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

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

Addendum

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

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

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

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Introduction

1. This report contains a comprehensive account of communications sent to Governments up to 1 December 2006, along with replies received up to the end of January 2007. It also contains two additional categories of communication: (i) Those sent after 1 December 2006 to which responses were received in time for inclusion; and (ii) Responses received to communications that were sent in earlier years.

I. COMMUNICATIONS AND REPLIES

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

A. Violation alleged

3. Violations are classified into the following categories:

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

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

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

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

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

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

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

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

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

B. Subject(s) of appeal

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

C. Character of replies received

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

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

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

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

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

(e) "No response".

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

6. In order to underscore the importance of the dialogue between the Special Rapporteur and Governments and to avoid any appearance that the principal goal is the exchange of correspondence for its own sake, this report contains brief comments by the Special Rapporteur on the extent to which he considers each reply to have responded adequately to the concerns arising under the mandate. An indication is also provided in instances in which additional information is required to respond effectively to the information received. As the procedures of the Human Rights Council evolve, in an effort to establish a more effective, credible, comprehensive and integrated system for promoting respect for human rights these comments will ideally be taken into account in the peer review procedure which is likely to be set up.

II. TABULATION OF COMMUNICATIONS AND REPLIES

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

A. "Communications sent" and "Government responses received"

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

B. "Number and category of individuals concerned"

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

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

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

D. "Character of replies received"

11. See Section I, paragraph 5 above.

ANNEX

Country	**Communications Sent**[1]	**Government Responses Received**	**Number and Category of Individuals Concerned**[2]	**Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened**	**Character of Replies Received**
Afghanistan	2 (2 UA)	0	2 males (1 member of religious minority)	Death penalty safeguards (2)	No response (2)
Algeria	2 (2 AL)[3]	1 (1 AL)	General	Impunity (2)	Largely satisfactory response (1) No response (1)
Argentina	1 (1 AL)	0	22 persons of unknown sex	Deaths in custody (1)	No response (1)
Australia	1 (1 AL)	0	1 male (indigenous)	Deaths in custody (1)	No response (1)
Bangladesh	3 (3 AL)	2 (2 AL)	29 males 1 female (journalist)	Attacks or killings (2) Death threats (1)	Receipt acknowledged (2) No response (1)
Burundi	1 (1 AL)	0	4 males	Deaths in custody (1)	No response (1)
Cameroun	1 (1 AL)	0	1 male	Attacks or killings (1)	No response (recent communication) (1)

[1] UA=Urgent Appeal; AL=Allegation Letter.

[2] HRD=Human Rights Defender.

[3] Both communications concerned the same case.

Country	**Communications Sent**[1]	**Government Responses Received**	**Number and Category of Individuals Concerned**[2]	**Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened**	**Character of Replies Received**
Chile	2 (1 UA, 1 AL)	1 (1 UA)	1 male (indigenous) 1 female (indigenous, HRD)	Attacks or killings (1) Death threats (1)	No response (1) Cooperative but incomplete (1)
China	7 (4 UA, 3 AL)	5 (4 UA, 1 AL)	10 males (2 foreign nationals, 2 members of religious minority, 1 journalist) 4-63 persons of unknown sex (3-20 demonstrators, 1-43 persons exercising their freedom of movement)	Death penalty safeguards (4) Excessive force (2) Attacks or killings (1)	Largely satisfactory response (3) Cooperative but incomplete response (2) No response (recent communication) (1) Translation awaited (1)

Country	**Communications Sent**[1]	**Government Responses Received**	**Number and Category of Individuals Concerned**[2]	**Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened**	**Character of Replies Received**
Colombia	9 (4 UA, 5 AL)	5 (2 UA, 3 AL)	34 males (3 exercising freedom of expression, 3 minors, 24 indigenous) 3 females (1 minor, 1 indigenous)	Attacks or killings (3) Excessive force (1) Attacks or killings/deaths in detention (1) Attacks or killings/impunity (1) Impunity/death threats (1) Excessive force/disappearance (1) Impunity (1)	Largely satisfactory response (4) Cooperative but incomplete response (1) No response (4) (2 recent communications)
Democratic People's Republic of Korea	1 (1 UA)	1 (1 UA)	1 male (religious minority)	Death penalty safeguards (1)	Cooperative but Incomplete response (1)
Djibouti	1 (1 AL)	1 (1 AL)	5 males (1 minor) 1 female	Excessive force (1)	Largely satisfactory response (1)
Ecuador	1 (1 AL)	1 (1 AL)	1 male (minor, refugee)	Excessive force (1)	Receipt acknowledged (1)

Country	**Communications Sent**[1]	**Government Responses Received**	**Number and Category of Individuals Concerned**[2]	**Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened**	**Character of Replies Received**
Egypt	3 (1 UA, 2 AL)	3 (1 UA, 2 AL)	12 males	Excessive force (1) Attacks or killings (1) Death penalty safeguards (1)	Largely satisfactory response (3)
Ethiopia	1 (1 AL)	0	33 or more persons of unknown sex	Attacks or killings (1)	No response (1)
Guatemala	4 (2 UA, 2 AL)	1 (1UA)	2 transgender individuals (2 HRDs) 3 males (1 lawyer, 2 HRDs) 1 female (1 HRD)	Attacks or killings (1) Death threats (1) Attacks or killings/death threats (1) Impunity (1)	No response (3) (2 recent communications) Cooperative but incomplete response (1)
India	4 (4 AL)	1 (1AL)	3 males 15 persons of unknown sex (demonstrators)	Deaths in custody (2) Excessive force (1) Attacks or killings (1)	No response (3) Cooperative but incomplete response (1)

Country	**Communications Sent**[1]	**Government Responses Received**	**Number and Category of Individuals Concerned**[2]	**Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened**	**Character of Replies Received**
Indonesia	3 (1 UA, 2 AL)	1 (1 AL)	4 males (1 HRD) 4 persons of unknown sex	Death penalty safeguards (1) Excessive force (1) Impunity/attacks or killings (1)	No response (2) Cooperative but incomplete response (1)
Islamic Republic of Iran	8 (7 UA, 1 AL)[4]	2 (2 UA)	38 males (2 minors, 1 foreign national) 6 females (1 minor)	Death penalty safeguards (8)	No response (6) Allegations rejected without adequate substantiation (1) Cooperative but incomplete response (1)

[4] This break-down does not reflect that in two cases both an urgent appeal and follow-up were sent in the current year. In each of these two cases, the Government responded to both the urgent appeal and follow-up. In another case, both an allegation letter and an urgent appeal were sent in the current year. In that case, neither received responses.

Country	**Communications Sent**[1]	**Government Responses Received**	**Number and Category of Individuals Concerned**[2]	**Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened**	**Character of Replies Received**
Iraq	4 (2 UA, 2 AL)	0	68 males More than 13 persons of unknown sex (at least 7 foreign nationals)	Attacks or killings (1) Death penalty safeguards (2) Deaths in custody/attacks or killings (1)	No response (4)
Ireland	2 (2 AL)	1 (1 AL)	2 males (1 minor)	Deaths in custody (2)	Largely satisfactory response (1) No response (1)
Israel	1 (1 AL)	0	More than 170 persons	Attacks or killings (1)	No response (recent communication) (1)
Jamaica	2 (2 AL)	0	2 males (1 HRD), 1 female	Impunity (1) Attacks or killings (1)	No response (2)
Kyrgyzstan	2 (2 AL)	0	4 males	Excessive force (1) Deaths in custody (1)	No response (2)
Lao People's Democratic Republic	1 (1 AL)	1 (1 AL)	At least 26 persons	Attacks or killings (1)	Largely satisfactory response (1)
Libyan Arab Jamahiriya	2 (2 UA)	1 (1 UA)	4 males	Deaths in custody (1) Disappearance/death penalty safeguards (1)	Largely satisfactory response (1) No response (recent communication) (1)

Country	**Communications Sent**[1]	**Government Responses Received**	**Number and Category of Individuals Concerned**[2]	**Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened**	**Character of Replies Received**
Malaysia	1 (1 AL)	0	5 persons of unknown sex (foreign nationals)	Attacks or killings (1)	No response (1)
Mexico	2 (2 AL)	0	6 males (5 exercising freedom of expression, 1 indigenous)	Excessive force (1) Deaths in custody (1)	No response (2)
Morocco	1 (1 AL)	1 (1 AL)	8 males (8 migrants or refugees, 1 minor)	Use of force (1)	Cooperative but incomplete response (1)
Mozambique	1 (1 AL)	0	1 male	Excessive force (1)	No response (1)
Myanmar	1 (1 AL)	0	Unknown	Attacks or killings (1)	No response (1)
Namibia	1 (1 AL)	0	1 male	Deaths in custody (1)	No response (1)
Nepal	4 (4 AL)	2 (2 AL)	31 males (1 journalist) 9 females (3 minors)	Deaths in custody (1) Death threats (1) Attacks or killings (2)	Cooperative but incomplete response (1) Largely satisfactory response (1) No response (2)

Country	**Communications Sent**[1]	**Government Responses Received**	**Number and Category of Individuals Concerned**[2]	**Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened**	**Character of Replies Received**
Nigeria	2 (1 UA, 1 AL)	1 (1 AL)	18 males (1 minor)	Attacks or killings (1) Death penalty safeguards (1)	No response (1) Allegations rejected but without adequate substantiation (1)
Pakistan	6 (2 UA, 4 AL)[5]	1 (1 AL)	58 males (at least 17 minors, 1 journalist) 38 females (at least 16 minors) 31 persons of unknown sex	Death penalty safeguards (2) Impunity (2) Attacks or killings (2)	No response (5) Cooperative but incomplete response (1)
Philippines	3 (3 AL)	2 (2 AL)	36 males (1 minor, 3 members of indigenous group) 7 females	Impunity (1) Impunity/attacks or killings (2)	Largely satisfactory response (2) No response (1)
Qatar	1 (1 UA)	1 (1 UA)	18 males	Death penalty safeguards (1)	Allegations rejected but without adequate substantiation (1)

[5] This number does not reflect that in the case of Mirza Tahir Hussain, the SR sent two UAs in 2006.

Country	**Communications Sent**[1]	**Government Responses Received**	**Number and Category of Individuals Concerned**[2]	**Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened**	**Character of Replies Received**
Russian Federation	2 (2 AL)	2 (2 AL)	13 males (11 journalists) 2 females (2 journalists)	Deaths in custody/attacks or killings (1) Impunity (1)	Cooperative but incomplete response (2)
Spain	1 (1 AL)	1 (1 AL)	3 males	Excessive force (1)	Largely satisfactory response (1)
Sri Lanka	4 (1 UA, 3 AL)	1 (1 AL)	8 males (1 minor) 1 female	Death threats (2) Deaths in custody (1) Impunity/attacks or killings (1)	Largely satisfactory response (1) No response (3)
Sudan	5 (1 UA, 4 AL)	0	5 males More than 115 persons of unknown sex (20 demonstrators)	Attacks or killings (3) Death penalty safeguards (1) Excessive force (1)	No response (5) (1 recent communication)
Syrian Arab Republic	1 (1 UA)	0	1 female	Impunity (1)	No response (1)

Country	**Communications Sent**[1]	**Government Responses Received**	**Number and Category of Individuals Concerned**[2]	**Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened**	**Character of Replies Received**
Thailand	1 (1 UA)	0	2 males	Death penalty safeguards (1)	No response (1)
Tunisia	3 (3 AL)[6]	3 (3 AL)	3 males	Deaths in custody (2) Excessive force (1)	Cooperative but incomplete response (2) Allegations rejected but without adequate substantiation (1)
Turkey	4 (4 AL)	2 (2 AL)	2 males (1 minor) 27 persons of unknown sex (7 minors)	Attacks or killings (3) Excessive force (1)	Cooperative but incomplete response (2) No response (2)
Turkmenistan	1 (1 UA)	0	1 female (HRD)	Deaths in custody (1)	No response (1)
Uganda	1 (1 AL)	0	1 male	Deaths in custody (1)	No response (1)
United Arab Emirates	1 (1 AL)	0	1 male (foreign national)	Death penalty safeguards (1)	No response (1)

[6] In one of these cases, the allegation letter was sent in a prior year, but the Government responded in the current year.

Country	**Communications Sent**[1]	**Government Responses Received**	**Number and Category of Individuals Concerned**[2]	**Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened**	**Character of Replies Received**
United States of America	5 (1 UA, 4 AL)	2 (1 UA, 1 AL)[7]	6 males (4 foreign nationals, 2 minors) 31 persons of unknown sex (foreign nationals) 8 females (4 minors)	Death penalty safeguards (1) Attacks or killings (3) Impunity (1)	Largely satisfactory response (1) Allegations rejected but without adequate substantiation (1) No response (3)
Uzbekistan	2 (1 UA, 1 AL)	0	4 males (3 foreign nationals)	Death penalty safeguards (1) Excessive force (1)	No response (2)
Bolivarian Republic of Venezuela	3 (1 UA, 2 AL)	0	6 males (1 journalist, 2 minors) 1 female	Death threats (3)	No response (3)
Viet Nam	1 (1 UA)	1	1 female	Death penalty safeguards (1)	Largely satisfactory response (1)

[7] This break-down does not reflect that, in the case of Haitham al-Yemeni, although the Government responded to a prior-year allegation letter, it has not responded to a recent follow-up communication.

Country	**Communications Sent**[1]	**Government Responses Received**	**Number and Category of Individuals Concerned**[2]	**Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened**	**Character of Replies Received**
Yemen	5 (4 UA, 1 AL)[8]	3 (3 UA)	2 females (1 minor) 4 males (1 minor)	Death penalty safeguards (5)	Cooperative but Awaiting translation (1) Incomplete response (1) Allegations rejected but without adequate substantiation (1) No response (2)

[8] In one of these cases, the urgent appeal was sent in a prior year, but the Government responded in the current year.

Country	**Communications Sent**[1]	**Government Responses Received**	**Number and Category of Individuals Concerned**[2]	**Alleged Violations of the Right to Life upon which the Special Rapporteur Intervened**	**Character of Replies Received**
Palestinian Authority	1 (1 UA)	0	General	Impunity/attacks or killings (1)	No response (recent communication) (1)
Liberation Tigers of Tamil Eelam (LTTE)	1 (1UA)	0	1 male	Death threats (1)	No response (1)

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Afghanistan: Death Sentence of Abdul Rahman

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

Subject(s) of appeal: 1 male (member of religious minority)

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 Commission on Human Rights.

Urgent appeal dated 22 March 2006

We would like to draw the attention of your Government to information we have received regarding **Abdul Rahman**. According to the information received:

> Abdul Rahman is currently being tried in a Kabul court on criminal charges of conversion from Islam to Christianity. Mr. Rahman was arrested in February 2006 after the police received information that he was a convert. He was found carrying a Bible at the time of his arrest. During his trial, Mr. Rahman acknowledged that he had converted to Christianity sixteen years ago. The Prosecutor, Mr. Wasi, indicated he would be willing to drop the charges if Mr. Rahman reconverted to Islam, but Mr. Rahman is unwilling to do so. According to the information received, conversion from Islam carries the death sentence under national law.

While we do not wish to prejudge the accuracy of these allegations, we would also like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration on Human Rights as well as of the International Covenant on Civil and Political Rights.

We would like to draw the Government's attention to General Comment 22 of the Human Rights Committee. Paragraph 3 provides that, "Art. 18 does not permit any limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief on one's choice." Furthermore, paragraph 5 of General Comment 22 of the Human Rights Committee provides that, "The Committee observes that the freedom to "have or adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another". The General Comment goes on in Paragraph 9 to state that, "the fact that a religion is recognized as a state religion […] shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including article 18 […], nor in any discrimination against adherents to other religions".

We would also like to remind your Excellency's Government that, in accordance with article 6(2) of the International Covenant on Civil and Political Rights, "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes". In its General Comment No. 6, the United Nations Human Rights Committee has stated that "the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure". Finally, the Safeguards guaranteeing protection of the rights of those facing the death penalty approved by Economic and Social Council resolution 1984/50 of 25 May 1984 provide that "in countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences" (para. 1).

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. Rahman in compliance with the obligations under international law of your Excellency's Government, as outlined above.

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

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

2. Please indicate the law and the relevant articles, under which Abdul Rahman has been charged. Please provide a copy of the relevant articles.

3. Please indicate the extent to which the criminalization of conversion is compatible with the international standards referred to above.

4. Please indicate how many people have been tried and convicted on charges relating to conversion during the past year.

Afghanistan: Death Sentence of Asadullah Sarwari

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

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 20 April 2006 sent with the Special Rapporteur on the independence of judges and lawyers

We would like to bring to the attention of your Excellency's Government reports we have received regarding the trial of Mr. **Asadullah Sarwari** and the imposition of the death penalty against him. We understand that Mr. Sarwari, who is now aged 65, was the head of Afghanistan's intelligence service (AGSA) under the regime of Hafizullah Amin (1978-79), which carried out mass arrests and summarily executed many of those detained. According to the information received:

> Mr. Sarwari was arrested in 1992 by a Mojahedin force following the withdrawal from Afghanistan of the Soviet Union's armed forces. In 2003 he was handed over to the intelligence service of your Excellency's Government, the National Security Directorate. In autumn 2005, Mr. Sarwari requested President Karzai 'for justice'. Criminal proceedings against him were initiated and he was charged with several crimes against the internal security of the state, including inviting armed forces to an uprising, using force to overthrow the presidency, and homicide.
>
> The trial consisted of 3 hearings, the first on 26 December 2005, the last on 25 February 2006. Because of the highly charged atmosphere surrounding the trial and of the precarious security situation, Mr. Sarwari was unable to find a suitable lawyer to represent him. Most of the evidence adduced at trial related to the arrest and subsequent disappearance of up to 70 members of a family, the Mujeddadi, in June 1979. At the final trial hearing on 25 February 2006, at Kabul National Security Primary Court, sixteen witnesses gave testimony. Some of them were called by the prosecutor, others 'gave evidence' spontaneously from the public gallery. Members of the Mujeddadi family and household stated that the accused was present at, and was in charge of, the arrests. One witness came forward and gave evidence supportive of Mr. Sarwari, stating that 120 detainees were released by him in 1979. This produced an angry reaction from the public gallery. The presiding judge called the audience to order and stated that it was important that the court listened to both sides. Mr. Sarwari was not given the opportunity to cross examine any of the witnesses.
>
> Mr. Sarwari read out his defence statement denying all allegations against him. He complained about his illegal arrest and detention for more than 13 years without trial. He admitted to having issued arrest warrants, but asked the prosecutor to produce any testimony or documentary proof that could prove his involvement in the killing of detainees. During this exchange, the Prosecutor conceded the absence of any article in the Penal Code of Afghanistan under which Mr. Sarwari could be convicted as a war criminal, but argued that Mr. Sarwari's official position as the head of AGSA was

sufficient to hold him responsible for the murder and disappearance of innocent countrymen under Article 130 of the Constitution.

At 1.30 p.m. the judicial panel retired to consider its verdict. Fifteen minutes later the judges returned and pronounced the judgment and sentence. Mr. Sarwari was found guilty of the 'killing of countless Afghans' on the basis of his involvement in the arrest of members of the Mujeddadi family and on the basis of his senior official position in the Amin Regime. He was not found guilty on any specific count contained in the indictment but rather, according to the judge, in accordance with article 130 of the Constitution which states that 'if there is no provision in the Constitution or other laws about a case, the courts shall in pursuance of Hanafi jurisprudence and within the limits set by the Constitution, rule in a way that attains justice in the best manner'. On the basis of this guilty finding, he was sentenced to death.

It would appear that the Attorney General has filed an appeal against the judgment (or the sentence), while Mr. Sarwari has not appealed against the judgment and sentence within the 20-day deadline provided by the Interim Criminal procedure Code.

We would like to commend your Excellency's Government for bringing to justice a person accused of responsibility as a commander for numerous summary executions (although we remain concerned that the Afghan criminal code does not proscribe war crimes and crimes against humanity, and therefore does not allow the prosecution to file charges which fully reflect the seriousness of the crimes Mr. Sarwari is accused of – an issue which the problems related to the charges in the present trial would appear to highlight). Indeed, ending the impunity of those responsible for war crimes and crimes against humanity committed during the 25 years of armed conflict in Afghanistan is an important obligation of your Excellency's Government under international law and the Action Plan on Peace, Justice and Reconciliation. It also constitutes a demand of the Afghani people, as set forth in the Afghan Independent Human Rights Commission's report *A Call for Justice. A National Consultation on Past Human Rights Violations in Afghanistan*.

Such efforts to ensure accountability must, however, themselves comply with international human rights law. While capital punishment is not prohibited under international law, it must be regarded as an extreme exception to the fundamental right to life, and is surrounded with strict limitations by international law binding upon your Excellency's Government, in particular articles 6 and 14 of the International Covenant on Civil and Political Rights. With specific regard to the case of Mr. Sarwari, we would like to draw your attention to the requirement that "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the [ICCPR] admits of no exception" (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). The reports concerning the trial of Mr. Sarwari raise a number of very serious concerns with regard to the right to a fair trial:

(i) Regarding the requirement of independence and impartiality of the tribunal (article 14(1) ICCPR), reports indicate that before the decisive hearing of 25 February 2006 representatives of the Mujeddadi family (i.e. victims and prosecution witnesses) and the Head of the Department of Judicial Inspections of the Supreme Court, Mr. Halimi, were sitting in the

judges' chambers at the court house and meeting with the judge presiding over the trial. Mr. Halimi sat in the front row of the court throughout the hearing, next to prosecution witnesses and close to the prosecutor. At one point he intervened during the trial. When the judges retired to consider their verdict, he also left the court. Moreover, the judicial panel took only fifteen minutes of deliberation to find the applicant guilty and sentence him to death. We acknowledge that the presiding judge reportedly gave Mr. Sarwari the opportunity to speak unhindered in his defence and reminded the public that both sides must be given a full hearing. The circumstances referred to above, however, engender the impression of possibly undue influence over the trial judges by the Department of Judicial Inspections of the Supreme Court and the victims' family and cast a grave shadow over the appearance of independence and impartiality of the tribunal.

(ii) Regarding the accused's right to be informed of the charges, to be given adequate time and facilities for the preparation of his defence, and to be enabled to examine the witnesses against him and obtain the attendance of witnesses on his behalf (article 14(3), letters (a), (b) and (e) ICCPR), nothing in the reports I have received indicates that the accused had prior notice of who would give evidence against him and what exactly the witnesses would give evidence on. Under articles 51 and 53 of the Interim Criminal Procedure Code the prosecution was obliged to submit to the court a list of witnesses it intends to call, which it failed to do. Mr. Sarwari therefore had no opportunity to call evidence in rebuttal, to effectively challenge the prosecution evidence or to properly prepare his defence. The accused was not given the opportunity to cross-examine the witnesses against him, and did not call any witnesses on his behalf. Finally, the accused was convicted on the basis of a provision, Article 130 of the Constitution, that was not contained in the criminal code in force at the time of the trial, was not mentioned in the indictment and reportedly was not discussed in the course of the trial, which would appear to have seriously undermined his chances of effectively preparing his defence. Articles 57 and 42 of the Interim Criminal Procedure Code as well require prior notice to be given to the defence of changes in the definition of offences alleged.

(iii) Regarding the accused's right "to defend himself in person or through legal assistance of his own choosing … and to have legal assistance assigned to him, in any case where the interests of justice so require" (article 14(3), letter (d) ICCPR), Mr. Sarwari did not enjoy any legal assistance. The reports we have received indicate that this was not his free choice, but due to the circumstance that no lawyer was willing to take up his defence. We am also concerned that in the indictment, Mr. Sarwari's request for an attorney was viewed as disruptive of the prosecution's investigation and as another basis for his guilt.

(iv) Regarding the right to obtain review of conviction and sentence by a higher court (article 14(5) ICCPR), the effective exercise of this right requires that the defendant be provided with legal counsel and time to adequately prepare his appeal.

We do not wish to prejudge the accuracy of the reports we have received. In the event, however, that they were accurate, entirely or also only in part, we have no doubt that international law requires your Excellency's Government to ensure that the death penalty is not carried out. I urge your Government to ensure that the concerns we (and other observers) have expressed with regard to the trial are fully taken into account at the second instance stage, whether or not Mr. Sarwari himself files an appeal against the judgment. We further urge your Government to

ensure that Mr. Sarwari be provided with adequate legal assistance for all remaining procedural stages in his case.

In 2003, the Commission on Human Rights called on the Afghanistan Transitional Administration to "declare a moratorium on the death penalty in the light of procedural and substantive flaws in the Afghan judicial system." (Situation of Human Rights in Afghanistan, CHR Res. 2003/77). We recognize that your Excellency's Government is undertaking considerable efforts to improve the criminal justice system under the most challenging circumstances. Nonetheless, we consider that the concerns highlighted with regard to the trial of Mr. Sarwari (as well as those I set forth in my letter to your Government of 31 August 2005 concerning the cases of Messrs. Sharifullah (surname unknown), Habib al-Rahman, Zalmai (surname unknown), Neyaz Mohammad, Tila Mohammad (known as Telgai), Mohammad Rafiq, and Omar Khan, which unfortunately has remained unanswered), require your Government to suspend all executions in order to live up to its obligations under international law.

It is our responsibility under the mandates provided to us by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to our attention. Since we are expected to report on this case, we would be grateful for your cooperation and your observations

a) as to whether the above information concerning the trial and sentence of Mr. Sarwari is accurate; and

b) regarding all steps undertaken by your Government to ensure that Mr. Sarwari is not executed in violation of international law, including information concerning all ongoing and future proceedings in his case.

We would appreciate a response on these matters before any irreversible steps are taken in relation to the fate of Mr. Sarwari. We undertake to ensure that your Government's response is accurately reflected in the reports we will submit.

Algeria: Charte Pour la Paix et la Réconciliation Nationale

Violation alléguée : Impunité

Objet de l'appel: Général

Caractère de la réponse: Réponse largement satisfaisante

Observations du Rapporteur Spécial

Le Rapporteur Spécial est satisfait de la réponse du Gouvernement Algérien qui démontre que celui-ci est impliqué dans un dialogue quant aux mesures d'application de la Charte pour la paix et la réconciliation nationale en matière de droit international des droits de l'Homme

Lettre d'allégation envoyée le 2 mars 2006 conjointement avec le Président du groupe de travail sur les disparitions forcées ou involontaires

Nous souhaitons attirer votre attention sur nos commentaires au sujet de l'adoption par le Gouvernement de son Excellence des mesures d'application de la Charte pour la paix et la réconciliation nationale (au sujet de laquelle nous vous avons déjà communiqué notre point de vue par lettre du 27 avril 2005). Toutefois, ne voulant pas à ce stade préjuger des allégations qui nous ont été soumises, nous saurions gré au Gouvernement de votre Excellence de bien vouloir nous faire parvenir dans les plus brefs délais une copie des textes susmentionnés.

D'après les renseignements dont nous disposons, le projet d'ordonnance et les décrets présidentiels portant mise en œuvre de la Charte pourraient ne pas être conformes aux obligations de droit international prises par l'Algérie. En effet, il nous a été rapporté que le sixième chapitre du projet d'ordonnance relatif aux « artisans de la sauvegarde de la République Algérienne Démocratique et Populaire » consacrerait l'impunité des forces de l'ordre et assimilés pour les crimes commis durant la guerre civile. Il interdirait toute poursuite pénale, dénonciation ou plainte publique à l'encontre des forces de défense et de sécurité de la République pour des actions menées en vue de la protection des personnes et des biens, de la sauvegarde de la nation et de la préservation des institutions.

Si elles s'avéraient exactes, ces dispositions dérogeraient au Pacte International relatif aux Droits Civils et Politiques (article 2 para 3 a) auquel le Gouvernement de son Excellence est partie et selon lequel « les Etats s'engagent à (…) garantir que toute personne dont les droits et libertés reconnus dans le présent Pacte auront été violés disposera d'un recours utile, alors même que la violation aurait été commise par des personnes agissant dans l'exercice de leurs fonctions officielles ».

De même, le texte énoncerait l'extinction des poursuites judiciaires pour les personnes qui se sont présentées aux autorités entre le 13 janvier 2000 et un délai de six mois à partir de la promulgation de l'ordonnance, à condition qu'elles ne soient pas impliquées dans les faits de massacres collectifs, viols ou usage d'explosifs dans les lieux publics. Bénéficieraient également de cette amnistie les personnes recherchées à l'intérieur ou à l'extérieur du territoire national ainsi que celles condamnées par contumace.

Nous félicitons le Gouvernement de son Excellence de sa décision de ne pas amnistier les crimes les plus graves et espérons que celui-ci se conformera avec son devoir d'enquête sur de telles violations afin de garantir qu'elles ne se reproduisent. Nous regrettons cependant que les auteurs d'exécutions extrajudiciaires, actes de torture ou disparitions forcées soient, malgré la gravité de leur crimes, couverts par l'amnistie.

Enfin, il nous a également été rapporté que le chapitre cinq du projet d'ordonnance codifiant les mesures d'appui à la politique de prise en charge du dossier des disparus prévoirait l'indemnisation des ayants droit contre l'octroi d'un jugement de décès. Nous saluons ces mesures de compensation car elles sont conformes à l'article 19 de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées. Cependant, nous souhaitons porter à l'attention du Gouvernement de son Excellence que dans l'hypothèse où la délivrance d'un certificat de décès empêcherait les familles des victimes d'entamer des poursuites judiciaires, cette disposition enfreindrait les articles 17 et 18 de la Déclaration précédemment mentionnée qui stipulent notamment que tout acte conduisant à une disparition forcée continue

d'être considéré comme un crime aussi longtemps que ses auteurs dissimulent le sort réservé à la personne disparue et le lieu où elle se trouve et que les faits n'ont pas été élucidés, et que les auteurs présumés de disparitions forcées ne peuvent bénéficier d'aucune loi d'amnistie spéciale ni d'autres mesures analogues qui auraient pour effet de les exonérer de toute poursuite ou sanction pénale.

Réponse du Gouvernement de l'Algérie du 24 mars 2006

Le Gouvernement algérien a pris connaissance du contenu de votre lettre du 02 mars 2006. Il se déclare contre la tendance à vouloir reléguer au second plan la volonté populaire souveraine qui procède de solutions naturellement réalistes. Seul le peuple algérien résolument tourné vers l'avenir, est investi de l'autorité politique et morale de choisir les conditions et les implications de sa sortie de crise. Seul l'Etat national algérien est habilité à traduire la volonté populaire en texte législatifs et réglementaires destinés à prendre en charge tous les aspects de la paix et de la réconciliation nationale que le peuple algérien soutient massivement.

L'appréciation que vous portez sur les textes de loi pris en application d'un Charte issue d'une consultation référendaire démocratique et à laquelle le peuple algérien a majoritairement souscrit, le 29 septembre 2005, n'est pas recevable. Elle constitue une atteinte à son libre arbitre et à la volonté citoyenne des Algériens et des Algériennes au nom duquel la justice est rendue. Elle contient des référents péremptoires et inacceptables sur les institutions républicaines garantes de l'ordre, de la sécurité et de la souveraineté de la Nation algérienne.

Votre démarche est choquante et pêche par une partialité évidente, dans la mesure où elle discrimine entre les victimes aux dépens de la quasi-totalité de ces derniers qui ont péri ou pâti par suite d'actes terroristes. Elle cherche visiblement à culpabiliser les agents de l'Etat pour des supputations hypothétiques tout en occultant totalement les hécatombes criminelles des groupes terroristes, auteurs avérés de près de deux cent mille morts. D'ailleurs, lors d'un entretien que j'ai eu le 6 avril 2005, en marge des travaux de la 61ème session de la Commission des Droits de l'Homme avec M. Stephen J. Toope, j'ai soulevé cette question sans pour autant recevoir une réponse adéquate. M. Toope s'est limité à affirmer que les groupes terroristes sont certs les auteurs de violations, en citant le cas du Népal, mais, a-t-il ajouté, le mandat du Groupe qu'il préside prend en charge uniquement les victimes de disparitions dont les auteurs seraient les agents de l'Etat. Selon cette démarche, les violations des droits de l'homme ne seraient pas dignes de compassion ou de prise en charge internationale, s'il s'agit de victimes de terrorisme, L'Algérie rejette une telle approche sélective aux droits de l'homme, toute vie humaine étant digne selon elle de la même compassion et de la même protection.

C'est fort du mandat que le peuple souverain lui a confié, à la suite d'un scrutin démocratique, par voie de référendum le 29 septembre 2005, que le Gouvernement a initié et adopté l'ordonnance portant mise en œuvre de la Charte pour la paix et la réconciliation nationale ainsi que ses textes d'application.

Par ces textes l'Algérie a choisi sa propre voie pour apaiser les esprits, pacifier les rapports sociaux et rassembler les composantes de la société. Il s'agit d'une aspiration citoyenne à laquelle aucune autre légitimité n'est opposable. Elle constitue la juste voie de cicatrisation sociale qu'a agréée la Nation algérienne.

L'Algérie qui a longtemps combattu seule, dans un passé récent, dans l'incompréhension des uns et la suspicion des autres, le terrorisme barbare a chosi dans le contexte dynamique de la concorde civile initiée en 199, d'emprunter la voie de la paix et de la réconciliation nationale en se fondant sur ses propres références et son propre vécu.

Cette réconciliation vise une reconstitution viable du tissu social gravement endommagé par les douleurs, les blessures et les souffrances. Elle se propose de prendre en charge les victimes, toutes les victimes, de la tragédie nationale et d'assurer à leurs ayants-droit la protection sociale de l'Etat. Le processus de réconciliation nationale fort complexe ne doit pas être détaché de son context historique et factuel.

L'Algérie a toujours manifesté sa disponibilité et sa coopération avec les mécanismes thématiques de la Commission des droits de l'Homme, y compris dans les moments les plus difficiles. Elle n'a pas ménagé ses efforts, lorsqu'il a été porté à sa connaissance des faits suffisamment documentés pour enquêter et poursuivre les auteurs de manquement à la loi contre toutes formes d'atteintes aux droits de l'homme. Elle souligne que la mission pérenne de protection des droits de l'homme incombe à l'Etat national qui sanctionne avec sévérité tout dépassement de la part des agents chargés de l'application de la loi. Elle accepte volontiers la critique constructive, tout autant qu'elle rejette les procès d'intention.

Le Gouvernement algérien souligne qu'il est respectueux des nombreux engagements internationaux qu'il a librement contractés et récuse l'invocation dans ce contexte de la Déclaration des Nations Unies de 1992 qui, faut-il le rappeler, n'est pas un instrument juridique contraignant et qui n'est donc pas pertinent. Au demeurant, en matière de disparitions forcées ou involontaires, une Convention internationale opposable aux Etats est encore su stade de projet.

Le Gouvernement algérien rappelle que le peuple qui est, selon la Constituion algérienne, l'unique source de la souveraineté et le seul artisan du changement institutionnel, exerce en conséquence la liberté de choisir son système politique, juridique, économique ou culturel. Le respect de ce choix consacré par la Charte des Nations Unies doit être observé en premier lieu par les organes et les mécanismes qui en dépendent. Toute autre attitude, de la part de ces derniers, serait, en cette période d'évaluation des cadres existants en vue de gain de l'efficacité et de la crédibilité, une claire invitation aux Etats à assumer pleinement leurs responsabilités contre les dérives et autres pratiques arbitraires par toutes les voies légitimes qui leur sont ouvertes.

Enfin, comme suite à votre demande, vous voudrez bien trouver, joint en annexe, les textes d'application portant mise en œuvre de la Charte pour la paix et pour la réconciliation nationale.

Lettre d'allégation envoyée le 17 mai 2006 conjointement avec le Président du groupe de travail sur les disparitions forcées ou involontaires.

En réponse à votre lettre du 24 mars 2006 portant référence IJ/MedMB/338/06, nous souhaitons attirer l'attention de votre Gouvernement sur le fait que notre communication du 2 mars 2006 ne remet pas en question le principe de la souveraineté du peuple algérien. Nous réaffirmons en effet le droit absolu de ce dernier à choisir librement la manière dont il veut répondre à des années de violence et de troubles internes, y compris par l'adoption par référendum populaire

d'une Charte pour la paix et la réconciliation nationale. Nous tenons cependant à rappeler au Gouvernement de son Excellence que celui-ci est tenu de respecter les engagements « qu'il a librement contractés » et qu'à ce titre, il doit donner effet aux droits reconnus dans le Pacte International relatif aux Droits Civils et Politiques, comme énoncé en son article 2 paragraphe 2.

En tant que partie au dit Pacte, l'Algérie s'est engagée à respecter et à garantir à tous les individus se trouvant sur son territoire et relevant de sa compétence les droits qui y sont reconnus, sans distinction aucune (article 2, paragraphe 1). Nous rappelons au Gouvernement de son Excellence que, conformément à l'article 6 paragraphe 1 du Pacte, celui-ci s'est engagé à respecter le droit à la vie. Dans son Commentaire Général No 6 paragraphe 4 relatif à ce même article, le Comité des Droits de l'Homme a expliqué que pour protéger le droit à la vie, « les Etats parties doivent adopter des mesures spécifiques et efficaces afin de prévenir les disparitions forcées d'individus » … « qui équivalent trop souvent à une privation arbitraire de la vie ». Il a par ailleurs énoncé que « les Etats doivent mettre en œuvre des mesures et procédures efficaces afin de mener des enquêtes exhaustives relatives aux cas de personnes disparues dans des circonstances pouvant impliquer une violation du droit à la vie ». Le devoir strict des Etats parties de prévenir et enquêter sur les cas de personnes disparues a par ailleurs été unanimement confirmé par le Comité dans *Maingo Muiyo v Zaire* (194/85), *Mojica v Dominica Republic* (449/91), et *Laureano v Peru* (540/93). Ainsi, on ne peut simplement arguer que la déclaration sur la protection de toutes les personnes contre les disparitions forcées n'est pas juridiquement contraignante car nombre de ses dispositions reflètent des principes de droit fondamentaux contenus dans le Pacte International relatif aux Droits Civils et Politiques.

Enfin, nous tenons à clarifier que le Président Rapporteur du Groupe de Travail sur les disparitions forcées et le Rapporteur Spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires n'ont aucunement l'intention d'exclure du domaine des droits de l'Homme les poursuites à l'encontre de terroristes. A cet égard, dans son rapport à la Commission des droits de l'Homme (E/CN.4/2005/7, paragraphes 65-76), Philip Alston a rappelé que la réponse d'un Gouvernement à des meurtres par des acteurs non étatiques y compris par des membres de groupes terroristes relève de son mandat. En particulier, il a énoncé que « des crimes, y compris des meurtres, perpétrés par des particuliers peuvent aussi engager la responsabilité de l'Etat si celui-ci n'a pas pris les mesures voulues pour dissuader, empêcher et punir les auteurs ou pour corriger toute attitude ou toute situation dans la société qui encourage ou facilite de tels crimes » (paragraphe 71).

Argentina: Muertes en el Sistema Penitenciario de la Provincia de Mendoza

Violación alegada: Muertes en detención

Persona objeta del llamamiento: 22 personas

Carácter de la respuesta: No respuesta

Observaciones del Relator Especial

El Relator Especial lamenta que el Gobierno de Argentina no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

Carta de alegación enviada el 1 de septiembre de 2006 conjuntamente con el Relator Especial sobre la tortura

Quisiéramos llamar la atención de su Gobierno sobre la información que hemos recibido en relación con los incidentes ocurridos en la Penitenciaría de Mendoza en la que recientemente se encontraron muertos a tres reclusos.

Según la información recibida, el 17 de junio de 2006, el preso **Sebastián Alejandro Hormazabal** fue encontrado muerto en el Pabellón 9, celda 16, como consecuencia de heridas múltiples causadas por un instrumento corto-punzante. El 18 de junio de 2006, se encontraron los cadáveres de los reclusos **Diego Ferranti Lucero** y **Gerardo Gómez González** en un patio del Pabellón 16 de máxima seguridad. Los dos reclusos habrían sido trasladados horas antes desde la cárcel de Córdoba y su traslado se debería a que el martes siguiente iban a declarar ante el juez que instruye la causa por un motín ocurrido en Mendoza en el año 2000. Según la información recibida ambos reclusos habrían sido apuñalados y degollados.

De acuerdo a nuestras fuentes, dichas muertes no constituyen hechos aislados, sino que se dan en un contexto reiterado de violencia y denuncias de violaciones a los derechos humanos en las cárceles de la provincia de Mendoza. Según la información recibida, desde el año 2000 han muerto más de 40 internos en dependencias del Sistema Penitenciario Provincial, con 22 fallecimientos registrados entre febrero 2004 y noviembre 2005. En el anexo a esta carta incluimos una lista con los nombres, la fecha, el lugar y la causa de la muerte de los 22 internos fallecidos durante este periodo. Diez de ellos habrían muerto como consecuencia de heridas causadas por armas corto-punzantes, cinco por asfixia, uno debido a graves quemaduras, dos por disparos de arma de fuego durante un intento de fuga, uno habría muerto electrocutado, un recluso habría sido asesinado y luego descuartizado y otro habría aparecido colgado de su cinturón en su celda. Según la información recibida, en noviembre del 2005 sólo existía avance en dos investigaciones sobre estos fallecimientos.

Igualmente, se nos ha informado que las condiciones de reclusión en las cárceles de la Provincia de Mendoza son preocupantes. Existiría un grave hacinamiento en condiciones de insalubridad, escasez de agua potable y de una atención médica adecuada. Un número elevado de presos habría denunciado maltrato por parte del personal penitenciario, imposición arbitraria de sanciones y demora en los procesos judiciales. A este respecto, me gustaría llamar la atención de su Gobierno sobre las conclusiones del Grupo de Trabajo sobre la Detención Arbitraria, de la Comisión de Derechos Humanos de las Naciones Unidas. Durante su visita a centros de detención en varias provincias argentinas incluyendo Mendoza en septiembre y octubre de 2003, el Grupo de Trabajo pudo comprobar “el hacinamiento y las malas condiciones de seguridad, salud, nutrición, vestimenta y sanitarias en la mayoría de los centros de detención visitados.” Doc. ONU.E/CN.4/2004/3/Add.3, 23 de diciembre de 2003, párrafo 62.

Por otro lado, quisiera llamar la atención de su Gobierno sobre la resolución del 22 de noviembre de 2004 de la Corte Interamericana de Derechos Humanos. En dicha resolución, la Corte pidió al estado argentino “adoptar las disposiciones necesarias para proteger la vida e integridad personal de todas las personas privadas de la libertad en la Penitenciaría de Mendoza y en la unidad Gustavo André de Lavalle, así como la de todas las personas que se encuentren en el interior de

éstas". En diciembre de 2004, la Comisión Interamericana realizó una visita a las cárceles de la Provincia de Mendoza, y en su informe declaró que las medidas tomadas hasta el momento por el Gobierno no eran idóneas ni suficientes y que los internos continuaban viviendo en "condiciones infrahumanas".

En este contexto, deseamos instar a su Gobierno a que investigue las muertes de los 22 reclusos que fallecieron en las cárceles de la Provincia de Mendoza entre el 2004 y el 2005, así como las muertes recientes de los reclusos **Sebastián Alejandro Hormazabal, Diego Ferranti Lucero y Gerardo Gómez González** en Junio de 2006**.** Igualmente, instamos al Gobierno de su Excelencia **a** que imponga las sanciones adecuadas a las personas responsables de estas muertes y a que adopte todas las medidas necesarias para que dejen de repetirse este tipo de hechos. A este respecto, llamamos la atención de su gobierno sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. En particular, llamamos la atención sobre los principios 9 y 19 según los cuales, los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.

Finalmente, instamos al Gobierno de su Excelencia a tomar todas las medidas necesarias para garantizar las condiciones mínimas de seguridad y de respeto de la integridad física y psicológica de todas las personas que se encuentran detenidas en las cárceles de la Provincia de Mendoza. A este respecto, llamamos la atención de su Gobierno sobre las Reglas mínimas para el tratamiento de los reclusos, adoptadas por el Consejo Económico y Social en sus resoluciones 663C (XXIV) del 31 de julio de 1957 y 2076 (LXII) del 13 de mayo de 1977, así como sobre el Conjunto de Principios para la protección de todas las personas sometidas a cualquier forma de detención o prisión, adoptado por la Asamblea General en su resolución 43/173 del 9 de diciembre de 1988.

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

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

2. ¿Fue presentada alguna queja?

3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con la muerte de **Sebastián Alejandro Hormazabal, Diego Ferranti Lucero y Gerardo Gómez González**, así como las muertes de los 22 reclusos que fallecieron en las cárceles de la Provincia de Mendoza entre el 2004 y el 2005. Por favor incluya el resultado de las autopsias, y si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.

4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

5. Por favor, indique si los familiares de los reclusos fallecidos obtuvieron algún tipo de compensación a modo de indemnización.

6. Por favor informe sobre las medidas adoptadas para que este tipo de incidentes no se reproduzca

ANEXO

LISTA DE INTERNOS FALLECIDOS EN LAS CÁRCELES DE MENDOZA ENTRE 2004 Y 2005

NOMBRE DE INTERNO	FECHA DE MUERTE	LUGAR DE MUERTE	DETALLES
Alaniz Morales, Roberto Damián (19 años)	21 de marzo de 2004	Penitenciaría Pabellón 2	asesinado con un objeto corto-punzante
Argüello Quiroga, Pablo Javier (22)	6 de julio de 2004	Penitenciaría Pabellón 7	falleció por heridas ocasionadas por un arma corto-punzante
Camargo Quiroga, Alejandro	30 de octubre de 2004	Granja Penal de Gustavo André	asesinado por un grupo de internos. Falleció por heridas ocasionadas con un arma corto-punzante
Camargo Quiroga, Marcelo (28; hermano de Alejandro)	3 de febrero de 2005	Penitenciaría Pabellón 13	falleció en el Hospital Lagomaggiore de heridas de corto-punzante sufridas el 21 de noviembre de 2004
Carreño Contreras, Roy Antonio (21)	27 de julio de 2004	Penitenciaría Pabellón 6	murió luego de ser atacado con un arma corto-punzante. Fue llevado al Hospital Lagomaggiore pero no se recuperó.
Castro Irazoque, Ángel Patricio (29)	27 de septiembre de 2004	Penitenciaría Pabellón 13	atacado con un arma corto-punzante
Cuellar Vázquez, Luis	17 de marzo de 2005	Penitenciaría Pabellón 5	Muerto a puñaladas
García Contrera, Esteban Apolinario (25)	27 de marzo de 2004	Penitenciaría Pabellón 4	había sido atacado con un arma corto-punzante el 16 de marzo. falleció en el Hospital Central

NOMBRE DE INTERNO	FECHA DE MUERTE	LUGAR DE MUERTE	DETALLES
Manrique Inglés, Marcelo Javier (27)	30 de junio de 2004	Penitenciaría Pabellón 8	Atacado por otro interno con un arma corto-punzante durante una pelea.
Naranjo Nievas, Federico Daniel (22); y Javier Orlando **Chacón Araujo** (26)	28 de junio de 2004	Penitenciaría Pabellones 11 y 12	murieron tras ser baleados por personal penitenciario en un supuesto intento de fuga.
Reales Reynoso, Sergio Darío; José Alejo **Falcón Porras;** Javier Antonio **Gualpa;** Mario Guillermo **Andrada Molfa** y Carlos Marcelo **Villaruel Murúa**;	1 de mayo de 2004	Granja Penal de Gustavo André	Sergio Darío Reales Reynoso murió a raíz de varias lesiones de arma corto punzantes durante una riña entre internos. Los otros murieron asfixiados luego de un incendio ocasionado por internos, en protesta a las medidas disciplinarias introducidas como castigo.
Roldán di Benedetto, Jorge Antonio	28 de agosto de 2004		muerto con un arma corto-punzante
Saez, Ramón Pedro	4 de junio de 2004	Granja Penal de Gustavo André	murió en el Hospital Sicoli de Lavalle como consecuencia de quemaduras sufridas durante los sucesos de 1 de mayo de 2004 arriba mencionados.
Salinas Ares, Sergio Norberto (24)	4 de diciembre de 2004	Penitenciaría Pabellón 7	asesinado y luego descuartizado
Sandes Aguirre, Sergio César (20 años)	13 de agosto de 2005	Penitenciaría Complejo San Felipe Sección extramuros	murió electrocutado. Según fuentes oficiales, fue provocado por haber manipulado una conexión eléctrica clandestina
Videla Fernández, Ricardo David	22 de junio de 2005	Penitenciaría Pabellón 2	apareció colgado de su cinturón en su celda. Había estado encerrado más de 20 horas y tenia limitada las visitas.

Australia: Death in Custody of Mulrunji

Violation alleged: Death in custody

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

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information that was provided by the Government of Australia in response to his earlier communication, but he regrets that the Government has yet to provide the results of investigations, information on any penal or disciplinary sanctions that were imposed, or information relating to any compensation provided to the family of Mulrunji.

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

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

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

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

Bangladesh: "Crossfire" Killings by Special Forces Units

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

Subject(s) of appeals: 27 males

Character of reply: Receipt acknowledged

Observation of the Special Rapporteur

The Special Rapporteur looks forward to receiving a substantive response concerning the many deaths reported by the police and special forces as having occurred in "crossfire" with criminals but that raise suspicions of being staged extrajudicial executions. The SR would note, however, that the Government has already taken longer than the customary 90 days to respond.

Allegation letter dated 22 August 2006

I am writing about the trend that has emerged in the last two years of criminal suspects being shot and killed in crossfire while in the custody of Bangladeshi police or special forces. According to the information that I have received, many of these deaths are explained by law enforcement officials in a manner so consistent as to raise suspicions of police wrongdoing. The pattern of incidents would suggest that what the police and special forces report as "crossfire" deaths are in fact staged extrajudicial executions.

There are many examples to choose from, but I cite only three of the more recent:

(i) On or about 7 November 2005 a man identified only as **Ahad**, 30, was killed in a shootout between police and Ahad's cohorts in Narayanganj. Police arrested Ahad earlier that day or the day before. Following a confession, police took him to recover hidden arms. Alleged accomplices of Ahad attacked the police, and Ahad was killed in the crossfire.

(ii) On or about 6 November 2005 **Ebu Hossain**, 29, was killed in a shootout between police and Mr. Hossain's cohorts. A special team of police arrested Mr. Hossain about one day earlier in Dhaka. After a confession, police took him to recover hidden arms. While retrieving the arms, alleged accomplices of Mr. Hossain opened fire on police. Mr. Hossain was killed in the crossfire while trying to flee.

(iii) On or about 3 November 2005 **Projapati Biswas**, 45, was killed in a shootout between police and Mr. Biswas's cohorts. Mr. Biswas was identified as the leader of the New Biplabi Communist Party, an outlawed group. He was arrested about a day before in Bolabunia village. After a confession, police took him to Tangramari village to recover hidden arms. While retrieving the arms, accomplices of Mr. Biswas opened fire on the police. Mr. Biswas was caught in the crossfire and killed instantly.

For additional cases, please see the table of recent incidents attached to this letter as an annex. This table is by no means comprehensive. Indeed, I have received information concerning hundreds of other incidents.

Many of the deaths involve the Rapid Action Battalion (RAB), although the regular police and its auxiliary Cheetah and Cobra units are implicated as well. For example, in the year following RAB's founding in or about June 2004, more than one hundred (100) crossfire deaths were attributed to that agency. But other agencies have also been cited. I have received reports that three hundred and twenty-four (324) people were killed by Bangladeshi police agencies in the first nine months of 2005, and that between June 2004 and January 2006 there were four hundred

and sixty-seven (467) crossfire deaths. As will be seen from the table of incidents, the crossfire deaths have continued to occur almost daily in January 2006.

I am aware that several RAB officers have been subject to punitive action. I am also aware the government has called for an inquiry into some of these deaths. Nonetheless, the crossfire deaths continue. Moreover, the frequency with which I receive such reports raises with some urgency the possibility that police officers, and in particular RAB members, operate in an atmosphere of effective impunity.

I remind Your Excellency's Government that under Article 6(1) of the International Covenant on Civil and Political Rights, every human being has the right not to be arbitrarily deprived of his or her life. Death sentences may only be carried out pursuant to a final judgment rendered by a competent court (Article 6(2)) in accordance with the requirements of due process (Article 14). Accordingly, if these reported crossfire deaths in fact comprise extrajudicial executions, they would represent a violation of the Bangladeshi government's international human rights obligations. It is also relevant that Bangladesh's own constitution guarantees that no person shall be deprived of life save in accordance with the law (Articles 31 and 32). In this context, the number of suspects that are killed without legal process is alarming.

While I do not wish to prejudge the accuracy of the facts reported in any of the incidents reported, it is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Commission I would be grateful for the cooperation of Your Excellency's Government in providing responses and observations related to the following:

(i) With respect to the cases of Ahad, Ebu Hossain, and Projapti Biswas, summarized above:

a. Are the facts alleged accurate? If not, please provide the correct details of each case.

b. In each case, police have alleged the dead suspect was wanted on a number of serious charges. I would be grateful if in your response you substantiated such allegations where possible, possibly with information about police investigations prior to arrest, or explained why supporting evidence is not available.

c. Please provide details about any complaints lodged by the public about any of these deaths and details of the response to such complaints.

d. Please provide the details, and where available the results, of any investigation, or judicial or other form of inquiry carried out in relation to these cases.

e. Please provide the details of any criminal prosecutions or other disciplinary action taken with respect to any officers. Please include the facts of the incident for which the officers were punished, the details of the punishment, and whether the officer is still serving on the force.

f. Please indicate the amount, if any, of compensation that has been provided to the families of the victims.

(ii) Please provide information concerning relevant oversight mechanisms, codes of conduct or similar protocols governing Bangladeshi police and, in particular, the RAB. Please provide information of any steps taken to prevent such crossfire deaths or other deaths from occurring in the future.

Annex

Partial list of recent crossfire incidents

	Date of incident	**Name of the deceased**	**Location of incident**	**Facts of case**
1	2 March 2006	Nurul Islam, alias Nur, alias Rocky	Sutidurgapur village in Sadar upazila	Mr. Islam, second in command of the Purba Banglar Communist Party (Janajuddha) of Khulna division, was arrested by police on 1 March 2006 in the Shahpur camp in Jibonnagar upazila. Police then took him to recover arms from Sutidurgapur in Sadar upazila. When they reached their destination at about 4 a.m., Mr. Islam's cohorts opened fire. A gun battle followed. Mr. Islam died trying to escape. One pipe gun and seven gun bullets were recovered from the scene.
2	27 February 2006	Abdul Qadir	Bholaganj in Companiganj upazila	Police arrested Mr. Qadir in the Bholaganj area on Sunday, 26 February 2006. Police then returned with him to the area early Monday morning to seize looted goods. Once there, Mr. Qadir's cohorts allegedly opened fire. Mr. Qadir was shot during the ensuing gunfight while trying to escape. He died instantly.

	Date of incident	Name of the deceased	Location of incident	Facts of case
3	25 February 2006	Al Amin Shikder	Eastern Housing Project area under Pallabi police station in Dhaka	RAB-4 members arrested Mr. Shikder from near Arong shop in Dhaka's Lalmatia early Friday, 24 February 2006. The RAB took him to the Eastern Housing Project area at around 4:10 a.m. Saturday morning to recover hidden arms. When they reached the spot, Mr. Shikder's cohorts allegedly opened fire on the RAB, who fired back. Mr. Shikder was killed in the crossfire while trying to flea. The RAB recovered one AK-47 rifle, three pistols and 23 bullet rounds from the scene.
4	13 February 2006	Asaduzzaman Babu	Daulatpur area of Khulna	Mr. Babu was arrested Friday, 10 February 2006, in Dhaka and handed over to the Khulna Rapid Action Battalion. Early Monday, the RAB took Mr. Babu to the Daulatpur area of Khulna to recover arms and arrest his accomplices. When they reached Daulatpur, his accomplices opened fire on the RAB, who fired back. Mr. Babu was killed in the crossfire while trying to escape. The RAB recovered a gun and three bullets from the area.
5	13 February 2006	Mohammad Iliyas, alias Tepa	Meradia	Mr. Iliyas was arrested from Madhu's canteen in Dhaka University on Sunday evening, 12 February 2006. Police took him to Meradia Sunday at midnight to arrest his accomplices and seize hidden arms. In Meradia, Mr. Iliyas's cohorts allegedly opened fire on police. Mr. Iliyas was allegedly killed in the crossfire when he tried to flee.

	Date of incident	Name of the deceased	Location of incident	Facts of case
6	9 February 2006	Alamgir Hossain Ali	Paikpara of Mirpur in Dhaka	The RAB arrested Mr. Ali on Wednesday, 8 February 2006. The RAB took him to Habuler Pukurpar in Paikpara at around 3:30 a.m. Thursday to recover arms and arrest his accomplices. When they arrived, Mr. Ali's accomplices allegedly opened fire. Mr. Ali died after being shot four times in the chest. He had allegedly tried to escape and was caught in the crossfire. The RAB recovered a cut rifle and a pistol from the area.
7	24 January 2006	Mofazzal Haque, alias Mofa	Uttara area of Dhaka city	Following his arrest by the RAB, Mr. Haque was taken with another detainee, Shaikh Golam Mostafa, to the village Elaipur to seek accomplices and recover arms and ammunition. The RAB came under fire when they reached the village. During the gunfight, Mr. Haque escaped and was shot, the RAB said. The battalion members recovered one revolver, two pipe guns, 16 rounds of ammunition and four spent cartridges from the spot.
8	24 January 2006	Shaikh Golam Mostafa, alias Mosto	Raeyermahal area of Khulna city	Mr. Mostafa was arrested at his house with one pipe gun and three bullets. He was taken with another detainee, Mofazzal Haque, to the village Elaipur to seek accomplices and recover arms and ammunition. The RAB came under fire when they reached the village. During the gunfight, Mr. Mostafa escaped and was shot, the RAB said. The battalion members recovered one revolver, two pipe guns, 16 rounds of ammunition and four spent cartridges from the spot.

	Date of incident	Name of the deceased	Location of incident	Facts of case
9	17 January 2006	Monir Talukder, alias Moni	Mongla	Police arrested Mr. Talukder at a brothel in Mongla the evening of Tuesday, 17 January 2006. After he gave them a statement, the police took him to the Chowrangir Math area in Mongla to recover firearms. He was killed in crossfire when his associates opened fire on the police. Two guns, seven gun cartridges, and four rifle bullets were recovered from the scene of the shooting. Two constables were also injured.
10	16 January 2006	Nazrul Islam	Amin Bazar in Dhaka	The RAB arrested Mr. Islam the night of 16 January 2006. After a statement from Mr. Islam, RAB members took him to Bias Union at about 2:30 a.m. that same evening. When they reached the Ratal Dighipara area, Mr. Islam's associates fired on the RAB. The RAB said Mr. Islam was shot trying to flee during the shooting. A shutter gun, three bullets, and five cartridges were recovered from the scene.
11	16 January 2006	Sonu Mondol	Jibonnagar upazila in Chuadanga	Jessore police arrested Mr. Mondol and two other men at Dadpur village on 15 January 2006. He was subsequently remanded to the custody of Chuadanga police. Following a statement from Mr. Mondol, Jibonnagar took him to Purondarpur village to retrieve illegal firearms. The police were ambushed when they reached Hasdah village at approximately 4:40 a.m. Police said that Mr. Mondol tried to escape in the ensuing firefight and was killed. One shutter gun and twelve bullets were recovered from the scene.

	Date of incident	Name of the deceased	Location of incident	Facts of case
12	10 January 2006	Nuruzzaman, alias Nura	Madanganj Road in Chowala	Detectives arrested Mr. Nuruzzaman in Narsingdi on 10 January 2006. The Narsingdi police then took him to Chowala to recover firearms and arrest his accomplices. Police said that as they reached Madanganj Road in Chowala, associates of Mr. Nuruzzaman opened fire on them at about 8:30 p.m. Mr. Nuruzzaman was killed in the crossfire. The police seized two light guns, two bullets and two cartridges from the spot.
13	10 January 2006	Mohammad Mizanur Rahman	Khulna	The RAB arrested Mr. Rahman in Rayermahal in Khalishpur in 8 January 2006. One day later, they later took him to the city to recover firearms and arrest his accomplices. The RAB came under fire at around 4 a.m. Mr. Rahman was killed in the crossfire. The RAB recovered one pistol with two bullets, one pipe gun, seven bullets of a .303 rifle, and two empty cases of shotgun cartridges.
14	8 January 2006	Sohel	Lauzani	Mr. Sohel of Dhaitpur village was killed when police made a raid on a gang on early morning of 8 January 2006. Mr. Sohel was killed in the firefight between his gang and the police.
15	5 January 2006	Khandakar Selim Ahmed Tutul	Moralpara in Damodar	Mr. Tutul was arrested from his village home on 3 January 2006 by the RAB. He was later taken to Damodar to recover firearms and arrest his associates. When the RAB reached the Moralpara area, Mr. Tutul's associates fired shots at them. Mr. Tutul was shot while trying to escape during the fight, the RAB said. The RAB recovered two pipe guns, a pistol, and eleven bullets from the area.

	Date of incident	Name of the deceased	Location of incident	Facts of case
16	4 January 2006	Abul Kalam Khan, alias Kalam Dakat	Demra Suburbs of Dhaka	RAB members arrested Mr. Khan at about 9:30 p.m. on 3 January 2006 in Kanchpur. During interrogation, Mr. Khan reportedly told the RAB that his gang members had assembled in at one of the gang's hideouts in Demra in preparation to carry out a robbery. RAB members took Mr. Khan to that location, where they were fired upon. Mr. Khan tried to run away and was shot in the crossfire.
17	1 January 2006	Motiar Rahman Moti	Tek in Araizahar thana	Police arrested Mr. Moti from Modonpur the evening of 31 December 2005. Police then took him to Tek to recover arms. When they reached Tek, Mr. Moti's associates opened fire. The police said that Mr. Moti was shot trying to escape during the encounter. Police recovered a revolver, nine bullets, six bombs and other weapons from the area.
18	24 October 2005	Hasanuzzaman Milon Biswas, aged 30	Beel Dakatia in Khanjahan Ali thana	Mr. Biswas, regional leader of the Purbo Banglar Communist Party, was arrested Thursday, 20 October 2005 in Dhaka. He was taken to Khulna for interrogation and arms recovery. In accordance with his statement to the police, he police took him to Beel Dakatia to look for his associates. When they reached there at 2:40 a.m. on Monday 24 October 2005, Mr. Biswas's accomplices opened fire on police. Police fired back, and Mr. Biswas was shot and instantly killed in the crossfire. A pipe gun, one gun, and eight bullets were recovered by police. Police said Mr. Biswas was wanted for several incidents, including murder.

	Date of incident	Name of the deceased	Location of incident	Facts of case
19	29 September 2005	Bhaista Titu (alias Titu), aged 24	Dhaka	A team of RAB-3 arrested Titu in Dhaka on Wednesday 28 September 2005 at about 11 a.m. During interrogation, he reportedly confessed he had hidden arms and ammunition in the area. RAB men took Titu to the West Rampura area. When they reached the Baubazar area at about 3:45 a.m., Titu's accomplices encountered the team and opened fire. A RAB press release said Titu was caught in the ensuing crossfire and died while his accomplices managed to escape. The release said a single-barrel gun, one 0.22-bore revolver, and several rounds of bullet were recovered from the scene. Police said Titu was wanted in several cases, including murder.
20	29 September 2005	Md Shah Alam, aged 38	Khulna City	RAB sources said Mr. Alam was arrested from Khalishpur in Khulna city. The RAB took him to recover arms early Thursday morning. When they reached the place where the arms were said to be located, his accomplices opened fire, forcing the RAB to fire back. Mr. Alam was caught in the crossfire trying to flee and died on the spot. A RAB member was also injured in the shootout. One gun, one pipe-gun and several bullets were seized from the spot. Mr. Alam was an accused of 18 cases, including two murders.

	Date of incident	Name of the deceased	Location of incident	Facts of case
21	9 September 2005	Tower Selim, aged 36	Dhaka/Takka Maath area under Fatullah thana	Mr. Selim, along with his wife and a caretaker, was arrested by the Detective Branch of the police in Dhaka on 8 September 2005. According to his statement, DB and Fatullah police took him to Takkar Maath area at about 3:30 a.m. to recover hidden arms. As soon as police along with Selim reached the area, his cohorts opened fire on them, forcing police to fire back. Mr. Selim was caught in the crossfire while trying to escape and received serious bullet injuries. A revolver, a gun and six rounds of bullets were recovered from the spot. Later, he was rushed to the Narayanganj Sadar hospital where the attending doctors declared him dead, police said. Mr. Selim was wanted in seven murder, snatching and other criminal cases, police said.
22	4 September 2005	Amirul, alias Shutki, alias Faruk	Dhaka-Narayanganj highway and Ramdia Baor	Police said they arrested Amirul, a regional leader of Janajuddha, from Dhaka-Narayanganj highway on Friday, 3 September 2005. As per his statement, police brought Amirul to Ramdia Baor to recover firearms. When they reached the place at about 11 p.m. Saturday, his accomplices opened fire on the policemen, forcing them to fire back. "Amirul was caught in the crossfire and died on the spot," police said. A shutter-gun and six rounds of bullet were recovered from the scene. Amirul, who hailed from Parlaxmipur village in Alamdanga upazila, was wanted in a number of cases, police said.

	Date of incident	Name of the deceased	Location of incident	Facts of case
23	9 July 2005	Khandaker Iqbal Hossain, alias Deep, alias Gala Kata Masum	Dhaka (Rayerbazar area)	Mr. Hossain died in the shootout while his associates fled the scene. Police said they received a secret information earlier in the evening that about ten terrorists were preparing to commit a crime near the Martyred Intellectuals Monument in the city's Rayerbazar area. A team of detective police "Cheeta" rushed to the spot and challenged the gang. Mr. Hossain suffered severe bullet wounds in the firefight, during which twenty five to thirty shots were exchanged. He was taken to Dhaka Medical College Hospital, where doctors declared him dead at about 3:30 a.m. Police sub-inspect Shafiuddin Sheikh and sub-inspector Iqbal Hossain were also injured in the shootout and were being treated at Rajarbagh Police Hospital. Police recovered a foreign-made 7.62 pistol and two bullets from the scene.
24	30 April 2005	Atiyar Rahman	Chuadanga	Police arrested Mr. Rahman, 40, from a house at Alamdanga in Chuadanga on Wednesday and took him to the village to seize his firearms. He was killed in “crossfire” when his associates opened fire on police and the law enforcers retaliated, the police said. He was accused of three criminal offences including two murders.

Response of the Government of Bangladesh dated 29 August 2006

The Government of Bangladesh acknowledged receipt of the Special Rapporteur’s letter sent on 22 August 2006 concerning alleged criminal suspects being shot and killed in crossfire while in the custody of Bangladesh police or special forces.

“Reiterating the full support and cooperation of the Government of Bangladesh to the mandate and work of the esteemed Special Rapporteur and to other human rights special procedures and complaints mechanisms, the Permanent Mission has the honour to assure that the contents of the

communication have been duly noted. The OHCHR may be assured that its request will be carefully considered as it deserves".

Bangladesh: Attack on Journalist Sumi Khan

Violation alleged: Death threats and fear of imminent extrajudicial execution

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

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information that was provided by the Government of Bangladesh in response to his earlier communication regarding the attack and death threats against Sumi Khan, but he regrets that the Government has not responded to his request for the results of investigations or information on the measures taken to ensure her safety.

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

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

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

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

Bangladesh: "Crossfire" Killings of Abul Hawladar and Md. Shamim

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

Subject(s) of appeal: 2 males

Character of reply: Receipt acknowledged

Observations of the Special Rapporteur

The Special Rapporteur looks forward to receiving a substantive response concerning the deaths of Abul Hawladar and Md. Shamin.

Allegation letter dated 30 October 2006

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

According to the information received, on the morning of 1 September 2006, a Rapid Action Battalion (RAB) team arrested Mr. **Md. Shamim** (laundry worker) and Mr. **Abul Hawladar** (chicken-seller) from the Tutpara area in Khulna. Early in the morning on September 2, sounds of gunfire and hand bombs blasted throughout the streets awaking the inhabitants of Baro Khalpar, Khulna city. When local people thought that it was a robbery they began to shout at the culprits; however, the RAB officers urged them not to worry and explained that they had an 'encounter' with an extremist group.

In its news release issued on September 2, the RAB-6 reported that they arrested Mr. Abul Hawladar and Mr. Md. Shamim from Tutpara on September 1, at around 9:00 am. During their interrogation, both men reportedly confessed that they were cashiers (toll-collector) of the underground extremist party "Janajuddho" (Mass war). They also revealed the names of their associates, who were allegedly plotting destructive activities on a regular basis at their meetings in the Baro Khalpar area.

The RAB officials informed that when they took Abul and Shamim to the Baro Khalpar area, terrorists open fired against the officials, who then replied with gunshots. The RAB officials also claim that during the 'encounter' between the RAB and the gang, Abul and Shamim fled the scene. The police along with local people then found their bodies and brought Abul and Shamim, to the hospital where the on duty doctors declared them dead. According to the information I have received, the killings have not been investigated and they have been recorded as "killings in encounter".

It has been alleged that the use of lethal force against Abul Hawladar and Md. Shamim from Tutpara was not justified and that these killings are not an isolated incident. In this respect, it has been brought to my attention that 283 persons were reportedly killed in similar circumstances by the RAB since it began its operations in June 2004, in the aftermath of the anti-crime operation "Clean Heart". I understand that many of these killings share certain common elements as they are often reported by the RAB as having taken place in an exchange of fire with the RAB, which is usually triggered by the presence of "terrorists". In other instances, reports indicate that the culprits tried to escape and were caught in crossfire.

Concerns have also been expressed for the families of the deceased who have reportedly received death threats by members of the RAB who told them not to speak out regarding the circumstances of the deaths of their relatives.

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

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

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

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

2. On what basis was it decided to kill, rather than capture, Abul Hawladar and Mr. Md. Shamim? What rules of international law does your Excellency's Government consider to govern these incidents?

3. Please provide the details, and where available the results, of any police investigation, medical examination (autopsy), and judicial or other inquiries carried out in relation to the

alleged use of lethal force in the above incidents. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide the details of any disciplinary measures or criminal prosecution in relation to the members of the armed forces responsible for the above killings.

5. Please state whether any investigation into the alleged death threats against the families of Abul Hawladar and Mr. Md. Shamim have been initiated. If no inquiries have taken place, or if they have been inconclusive, please explain why. If investigations have occurred, were any measures taken to protect the families of the victims.

Response of the Government of Bangladesh dated 3 January 2007

The Government of Bangladesh assures the Special Rapporteur that the contents of the communication have been duly noted and forwarded to the concerned authorities for necessary response.

Burundi: Mort en Détention de Quatre Hommes

Violation alléguée: Mort en détention

Objet de l'appel: 4 hommes

Caractère de la réponse: Pas de réponse

Observations du Rapporteur Spécial

Le Rapporteur Spécial regrette que le Gouvernement du Burundi n'ait pas coopéré avec le mandat qui lui a été conféré par l'Assemblée Générale et la Commission pour les Droits de l'Homme.

Lettre d'allégation envoyée le 1 septembre 2006 conjointement avec le Rapporteur spécial sur la torture

Nous souhaiterions attirer l'attention de votre gouvernement sur des informations reçues à propos de la mort de M. **Nizigiyimana Salvator**, M. **Mugenzi Moise**, M. **Rénovât Niyonzima**, et M. **Didace Ngendandumwe**. Selon les informations reçues:

> Les corps mutilés de ces quatre individus auraient été retrouvés par les habitants de la commune de Kinama, Mairie de Bujumbura, le 15 août 2006. Ces quatre individus auraient été arrêtés dans la commune de Kamenge Urban, province de Bujumbura, le 4 août 2006 par un agent non officiel du Service National de Renseignement et deux policiers en civil qui les auraient accusés de collaborer avec le Front de Libération Nationale. Ils auraient été amenés vers une station service de la commune de Kamenge, où ils auraient été frappés et détenus dans les toilettes. Le jour suivant, ils auraient été emmenés à la commune de Mutuzi et le 6 aout, ils auraient été emmenés au camp de

SOCARTI avant d'être emmenés, le 9 aout, au poste de police de Kinama où ils auraient été grièvement frappés.

Le 14 août, alors que les quatre individus étaient sous l'autorité de la Police de la Sécurité Intérieure, un agent non officiel du Service National de Renseignement accompagné par des policiers en civil ainsi que d'autres agents du Service National de Renseignement les auraient retirés de leur cellule et les auraient emmenés dans un taxi. Plus tard dans la nuit, le taxi aurait été vu près de la position des Forces Nationales de Défense de Kanga, Commune de Kinama, où l'accès lui aurait été refusé. Après que le taxi se soit éloigné de quelques centaines de mètres, des cris et le bruit d'armes à feu se serait fait entendre. Les corps des quatre individus auraient été retrouvés le lendemain, leurs corps criblés de balles et portant trace de coups de couteau.

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

Les rapports indiquent que les victimes ont été vues vivantes pour la dernière fois lorsqu'elles ont été sous l'autorité des forces de sécurité du Gouvernement de votre Excellence. Dans ces circonstances, le droit international des droits de l'homme établit une présomption de responsabilité de l'Etat réfutable pour les violations du droit à la vie et à l'intégrité physique et morale.

De même, l'article 12 de la Convention contre la torture requiert que les autorités compétentes procèdent immédiatement à une enquête impartiale chaque fois qu'il y a des motifs raisonnables de croire qu'un acte de torture a été commis sur tout territoire sous sa juridiction, l'article 7 requiert les Etats partie de soumettre les auteurs présumés d'actes de torture à ses autorités compétentes pour l'exercice de l'action pénale. La Commission des droits de l'homme a souligné dans sa résolution 2005/39 (paragraphe 3) que « toutes les allégations faisant état d'actes de torture ou d'autres peines ou traitements cruels, inhumains ou dégradants doivent être examinées sans délai et en toute impartialité par l'autorité nationale compétente, que ceux qui encouragent, ordonnent, tolèrent ou commettent de tels actes doivent en être tenus pour responsables et sévèrement punis, y compris les responsables du lieu de détention où il est établi que l'acte interdit a été commis, et note à cet égard que les Principes relatifs aux moyens d'enquêter efficacement sur la torture et autres peines ou traitements cruels, inhumains ou dégradants et d'établir la réalité de ces faits (Principes d'Istanbul) constituent un moyen utile de combattre la torture ».

Comme indiqué par les « Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et moyens d'enquêter efficacement sur ces exécutions » résolution 1989/65 du 24 Mai 1989, le droit international exige des Gouvernements qu'une enquête approfondie et impartiale sera promptement ouverte dans tous les cas où l'on soupçonnera des exécutions extrajudiciaires, arbitraires et sommaires » (Principe 9). Comme indiqué par la Commission des droits de l'Homme dans sa résolution 2005/34 (paragraphe 4),

ceci comprend l'obligation d'identifier et de traduire en justice les responsables, …, d'indemniser comme il convient, dans un délai raisonnable, les victimes ou leur famille, et d'adopter toutes les mesures nécessaires, notamment les mesures légales et judiciaires, afin de mettre un terme à l'impunité et d'empêcher que de telles exécutions ne se reproduisent ». Nous souhaitons souligner que, en raison de la responsabilité présupposée de l'Etat en cas de morts en détention, celui-ci reste dans l'obligation de verser une réparation financière aux membres de la famille des victimes même dans l'hypothèse où les circonstances du décès et l'identité des personnes responsables n'ont pu être établies.

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

Il est de notre responsabilité, en vertu du mandat qui nous a été confié par la Commission des Droits de l'Homme et par les résolutions de l'Assemblée générale 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 reconnaissant au Gouvernement de Votre Excellence de ses observations sur les points suivants :

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts? Si tel n'est pas le cas, quelles enquêtes ont été menées pour conclure à leur réfutation ?

2. Au cas où une plainte a été déposée, quelles suites lui ont été données ?

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

4. Si les allégations sont avérées, veuillez fournir toute information sur les poursuites et procédures engagées contre les auteurs de la violence.

5. Veuillez indiquer si les familles des victimes ont été indemnisées.

Cameroun: Mort de M. Oumarou à Maroua

Violation alléguée: Mort due à des exécutions par des forces de sécurité

Objet de l'appel: 1 homme

Caractère de la réponse: Pas de réponse (communication envoyée récemment)

Observations du Rapporteur Spécial

Le Rapporteur Spécial attend de recevoir une réponse à sa lettre d'allegation qu'il a récemment envoyée.

Lettre d'allégation envoyée le 23 novembre 2006 conjointement avec le Rapporteur spécial sur la torture

Nous souhaiterions attirer l'attention de votre Gouvernement concernant les actes de torture dont cinq jeunes hommes auraient été victimes après leur arrestation, ainsi que le décès de M. **Oumarou** suite aux blessures que lui auraient été infligées par membres des forces de sécurité en civil.

Selon les informations reçues, le 28 octobre 2006, M. **Hamidou Ndjidda**, M. **Dikouza Aziz**, M. **Amadou Ismaela Balo**, M. **Hamza Hamadou** et M. **Gilbert Bring Moumini**, ont été arrêtés à leur domicile sans motif apparent, suite à une opération du Bataillon d'Intervention Rapide (BIR) de Salak.

Les cinq jeunes hommes auraient été détenus pendant trois jours dans les locaux du BIR à Salak. Durant leur détention Ils auraient été battus, menacés de mort, attachés par des cordes, dénudés et humiliés. D'après nos sources, les cinq jeunes hommes ont ensuite été confiés à la Brigade territoriale où ils ont passé quatre jours avant d'être déférés devant le Procureur de la République pour « vagabondage ». Durant ces quatre jours, les jeunes hommes auraient été privés de nourriture et aucune visite de leur famille ne leur aurait été accordée. Après avoir constaté l'état physique des cinq hommes, le Procureur aurait ordonné leur conduite à l'hôpital. Toutefois, aucun soin ne leur aurait été prodigué après leur libération.

D'autre part, dans la nuit du 28 octobre 2006, M. Oumarou, né le 11 mai 1981, est décédé alors qu'il dormait devant le domicile de son père à Maroua, suite aux blessures infligées par des éléments du BIR en civil, armés de fusil et de gourdins. Alerté par les cris, le père de la victime, aurait tenté de venir au secours de son fils mais les agresseurs lui auraient donné l'ordre de rester à l'intérieur de la maison. La victime serait décédée sur place, après avoir été battue, traînée sur plusieurs mètres et abandonnée.

Sans vouloir à ce stade nous prononcer sur les faits qui nous ont été soumis, nous prions votre Gouvernement de prendre toutes les mesures nécessaires pour enquêter, juger et imposer les sanctions adéquates, à toute personne responsable de la mort de M. Oumarou et des actes de torture infligés aux cinq jeunes hommes mentionnés ci-dessus. Nous prions également votre Gouvernement de prendre toute mesure efficace pour éviter que de tels actes ne se répètent.

Dans ce contexte, nous souhaiterions attirer l'attention de votre Gouvernement sur les principes relatifs à une prévention et investigation efficace des exécutions extralégales, arbitraires ou sommaires, Résolution 1989/65 du 24 mai 1989 du Conseil Economique et Social. En particulier, nous attirons l'attention sur les principes 9 à 19 selon lesquels les gouvernements doivent procéder à une investigation exhaustive, immédiate et impartiale de tous les cas pour lesquels il y a une suspicion de telles exécutions ou menaces; publier dans un rapport les conclusions de ces enquêtes; et veiller à ce que les personnes que l'enquête a identifié comme participant à de telles exécutions soient jugées, dans n'importe quel territoire se trouvant sous sa juridiction.

De même, nous souhaiterions attirer l'attention de votre Gouvernement sur la Résolution 2005/39 de la Commission des droits de l'homme. Le paragraphe 1 de la Résolution «

Condamne toutes les formes de torture et autres peines ou traitements cruels, inhumains ou dégradants, qui sont et demeureront interdits quels que soient le lieu ou l'époque et que rien ne saurait donc justifier, et demande aux gouvernements d'appliquer pleinement l'interdiction de la torture et autres peines ou traitements cruels, inhumains ou dégradants ». Le Paragraphe 3 souligne en particulier que « toutes les allégations faisant état d'actes de torture ou de peines ou traitements cruels, inhumains ou dégradants doivent être examinées sans délai et en toute impartialité par l'autorité nationale compétente, que ceux qui encouragent, ordonnent, tolèrent ou commettent de tels actes doivent être tenus pour responsables et sévèrement punis, y compris les responsables du lieu de détention où il est avéré que l'acte interdit a été commis, note à cet égard les Principes relatifs aux moyens d'enquêter efficacement sur la torture et autres peines ou traitements cruels, inhumains ou dégradants (Principes d'Istanbul), offrent un moyen utile de combattre la torture». A ce même égard, l'article 12 de la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, stipule que tout Etat partie veillera à ce que « les autorités compétentes procèdent immédiatement à une enquête impartiale chaque fois qu'il y a des motifs raisonnables de croire qu'un acte de torture a été commis sur tout territoire sous sa juridiction ».

Il est de notre responsabilité, en vertu des mandats qui nous ont été confiés par la Commission des droits de l'Homme et par les résolutions de l'Assemblée Générale des Nations Unies, prolongées 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. Dans l'obligation d'en faire rapport 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 des cas sont-ils exacts? Si tel n'est pas le cas, quelles enquêtes ont été menées pour conclure à leur réfutation ?

2. Au cas où des plaintes ont été déposées, quelles suites leur ont été données ?

3. Veuillez fournir toute information, et éventuellement tout résultat des enquêtes menées, examens médicaux (autopsie), investigations judiciaires et autres menées en relation avec la mort de M. Oumarou et les actes de torture infligés aux cinq jeunes hommes mentionnés.

4. Veuillez fournir toute information sur les poursuites et procédures engagées.

5. Veuillez indiquer si les victimes ou leurs familles ont été indemnisées.

Chile: Muerte de Juan Juan Domingo Collihuín Catril

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

Persona objeta del llamamiento: 1 hombre (indígena)

Carácter de la respuesta: No respuesta

Observaciones del Relator Especial

El Relator Especial lamenta que el Gobierno de Chile no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

Carta de alegación mandada el 7 de noviembre de 2006 con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y Relator Especial sobre la cuestión de la tortura

Quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación con la muerte del Sr. **Juan Juan Domingo Collihuín Catril**, Lonko (autoridad tradicional mapuche), de 71 años de edad, y así como las graves heridas causadas a dos de sus hijos, los Sres. Juan **Lorenzo Collihuín Ñanculef** y **José Domingo Collihuín Ñanculef**, durante al allanamiento policial que tuvo lugar en su domicilio familiar ubicado en la Comunidad de Bollico Grande, Comuna de Nueva Imperial, en la IX Región.

Según las informaciones recibidas,

El 28 de agosto de 2006, alrededor de la una de la madrugada, un contingente policial supuestamente integrado por unos catorce carabineros, incluyendo personas uniformadas y de civil, habrían penetrado en el domicilio del Lonko Juan Domingo Collihuín Catril, alegando que miembros de su familia eran responsables de un delito de abigeato cometido en Iquique. Según estas informaciones, los carabineros, sin exhibir orden de allanamiento y detención, habrían procedido a disparar indiscriminadamente al interior de la vivienda. Las informaciones alegan que uno de los carabineros, el sargento Sr. Luis Marimán Lévio, habría disparado directamente contra el Lonko Juan Domingo Collihuín Catril, así como contra los Sres. Juan Lorenzo y José Domingo Collihuín Ñanculef, quienes habrían salido en defensa de su padre. La muerte del Lonko se habría producido consecuencia de un impacto de bala en el tórax, mientras sus hijos habrían recibido impactos de bala en las caderas.

Las informaciones que hemos recibido alegan también que, tras los hechos, los Sres. Juan Lorenzo y José Domingo Collihuín Ñanculef se habrían dirigido a la Comisaría de Nueva Imperial para denunciar la agresión y demandar asistencia. Se alega que los carabineros se habrían negado a prestar dicha asistencia, y que los hermanos Collihuín Ñanculef habrían tenido que desplazarse por sus propios medios al hospital de Temuco. Durante su estadía en dicho hospital, el Sr. Juan Lorenzo Collihuín Ñanculef habría sido detenido bajo la acusación de abigeato.

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

Nos gustaría también llamar la atención de su Gobierno sobre los principios 4 y 5 de los Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de Hacer Cumplir la Ley. 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 esta misma perspectiva, el principio 5 recuerda 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”. (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).

Igualmente, quisiéramos llamar la atención del Gobierno de Su Excelencia sobre la gravedad de los hechos alegados, así como por el contexto de conflictividad social en el que se registran.

En el curso de su visita oficial a Chile en 2003, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas recibió información sobre "la alta presencia de fuerza pública, permanente, en las comunidades, en algunas de las cuales se llevan a cabo diligencias de averiguación, no exentas de violencia física y verbal, con el consiguiente temor de la población" (E/CN.4/2004/80/Add.4, para. 31). Durante los últimos años, he continuado recibiendo alegaciones provenientes de fuentes fidedignas donde se alegan distintos actos de violencia cometidas contra miembros de comunidades mapuche en el sur del país por parte de las fuerzas de orden público en el curso de actuaciones de vigilancia o averiguación. Algunas alegaciones específicas han sido puestas en conocimiento del Gobierno de Su Excelencia por parte de distintos mecanismos especiales de la Comisión y del Consejo de Derechos Humanos de Naciones Unidas.

En el caso específico de la Comunidad de Bollico Grande, en la Comuna de Nueva Imperial, las informaciones que han podido ser recavadas señalan la existencia de un parámetro continuado de actuaciones de la fuerza pública en contra de miembros de la Comunidad, incluyendo previos allanamientos del domicilio del Lonko Juan Domingo Collihuín Catril, así como el arresto de éste y de otros miembros de su familia. En varios de las actuaciones de las fuerzas públicas se alegaron tratos degradantes y uso excesivo de la violencia.

En este contexto, exhortamos respetuosamente a las autoridades de su Gobierno a que investiguen de forma completa y exhaustiva los hechos que dieron lugar a la muerte del Lonko Juan Domingo Collihuín Catril, y que se castigue al responsable o responsables de dicha muerte. Asimismo, solicitamos que se garantice la integridad física y mental del Sr. Juan Lorenzo Collihuín, y que se le asegure un juicio conforme a todos los estándares de derechos humanos reconocidos por el ordenamiento jurídico chileno y por los instrumentos internacionales ratificados por Chile.

Asimismo, invitamos al Gobierno de su Excelencia a que considere la situación de conflictividad que afecta a las comunidades mapuche y a otros sectores sociales en el sur del país desde una

perspectiva global, que atienda a las raíces de dicha conflictividad, en el espíritu del Nuevo Trato auspiciado por el Estado chileno en relación con los pueblos indígenas del país, y desde el respeto a las normas internacionales en esta materia.

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

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

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

2. ¿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 las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Chile: Amenazas de Muerte contra Juana Calfunao Paillalef

Violación alegada: Amenazas de muerte y temor por la seguridad

Persona objeta del llamamiento: 1 mujer (indígena, defensora de los derechos humanos)

Carácter de la respuesta: Respuesta cooperativa pero incompleta

Observaciones del Relator Especial

El Relator Especial agradece el Gobierno de Chile por su respuesta suplementaria, pero él observa que la respuesta no contiene “información relativa al caso concreto de amenazas mencionadas en su comunicación”.

Llamamiento urgente enviado el 22 de octubre de 2003 con el Relator Especial sobre la tortura, el Relator Especial sobre la promoción del derecho a la libertad de opinión y de

expresión, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, y la Representante Especial del Secretario General sobre los defensores de los derechos humanos, reproducido desde E/CN.4/2005/7/Add.1 al para. 57

El 26 de septiembre de 2004, Juana Calfunao Paillalef, líder de una comunidad indígena mapuche del municipio de Cunco de la IX Región y líder fundador de la Comisión Ética Contra la Tortura habría sido amenazado de muerte por un funcionario de la Cooperación Nacional de Desarrollo Indígena (CONADI). Se alega también que más tarde, ese mismo día, alguien habría disparado varias veces contra la vivienda provisional en la que Juana Calfunao y su familia se refugian después del presunto incendio provocado que habría resultado en la destrucción de su casa y la muerte de su tío. Se teme que estas amenazas en contra de Juana Paillalef y su familia puedan estar relacionados con su trabajo en defensa de los derechos de su comunidad indígena. Además, se expresa temores por la seguridad y la vida de Juana Paillalef y sus familiares.

Respuesta del 27 de diciembre de 2004, reproducido desde E/CN.4/2005/7/Add.1 al para. 58

De acuerdo con el Gobierno, desde el año 2000, la Sra Calfunao fue involucrada en agresiones contra varias personas en el marco de sus actividades de líder mapuche. En la actualidad Juana Calfunao está alejada del Consejo de Todas las Tierras y no estaría siendo apoyada en ninguna de sus demandas por esta organización indígena. Su vinculación organizacional más fuerte, es con la comunicada Unión Temulemu de la comuna de Traiguén, la cual es beneficiaria del Fondo de Tierras de la CONADI, y parte del Programa de Desarrollo Integral Orígenes. Por lo que se ha podido constatar, su presencia ha generado división y problemas organizacionales en esta comunidad especialmente en la distribución de recursos entregados por los programas de Gobierno. De acuerdo con el Gobierno, es importante destacar con relación al tema indígena en general, que durante la última década la sociedad chilena, el Gobierno y los pueblos indígenas han realizado los esfuerzos necesarios para mejorar todas estas situaciones puntuales, en un contexto amplio de profundización democrática y mejoramiento de la equidad social y cultural de Chile. El gobierno añade que “finalmente, llama la atención la organizada campaña internacional a favor de una persona que constituye un caso excepcional de disconformidad con la nueva política indígena chilena”.

Observaciones del Relator Especial, reproducido desde E/CN.4/2005/7/Add.1 al para. 59

El Relator Especial agradece el Gobierno por su respuesta. Sin embargo, le gustaría recibir información relativa al caso concreto de amenazas mencionadas en su comunicación**.**

Respuesta del Gobierno de Chile del 23 de noviembre de 2006

El 15 de noviembre pasado en el tribunal de garantías de Temuco, a las 12:30 horas, al finalizar la audiencia de juicio simplificado por desordenes acaecidos el 2 y 4 de enero de 2006 en los Laureles, comuna de Cunco, en contra de la Sra. Juana Calfunao, dicha sesión debió suspenderse, ya que la imputada junto a otras 10 personas, agredieron a los fiscales y a algunos otros funcionarios, quienes sufrieron lesiones, aparentemente menores.

Una vez que golpearon a los funcionarios públicos, fueron detenidos en el exterior por carabineros, 6 mujeres y 4 hombres. Huyó el hijo de la imputada, Sr. Jorge Landeros Calfunao.

Durante la tarde del día 16 del presente mes, fue detenido por carabineros el Sr. Landeros, quien participó también en la golpiza a funcionarios del tribunal.

Asimismo, el abogado de la Sra. Calfunao, Sr. Freddy Barriga, habría renunciado a representarla, luego del ataque a los funcionarios.

Por ultimo, et día 20 de noviembre el tribunal de garantía de Temuco condenó a la Sra. Juana Calfunao a 150 días de presidio por desórdenes ocurridos en enero de este 2006 en la comuna de los laureles. Cabe recordar que la Sra Juana Calfunao actualmente cumple una pena remitida por desórdenes públicos y amenazas a carabineros por hechos ocurridos en diciembre de 2005 también en los laureles.

China: Death Sentences of Two Nepalese Men

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

Subject(s) of appeal: 2 males (foreign nationals)

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of China and welcomes the information that the death sentence of Ishori Kumar Shrestha has been commuted and that the death sentence of Ravi Dahal has been suspended.

The Special Rapporteur would request that he be informed should, for whatever reason, the sentence of Ravi Dahal not be commuted upon the expiration of the two year period.

Urgent appeal sent on 8 July 2004 reproduced from E/CN.4/2005/7 at para. 82

Two Nepalese citizens, Ishwori Kumar Shrestha and Rabi Dahal, were sentenced to death in the Tibet Autonomous Region (TAR), People's Republic of China, on 30 May 2004, on drug-related charges and could face execution at any time. The two men were appointed a lawyer, but it is not clear whether a Nepali-Chinese interpreter was provided, or whether the two were able to fully understand the process of their charge and trial. It was reported that their families had not heard from them for four months. They were not officially informed of their sentence, but read about it in a Kathmandu newspaper.

Response of the Government of China dated 12 May 2005 to an UA sent on 8 July 2004 relating to two Nepalese citizens sentenced to death on drug-related charges see E/CN.4/2005/7/Add.1, p 49 and E/CN.4/2006/53/Add.1 p. 45

I. Basic circumstances:

Ravi Dahal, aged 38, Nepalese businessman and Ishori Kimar Shrestha, aged 28, nepali businessman, were taken into custody on 8 July 2003.

In May 2003, Ravi Dahal, acting on the invitation of persons outside the country, entered Khasa (Zhangmu Kou'an), in the Tibetan Autonomous Region of China from Nepal and, on many occasions, contacted the receivers of contraband goods to make smuggling arrangements. He requested Ishori Kumar Shrestha to provide samples of contraband merchandise for the purpose of examination. On 28 May, the contact person outside the country smuggled a large quantity of heroin into Khasa, stashed it away in a warehouse which had been rented beforehand by Ishori Kumar Shrestha, and thereupon Ravi Dahal contacted other persons to take possession of thé merchandise. After this, officiels of the local anti-smuggling unit seized 75 bags of heroin in the rented warehouse, totalling 29,850 grams, and arrested Ishori Kumar Shrestha and with his assistance also arrested Ravi Dahal.

On 30 May 2004, the Lhasa city intermediate people's court in the Tibetan Autonomous Region, following public proceedings, passed judgement at frrst instance and found both defendants guilty of the crime of smuggling narcotics. The court sentenced Ravi Dahal to death and Ishori Kumar Shrestha to death with a two-year suspension of the sentence and to the additional penalty of the forfeiture of all their property. Following the judgement, the two defendants refused to accept the verdict and lodged an appeal with the people's high court of the Tibetan Autonomous Region.

The finding of the Tibetan high court was that the conduct of the two defendants had indeed constituted the offence of smuggling narcotics, in that they had smuggled 29,850 grams of heroin, which represented an extremely large quantity, and that the penalty handed down was consistent with the law. Taking into consideration that the défendants had only been responsible for arranging contacts between those providing and those receiving the narcotics and had not themselves carried the contraband narcotics across the State frontier, having responsibility for only one link in the whole criminal process, and furthermore that Ravi Dahal had rendered significant service to the authorities, for that reason, on 21 December 2004, the Tibetan high court made final judgement at second instance that the sentence of death handed down on Ravi Dahal for the offence of smuggling narcotics should be suspended for two years and that the death sentence handed down on Ishori Kumar Shrestha should be commuted to life imprisonment and that both defendants should in addition forfeit all their property. The sentence has already entered into effect.

During the legal proceedings, the legal counsel invited to represent the two defendants conducted their defence in compliance with the law, the two defendants also gave their own individual and separate explanations in their defence, and the court engaged thé services of a Nepalese interpreter. The Tibetan high court promptly notified the Nepalese Consulate General in Lhasa of the circumstances relating to the case and officials from the consulate were able to visit the two defendants. Once the two offenders had been sent to prison to serve their sentence, the Nepalese consulate in Lhasa was promptly notified of the prison.

II. Explanation:

Throughout the proceedings described above, the Chinese judicial authorities acted in strict compliance with the Chinese Criminal Code, the Chinese Code of Criminal Procedure and other laws and regulations; the rights of the two defendants were fully upheld; and there is no question of anyone being put to death.

China: Killing of Demonstrators in Dongzhou, Guangdong

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

Subject(s) of appeal: 3-20 persons (demonstrators)

Character of reply: No response (recent communication)

Observations of the Special Rapporteur

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

Letter of allegation sent on 13 December 2005

I would like to bring to your Government's attention information I have received concerning the recent shooting by police at a crowd in the Southern province of Guangdong. According to the information received, on 6 December 2005, thousands of villagers had gathered in the village of Donghzou to demand the release of three village representatives who had been arrested earlier that day in relation with a dispute over the use of a large power plant which appeared to have coal-fired and wind-driven turbines. The dispute had reportedly been running for five months without any incident until this point. Some residents had complained about the amount of money they received for ceding their land to the Government for the plant, while others said a reclamation project connected with the wind turbines would hurt fishing the area.

Reports indicate that hundreds of officers from the People's Armed Police, a unit of the People's Liberation Army, arrived at the village and started shooting at the crowd. Varying estimates of the death toll have been received, some indicating that as many as 20 people had been killed. Some sources still maintain that a number of people remain missing or unaccounted for, alleging that the authorities arrested people for participating in the protest. However the official New China News Agency mentioned that three people had been killed and eight others injured. Local authorities laid blame for the violence exclusively on villagers. They claim that local residents, led by three men, first attacked the power plant at the center of the dispute and then turned on to the police, using weapons including spears, knives and dynamite, compelling security forces to put down the insurrection forcibly.

In this respect, and without pre-judging the accuracy of the various conflicting accounts received, I would note the relevance in such situations of the United Nations Basic principles on the Use of Force and Firearms by Law Enforcement Officials. These Principles note, inter alia, that law enforcement officials should "as far as possible apply non-violent means before resorting to the use of force and firearms" and that "in any event, intentional lethal use of

firearms may only be made when strictly unavoidable in order to protect life". I would also like to draw your Excellency's attention to the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly resolution 34/169 (1979) which more succinctly stresses the limited role for lethal force in ale enforcement operations.

While I note the recent arrest by civilian local authorities of the commander of the People's Armed Police reportedly responsible for ordering the shooting, I would like to appeal to your Excellency's Government to ensure that all deaths that occurred in connection with the operation of 6 December 2005 are promptly, independently and thoroughly investigated in accordance with the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

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

1. What, in your view, were the facts of the situation described?

2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the killings of villagers in Dongzhou.

3. Assuming that those responsible for the shootings have been or will be identified, please provide the full details of any prosecutions which have been undertaken, and of any other penal, disciplinary or administrative sanctions imposed in this connection.

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

Finally, I would like to appeal to the Government of Your Excellency to make sure that there is full public accountability for the actions of the State and of its security forces by ensuring that the result of your official investigation be made public

China: Death Sentences of Four Men

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

Subject(s) of appeal: 4 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the detailed response provided by the Government of China with respect to the cases of Huang Zhiqiang, Fang Chunping, Cheng Fagen, and Cheng Lihe.

The SR also appreciates the efforts made by the Government to investigate allegations that the defendants' confessions were extracted by torture.

Urgent appeal sent on 10 October 2005 with the Special Rapporteur on the question of torture, reproduced from E/CN.4/2006/53/Add.1, pp. 54-55

Urgent appeal sent in relation to four men – Huang Zhiqiang, Fang Chunping, Cheng Fagen, and Cheng Lihe – who we understand are currently held in Leping City Police Detention Centre in the Jiangxi province. We have been informed that they are at imminent risk of execution and the basis for our intervention concerns allegations that they were tortured while in pre-trial detention and that their convictions are therefore unsound.

According to the information received, they were convicted of murder, rape, robbery and extortion in connection with their joint involvement in three separate crimes committed between September 1999 and May 2000. The Jingdezhen Intermediate People's Court in Jiangxi province first sentenced them to death, a decision which they appealed to the Jiangxi High People's Court. On 17 January 2004 it ruled that the case should be sent back to the Intermediate Court for re-trial, since the detail of their testimony had changed several times and the evidence was insufficient to convict them. It has been brought to our attention that in their defence statements the four men had also highlighted several contradictions in their testimonies and alleged that they had confessed to the crimes under torture at the hands of the police.

However, the Intermediate Court once again sentenced the men to death on 18 November 2004, reportedly without considering the torture allegations. The four men remain under sentence of death, and it is unclear why their executions have not yet been carried out. It is possible that the Jiangxi High People's Court is continuing to refuse to approve the verdict.

If these allegations are correct there would be ground for serious concerns. While we acknowledge the serious nature of crimes involved we would recall that "in capital punishment cases, the obligations of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights admits of no exception". (Little v. Jamaica, communication no. 283/1988, Views of Human rights Committee of 19 November 1991, para. 10). This standard embraces the right not to be found guilty on the basis of a forced confession. We would also recall Commission on Human Rights resolution 2005/39 which urges States to ensure that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings. This principle is an essential aspect of the right to physical and mental integrity.

We would further like to draw your Excellency's attention to the Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (UN General Assembly resolution 55/89 of 4 December 2000, Doc. A/55/89, Annex), also known as the Istanbul Protocol, which states that "alleged victims of torture, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any form of intimidation that may arise pursuant to the investigation." (Para. 3 (b)). We would urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Huang Zhiqiang, Fang Chunping, Cheng

Fagen, and Cheng Lihe are respected. Under the circumstances this would include an official investigation of the allegations before any further action is taken.

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 abovementioned persons in compliance with the applicable standards of international law.

Response of the Government of China dated 12 January 2006 to an UA sent on 10 October 2005 (see E/CN.4/2006/53/Add.1, p. 55)

Receipt is acknowledged of communication UA G/SO 214 (33-23) G/SO 214 (53-20) CHIN 21/2005 from the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture of the United Nations Commission on Human Rights. The Chinese Government has carefully examined the matters referred to in the communication and wishes to submit the following response.

I. Basic circumstances

Huang Zhiqiang, male, born 4 January 1973, ethnic Han Chinese, from Leping city in Jiangxi province, primary education, farmer, resident in Zhongdian village, Jiyang road, Leping municipality. On 19 June 2002 he was arrested and he is currently being held in custody.

Fang Chunping, male, born 21 December 1977, ethnic Han Chinese, from Leping city in Jiangxi province, primary education, farmer, resident in Zhongdian village, Jiyang road, Leping municipality. On 19 June 2002 he was arrested and he is currently being held in custody.

Cheng Fagen, male, born 11 August 1968, ethnic Han Chinese, from Leping city in Jiangxi province, lower secondary education, farmer, resident in Zhongdian village, Jiyang road, Leping municipality. On 19 June 2002 he was arrested and he is currently being held in custody.

Cheng Lihe, male, born 18 March 1977, ethnic Han Chinese, from Leping city in Jiangxi province, primary education, farmer, resident in Zhongdian village, Jiyang road, Leping municipality. On 19 June 2002 he was arrested and he is currently being held in custody.

In the early morning of 8 September 1999, Huang Zhinqiang and Fang Chunping made their way, bearing knives, together with one Cheng Wencai (whose case is being handled separately), armed with a claw hammer, to Denggao hill in Donghu park, in Leping city, where they lay in wait for an opportunity to rob passers-by. At about 1 a.m. on 9 September, the three men caught sight of a couple, a man by the surname Zou and a woman by the surname Xiong, who had a rendezvous at the kiosk on the badminton court on the left side of Leping television mast on Denggao hill. The three men thereupon surrounded the couple, brandishing their weapons, and set upon Zou, who was taken entirely unawares. They savagely stabbed and kicked him, fracturing his skull and causing him cranial haemorrhage and fatal cranial contusions. The three men then seized hold of Xiong and, after beating her unconscious, gang-raped her. They also pulled off her gold neck-chain.

In the evening of 23 May 2000, Huang Zhiqiang, Fang Chunping, Cheng Fagen, Cheng Lihe and one Wang Shenbing (currently on the run), armed with knives, made their way again to Denggao hill in Donghu Park, in Leping, where they lay in wait for victims. That same evening at about 11 p.m., on a small road on Wutiandi farm in Zhongdian village, the five men came across a man by the surname Jiang, proprietor of the Lübao supermarket, and his wife, who has the surname Hao: they surrounded the couple demanding money. Jiang refused to comply, whereupon Wang Shenbing stabbed him in the head. When she saw what was happening, Hao fled and Wang Shenbing chased after her. The four other men - Huang Zhiqiang, Fang Chunping, Cheng Fagen and Cheng Lihe - threw themselves at Jiang, slashing away at him with their weapons and killing him on the spot. Cheng Fagen removed 5,000 yuan which they found on Jiang's person and a mobile phone, then they detached a length of rope from Jiang's motorbike, parked nearby, and with the others took his body and tied it to the back seat of the motorbike in order to get rid of the body and to hide their traces. Because the resulting load made the motorbike unstable, it caused it to topple over into a field on the side of the road, trapping the body beneath the bike, whereupon the four men decided to abandon their plan to move the body. Shortly afterwards, the four men rejoined Wang Shenbing and together they chased and caught Hao, whereupon the five men repeatedly raped her. In order to silence her, Cheng Fagen fetched the length of rope and tied it round her neck while the other men held down her arms and legs: in this way they then strangled her. In order to conceal their traces, the five men took Hao's body and hauled it into the bushes behind the hill, where they buried it. Later, anxious that the body might be discovered, the five men decided, after a discussion, to cut it into pieces so that it would be easier to conceal, and they then went their separate ways to fetch the tools to cut it up with. At midday on that same day, the five men, as previously arranged, came to the spot where the body was buried and, after drawing lots to decide in what order to proceed, came up one after the other with their knives to cut off pieces of the body. They then took the dismembered body parts, stuffed them into plastic bags, carried them off one by one and scattered them in all directions. The five men then took the 5,000 yuan, the mobile phone which they had stolen and a telephone credit card with a face value of 30 yuan which they had removed from Hao and divided all this loot up among themselves. On 25 June and in the evening of 28 June of that same year, Huang Zhiqiang, Fang Chunping and Chen Fagen used this stolen telephone card to call the Lübao supermarket from a public telephone, demanding a ransom of 100,000 yuan, after which the three men made no further use of it, for fear of being discovered.

In September 2003, the Jingdezhen intermediate level people's court in Jiangxi province, hearing the trial at first instance, sentenced Huang Zhiqiang, Fang Chunping, Cheng Fagen and Cheng Lihe to death for the offences of murder, robbery with violence, rape and extortion. The four defendants refused to accept the verdict and lodged an appeal. In January 2004, the Jiangxi provincial people's high court, after considering the case, ruled that, owing to problems with certain details of the case, the investigation had not been sufficiently thorough and further full inquiries should be held. Accordingly, as the facts were not sufficiently clear and the investigation was not sufficiently thorough, it ordered that the case be sent back for retrial. Following a full investigation by the public security and the procuratorial authorities, the Jingdezhen city intermediate level people's court reconsidered the case and, on 18 November 2004, reached the following new judgement:

For the offence of murder, Huang Zhiqiang was to be put to death and stripped of his political rights in perpetuity, and all his personal property to be confiscated; for the offence of robbery

with violence, he was to be put to death and stripped of his political rights in perpetuity and all his personal property to be confiscated; for the offence of rape, he was to serve 15 years' fixed-term imprisonment and to be stripped of his political rights for five years; for the offence of extortion and blackmail, he was exempted from any criminal penalty; it was therefore ordered that he be put to death, that he should be stripped of his political rights in perpetuity and that all his personal property should be confiscated.

For the offence of murder, Fang Chunping was to be put to death and stripped of his political rights in perpetuity, and all his personal property to be confiscated; for the offence of robbery with violence, he was to be put to death and stripped of his political rights in perpetuity and all his personal property to be confiscated; for the offence of rape, he was to serve 15 years' fixed-term imprisonment and to be stripped of his political rights for 5 years; for the offence of extortion and blackmail, he was exempted from any criminal penalty; it was therefore ordered that he be put to death, that he should be stripped of his political rights in perpetuity and that all his personal property should be confiscated.

For the offence of murder, Cheng Fagen was to be put to death and stripped of his political rights in perpetuity, and all his personal property to be confiscated; for the offence of robbery with violence, he was to be put to death and stripped of his political rights in perpetuity and all his personal property to be confiscated; for the offence of rape, he was to serve 15 years' fixed-term imprisonment and to be stripped of his political rights for five years; for the offence of extortion and blackmail, he was exempted from any criminal penalty; it was therefore ordered that he be put to death, that he should be stripped of his political rights in perpetuity and that all his personal property should be confiscated.

For the offence of murder, Cheng Lihe was to be put to death and stripped of his political rights in perpetuity, and all his personal property to be confiscated; for the offence of robbery with violence, he was to be put to death and stripped of his political rights in perpetuity and all his personal property to be confiscated; for the offence of rape, he was to serve 15 years' fixed-term imprisonment and to be stripped of his political rights for 5 years; for the offence of extortion and blackmail, he was exempted from any criminal penalty; it was therefore ordered that he be put to death, that he should be stripped of his political rights in perpetuity and that all his personal property should be confiscated.

After the court had passed judgement, the four defendants refused to accept the verdict and lodged an appeal. The Jiangxi people's high court is currently considering the case.

II. Concerning the allegation that the four persons have been subjected to torture

Because the matters involved in this case were particularly serious, the Leping people's procurator's office assigned two procuratorial officials to make a careful study of the case. These officials were present on numerous occasions when the suspects made statements and identified the scene of the crimes and they found no evidence at all that the investigating officers had employed any unlawful methods in their handling of the case, such as extorting confessions by torture, etc.

Throughout the course of the investigation, the officials handling the case made sound and video recordings of the questioning of the defendants and the identification of the scene of the crime. The disc containing the sound and video recordings of the questioning of the four defendants and the identification of the scene of the crime was carefully studied and the recordings showed no evidence that the police had used beatings, verbal abuse, or threats; the criminal suspects were seen to be in a stable and calm state of mind and no harsh treatment was used against them: they showed no signs of fear or having been intimidated and freely confessed their crimes.

The criminal suspects Huang Zhiqiang and Cheng Lihe are able to correspond with their families while being held in preventive detention and they have freely admitted that they had committed serious offences, and have shown themselves to be extremely repentant. Over this period, in his letters home, Huang has written that he "committed a serious crime"; he writes "I myself perpetrated a disgraceful deed, I have the blood and lives of three people on my hands, and now I deeply regret what I did."

When the procurator's office commenced its examination of the appeal stage of the proceedings, the suspects Huang Zhiqiang, Fang Chunping, Cheng Fagen and Cheng Lihe complained to the procuratorial authorities that the investigative officers had extorted confessions from them by the use of torture and showed abrasions on their wrists to prove it. The oversight division of the Leping people's security bureau conducted a special investigation, but did not find any evidence that the investigating officers had extorted confessions by torture. An examination of the criminal suspects revealed that the abrasions on their wrists had been caused by pressure from the clasps of their handcuffs and the resulting bruising (because of the gravity of the offences committed by the four offenders, the investigating officers had put handcuffs on them, as provided for by law).

The Chinese Government respectfully requests that the content of the above response be incorporated in full in a relevant document of the United Nations.

China: Death Sentence of Ismail Semed

Violation alleged: Non-respect of international standards relating to the imposition of the death penalty

Subject(s) of appeal: 1 male

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of China that the case of Ismail Semed remains under ongoing consideration. The Special Rapporteur would suggest that such consideration should include the thorough investigation of allegations that the confessions on which charges were brought were extracted with torture.

Urgent appeal dated 13 April 2006 sent with the Special Rapporteur on the question of torture and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

We would like to draw the attention of your Government to information we have received regarding **Ismail Semed**, an ethnic Uighur from Xinjiang Uighur Autonomous Region (XUAR) in northwest China who is believed to be at imminent risk of execution.

According to the information received, Ismail Semed was convicted by the Urumqi Intermediate People's Court on 31 October 2005 for "attempting to split the motherland" and other charges related to possession of firearms and explosives. The possession of firearms charges against Ismail Semed appear to have been based on old testimonies taken from other Uighurs, some of whom were reportedly executed in 1999. According to reports, those testimonies might have been extracted through torture. The charge of "splittism" was based on second-hand testimony which stated that Ismail Semed was a member of the East Turkestan Islamic Movement (ETIM), an organisation qualified as "terrorist" by the Chinese authorities, and attended one ETIM meeting in 1997 in Rawalpindi, Pakistan. However, his alleged membership of ETIM and attendance at that meeting have reportedly been disputed by people who were present at the meeting.

Concern has been expressed that he reportedly confessed to the terrorism-related charges under torture and subsequently denied them during his trial.

We have received information indicating that his appeal might have already been heard in a closed session. If rejected, Ismail Semed could have been executed, as sentences are usually carried out soon after the appeal hearing is concluded. However, given the political nature of the charges brought against Ismail Semed, his death sentence should be reviewed by China's Supreme People's Court.

While we do not wish to prejudge the accuracy of these allegations, we would like to respectfully remind your Excellency that according to the well-established international standard in capital punishment cases, the obligation of states to observe rigorously all the guarantees for a fair trial admits no exception. (See, Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the case at issue, this guarantee includes the right not to be compelled to confess guilt.

We also recall that Commission on Human Rights resolution 2005/39 urges States to ensure that any statement, which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made. This principle is an essential aspect of the right to physical and mental integrity set forth, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Protection of All persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Ismail Semed are respected. This can only mean suspension of the capital punishment until the allegations of torture have been thoroughly investigated and all

doubts in this respect dispelled. Moreover, international law requires that the accountability of any person guilty of subjecting Ismail Semed to torture is ensured.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government.

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

2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegations that Ismail Semed was subjected to torture while in pre-trial detention. If no enquiries have taken place or if they have been inconclusive, please explain why.

3. Please provide the full details of any prosecutions which have been undertaken with regard to the alleged torture of Ismail Semed. Have penal, disciplinary or administrative sanctions been imposed on the perpetrators?

4. Please indicate on the basis of what criteria organizations are qualified as terrorist organizations and whether they can appeal against such qualification. Please provide the relevant legal base.

Response of the Government of China dated 12 July 2006

Receipt is acknowledged of communication UA G/SO 214 (33-23) G/SO 214 (53-20) CHN 12/2006 from the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on the question of torture of the United Nations Commission on Human Rights. The Chinese Government has carefully examined the matters referred to in the communication and wishes to submit the following response.

Ismail Semed, male, ethnic Uighur, born 20 May 1969, without fixed profession.

On 13 August 2004, the Urumchi city procuratorial authorities instituted criminal proceedings against Ismail Semed with the Urumchi city intermediate level people's court for the offences of separatism, unlawful manufacture of ammunition and the causing of explosions. The precise charges as set out in the bill of indictment are as follows.

In January 1997, Ismail Semed, together with Hasan Mahsum (later shot dead in Pakistan) and Abdukadir Amat (now on the run), slipped out of the country through the city of Xiamen and made their way to Saudi Arabia to meet Kurban Aji and other persons, to propagate the notion of an independent Xinjiang, to carry out separatist activities and to drum up support. Soon after, Semed and the two other men travelled to Rawalpindi in Pakistan, to meet Uighur students and other young Uighurs engaged in business in that city, preaching to them and urging them to form an organization and to go to Afghanistan to receive training, for the purpose of waging a holy war. In March of that same year, Semed and the other men convened a preparatory meeting of the East Turkestan Islamic Movement and, following a division of tasks, Ismail Semed was appointed in charge of military operations. Thereafter, Ismail Semed and the other men

continued to develop and expand the organization, establishing military bases, recruiting members, conducting fund-raising and other activities and forging links with Afghan Taliban bases and bases run by Bin Laden, striking an agreement with them on the provision of free training for their jihadists. From May 1997 to January 1998 Semed and his accomplices organized the transport of some 100 Uighur jihadists from Pakistan and the Middle East to the above-mentioned military camps for training. After completing their training, Semed and the others appointed Usman Imat in charge and sent him to take 13 men to Xinjiang to set up workshops to manufacture explosives, to conduct training and to develop jihadist columns. After arriving in Xinjiang, Usman and the others purchased 1,053 boxes of erbium nitrate, for use in preparing chemicals and other reagents for the manufacture of explosives, and set up explosive manufacturing workshops in Turfan, Hotan and other cities. They trained some 100 men in the use of chemicals and reagents for the manufacture of explosive devices, detonators and blasting fuses and in weapons technology.

On 5 December 1997 Semed attended a conference of the formally constituted East Turkestan Islamic Movement, held in Rawalpindi in Pakistan, and was appointed military commander. The conference resolved that the goal of the organization would be to liberate East Turkestan through a holy war and to set in place an Islamic State, and mapped out a strategic plan for the period ahead.

In mid-December 1998, Semed and others organized a meeting in Rawalpindi at which they decided to break away from the East Turkestan Islamic Movement and form a separate grouping. They deposed their former leader, Hasan Mahsum, assumed control of their members and funds in Afghanistan and started to look for ways of illegally entering Xinjiang, so as to prepare for the conduct of military jihadist activities in that region.

On 16 September 2004 the Urumchi intermediate level people's court commenced hearings on this matter. Given the complexity of this case, it is still under consideration.

The Chinese Government respectfully requests that the content of the above response be incorporated in full in a relevant document of the United Nations.

China: Death Sentences of Xu Shuangfu and Li Maoxing

Violation alleged: Non-respect of international standards relating to the imposition of the death penalty

Subject(s) of appeal: 2 males (members of religious minority)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of China regarding the cases of Xu Shuangfu and Li Maoxing. However, the SR remains concerned that they have been sentenced to death despite the apparent absence of an investigation into allegations that their confessions were extracted with torture.

Urgent appeal dated 18 July 2006 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding Mr. **Xu Shuangfu** (also known as Xu Wenku) and Mr. **Li Maoxing**, two Chinese religious leaders belonging to a group known as "the Three Grades of Servants" who were sentenced to death on 28 June 2006. They were accused of murdering twenty leaders of a religious group known as the Eastern Lightning group. Xu was also accused of defrauding his congregation of over thirty-two million Yuan. According to the information received:

> Xu Shuangfu, was kidnapped in April 2004 by gun-wielding men in a police car while visiting congregation members in neighboring Haerbin, Heilongjian Province. Reports indicate that he was held incommunicado for some time before his family was informed of his detention.

Concern has been expressed that Xu Shuangfu and Li Maoxing confessed to their murder charges under torture and subsequently denied their guilt during their trial which was held at the Shuangyashan Intermediate Court, from 28 February to 3 March 2006.

While we do not wish to prejudge the accuracy of these allegations, we would like to respectfully remind your Excellency that according to the well-established international standard in capital punishment cases, the obligation of states to observe rigorously all the guarantees for a fair trial admits no exception. (See, Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the case at issue, this guarantee includes the right not to be compelled to confess guilt.

We also recall that Commission on Human Rights resolution 2005/39 urges States to ensure that any statement, which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made. This principle is an essential aspect of the right to physical and mental integrity set forth, inter alia, in article 15 of the Convention against Torture provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of defendants in compliance with the obligations under international law of your Excellency's Government, as outlined above. This can only mean suspension of the capital punishment until the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled. Moreover, international law requires that the accountability of any person guilty of subjecting someone to torture is ensured.

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

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

2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegations that the defendants were subjected to torture while in pre-trial detention. If no enquiries have taken place, or if they have been inconclusive, please explain why.

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

Response of the Government of China dated 21 August 2006

Receipt is hereby acknowledged of the letter addressed jointly by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture (UA G/SO 214 (33-23) G/SO 214 (53-20) CHN 25/2006). The Chinese Government has carefully investigated the matters referred to in this letter and wishes to make the following reply:

From 28 February to 3 March 2006 the Shuangyashan Intermediate People's Court in Heilongjiang Province conducted an open trial in the criminal cases brought against Xu Shuangfu and others for a series of killings. As a result of the trial it was determined that from 2002 to 2004 Xu Shuangfu, Li Maoxing and others, seeking to gain control over other people and obtain money by fraudulent means, engaged in such serious criminal activities as ordering, abetting and encouraging others to commit or participate directly in murders, wilful injury, unlawful detention and fraud. Some 17 cases of murder or wilful injury resulting in death were brought; the methods used were cruel, the particulars of the cases were abominable, and in all 21 persons were killed. The defendants also fraudulently obtained "contributions" totalling more than 20 million yuan. The criminal activities of Xu and others extended to various provinces and cities including Liaoning, Jilin, Heilongjiang, Jiangxi, Shandong and Chongqing; they caused severe harm to peoples' lives, security and physical and mental health, and destroyed the order of normal productive life, causing great public indignation.

On 4 July 2006 the court handed down its sentence: Xu Shuangfu and Li Maoxing were found guilty of the crimes of murder, wilful and malicious injury, unlawful detention and fraud, for which they were sentenced to death, in accordance with the law; they were also deprived of their political rights for life and their personal property was confiscated.

In conducting this trial, the Chinese judicial authorities adhered to the facts of the case, took the law as their criterion, applied the law properly and proceeded in accordance with the law.

China: Death of Journalist Xiao Guopeng in Anshun, Guizhou

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

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

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of China regarding the circumstances surrounding the death of Xiao Guopeng.

Letter of allegation sent on 1 September 2006

I would like to draw the attention of your Government to information I have received regarding Mr. **Xiao Guopeng**, a journalist who is alleged to have been beaten to death by a policeman in the province of Guizhou.
According to the information received, on 18 July 2006, Mr. Xiao Guopeng was attacked by police officer Pan Dengfeng outside the offices of the daily newspaper "Anshun". The police officer knocked Mr.Guopeng to the ground and continued to hit him despite the protests of a crowd that gathered. Mr. Guopeng was taken to a hospital where he died as a result of cerebral hemorrhaging. According to our source, this attack is reportedly linked to a recent article in which Mr. Guopeng strongly criticized the local police.
According to the information received, Mr. Xiao Guopeng is the second journalist beaten to death by a police officer in China this year. On February 2006, the deputy editor of the "Taizhou Evening News" in Zhejiang province was killed because of an article in which he criticized the local police.

While I do not wish to prejudge the accuracy of these allegations, I respectfully request that your Government ensures that the death of Mr. Xiao Guopeng is promptly, independently and thoroughly investigated, in accordance with the United Nations principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions.

In this connection, I would like to recall the principle whereby all States have “the obligation (…) to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”, as recently reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4). The Commission added that this obligation includes the obligation “to identify and bring to justice those responsible, (…) to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to (…) prevent the recurrence of such executions”.

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

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 (autopsy), and judicial or other inquiries which may have been carried out in relation to the death of Mr. Xiao Guopeng. 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 Mr. Xiao Guopeng.

Response of the Government of China dated 28 November 2006 regarding an urgent appeal sent on 1 September 2006

Receipt is acknowledged of communication UA G/SO 214 (33-24) CHN 36/2006 from the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions. The Chinese Government has carefully examined the matters referred to in the communication and wishes to submit the following response.

Victim: **Xiao Guopeng**, male, head of the editorial office at the *Anshun Daily* newspaper.

Suspect: **Pan Dengfeng**, male, formerly chief of the Xinchang office of the Anshun city public security bureau.

Third party to the proceedings: **Tang Yunxia**, female, employee of *Anshun Daily*, former wife of Pan Dengfeng.

In May 2006, Pan Dengfeng discovered that his wife Tang Yunxia was involved in a relationship of an irregular nature with Xiao Guopeng. After that discovery, husband and wife started arguing. On 1 June they decided to divorce. Following their divorce, because they were apprehensive about the way both their parents would react and about the effect it would have on the development of their children, they continued living together.

At about 10.20 p.m. on 18 July, Tang received a phone call at home and started preparing to go out. As it was raining heavily at that time, Pan offered to give her a lift, but Tang declined his offer and proceeded to leave the house. After she had gone out, Pan set off in his car to his mother-in-law's home to visit their daughter. When he had driven some 100 metres from their house along Kuija Street, at the entrance to the Yuanhe food-store, he spotted Tang walking together with Xiao and sharing his umbrella, heading in the direction of Shidong Street. Pan immediately got out of his car and challenged Xiao. He then grabbed hold of him and started pulling and shoving him. During the ensuing scuffle between the two men, Pan punched Xiao and knocked him to the ground. Tang then got between them and tried to stop them from fighting but was pushed aside by Pan. When Xiao tried to get back to his feet he was knocked down again by Pan and struck the ridge between the roadway and the pedestrian footpath with the back of his head. Blood started pouring from his head and he lost consciousness. He was

taken to Anshun city hospital No. 73 but efforts to save his life were to no avail and he died at 11.28 p.m. on 19 July. Following the autopsy, the coroner ruled in his report that Xiao's death had been caused by a serious head wound.

Following this incident, Pan reported at the Dongguan police station to turn himself in. That same day he was taken into police custody and on 21 July he was formally remanded. On 31 July the Xixiu local public security office referred Pan's case, of the suspected offence of assault and battery, to the Xixiu district people's procurator's office for review and prosecution. The Xixiu district people's procurator's office referred the case, which involved the suspected offence of murder, to the Anshun procurator's office for prosecution and on 13 October criminal proceedings were instituted with the Anshun city intermediate level people's court. Proceedings in the case are currently under way.

Investigation and verification by the police established that the principal cause in this case was the involvement of a third party which led to the break-up of the police officer's family, and an unexpected and disproportionate reaction by the police officer which resulted in the death of another person, and the case has nothing to do with articles written by Xiao Guopeng criticizing the local police.

The public security authorities at the level both of Anshun city and Xixiu district gave very serious attention to this case and, after the incident itself, immediately set in place the proper working procedures and made the correct arrangements. Even though they were not obliged to accept any responsibility in this matter, the Xixiu public security authorities, acting in a purely charitable spirit, promptly donated the sum of 60,000 yuan to Xiao Guopeng's family to cover the costs of hospitalization and funeral expenses.

The Chinese Government respectfully requests that the content of the above response be incorporated in full in a relevant document of the United Nations.

China: Killing of Persons Attempting to Cross into Nepal

Violation alleged: Deaths due to the exceussive use of force by law enforcement officials

Subject(s) of appeal: More than 1 but less than 43 persons exercising their freedom of movement

Character of reply: UN translation awaited for response of the Government of China dated 20 December 2006

Letter of allegation dated 18 October 2006

I wish to bring to your Excellency's attention information I have received regarding 43 members of a group of Tibetans that was fired upon while attempting to cross the Nangpa Pass at the border between China and Nepal on 10 October 2006.

According to the information received, a group of 43 Tibetans departed Lhasa by bus on approximately 18 September. They began walking at Sakya, intending to cross into Nepal via the

Nangpa Pass near Mt. Everest. Traveling by night and resting during the day, the group walked for 13 nights. On the 13th night, the group was warned by local nomads that a military patrol was in the area and aware of the presence of the group, and was trying to locate them. Over the course of that evening, the group (which included women and small children) became somewhat separated from each other, and frequently called out to each other to locate the proper route, perhaps causing the patrol to locate them.

The group was proceeding up the final ascent of Nangpa La during the morning of 30 September when they were located by 6-7 members of a Chinese patrol. Soldiers called out to the group, ordering them to stop. The stronger Tibetans began to run towards the top of the pass. However, the slower members of the group were unable to run in the deep snow, including approximately 10-12 small children and a number of sick or injured Tibetans.

Shortly after calling out to the Tibetans, two members of the patrol began firing at the fleeing Tibetans. At least two Tibetans were hit, including one nun, Kelsang Nortso, 17, from Nagchu, Kham, Tibet. She was struck in her thigh and in the back, falling into the snow. She called out to the others, who attempted to drag her towards the pass. However, as the gunshots continued, the woman's friends were forced to abandon her unconscious body. Her body was left approximately five minutes' or so walk below the pass (which represents the border between PRC and Nepal). The body remained visible on the Nangpa Pass during the day of 30 September, though it was apparently removed by the following day. A young man, of unknown age, was also hit in the leg; the extent of his injuries is unknown, as is his location.

In this respect, and without pre-judging the accuracy of the information received, I would note the relevance in such situations of the United Nations Basic principles on the Use of Force and Firearms by Law Enforcement Officials. These Principles note, inter alia, that law enforcement officials should “as far as possible apply non-violent means before resorting to the use of force and firearms” and that “in any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”. I would also like to draw your Excellency’s attention to the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly resolution 34/169 (1979) which more succinctly stresses the limited role for lethal force in all enforcement operations.

While I note that on 6 October the Chinese Foreign Ministry spokesman said that the authorities will investigate claims that the military shot Tibetans attempting to flee the country, I would like to appeal to your Excellency’s Government to ensure that the deaths that occurred on 10 October at the Nagpa pass are promptly, independently and thoroughly investigated in accordance with the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

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

1. What, in your view, were the facts of the situation described?

2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the above mention killing.

3. Assuming that those responsible for the shootings have been or will be identified, please provide the full details of any prosecutions which have been undertaken, and of any other penal, disciplinary or administrative sanctions imposed in this connection.

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

Finally, I would like to appeal to the Government of Your Excellency to make sure that there is full public accountability for the actions of the State and of its border military patrols by ensuring that the result of your official investigation be made public.

Colombia: Muertes de Alfredo Correa de Andreis y Edward Ochoa Martínez

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

Persona objeta del llamamiento: 2 hombres

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Colombia por la información adicional que ha proporcionado relativa al estado de sus investigaciones con relación a los asesinatos de Alfredo Correa de Andreis y Edgard Ochoa Martinez. El Relator Especial también aprecia el compromiso del Gobierno de mantenerlo informado sobre el progreso de dichas investigaciones.

Llamamiento urgente del 17 de enero de 2005, reproducido desde E/CN.4/2006/53/Add.1 al p 58

El Profesor Alfredo Correa de Andreis y su escolta Edward Ochoa Martínez habrían sido asesinados el viernes 17 de septiembre de 2004 en la ciudad de Baranquilla por hombres en motocicleta. El profesor Correa era sociólogo, ex rector de la Universidad del Magdalena, miembro de la Red de Universidades por la Paz y profesor de las universidades del Norte y Simón Bolívar. El 17 de junio, Señor Correa de Andreis habría sido detenido por las fuerzas de seguridad por el supuesto delito de rebelión. Habría sido denunciado por un guerrillero reinsertado que lo acusaba de ser un supuesto ‘comandante Eulogio’ de las FARC. A finales del mes de julio, la Fiscalía habría revocado la medida de aseguramiento proferida contra el profesor Correa luego de no encontrar elementos que la justificaran.

Respuesta del Gobierno de Colombia del 31 de marzo de 2005, reproducido desde E/CN.4/2006/53/Add.1 al p 58

Al respecto, el Programa de Protección, de la Dirección de Derechos Humanos del Ministerio del Interior y de Justicia, por medio de oficio DDH-0900 de 16 de febrero de 2005, ha informado que de acuerdo con datos suministrados por la Policía Nacional, la investigación por el doble homicidio del docente de la Universidad Simon Bolivar, senor Alfredo Correa de Andreis y su escolta, el señor Eduardo Ochoa Martinez, esta siendo adelantada por la Fiscalia 11 BRINHO bajo el numero de radicación IPB 1814 por el delito de homicidio agravado.

Por otra parte, la Procuradora Delegada para la Prevención en Materia de Derechos Humanos y Asuntos Ethnicos de la Procuraduría General de la Nación, mediante el oficio No. 111046-44237 de 16 marzo de 2005, ha comunicado que una vez revisado el sistema de información de esa institución sobre investigaciones disciplinarias, se encontró que la actuación identificada bajo el Radicado inicial 020-110782/04 por el homicidio del señor Alfredo Correa de Andreis de la Procuraduría Delegada para la Policía Nacional., fue remitido por competencia a la Procuraduría Provincial de Barranquilla y que en la actualidad se encuentra en estudio la documentación que allí se envió. Asimismo, manifiesta que se ha enviado copia del cuestionario del Relator Especial sobre Ejecuciones Extrajudiciales, Sumarias o Arbitrarias a la Procuraduría Provincial de Barranquilla, el cual será remitido una vez sea diligenciado.

Adicionalmente, el Gobierno de Colombia se queda atento al resultado de las investigaciones que se adelanten, respecto de lo cual informara oportunamente a su Excelencia.

Observaciones del Relator Especial, reproducido desde E/CN.4/2006/53/Add.1 al p 58

El Relator Especial aprecia la información proporcionada por el Gobierno de Colombia relativa a los asesinatos de Alfredo Correa de Andreis and Edward Ochoa Martínez. El Relator Especial preguntará información sobre los resultados de las investigaciones mencionadas en la respuesta del Gobierno.

Respuesta del Gobierno de Colombia del 6 de noviembre de 2006

El Gobierno envió información adicional a su respuesta del 31 de marzo de 2005 y 13 de junio de 2005 en respuesta a la comunicación del 17 de enero de 2005, procedente del Relator Especial sobre Ejecuciones Extrajudiciales, Sumarias y Arbitrarias, en relación con el homicidio del profesor Alfredo Correa de Andreis y su escolta el Señor Eduardo Ochoa Martinez.

Conforme a la información suministrada por el Programa Presidencial de Derechos Humanos y DIH, la Fiscal a Seccional de Barranquilla -entidad en donde cursa la investigación preliminar por el homicidio de las personas mencionadas-, ha practicado varias diligencias, y recolectado elementos probatorios tendientes a identificar e individualizar a los responsables. Hasta este momento, se tienen algunos imputados, quienes han si o llamados a rendir declaración.

De Igual manera, el Ministerio del Interior y de Justicia informó que el Señor Corres no se encontraba incluido en el Programa de Protección liderado por ese Ministerio, teniendo en cuenta que la víctima en ningún momento había realizado solicitud de protección directa o a través de un tercero.

El Gobierno estará atento al desarrollo de las investigaciones que por estos hechos vienen adelantando las diferentes autoridades nacionales, de cuyos resultados informara oportunamente al Relator Especial.

Colombia: Muerte de Oscar Leonardo Sala Ángel Durante Manifestación en Bogotá en Marzo de 2006

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

Persona objeta del llamamiento: 1 hombre (manifestante)

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Colombia por la información que ha proporcionado sobre la muerte de Oscar Leonardo Sala Ángel.

El Relator Especial nota con interés la información proporcionada por el Gobierno relativa a la formación de la unidad Escuadrón Móvil Antidisturbios. El Relator Especial agradecería recibir información sobre el marco legal que reglamenta el uso de la fuerza por parte de dicha unidad, incluyendo el uso letal de la fuerza.

Asimismo, el Relator Especial pide al Gobierno de Colombia que le mantenga informado sobre los resultados de sus investigaciones y sobre las sanciones impuestas a los responsables, así como sobre las compensaciones otorgadas a las familias de las víctimas.

Carta de alegación del 24 de marzo de 2006 mandado con el Relator Especial sobre la promoción del derecho a la libertad de opinión

En este contexto, quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación al supuesto excesivo uso de la fuerza por parte de la policía contra **los estudiantes que se manifestaban en las instalaciones de la Universidad Naciona**l, en la ciudad de Bogotá, la cual, según se informa, ocasionó la muerte del joven **Oscar Leonardo Salas Ángel**.

De acuerdo con la información recibida, el 8 de marzo de 2006 hacia la una de la tarde, cuando los estudiantes universitarios de la capital se manifestaban en la Universidad Nacional contra del Tratado de Libre Comercio (TLC) y en defensa de la educación pública, numerosos miembros del Escuadrón Móvil Antidisturbios (ESMAD) de la Policía Nacional, los cuales se desplazaban en una tanqueta, cargaron contra los estudiantes, agrediéndoles, golpeándoles, disparando también gases lacrimógenos y granadas de aspersión contra los estudiantes que en ese momento

se encontraban en el campus universitario. Según algunas de las denuncias, miembros del ESMAD atacaron a los manifestantes lanzando piedras, pedazos de ladrillos y botellas. Se alega que durante el altercado, el estudiante Oscar Leonardo Salas Ángel, quien se encontraba entre los manifestantes, recibió un golpe en la cabeza por parte de uno de los integrantes del ESMAD, fruto del cual falleció el día 10 de marzo de 2006, aproximadamente a las 2 de la mañana, víctima de un trauma craneoencefálico que le provocó muerte cerebral irreversible, en la Clínica los Fundadores de la ciudad de Bogotá, donde había sido trasladado. Además de la muerte del Sr. Salas Ángel, otros estudiantes resultaron heridos, a causa de la reacción de los miembros del ESMAD.

Sin implicar, de antemano, una conclusión sobre los hechos, quisiéramos hacer un llamamiento urgente al gobierno de su Excelencia para que tome las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos, y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Político: "Todo individuo tiene derecho a la libertad de opinión y de expresión; este derecho incluye el no ser molestado a causa de sus opiniones, el de investigar y recibir informaciones y opiniones, y el de difundirlas, sin limitación de fronteras, por cualquier medio de expresión".

Consideramos apropiado hacer referencia a la resolución 2005/38 de la Comisión de Derechos Humanos la cual reafirma que el derecho de reunión pacífica y de asociación, además del derecho a participar en la dirección de los asuntos públicos guardan una estrecha relación con el derecho a la libertad de opinión y expresión, y en este contexto llama a los Estados a que adopten todas las medidas necesarias para prevenir y poner fin a las violaciones de estos derechos.

Quisiéramos instar a su Gobierno que adopte todas las medidas necesarias investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas, de conformidad con los principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, (resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social) según los cuales los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.(principios 9 a 19). Quisiéramos asimismo instarle a que tome las medidas eficaces para evitar que se repitan tales hechos.

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

1. ¿Son exactos los hechos referidos?

2. ¿Fue presentada alguna queja?

3. En el caso de que los hechos referidos sean ciertos, proporcione información detallada sobre las investigaciones iniciadas en relación con el incidente que provocó el fallecimiento del joven Oscar Leonardo Salas Ángel. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.

4. En el caso de que el supuesto responsable del fallecimiento del joven Leonardo Salas Ángel haya sido ya identificado, por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

5. Por favor proporcione información detallada sobre la base legal de las acciones emprendidas por el Escuadrón Móvil Antidisturbios (ESMAD) de la Policía Nacional en contra de los manifestantes, así como sobre la compatibilidad de esta base legal con los derechos a la libertad de opinión, expresión y asociación reconocidos internacionalmente.

6. Por favor, indique si alguna compensación fue otorgada a la familia de la víctima.

Respuesta del Gobierno de Colombia del 20 de junio de 2006

El Gobierno envió información relativa a una carta del 24 de marzo de 2006, relativo al supuesto uso excesivo de la fuerza por parte de la policía en contra de unos manifestantes y que ocasionaron la muerte del joven Oscar Leonardo Salas Angel.

La Fiscalía General de la Nación transmitió la respuesta siguiente:

Pregunta No. 1: Son exactos los hechos referidos?

Respuesta: Los hechos relatados en el comunicado procedente de los Relatores como ocurridos al interior de la Universidad nacional no son exactos.

Sobre las 11:15 horas, los manifestantes se dirigieron a la a la porteria de la carrera 30 donde se enfrentaron con la policía, lanzándole papas explosivas, petos, y otros elementos. La policía respondía a dichos ataques desde la parte exterior de la Universidad con chorros de agua y gases lacrimógenos dirigidos al puente peatonal interno de la universidad, en donde se encontraba un grupo de encapuchados. En este sitio fue visto un joven revolcándose en el piso, quien fue auxiliado por otros que lo retiraron de allí gritando que había un herido y pidiendo una ambulancia. El enfrentamiento con la policía continuó, terminándose horas después debido a un fuerte aguacero.

Pregunta No. 2: Fue presentada alguna queja?

Dentro del contexto de la investigación penal, no existe ninguna queja formulada por familiares ni por ninguna entidad frente al desarrollo o a los hechos mismos.

Pregunta No3: Por favor proporcione información sobre las investigaciones iniciadas en relación con el incidente que produjo el fallecimiento del joven Oscar Leonardo Salas Angel.

La investigación penal iniciada, está orientada a establecer las circunstancias que rodearon estos hechos y a establecer los responsables de los mismos.

Pregunta No 4: Por favor proporcione información detallada sobre las diligencias judiciales practicadas. Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntas culpables?

A la fecha no se ha vinculado formalmente a ningún sujeto a la investigación, ni se ha establecido si la lesión sufrida por el joven fue producto de una acción cometida por algún miembro de la fuerza pública.

Pregunta No. 6: Indique si alguna compensación ha sido otorgada a la familia de la víctima.

La Fiscalía General de la Nación desconoce si la familia de la víctima ha recibido alguna compensación.

En lo referente a la pregunta No. 5 de su cuestionario relativa a la base legal de las acciones emprendidas por el Escuadrón Móvil Antidisturbios (ESMAD) de la policía Nacional, me permito señalar que la Dirección General de la policía nacional, mediante resolución 01363 del 14 de abril de 1999, por medio de la cual se adiciona la resolución 0044 del 19 de enero del mismo año – que desarrolla la estructura orgánica y determina los procesos de la Dirección Operativa- crea el Escuadrón Móvil Antidisturbios como desconcentrados de la dirección operativa, con el encargo de "apoyar a los departamentos de policía y metropolitanas en la atención de desórdenes, cuando su capacidad en talento humano y medio sea rebasada". Tal disposición no sólo es reafirmada por la resolución 01140 de 2002, sino que eleva a la categoría de especialidad del servicio el control antidisturbios.

En lo que hace al funcionamiento del ESMAD, mención aparte merecen la directiva transitoria 205 del 24 de febrero de 1999 y las directivas permanentes 031 y 019, del 9 de septiembre de 2003 y 20 de mayo de 2005 respectivamente. Con la primera, se imparte una serie de instrucciones para la organización del escuadrón móvil antidisturbios, y se establece que, previo a la entrada de sus operaciones, deberá surtirse un proceso de capacitación y entrenamiento en temas relacionados con el respeto y protección de los derechos humanos. Entre tanto, la Directiva 031 imparte una serie de instrucciones a las seccionales metropolitanas y departamentales respecto del empleo y uso adecuado de los ESMAD, mientras que la directiva 019 se refiere a los criterios de identificación que deben ser tomados en cuenta por el personal que integra el ESMAD, entre ellos el número de identificación policial y el apellido de quien lo porta, aspecto de suma importancia frente a las actividades que debe desempeñar el organismo. Finalmente, y con el objeto de reforzar las actividades institucionales orientadas hacia la capacitación en el área de derechos humanos al interior del personal que integra el ESMAD, la escuela nacional de policía dispuso, mediante resolución 128 del 4 de mayo de 2006, un nuevo plan de estudios para el curso de control de multitudes de los ESMAD, en cuyo programa la formación en derechos humanos ocupa un lugar central y articulador entre la diversas materias.

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

Colombia: Asesinato de Susana Particia Galeano en Argelia, Antioquia

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

Persona objeta del llamamiento: 1 mujer (menor)

Carácter de la respuesta: Respuesta cooperativa pero incompleta

Observaciones del Relator Especial

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

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

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

> El 15 de febrero de 2006 un grupo de soldados del batallón “Juan del Corral”, adscrito a la Cuarta Brigada del ejército regular colombiano con sede en Medellín, se habrían presentado en la vereda “El Plan” del antemencionado municipio e iniciado la persecución contra un presunto miembro de la guerrilla. Posteriormente los soldados habrían entrado en la vivienda de la familia Galeano Galeano, ubicada en la misma vereda donde se encontraban solas dos menores de edad: una de 14 años, cuyo nombre se desconoce hasta el momento, y Susana Patricia, de 17 años. Se alega que los soldados habrían procedido a disparar contra esta última causándole la muerte. Según las denuncias, los soldados habrían tratado de convencer a la familia que el disparo que acabó con la vida de Susana Patricia lo había hecho el antemencionado supuesto miembro de la guerrilla y habrían exhortado a los familiares de la victima a informar a las autoridades “que a la joven la había matado el guerrillero”. Se informa también que los militares habrían presionado a diferentes integrantes de la familia, con el fin de evitar que estos denunciasen la verdad sobre la forma en que sucedieron los hechos. Se alega también que el cadáver de Susana Patricia habría sido dejado en el potrero de la finca hasta el día siguiente cuando, otros miembros del ejército lo habrían trasladado hasta el municipio de Sonsón con el fin de efectuar las correspondientes diligencias judiciales, pese a que la jurisdicción de la vereda « El Plan » corresponde al municipio de Argelia, alegando que la fiscalía los habría autorizado a efectuar dicho traslado. Los Relatores Especiales expresamos nuestra preocupación por los miembros de la familia de Susana Patricia quienes, según la información recibida, se encuentran muy atemorizados y temen

sufrir agresiones contra su vida e integridad personal por haber denunciado los citados hechos.

El 12 de febrero de 2006 en la vereda de nombre “Gitana”, un soldado habría llegado a la vivienda de una familia campesina, y habría exigido que le entregaran a su hija, una niña de 14 años ante lo cual los padres se negaron. El soldado habría procedido a llevarse a la menor procediendo a violarla. La niña regresó posteriormente al domicilio de sus padres. Se alega que los padres de la menor también habrían sido agredidos físicamente cuando intentaron evitar que el soldado agrediera a la niña.

Sin implicar, de antemano, una conclusión sobre los hechos, quisiéramos instar al Gobierno de su Excelencia a que adopte todas las medidas necesarias para garantizar el derecho de la persona mencionada a no ser víctima de cualquier forma de violencia por cuestiones de género, discriminación y abuso. A este fin, quisiéramos llevar a la atención de su Excelencia la Declaración sobre la eliminación de la violencia contra la mujer, aprobada por la Asamblea General de las Naciones Unidas, que establece que la mujer tiene derecho, en condiciones de igualdad, al goce y la protección de todos los derechos humanos y libertades fundamentales en las esferas política, económica, social, cultural, civil y de cualquier otra índole. Entre estos derechos figuran, (a) el derecho a la vida; (b) el derecho a la igualdad; (c) el derecho a la libertad y la seguridad de la persona; y (d) el derecho a igual protección ante la ley (artículo. 3). Además, también estipula que todos los estados deberán proceder con la debida diligencia a fin de prevenir, investigar y, conforme a la legislación nacional, castigar todo acto de violencia contra la mujer, ya se trate de actos perpetrados por el Estado o por particulares (artículo 4 (c)).

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

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

Quisiéramos instar a su Gobierno que adopte todas las medidas necesarias para proteger los derechos y las libertades de las personas mencionadas e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas de conformidad con los principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social según el cual los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.(principios 9 a 19) . Quisiéramos asimismo instarle a que tome las medidas eficaces para evitar que se repitan tales hechos.

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

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

2. ¿Fue presentada alguna queja?

3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con los dos casos, incluyendo los resultados de los exámenes médicos llevados a cabo. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.

4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

5. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Respuesta del Gobierno de Colombia del 31 de mayo de 2006

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

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

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

Por último, el programa presidencial de derechos humanos y derecho internacional humanitario de la vicepresidencia de la república, ha solicitado información al inspector del ejército nacional, acerca de las investigaciones adelantadas. De igual forma puso en conocimiento del caso a la

procuradora delegada para las fuerzas militares, con el fin de que se adopten las acciones pertinentes.

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

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

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

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

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

Colombia: Muertes Durante Manifestación en el Departamento del Cauca en Mayo 2006

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

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

Carácter de la respuesta: No respuesta

Observaciones del Relator Especial

El Relator Especial lamenta que el Gobierno de Colombia no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

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

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

> El 14 y 15 de mayo de 2006, más de 50 000 personas de distintos sectores de la sociedad civil colombiana se habrían congregado en diversos puntos del país para protestar de manera pacifica contra la firma del Tratado de Libre Comercio, la re-elección de Álvaro Uribe Vélez y la adopción de la "Ley de Justicia y Paz".
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> Según se informa, el 15 de mayo de 2006, en la ciudad de Popayán, capital del departamento del Cauca, el Escuadrón Móvil Antidisturbios (ESMAD) de la Policía Nacional habría intentado disolver por la fuerza la concentración de las más de 1000 personas que se manifestaban frente a las instalaciones del SENA (una escuela técnica). Como resultado de dicha intervención policial, varias personas habrían resultado heridas, algunas por arma de fuego. Otros manifestantes, que habían decidido ocupar el edificio del SENA, habrían sido desalojados por la fuerza lo que habría provocado un enfrentamiento con las fuerzas del orden que se habría prolongado hasta altas horas de la madrugada. Según los informes, integrantes del ESMAD habrían entrado en el barrio de la Paz, donde se encontraban algunos manifestantes a los que habrían atacado con gases lacrimógenos. Como resultado de esta intervención policial, al menos 60 manifestantes y residentes del barrio, habrían resultado heridos, y más de 40 personas habrían sido detenidas, entre ellas 5 menores de edad.
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> El 16 de mayo de 2006, alrededor de 15.000 manifestantes congregados en la finca La María, en la localidad de Piendamo, departamento del Cauca habrían ocupado un tramo de la autopista Panamericana. El ESMAD, la policía de carretera y el Ejército Nacional habrían intervenido con acciones aéreas y por tierra. En el transcurso de esta intervención **Pedro Mauricio Coscue** de etnia indígena, habría sido asesinado, y más de 100 personas, en su mayoría indígenas, habrían resultado heridas, entre ellas 7 menores de edad. Además, **Misael Vizcunda Chocué**, de entre 16 y 17 años, habitante de la vereda San Pablo, Resguardo Indígena Corinto Tierra Adentro se encontraría desaparecido. Según los informes, al menos 24 manifestantes habrían sido detenidos durante los enfrentamientos, entre ellos los periodistas **Marcelo Forero**, del periódico virtual "*El Turbión*", **Jesús López** y **Carmen Eugenia León**, de la emisora de la oficina de

comunicaciones del resguardo indígena de *La María* y **Richard Calpa**, director de la emisora *La Libertad* del municipio de Totoró. Según los informes, los 4 periodistas habrían sido liberados sin cargos el 22 de mayo de 2006. Se alega también, que las fuerzas del orden público habrían confiscado los materiales de grabación de diversos miembros de la prensa.

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

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

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

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

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

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

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

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

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

Además, quisiéramos referirnos a los artículos siguientes:

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

- el artículo 5 apartado a) estipula que a fin de promover y proteger los derechos humanos y las libertades fundamentales, toda persona tiene derecho, individual o colectivamente, en el plano nacional e internacional a reunirse o manifestarse pacíficamente;

Nos permitimos también hacer un llamamiento urgente al gobierno de su Excelencia para que tome las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos, y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Político: "Todo individuo tiene derecho a la libertad de opinión y de expresión; este derecho incluye el no ser molestado a causa de sus opiniones, el de investigar y recibir informaciones y opiniones, y el de difundirlas, sin limitación de fronteras, por cualquier medio de expresión".

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

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

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

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

2. ¿Fue presentada alguna queja?

3. En el caso de que los hechos descritos en las alegaciones sean ciertos, y los miembros de la policía presuntamente implicados en los antemencionados incidentes hayan sido ya identificados, por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

4. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Colombia: Muertes y Amenazas de Muerte contra Líderes Sindicales

Violación alegada: Impunidad y amenazas de muerte

Persona objeta del llamamiento: 2 hombres; 1 mujer

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial aprecia la información proporcionada por el Gobierno de Colombia y agradece su compromiso de mantenerlo informado de la evolución de sus investigaciones.

Llamamiento urgente del 29 de agosto de 2006 mandado con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y Representante Especial del Secretario-General para los defensores de los derechos humanos

Quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación con la situación de **Carlos Arturo Montes Bonilla, Héctor Jairo Paz y Martha Cecilia Díaz Suárez.**

Según la información recibida:

El 18 de Agosto de 2006, **Héctor Jairo Paz**, directivo del mencionado Sindicato SINALTRAINAL y trabajador de Nestlé Colombia, recibió graves amenazas en una tarjeta depositada en su domicilio.

El 15 de Agosto de 2006, **Martha Cecilia Díaz Suárez**, líder sindical y presidenta de la Asociación Santandereana de Servidores Públicos (ASTDEMP) fue intimidada y golpeada por unos individuos desconocidos que le amenazaron con matar a su hija. Según la Sra. Díaz, no se trata del primer caso de agresión ni amenaza sufrida desde que es presidenta sindical.

El 17 de Agosto de 2006, **Carlos Arturo Montes Bonilla**, activista sindical afiliado al Sindicato Nacional de Trabajadores de la Industria de los Alimentos (SINALTRAINAL) fue asesinado cuando regresaba a su domicilio. El Sr. Montes Bonilla había participado en las denuncias contra la multinacional Coca-Cola y en las actividades sindicales del puerto petrolero ECOPETROL.

Se teme que las amenazas recibidas por Héctor Jairo Paz y Martha Cecilia Díaz Suárez, así como el asesinato de Carlos Arturo Montes Bonilla, estén vinculados a sus actividades como defensores de los derechos sociales y económicos, y puedan formar parte de de una campaña de intimidación contra los defensores de los derechos humanos, en concreto en contra de los sindicalistas.

Sin implicar, de antemano, una conclusión sobre los hechos, deseamos hacer un llamamiento al gobierno de su Excelencia para que tome las medidas necesarias para asegurar que el derecho a la libertad de opinión y de expresión sea respetado, de acuerdo con los principios enunciados en el artículo 19 de la Declaración Universal de los Derechos Humanos, y reiterados en el artículo 19 del Pacto Internacional de Derechos Civiles y Político: "Todo individuo tiene derecho a la libertad de opinión y de expresión; este derecho incluye el no ser molestado a causa de sus opiniones, el de investigar y recibir informaciones y opiniones, y el de difundirlas, sin limitación de fronteras, por cualquier medio de expresión".

Consideramos también apropiado hacer referencia a la resolución 2005/38 de la Comisión de Derechos Humanos, la cual insta a los estados a que garanticen que las víctimas de violaciones al derecho a la libertad de expresión puedan interponer recursos eficaces para investigar efectivamente las amenazas y actos de violencia, y llevar ante la justicia a los responsables de esos actos, para luchar contra la impunidad.

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

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

Además, quisiéramos referirnos a los artículos siguientes:

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

- el artículo 5 apartado a) estipula que a fin de promover y proteger los derechos humanos y las libertades fundamentales, toda persona tiene derecho, individual o colectivamente, en el plano nacional e internacional a reunirse o manifestarse pacíficamente;"

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

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

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

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

2- ¿Fue presentada alguna queja por las víctimas o sus representantes?

3- Por favor, proporcione información detallada sobre las investigaciones judiciales y administrativas iniciadas con relación a estos casos, incluyendo los resultados de los exámenes médicos llevados a cabo.

Respuesta del Gobierno de Colombia del 9 de noviembre de 2006

El Gobierno respondió a la comunicación del relator Especial del 29 de agosto de 2006, relativo al homicidio del Señor Cados Arturo Montes, activista afiliado a *SINALTRAINAL*, así como acerca de la recepción de informaciones sobre Intimidaciones y amenazas en contra de Héctor Jairo Paz, directivo del *SINDICATO NACIONAL DE TRABAJADORES DE LA INDUSTRIA DE ALIMENTOS (SINALTRAINAL) y de* la Señora Martha Cecilia Diaz, líder sindical y Presidenta de la *ASOCIACIÔN SANTANDEREANA DE SERVIDORES PÙBLICOS (ASTDEMP).*

Sobre el particular, en relación con el homicidio del señor Carlos Arturo Montes, el Departamento Administrativo de Seguridad (DAS) informó que una persona identificada coma el hijastro de la víctima, se entregó voluntariamente a la Fiscalía URI de Barrancamermeja, señalando haber cometido el hecho punible presuntamente par motivos familiares. Sin perjuicio de lo anterior, el DAS realizará el respectivo seguimiento a las resultados que arroje la investigación.

En relación con los hechos señalados en contra del señor Héctor Jairo Paz, y de la señora Martha Cecilia Díaz comunicamos que hemos solicitado a las autoridades competentes suministrar toda la información que permita esclarecer los hechos ocurridos, así como las medidas adoptadas en relación con estas personas.

El Gobierno estará atento al desarrollo de las investigaciones que por estos hechos vienen adelantando las diferentes autoridades nacionales, de cuyos resultados informara oportunamente al Relator Especial.

Colombia: Asesinatos contra los Wiwa

Violación alegada: Muertes a consecuencia de ataques o asesinatos por fuerzas de seguridad, muertes en detención, y temores por la seguridad

Persona objeta del llamamiento: 20 hombres (1 menor) y 1 mujer (indígenas)

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial aprecia la información proporcionada por el Gobierno de Colombia y agradece su compromiso de mantenerlo informado de la evolución de sus investigaciones.

El Relator Especial también nota que la obligación del Gobierno de investigar asesinatos no depende de la existencia de una queja oficial. El Relator Especial recuerda que es imprescindible que el Gobierno investigue los casos llamados a su atención aunque no hayan sido registrados por la Fiscalía.

Carta de alegación del 11 de julio de 2006

Quisiera señalar a la atención urgente de su Gobierno la información que he recibido en relación con supuestas violaciones sufridas por el pueblo wiwa de la Sierra Nevada de Santa Marta cometidas por miembros del ejército nacional. De acuerdo con la información recibida:

Se habrían producido al menos 6 ejecuciones extrajudiciales entre diciembre de 2005 y junio de 2006 de indígenas wiwa. Estas ejecuciones de indígenas wiwa habrían sido presentadas por el ejército nacional como "homicidios en combate". No obstante, la información recibida alega la existencia de evidencias que demostrarían que varias de las víctimas se encontraban en el momento de su muerte bajo custodia del ejército nacional. El 9 de diciembre de 2005, miembros del ejército nacional habría detenido en su casa al Sr. **Laudelino Montano** en el resguardo indígena en el municipio de San Juan del Cesar. Se alega que al día siguiente se habrían oído disparos y encontrado el cadáver del Sr. Laudelino Montano en un sitio localizado entre las comunidades de Ulaka (Ulago) y Abo Guaquina (Sabana de Joaquina). El 3 de enero de 2006 miembros del ejército habrían detenido a los Sres. **Ricardo Arias Solis** y **Celso Carrillo Perea**, en la comunidad de Abu Guaquina (Sabana de Joaquina). Al día siguiente se habrían escuchado disparos en un lugar cercano a las comunidades indígenas de Mamarongo y Guamaka, apareciendo los cadáveres de las personas anteriormente mencionadas. Se alega que ese mismo día, varias radios locales habrían difundido la noticia de que dos miembros de las FARC-EP habrían sido dados de baja, por lo que se teme se hiciera referencia a la misma persona. Se alega que el 9 de enero de 2006, el Sr. **Bernardo Montano Armenta** habría sido asesinado por paramilitares en el municipio de San Juan del Cesar Departamento de Guajira). Se alega que el 6 de abril de 2006, habría sido asesinado en el municipio Riohacha el mamo (líder espiritual indígena) **Juan Rafael Alberto Gil** por personas desconocidas. Se alega que el 30 de abril de 2006, el Sr. **Hector Jose Nieves** habría muerto a manos de la policía nacional. Se alega que la policía nacional habría entrado en su casa, habría ordenado a todas las personas que allí se encontraban a tumbarse y uno de sus miembros habría disparado al Sr. Hector José Nieves cuando se encontraba tumbado en el suelo.

La información recibida alega también la existencia de maltrato y hostigamiento por parte del ejército nacional dentro del Resguardo indígena Kogui-Malayo-Arhauco. Se alegan, entre otros, los siguientes casos. En agosto de 2005 el joven de 17 años **Eladio Jose Banos Alonso** habría sido golpeado por miembros del Ejército Nacional, obligado a vestirse con el uniforme de las FARC. Se alega que se habría previsto su asesinato pero que miembros del ejército nacional se habrían opuesto al mismo, motivo por el que habría sido liberado. Entre el 17 y 22 de abril de 2006, el Sr. **Wilson Enrique Villazon Villazon** habría sido detenido y amenazado en un campamento militar cuando se disponía a denunciar las supuestas torturas que habría sufrido en 2004 por miembros del ejército nacional.

La información recibida alega asimismo una serie de hechos que supondrían, en su caso, una violación del derecho humanitario internacional. Se alega que en junio de 2005, varios miembros del ejército nacional habrían amenazado a indígenas wiwa con retirar al ejército y permitir la entrada de los paramilitares en caso de que no colaboraran con ellos e informaran sobre los movimientos de la guerrilla. Asimismo, se alega que en agosto de 2005, los Sres**.** José Francisco Alonso Zabata, Merilo Montero Maestre, Robinson Pachecho Malo, Jian zabata Torres y

Hermenegildo Zabata habrían sido utilizados como escudos humanos por parte del ejército nacional durante una persecución de guerrilleros de las FARC-EP, entre otros hechos.

La información recibida alega la existencia de detenciones arbitrarias de indígenas wiwa por parte del ejército nacional. Así, se alega que habrían sido detenidos acusados de rebelión los Sres. **Juan de Jesús Mendoza Arias** (3 de agosto de 2005), **José Eduardo Marestre Crespo** (11 de diciembre de 2005), **Carmen Cecilia Arias Cáceres** (7 de enero de 2006) y **Jorge Luis Montero Malo** (30 de abril de 2006). Se alega que el 18 de marzo de 2006 habrían sido detenidos los Srs. **Geovanis Montano Mendoza, Obdulio Dario Montano Armenta, Yamelis del Rosario Montano Armenta** y **Julio Bolivar Montano Loperena**, acusados de haber participado en un ataque de la guerrilla sobre el ejército nacional del 9 de marzo de 2006 y por ser miembros de las FARC. Se alega que tras discutir con las autoridades locales, estas personas habrían pasado a custodia de las autoridades tradicionales wiwa, dentro del refugio indígena.

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. 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.

Quisiera instar a su Gobierno que adopte todas las medidas necesarias para proteger los derechos y las libertades de las personas mencionadas e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas de conformidad con los principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias, o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. Quisiera asimismo instarle a que tome las medidas eficaces para evitar que se repitan tales hechos.

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

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

2. ¿Fue presentada alguna queja?

3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de los exámenes médicos llevados a cabo. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.

4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

5. Por favor, indique si la víctima o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Respuesta del Gobierno del 14 de noviembre de 2006

El Gobierno proporcionó información relativo a una carta de alegación del Relator especial del 11 de julio de 2006, mediante la cual solicitaba información en relación con las presuntas ejecuciones extrajudiciales, detenciones arbitrarlas y hostigamientos sufridos por el PUEBLO WIWA de la Sierra Nevada de Santa Marta, entre junio de 2005 y junio de 2006.

Sobre el particular, es importante precisar que et 04 de febrero de 2005, la Comisión Interamericana de Derechos Humanos solicitó et otorgamiento de medidas cautelares a favor de esta comunidad indígena,

AI respecte, en desarrollo de las medidas cautelares la Policía y et Ejército Nacional implementaron varios mecanismos de protección y seguridad de la comunidad, tales como patrullajes constantes y controles de las entradas que conducen a la Sierra Nevada de Santa Marta, que permitan controlar el porte de armas de fuego, municiones y explosivos, así como contrarrestar la movilidad de les delincuentes que puedan actuar en contra de la población civil.

De otra parte, las instituciones mencionadas destacan su estricto respeto por las creencias y cultura de la comunidad Wiwa, así como el desarrollo de actividades de bienestar social a favor de la misma

En ese sentido, las instituciones en mención han realizado varias reuniones, con participación de los mamos, cabildos gobernadores y demás autoridades indígenas y civiles, en las cuales se dejó constancia del respaldo y buen trato brindado por la fuerza pública, fruto de las cuales se realizó el examen y coordinación de las condiciones de seguridad y protección de los derechos de los miembros de la comunidad
Respecto de las investigaciones adelantadas por las presuntas violaciones en contra de miembros de esta comunidad, me permito transmitir la información suministrada par la Fiscalía General de la Nación:

La Fiscalía Seccional de San Juan de Cesar adelanta una investigación penal par el homicidio del señor LAUDELINO LOPERENA MONTAÑO, quien habría sido asesinado et 09 de diciembre de 2005, la cual se encuentra en etapa previa en la práctica de las pruebas tendientes al esclarecimiento de los hechos y a la identificación e individualización de los autores o participes del ilícito

Acerca de los homicidios de los señores CELSO CARRILLO PEREA y RICARDO ARIAS SOLES, en hechos ocurridos et 07 de enero de 2006, la Fiscalía informó que remitió la información al Juzgado 20 de Instrucción Penal Militar del Batallón Cartagena,

Sobre el particular, el Comando General de las Fuerzas Militares informó que el Comando del Batallón de infantería Mecanizado No. 6 "Cartagena-" dio inicio a una indagación preliminar.

En relación con et señor BERNÂRDO FRANCISCO MONTMO ARMENTA, quien habría sido asesinado el 09 de enero de 2006, en el perímetro urbano de San Juan del Cesar, la Fiscalía en asocio con el Cuerpo Técnico de Investigación de la localidad, practicó la diligencia de inspección a su cadáver. La Investigación se encuentra en etapa previa y cursa en la Fiscalía 02 Seccional de San Juan del Cesar.

Respecto del homicidio del Señor JUAN RAFAEL ALBERTO GIL, quien habría sido asesinado et 04 de abril de 2006, su muerte estaría atribuida a dos jóvenes que llegaron en una motocicleta a la vivienda donde se encontraba y posteriormente le dispararon en varias oportunidades. La Investigación cursa en la Fiscalía No. 01 de Vida de la ciudad de Riohacha, y se encuentra en etapa de investigación previa.

Respecto de la presunta detención arbitraria del Señor JORGE LUIS MONTAÑO MALO, se determinó que esta persona se encuentra sindicada por el delito de rebelión, debido a hechos cometidos et 30 de abril de 2,006, motivo por el cual la Fiscalía Seccional de San Juan del Cesar informa que el proceso cursa actualmente en et Juzgado Promiscue del Circuito de San Juan del Cesar.

La Fiscalía destaca que durante el operativo en que fue capturado el Señor MONTAÑO MALO, se produjo un enfrentamiento con miembros de la Policía Nacional, en el que resultó herido el Señor HÉCTOR JOSÉ NIEVES NIEVES, quien murió posteriormente en la ciudad de Valledupar como resultado de las heridas recibidas. Los hechos habrían ocurrido en el corregimiento de La Junta, Jurisdicción de San Juan del Cesar.

Las diligencias acerca de la muerte del Señor HÉCTOR JOSÉ NIEVES NIEVES mencionado, fueron remitidas al Juzgado 177 de Instrucción Penal Militar del Grupo de Caballería Mecanizado No. 2 Rond6n de 8uenavista - Distracci6n, La Guajira.

Igualmente, la Oficina de Control Interna Disciplinario del Departamento de Policía Guejira adelanta una indagación Preliminar Disciplinarla en contra de dos Patrulleros miembros de la institución

Respecto de los Señores ELADIO JOSÉ ALONSO y WILSON ENRIQUE VILLAZÔN VILLAZÓN, la Fiscalía informó que en su despacho no se encuentra registro alguno en et que figuren como victimas de tortura o maltrato las personas mencionadas, y que adicionalmente, cursa una investigaci6n en la Fiscalía 03 Especializada de Riohacha, en la cual se encuentra sindicado por et delito de concierto para delinquir et Señor WILSON ENRIQUE VILLAZON VILLAZÔN.

Respecto de los Señores JOSÉ FRANCISCO ZABATA, MERILO MONTERO MAESTRE, ROBINSON PACHECO MALO, JIAN ZABATA TORRES y HERMENEGILDO ZABATA, la Fiscalía informó que en su despacho no se encuentra registro alguno en el que figuren como victimas de delitos.

De igual manera, se informa que no se encontraron registros de la captura de los Señores GEOVANIS MONTAIIQO MENDOZA, OBDULIO DARIO MONTAIGO ARMENTA, YAMELIS DEL ROSARIO MONTAÑO ARMENTA y JULIO BOLIVAR MONTAÑO

LOPERENA del 18 de marzo de 2.006, asi como tampoco se encontraron registros de la captura et 03 de agosto de 2.005 del Señor JUAN DE JESOS MENDOZA ARIAS.

En relación con la Señora CARMEN CÉCILIA ARIAS CÁCERES, se informa que la Fiscalía 02 Seccional San Juan del Cesar profirió, et 25 de mayo de 2006, Resolución de Acusación en contra de este persona por el delito de rebelión, debido a hechos cometidos el 01 de septiembre de 2.003, motivo por el cual el proceso cursa en el Juzgado Promiscuo del Circuito de San Juan del Cesar.

De acuerdo con la información suministrada por el Comando General de las Fuerzas Militares, esta institución gestionará la verificación del estado de su proceso judicial. Igualmente, se menciona que la Señora ARIAS manifestó que cuenta con un Defensor Público que la acompañara en el Proceso en su contra.

Respecto del Señor EDUARDO JOSÉ MAESTRE CRESPO, se informa que la Fiscalía 02 Seccional San Juan del Cesar profirió, et 25 de abril de 2.006, Resolución de Acusación por el delito de rebelión en contra de esta persona, debido a hechos cometidos et 11 de diciembre de 2.005, motivo por el cual el proceso cursa en el Juzgado Promiscuo del Circuito de San Juan del Cesar.

El Gobierno estará atento al desarrollo de las investigaciones que por estos hechos vienen adelantando las diferentes autoridades nacionales, de cuyos resultados informara oportunamente al Relator especial.

Colombia: Asesinatos contra los Wayuú

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

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

Carácter de la respuesta: No respuesta

Observaciones del Relator Especial

El Relator Especial lamenta que el Gobierno de Colombia no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

Carta de alegación del 17 de julio de 2006

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

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

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

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

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

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

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

2. ¿Fue presentada alguna queja por parte de las víctimas o sus familiares?

3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de los exámenes médicos efectuados a los heridos y de las autopsias practicadas a Javier Pushaina, Luis Angel Fince Iguana e Irene López. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.

4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas.

5. Se han tomado medidas para que la investigación en curso sea retirada de la Justicia Penal Militar y puesta en conocimiento de la Justicia Ordinaria? ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

6. Por favor, indique si se ha otorgado algún tipo de compensación a las víctimas o sus familiares. En caso afirmativo, ¿Cuál es la naturaleza y cantidad de esa compensación? Si no se les ha compensado, ¿Cuáles son los motivos?

7. ¿Cuales son las acciones tomadas o planeadas para prevenir la repetición de tales incidentes en el futuro y para promover y proteger los derechos de todos los miembros de la comunidad indígena Wayúu?

Colombia: Muertes y Amenazas de Muerte contra Líderes Sindicales

Violación alegada: Impunidad y amenazas de muerte

Persona objeta del llamamiento: 3 hombres

Carácter de la respuesta: No respuesta, (comunicación reciente)

Observaciones del Relator Especial

El Relator Especial espera recibir una respuesta a sus alegaciones.

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

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

De acuerdo con la información recibida:

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

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

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

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

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

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

Además, quisiéramos referirnos a los artículos siguientes:

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

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

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

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

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

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

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

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

2. ¿Fue presentada alguna queja?

3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con estos casos, incluyendo los resultados de los exámenes médicos llevados a cabo. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.

4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

5. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

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

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

Persona objeta del llamamiento: 1 hombre

Carácter de la respuesta: No respuesta (comunicación reciente)

Observaciones del Relator Especial

El Relator Especial espera recibir una respuesta a sus alegaciones.

Carta de alegación del 24 de noviembre de 2006

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

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

El Coronel Gustavo Enrique Avendaño, Jefe del Estado Mayor de la Quinta Brigada, habría afirmado que dicho incidente era la consecuencia de un error militar. De acuerdo a su versión, el incidente habría tenido lugar en un sector donde el Ejército adelantaba operaciones de registro y control militar. Al parecer, el Ejército habría abierto fuego contra el Sr. Castrillón y sus hijos al confundirlos con miembros de organizaciones al margen de la ley.

En estas circunstancias, deseo expresar mi profunda preocupación con relación a las denuncias que he venido recibiendo en contra de tropas del Ejército presentes en la región del sur de Bolivar. A través de una carta enviada el 8 de Noviembre de este año, llamé la atención de su Gobierno sobre la muerte del Sr. **Alejandro Uribe**, reconocido defensor de derechos humanos, quien habría sido asesinado el 19 de septiembre de 2006 por presuntos miembros del Ejército

Nacional en el sur de Bolívar. Según nuestras fuentes, su muerte estaría relacionada con la denuncia que el Sr. Uribe efectuó ante la Defensoría del Pueblo, sobre la presunta ejecución extrajudicial del **Sr. Arnulfo Pabón**, un habitante del sur de Bolivar que habría sido asesinado el 18 de agosto de 2006 por supuestos miembros del Batallón Antiaéreo Nueva Granada.

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

Frente a esta grave situación, insto al Gobierno de Su Excelencia a que investigue el incidente que causó la muerte del Sr. Leber Castrillón Sarmiento, así como todas las alegaciones en contra de las tropas del ejército presentes en el sur de Bolivar, a que imponga las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas, y a que adopte todas las medidas necesarias para garantizar la vida y la seguridad de los habitante de dicha región.
Finalmente, me gustaría mencionar algunos instrumentos del Derecho Internacional que resultan particularmente relevante en el contexto de esta carta.
Llamo la atención del Gobierno Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos garantizan a todo individuo el derecho a la vida y a la seguridad de su persona y disponen que este derecho sea protegido por la ley y que nadie sea arbitrariamente privado de su vida.

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

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

1. ¿Son exactos los hechos a los que se refiere la alegación?

2. ¿Fue presentada alguna queja por las víctimas o sus representantes?

3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con la muerte del Sr. **Leber Castrillón Sarmiento** incluyendo los resultados de las autopsias llevadas a cabo. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.

4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

5. Por favor, indique si los familiares del Sr.**Leber Castrillón Sarmiento** obtuvieron algún tipo de compensación a modo de indemnización.

6. Por favor indique las medidas adoptadas para garantizar que este tipo de hecho no se repitan

Democratic People's Republic of Korea: Death Sentence of Son Jong Nam

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

Subject(s) of appeal: 1 male (religious minority)

Character of reply: Allegations rejected but without adequate substantiation

Observations of the Special Rapporteur

In keeping with a public statement made by him and other special procedures on 31 May 2006, the Special Rapporteur would reiterate that he is profoundly dismayed by the response of the Democratic People's Republic of Korea and deplores its failure to cooperate with the special procedures established by the United Nations Commission on Human Rights.

Urgent appeal dated 26 April 2006 sent with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on the question of torture and Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

We would like to bring to your attention information we have received regarding Mr. **Son Jong Nam**, who we understand is currently held imprisoned in the basement of the National Security Agency in Pyongyang in a critical health condition after he was reportedly tortured at the hands of members of the National Security Agency. We have been informed that he is accused of treason and that he is at risk of imminent execution. Information received does not indicate that a trial took place. The sentence is believed to have been passed by the National Security Agency.

According to the information received, Mr. Son Jong Nam had defected from North Korea in 1997 with his wife, son and brother. He was born in Sadong, Soryongdong, Pyongyang and served his full military term as a non-commissioned officer at the Security Protection Headquarters from October 1975 to May 1983. In January 1998, Mr Son's sister-in-law was investigated by the secret police while pregnant. During the interrogation she was kicked in the stomach and she miscarried. Mr Son brought the matter before the Central People's Committee. However, his claim was dismissed and he decided to leave North Korea to China shortly afterwards. Reported indicate that he attended Church in China and became a Christian.

Son Jong Nam was repatriated in April 2001 and imprisoned for three years in the Ham-yung-Buk area prison camp in North Korea. He was released on parole in May 2004 and was expelled to Chongjin where he worked at a rocket research institute.

In May 2004, Son Jong Nam was able to meet his brother in China and return to North Korea. However, the National Security Agency got to know about this trip and he was taken in by the secret police in January 2006 as he was leaving his younger sister's house in Pyongyang. Shortly afterwards, his two older and two younger sisters were exiled from Pyongyang.

It would appear that the charges against Mr. Son Jong Nam are grounded in his visit to China where he met with his brother and shared information with him on his life in South Korea.

According to the information we have received, the date of Mr. Son Jong Nam's execution has not been communicated but reports indicate that it could be carried out sometime in April. It is further reported that the general practice is to only announce executions for murder and other common crimes while dates of executions for treason are not made public in advance.

While we do not wish to prejudge the accuracy of these allegations, we would like to respectfully remind your Excellency that States have the legal duty to ensure and respect the right to life and that this right shall be protected by law. In addition, 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. This penalty can only be carried out pursuant to a final judgment rendered by a competent court (International Covenant on Civil and Political Rights, article 6 paragraphs 1 and 2).

Without in any way making any determination on whether the detention of Mr. Son Jong Nam 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.

We also recall that Commission on Human Rights resolution 2005/39 urges States to ensure that any statement, which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made. This principle is an essential aspect of the right to physical and mental integrity set forth, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Protection of All persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Mr. Son Jong Nam are respected. This can only mean suspension of the capital punishment against him until all allegations relating to the absence of trial and the recourse to torture have been thoroughly investigated. Moreover, international law requires that the accountability of any person guilty of subjecting Mr. Son Jong Nam to torture is ensured.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government.

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

2. Please provide the details about the steps taken to guarantee that Mr. Son Jong Nam was sentenced to death by a competent court after a fair trial.

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 the arrest, detention and allegations of torture of Mr. Son Jong Nam. If no enquiries 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 with regard to the alleged torture of Mr. Son Jong Nam. Have penal, disciplinary or administrative sanctions been imposed on the perpetrators?

Response of the Government of Democratic People's Republic of Korea dated 5 May 2006

According to the Government "this joint letter like previous ones also represents a product of conspiracy undertaken in pursuit of the ill-minded aim of spreading fabricated information while following the attempts of those hostile forces to defame, disintegrate and overthrow the state and social system of the DPRK on the pretext of human rights. The letter has therefore no relevance to genuine human rights. Therefore, we resolutely and categorically reject the letter once again. For this and those other reasons stated on previous joint letters, unfortunately, I send back to you the joint letter of 3 special rapporteurs and the Chairperson of the working group on arbitrary detention dated April 26, 2006."

Djibouti: Morts lors de l'opération de délogement au quartier d'Arhiba

Violation alléguée: Usage excessif de la force par des forces de sécurité.

Objet de l'appel: 5 hommes (y compris un mineur); 1 femme

Caractère de la réponse: Réponse largement satisfaisante

Observations du Rapporteur Spécial

Le Rapporteur Spécial remercie le Gouvernement de Djibouti pour sa réponse ; il regrette toutefois que celle-ci n'évoque pas en détail le cas de toutes les victimes telles que mentionnés dans sa lettre d'allégation.

Le Rapporteur Spécial souhaite souligner que les compensations financières requises pour assurer la réparation de violations des droits de l'Homme ne peuvent légitimement se substituer à des poursuites judicaires lorsqu'il existe des personnes pénalement responsables.

Lettre d'allégation envoyée le 13 janvier 2006

Je souhaite attirer votre attention sur la répression sanglante par les forces de sécurité djiboutiennes de la manifestation qui a eu lieu le 30 novembre 2005 à Djibouti-ville. D'après les renseignements qui m'ont été communiqués, vers 8h30 du matin les forces de sécurité ont ouvert le feu sur les habitants du quartier d'Arhiba dans la capitale Djiboutienne alors que ceux-ci tentaient de s'opposer à la destruction de leurs habitations par les pouvoirs publics dans le cadre d'une campagne d'expulsion forcée des résidents ne prévoyant pas de relogement et détruisant par le feu des habitats insalubres du quartier d'Arhiba. On dénombre la mort de cinq manifestants, dont une femme et un enfant. Huit personnes auraient également été blessées lors de cette attaque et cinq autres seraient portées disparues.

Il m'a été rapporté que ces actes de répression brutale sont intervenus un mois après la mort d'un jeune homme de 18 ans, abattu par les forces de l'ordre le 23 octobre 2005 lors d'une manifestation pacifique de travailleurs et de lycéens contre l'augmentation des prix des transports.

Sans vouloir à ce stade me prononcer sur les faits qui m'ont été soumis, je souhaiterais néanmoins intervenir auprès de votre Excellence afin de lui rappeler 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, résolution 1989/65 du 24 mai 1989 du Conseil économique et social. Les principes prévoient que les responsables de l'application des lois, dans l'accomplissement de leurs fonctions, auront recours autant que possible à des moyens non-violents, en limitant le recours à la force à certains cas exceptionnels comme la légitime défense ou pour défendre des tiers contre une menace imminente de mort ou de blessure grave. Je souhaite également attirer votre attention sur le Code de conduite pour les responsables de l'application des lois, résolution 34/169 du 17 décembre 1979 de l'Assemblée générale qui stipule que les responsables de l'application des lois peuvent recourir à la force seulement lorsque cela est strictement nécessaire et dans la mesure exigée par l'accomplissement de leurs fonctions.

J'en appelle au Gouvernement de son Excellence afin d'assurer que les morts qui ont eu lieu lors de l'opération par les forces de sécurité le 23 et 30 octobre 2005 fasse rapidement l'objet d'une enquête approfondie et impartiale en conformité avec les Principes des Nations Unies relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires, et moyens d'enquêter efficacement sur ces exécutions.

Il est de ma responsabilité, en vertu du mandat qui m'a été confié par la Commission des Droits de l'Homme et par les résolutions de l'Assemblée Générale des Nations Unies de solliciter votre coopération afin d'éclaircir les cas qui ont été portés à notre attention. Dans l'obligation d'en faire rapport à la Commission des Droits de l'Homme, je remercie le Gouvernement de son Excellence de bien vouloir répondre aux questions ci-dessous :

1. Les faits tels que relatés plus haut sont-il exacts ? Si tel n'est pas le cas, quelle enquêtes ont été menées pour conclure à leur réfutation ?

2. Au cas où des plaintes ont été déposées, quelles suites leur ont été données ?

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

4. Veuillez fournir toute information sur les poursuites et procédures engagées.

5. Veuillez indiquer si les victimes ou leurs familles ont été indemnisées.

Réponse du Gouvernement de Djibouti du 5 avril 2006

En réponse à votre courrier en date du 13 janvier 2006 et relative aux événements malheureux survenus à Arhiba le 20 novembre 2005 lors des opérations de décasement des habitations de fortune construites illégalement et plus particulièrement sur les décès ainsi que les blessés enregistrés à la suite des affrontements avec les forces de l'ordre ainsi que du décès d'un étudiant le 23 octobre 2005 à l'occasion d'une manifestation publique, j'ai l'honneur de vous faire parvenir ci-joint le rapport détaillé préparé par les autorités compétentes de notre pays. Ce rapport retrace les faits dans leur contexte, les enquêtes menées ainsi que les suites données par notre pays à ces événements tragiques et regrettables.

Rapport de Djibouti suite à la plainte contenue dans la communication du 13 janvier 2006.

Contrairement à la légende de l'opération surprise commanditée par l'administration tel que décrite par les auteurs de la plainte, les opérations de décasement obéissainet à une logique mûrement réfléchie qui faisait suite à un besoin insistant des reiverains en matière de sécurité.

Les installations décasées faites de bric-à-brac en carton, taules et en tous genres de matériaux de récupération s'étendaient sur une surface de plusieurs hectares derrière le quartier d'Arhiba.

Il faut signaler que le quartier d'Arhiba est déjà source d'inquiétude pour les autorités de la ville de Djibouti à cause de la vétusté des constructions, de son surpeuplement et de la promiscuité.

Or c'est précisément les habitants non seulement du quartier d'Arhiba mais aussi les habitants de la cité Makka Al-Moukarama du quartier 7 et l'ensemble des des habitants du 2ème arrondissement qui depuis longtemps interpellaient les autorités de la ville de Djibouti sur les risques encourus à cause de ces constructions sauvages.

L'inquiétude des riverains était justifiée car les constructions insalubres devenaient contigües au Lycée Industriel et commercial de Djibouti, et les associations de parents d'élèves insistaient auprès des responsables de la ville sur les risques pour la sécurité et la moralité de leurs enfants.

En effet, à cause de leurs constructions sauvages, du manque total d'éclairage et de tout équipement sanitaire, le « secteur des taudis » (comme il était familièrement surnommé) était devenu le repère de tous les trafiquants (drogue, prostitution, racket…)

D'ailleurs, il convient de rappeler qu'en octobre 2005, un médecin avait été assassiné dans ce secteur. Il a été attaqué par 5 hommes armés de poignards et de barre de fer. Son épouse a été sauvée de justesse grâce à l'intervention des promeneurs qui ont entendu ses cris de détresse.

Les 5 hommes ont extorqué à la victime 2500 FD (15 dollars US) et une chaîne en or. La police a interpellé les 5 hommes, tous d'origine éthiopienne et en situation irrégulière, précisément dans un taudis situé en plein cœur des installations décasées.

Si ce crime a véritablement constitué un choc et une prise de conscience pour les habitants des quartiers 7, Arhiba et Makka Al-Mukkarama, de nombreuses agressions avaient déjà été signalées tout au long de l'année 2005 dans le même secteur.

C'est dans ces conditions que les autorités de la ville de Djibouti en concertation avec les habitants du quartier d'Arhiba qui est juxtaposé à ces installations sauvages et pirates ont entrepris un travail de dialogue et de sensibilisation avant de commencer les opérations de décasement.

Dès le départ, les autorités de la ville de Djibouti avaient planifié de réinstaller les personnes décasées sur un site préparé à cet effet à la périphérie de la ville, dans le secteur du PK 12.

Les services du district de Djibouti, d'un commun accord avec les notables et les responsables des deux arrondissements concernés avaient décidé qu'un registre serait tenu dans les deux arrondissements concernés pour permettre aux familles décasées de s'y inscrire et de bénéficier ainsi des parcelles prévues au PK 12.

C'est dans ces conditions que sous la direction de M. Djaffar Hersi, directeur de la voirie du district de Djibouti, les services techniques de la ville, assistés par la police et la gendarmerie ont entrepris les opérations de décasement.

L'opération a débuté le 22 novembre 2005 à 6h30 et a concerné quelques dizaines de familles composées de 149 personnes.

Cette première journée a été un succès total et aucun incident n'a eu lieu. Mieux encore, les populations déjà préparées psychologiquement et sûres d'être réinstallées emballaient elles-mêmes leurs bagages et affaires et s'enregistraient auprès des deux chefs d'arrondissements concernés.

Le 23 novembre 205 les opérations de décasement se sont poursuivies et 98 taudis on été enlevés sans aucun incident.

Les opérations de décasement ont repris le 26,27,28 et 29 novembre 2005 sans aucun incident. Le 29 novembre les opérations de décasement étaient pratiquement achevées puisque seul le nettoyage et le ramassage des ordures derrière le LIC était prévu pour le 30 novembre 2005.

D'ailleurs à partir du 29 novembre 2005, le dispositif de sécurité était allégé, l'essentiel de l'opération étant achevé ; le nombre de policiers destiné à protéger les agents des services de la voirie et leurs engins était réduit et le renfort des éléments de la gendarmerie avait été estimé inutile.

Or dans la nuit du 29 au 30 novembre 2005, des personnes mal intentionnées avaient fait courir la rumeur parmi les quelques familles qui restaient encore sur place ne seraient pas réinstallées

faute de place ; information totalement erronée puisque toutes les familles sont aujourd'hui réinstallées.

Cette rumeur s'étant propagée comme une trainée de poudre alimentée par des individus mal intentionnés, les agents des services techniques de la ville et les policiers ont été surpris le mercredi 30 novembre à 7h00 du matin de constater derrière le LIC la présence d'une centaine de personnes armées de barres de fer et de machettes décidées à les attaquer.

Face à cette foule surexcitée et hurlant des propos menaçant l'officier en charge de la sécurité des agents techniques de la voirie donnait l'ordre de se replier et de protéger les agents techniques de la voirie donnait l'ordre de se replier et de protéger les agents civils pour leur permettre de quitter les lieux.

Les manifestants commencèrent alors à lancer des cailloux et d'autres projectiles, à casser les véhicules et les engins de la voirie. Les policiers ont utilisé d'abord en riposte, des grenades lacrymogènes pour disperser les manifestants.

Mais face à des personnes surexcitées, l'officier commandant l'unité composée d'une vingtaine d'agents chargés de la protection des agents de la voirie n'a pas eu d'autre choix que de se replier avec son effectif vers le Dry-Port.

Constatant que cette unité allait être encerclée par un autre groupe de manifestants, l'officier lançait des véhicules grillages sur le flanc Nord par rapport à son unité, tout en se retirant vers le LIC.

Aussitôt le proviseur du Lycée (LIC) M. Hassan Ismail Hersi décidait avec sagesse d'évacuer le LIC pour éviter que les lycéens ne soient pris à partie par les manifestants. Cette stratégie a permis de contenir la foule et de permettre aux agents de la voirie et aux policiers de se replier sous une pluie de projectile. Néanmoins la foule arrivait à attraper deux policiers qui ont été véritablement lynchés. Le véhicule de l'officier commandant était par ailleurs la cible des manifestants et sérieusement endommagé ; celui-ci demandant par radio à l'Etat Major de la police des renforts.

Malheureusement, dans la panique et la confusion des coups de balles étaient tirés par les policiers qui, outre sept blessés civils, entrainaient la mort de Hawino Mohamed Ali et Mohamed Molla Mohamed.

Par ailleurs, le directeur général de l'hôpital Peltier, le Dr Mohamed Abdourahman établissait une liste faisant état de 22 policiers blessés dont 2 grièvement, tous soignés (ainsi que les blessés civils) dans ce même hôpital.

Parallèlement, des responsables de l'administration et les notables du quartier entreprenaient une méditation afin de rétablir le calme et l'ordre. Une commission d'enquête administrative était instituée par le Ministre de l'Intérieur pour « indiquer aux autorités de l'Etat les circonstances dans lesquelles la police s'est servie des armes à feu.

Cette commission a rendu ses conclusions le 12 décembre 2005 en estimant que « les policiers chargés de la protection des agents de la voirie et de leurs engins lors de ces opérations de décasement s'étaient retrouvés cernés par un nombre considérable de manifestants qui les ont attaqués avec des projectiles, des couteaux, des bâtons et des barres de fer et qu'ils étaient (avec les employés civils de la voirie) en danger de mort ».

La commission a estimé qu'il pourrait s'agir d'un cas de légitime défense. Le rapport met néanmoins en cause l'attitude irresponsable du capitaine Kamil Ali officier de police ; ce dernier a été aussitôt suspendu par le Ministre de l'Intérieur. Les familles des deux victimes décédées par balles étaient reçues par le Premier Ministre, toutes les victimes civiles ont été indemnisées et aucune plainte pénale n'a été déposée.

De même la famille du jeune homme décédé lors des manifestations du 23 octobre 2005 contre l'augmentation des prix des transports a été reçue par le premier ministre et indemnisée par l'Etat djiboutien. Par ailleurs, le 4 février 2006, des lycéens et étudiants manifestaient leur colère contre la diffusion par certains journaux européens des caricatures du prophète Mohamed et des accrochages avec les forces de l'ordre ont fait des blessés légers parmi les manifestants.

Or, à la suite de ces différents incidents et malgré les difficultés inhérentes à toute opération de maintien de l'ordre, le président de la République de son Excellence, Monsieur Ismail Omar Guelleh, a par décret du 5 février 2006 relevé le Colonel Hassan Djama Guedi de ses fonctions de Directeur Général de la Police. Ce même décret nommait le Lieuteneant-Colonel Abdillalhi Abdi Farah, nouveau chef de la police.

Le chef de l'Etat, en sanctionnant ainsi directement le Directeur Général de la polcie à la suite de ces événements tragiques, voulait ainsi démontrer que la République de Djibouti est une démocratie respectueuse de la vie humaine et que le recours à la force sans discernement est inadmissible.

Enfin la vie politique djiboutienne a connu une nouvelle dimension ces derniers mois à travers les élections régionales et communales qui ont eu lieu de façon pacifique et démocratique le 10 mars (1er tour) et le 31 mars 2006 (2eme tour) deans les 5 régions et à Djibouti-ville, outre qu'elles confirment davantage encore la réalité de la vie démocratique de notre pays, démontrent le souci permanent du Chef de l'Etat d'associer les populations à la gestion de leurs régions, villes et communes. Ainsi la tenue de ces élections qui réalisent la décentralisation constitue un instrument de gestion mieux adopté à certaines situations de crises comme la crise des décasements des logements insalubres. En effet, face aux défis majeurs que constituent les crises du logement, celle de l'eau, de l'électricité ; les problématiques de la promiscuité, de l'insalubrité et de l'absence d'hygiène dans les villes, le gouvernement de la république de Djibouti a estimé indispensable d'associer les populations concernées à la prise de décision en permettant largement à des personnes issues de la société civile et du monde associatif d'être élus aux conseils régionaux et municipaux.

Ainsi, lors de ces élections régionales et municipales, sur 28 listes présentées, plus d'une vingtaine était composée des personnalités issues des milieux associatifs et qui ont présenté des listes indépendantes qui concouraient à côté des partis politiques traditionnels. Des nombreux candidats issus de la société civile ont ainsi été élus et vont siéger dans les conseils régionaux et

municipaux. Aussi, cette participation de la société civile à la gestion des problèmes des régions villes et communes confirme donc la volonté du gouvernement djiboutien d'établir un ordre social pacifié ou les conflits se règlent par le dialogue, la confrontation d'idées et donc apr l'expression du suffrage universel. En définitive, les informations totalement erronées sur les événements du 30 novembre 2005 qui ont été soumises au Rapporteur Spécial sont contraires à la réalité sociale et politique de notre pays. Pire encore, ces fausses informations sont également en contradiction avec la vérité sur le déroulement des événements tragiques du 30 novembre 2005, faits matériels donc susceptibles de vérification et en conséquence, celles-ci compromettent jusqu'à leur dignité ceux qui, dans le but de nuire une fois de plus à l'image de notre pays, les ont transmises.

Ecuador: Muerte de Fernando Sierra Cruz en la Provincia de Sucumbios

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

Persona objeta del llamamiento: 1 hombre (menor, refugiado)

Carácter de la respuesta: El Gobierno informó al Relator Especial que recibió su carta.

Observaciones del Relator Especial

El Relator Especial espera recibir una repuesta substancial sobre la muerte de Fernando Sierra Cruz.

Carta de alegación del 3 de julio de 2006

Quisiera señalar a la atención urgente de su Gobierno la información que he recibido en relación al supuesto excesivo uso de la fuerza por parte de miembros de la policía en contra de **Fernando Sierra Cruz**, un refugiado de 16 años de edad de origen colombiano y habitante de la parroquia de General Farfán en la provincia de Sucumbíos, región fronteriza con Colombia, en Ecuador.

De acuerdo con las informaciones recibidas, el sábado 10 de junio de 2006 se desplegó un operativo policial en la Parroquia conocida con el nombre de General Farfán, luego que, aproximadamente a las ocho y media de la noche, dos policías, Luis David Lora Alvarez y Carlos Alejandro Garan Mina, fueran acribillados en el interior de su patrullero por individuos no identificados, en el mencionado lugar.

Los informes indican que pocos minutos después del ataque armado contra los dos policías, se activaron las alarmas locales de prevención instaladas en el pueblo. Sin embargo, ningún miembro de la policía se hizo presente en los siguientes noventa minutos, por lo que la propia población civil intentó dar los primeros auxilios a los gendarmes, con resultados infructuosos. Posteriormente, hacia las diez de la noche, llegaron a General Farfán miembros de la Policía Nacional, acantonada en la capital provincial de Lago Agrio, con la intención de dar con el paradero de los asesinos de sus dos compañeros. Según las denuncias, los policías se comportaron de manera poco profesional, con actitudes violentas y bruscas contra la población civil, realizaron allanamientos a varias casas, y procedieron a detener a numerosas personas.

Se informa que fue detenido el ciudadano colombiano Fernando Sierra Rojas, quien reside en Ecuador junto con su familia, con estatus de Refugiado reconocido por el Estado Ecuatoriano y bajo el amparo del ACNUR. En el momento de la detención de su padre, su hijo, el joven Fernando Sierra Cruz, de 16 años de edad, también refugiado colombiano, intervino a favor de su padre pidiendo que no lo maltrataran físicamente, ante lo cual los policías amenazaron con detenerlo. En medio de la confusión y pánico, el joven Sierra Cruz salió corriendo y los miembros de la Policía Nacional lo acribillaron a balazos.

Sin implicar de antemano, una conclusión sobre los hechos, deseo llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en el Pacto Internacional de Derechos Civiles y Políticos. El artículo 6 de este instrumento garantiza a todo individuo el derecho a la vida y a la seguridad de su persona y disponen que este derecho sea protegido por la ley y que nadie sea arbitrariamente privado de su vida.

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

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

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

2. ¿Fue presentada alguna queja?

3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de los exámenes médicos llevados a cabo. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.

4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

5. Por favor, indique los familiares de Fernando Sierra Cruz obtuvieron algún tipo de compensación a modo de indemnización.

Respuesta del Gobierno de Ecuador del 7 de julio de 2006

El Gobierno informó que la comunicación del Relator ha sido trasladada inmediatamente y con carácter urgente, a las autoridades competentes ecuatorianas a través del Ministerio de

Relaciones exteriores, a fin de esclarecer el caso y cumplir con su requerimiento de información conforme a su mandato. En cuanto la Misión Permanente reciba la respuesta, será transmitida al relator especial.

Egypt: Excessive Use of Force in Dispersing Crowds during Parliamentary Elections

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

Subject(s) of appeal: 8 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Egypt concerning the events of 7 December 2005.

The SR notes, however, that the explanation provided by the Government for the use of potentially lethal force to disperse the crowd raises serious concerns. According to human rights law, however necessary the use of force may be to achieve a particular objective, such as the dispersal of a crowd, the force used must nevertheless be proportionate to the threat posed. (*See* A/61/311, paras. 33-45.) In particular, the intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life, and even the potentially lethal use of firearms may only be made to apprehend the perpetrator of or otherwise prevent a particularly serious crime involving grave threat to life.

The description of the crowd provided in the allegation received by the Special Rapporteur and the description provided in the response of the Government of Egypt both suggest that for the police to have opened fire at the legs of individuals was disproportionate to any crime or threat posed by the crowd.

Letter of allegation sent on 16 December 2005

I would like to bring to the attention of Your Excellency's Government information I have received according to which, on 7 December 2005, the police fired into crowds of people who wished to gain access to polling stations in al-Daqahlia, al-Sharqia and other areas in order to cast their votes in run-offs to the third and last phase of Egypt's parliamentary elections. The police shootings resulted in the death of at least eight people, namely **Sa'eed al-Deghidi**, **Sha'aban Abu Rabaa'** and **'Atif Ahmed** from Damietta, **Tamir al-Qamash** and **Mohammed al-Bahrawy** from al-Daqahlia and **Mostafa 'Abd al-Salam**, **Mohammed 'Aliwa** and **Mohammed Gazzar** from al-Sharqia. Besides, **'Izzat Ra'fat Seddiq**, a fifteen-year-old boy from al-Duqahlia, was among a number of people who received gunshot injuries or were wounded by being struck by tear gas bombs. The polling stations concerned had been closed or cordoned off by the police. As well as live fire, police are reported to have used tear gas and rubber bullets in their efforts to disperse the crowds.

I would like to refer your Excellency's Government to the fundamental principles applicable to such incidents under international law. Article 6 of the International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of his or her life. As the Human Rights Committee has clarified, "arbitrarily" means in a manner "disproportionate to the requirements of law enforcement in the circumstances of the case" (Views of the Committee in the case Suárez de Guerrero v. Colombia, Communication no. 45/1979, § 13.3). This was further elaborated in the 1990 U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Principle 7 provides that "Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law."

In order to assess whether the use of lethal force was proportionate to the requirements of law enforcement, there must be a "thorough, prompt and impartial investigation" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This obligation, affirmed also in the jurisprudence of the Human Rights Committee (see, e.g. the Committee's views in Arhuacos v. Colombia, Communication no. 612/1995, § 8.8.), is an integral part of the obligation to respect and protect the right to life enshrined in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights. This principle was recently reiterated by the Commission on Human Rights (Resolution 2005/34) which noted that every State has "the obligation … to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Commission added that this includes the obligation "to identify and bring to justice those responsible, …, to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to … prevent the recurrence of such executions".

While I do not wish to prejudge the accuracy of these allegations, I urge your Excellency's Government to take all necessary measures to ensure the accountability, in accordance with international law, of any person responsible for the above mentioned shootings.

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

1. Are the facts alleged in the above summary accurate? Please provide a full list of persons deceased as a result of police shootings on 7 December 2005.

2. Please provide the details, and where available the results, of any police investigation, medical examination (autopsy), and judicial or other inquiries carried out in relation to these cases. Please include information regarding the guarantees for independence and impartiality of the investigating and adjudicating authorities. Have penal, disciplinary or administrative sanctions been imposed in connection with this incident? If your Government has not undertaken any inquiries in this matter or if they have been inconclusive, please explain why.

3. Please provide the full details of any prosecutions which have been undertaken.

4. Please indicate whether compensation has been provided to the victims or the family of the victims.

Response of the Government of Egypt dated 23 May 2006

I. Constitutional and legislative norms pertaining to the "Organization of rallies and demonstrations - the expression of opinion" contained in Act No. 10 of 1914 concerning rallies and Act No 14 of 1923 concerning the rules governing public meetings and demonstrations on the public highways:

1. The competent security department must be informed three days before the holding of the demonstration or rally (articles 1 and 9 of Act No. 14 of 1923).

2. The notification must state the time, place and purpose of the demonstration and it must be signed by five of the organizers, who must be persons entitled to exercise civil and political rights and who are of good reputation (articles 3 and 9 of Act No. 14 of 1923).

3. The time, place or purpose of the demonstration should not cause a disturbance of public order or security (articles 4 and 9 of Act No. 14 of 1923).

4. The demonstration must follow the prescribed route, or the rally must be held at the notified place, it must deal with the subject notified, and there must be no public calls or clamour for disorder or for the commission of a crime defined in the Criminal Code or other legislation, or any rioting (articles 7 and 9 of Act No. 14 of 1923).

II Legal consequences of breaches of the Assembly Act:

The legal consequences consist in the prohibition or breaking up of such demonstrations, the dispersal of any rally or assembly, and the punishment (of convenors - organizers - committee members) as prescribed by law with a prison term not exceeding six months and a fine of not more than 100 Egyptian pounds, or either of the two; participants in the demonstration are punishable with a prison term not exceeding one month and a fine of not more than 20 Egyptian pounds, or either of the two.

III. Means used to handle rioting during demonstrations or assemblies and police authorization to use force:

- Article 102 of Police Force Act No. 109 of 1971 concerning the circumstances in which firearms may be used to break up assemblies or demonstrations where there is a risk to public order stipulates that police officers must first issue a warning that they are about to fire and only then open fire; the order to use firearms must be issued by a superior officer, with the assembled persons first being given a warning and time to disperse and being informed of the required direction of dispersal, including the streets and roads they may use; gas weapons (rifles, ammunition, gas hand grenades) may be used and the demonstrators pursued with batons and sidearms (truncheons and bayonets); where the demonstrators fail to disperse, where alternative measures have been exhausted and in the

event of attacks on police officers, on one's own person, on property or on installations, it is permissible to open fire at a person's legs.

IV. Offences committed by he demonstrators on 8 September 2005 during the run-off election for the third phase of the parliamentary elections in the Governorates of Al-Daqahlia and Al-Sharqia.

1. The above-mentioned demonstrators breached all the constitutional and legislative rules so that the law enforcement agencies had no option but to issue a warning, giving them a deadline to disperse, indicating the requested direction of dispersal and the streets and roads they could use to depart, but they failed to heed the warning.

2. The police were compelled to use gas weapons (gas handguns) and to pursue the demonstrators with batons and side arms. Alter the exhaustion of such measures, the demonstrators had still failed to disperse and had escalated their attacks, throwing stones at the police, who were forced to use firearms to disperse the demonstrators, which resulted in some fatalities among them.

V. Forensic medical reports concluded that death occurred either as a result of cuts to the head or gunshot wounds or as a result of acute circulatory and respiratory failure, which indicates that some of the deaths were due to crowding, pushing and shoving and stone-throwing, for which the demonstrators themselves were primarily responsible.

VI. Compensation is awarded on the basis of a court decision in cases where damage is culpably inflicted on another person, which means that a perpetrator must be identified so that the victim can be awarded compensation. No perpetrators have been identified in view of the fact that the investigations have not yet been completed.

Egypt: Killing of Alaa Mahmoud Abdel Latef and Mohamed Adly

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

Subject(s) of appeal: 2 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur notes the information provided by the Government of Egypt.

Allegation letter sent on 11 November 2005, reproduced from E/CN/4/2006/53/Add.1, pages 67-68

Allegation letter concerning the recent shooting by a police officer of Alaa Mahmoud Abdel Lateef, a bus driver, and Mohamed Adly.

According to the information received, on 7 October 2005 a police officer from the Atlas police station got into a bus and asked the driver, Alaa Mahmoud Abdel Lateef, to order passengers to get off the vehicle so that he could give him a ride to the Atlas area. As he refused to do so, the police officer shot Alaa Mahmoud Abdel Lateef as well as his friend Mohamed Adly.

Both men were transferred to El-Manial El-Gameay hospital and placed under intensive care. Alaa Mahmoud Abdel Lateef went into a coma while Mohamed Adly got paralyzed as a result of a shot that broke his spinal cord. Reports indicate that an investigation was held and that the police officer was imprisoned for four days.

While I do not wish to prejudge the accuracy of these allegations, I urge your Excellency's Government to take all necessary measures to guarantee that accountability of any person guilty of shooting Alaa Mahmoud Abdel Lateef and Mohamed Adly is ensured.

Reply from the Government of Egypt dated 21 February 2006

On 7 October 2005, Alaa Mahmoud Abdel Lateef and Mohamed Adly attacked and punched a police officer and attempted to seize his government-issued weapon while he was escorting them to the Helwan police station to make a report on the former individual for driving a car without licence plates. As a result, the police officer opened fire on the two individuals, wounding them both. They were taken to the Helwan general hospital, where the driver of the car, Alaa Mahmoud Abdel Lateef, subsequently died.

The Office of the Public Prosecutor undertook an investigation into the matter, and the relevant documents were placed on file under the reference No. 10166/2005 (Admin.), Helwan Division. After questioning the officer concerned, the Office of the Public Prosecutor decided to hold him for purposes of its investigation of the case.

Egypt: Death Sentences of Ezzat and Hamdi Ali Hanafi

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

Subject(s) of appeal: 2 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Egypt concerning the death sentences of Mr. Ezzat and Mr. Hamdi Ali Hanafi.

The SR would observe that the Government does not dispute the allegation that the right to appeal was denied, and the SR would note that Egypt has made a legal commitment to respect that right.

Urgent appeal sent on 2 June 2006

I would like to draw your attention to information I have received regarding two men who are reportedly at imminent risk of execution: Mr. **Ezzat** and Mr. **Hamdi Ali Hanafi**.

According to the information received, the brothers Ezzat and Hamdi Ali Hanafi have been sentenced to death and could be executed at any time. The sentence has been sent to the supreme religious authority (Mufti) for approval. President Hosni Mubarak still has the power to commute the sentence.

Ezzat and Hamdi Ali Hanafi were sentenced to death on 25 September 2005 by the (Emergency) Supreme State Security Court (SSSC). They were arrested in March 2004 and convicted of using an area of land belonging to the state to grow unspecified "drugs"; when the security forces raided the property, they allegedly offered armed resistance, and took hostages to use as human shields.

The brothers are the first defendants sentenced to death by the SSSC since 1998. Under the Emergency Law, which has been in force in Egypt since 1981, they had no right to appeal against this verdict and could only lodge a petition to quash or reduce the sentence. On 2 May the Deputy Military Governor of Egypt rejected this petition. Under the state of emergency, the Deputy Military Governor is equivalent to President Mubarak's deputy.

It is my understanding that had they been tried before an ordinary criminal court, both defendants would have had the chance to appeal to the Court of Cassation on grounds of procedural irregularity. On a number of occasions the Court of Cassation has ordered retrials for people sentenced to death by courts of first instance.

Although the death penalty is not prohibited under international law, it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. It is therefore crucial that all restrictions pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences.

While I am fully aware of the seriousness of the crimes of which these two men have been convicted I respectfully remind your Excellency that “in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the [ICCPR] admits of no exception” (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10); relevant to the case at issue, these guarantees include the right to appeal and to seek pardon or commutation of sentence.

My major concern is with the arrangements relating to the functioning of the SSSC and the procedures it follows. There would appear to be compelling reasons to conclude that these fall far short of the applicable international standards My assessment in this regard has also taken account of the conclusions reached by the Human Rights Committee. In its Concluding Observations of 28 November 2002 (CCPR/CO/76/EGY) it stated, inter alia:

16. While understanding the security requirements associated with efforts to combat terrorism, the Committee voices concern at their effects on the human rights situation in Egypt, particularly in relation to articles 6, 7, 9 and 14 of the Covenant.

(a) The Committee considers that the effect of the very broad and general definition of terrorism given in Act No. 97 of 1992 is to increase the number of offences attracting the death penalty in a way that runs counter to the sense of article 6, paragraph 2, of the Covenant.

(b) The Committee notes with alarm that military courts and State security courts have jurisdiction to try civilians accused of terrorism although there are no guarantees of those courts' independence and their decisions are not subject to appeal before a higher court (article 14 of the Covenant).

I accordingly urge your Government not to proceed with the execution of Mr. Ezzat and Mr. Hamdi Ali Hanafi until the relevant procedural defects have been rectified. 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 two brothers in compliance with applicable international law.

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolution of the General Assembly, to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful 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 of the steps taken to guarantee that the trial of Mr. Ezzat and Mr. Hamdi Ali Hanafi conformed to international standards and indicate what arrangements for a judicial appeal to a higher court were provided.

Response of the Government of Egypt dated 11 July 2006

These two persons were charged, in Abu Tij criminal case No. 192 of 2004, registered as Higher State Security Criminal Case No. 16/2004, with: using, together with others, land owned by the State and a group of individuals to grow narcotic plants; bearing arms against public officers tasked with arresting the members of this gang; taking individuals hostage and using force, violence and threats to put pressure on public officers attempting to carry out their duties; setting fire to gas cylinders; and shooting at the police, thereby causing the death of Shima Mohammed Ahmad; and deliberately attempting to murder 10 other persons. They were not able to continue with their crimes for reasons beyond their control, namely, the intervention of the police. They were charged with possessing and procuring unlicensed firearms and ammunition for use in activities prejudicial to public security. They were sent, together with others, for trial before the Asyut Appeal Division of the Higher State (Emergency) Security Court. The case was heard in open session, until a unanimous verdict was handed down on 25 September 2005, sentencing the two men to death. The Prime Minister endorsed the verdict on 8 March 2006 and the President of the Republic gave his approval, on 28 May 2006, for execution of the sentence (pursuant to

article 470 of the Code of Criminal Procedures). The lawyer for the two men submitted a request for a review of the verdict to the Prosecutor-General. The request was turned down on 3 June 2006, pursuant to article 12 of Act No. 162/1958, as amended by Act No. 164 of 1981.

It is clear from the foregoing that:

- The death sentence was issued based on the findings of the investigation by the Department of Public Prosecutions. The two men were tried before a division of the Asyut Appeal Court which was competent to hear the case. The trial was held in open court and afforded the defence full legal guarantees. The decision to impose the death sentence was unanimous. Both men pursued all legal means to appeal the verdict. The appeal was rejected and the verdict was upheld.

- This shows that the criminal trial afforded full safeguards and respect for due process and guaranteed the two men a full and proper defence. The trial was not vitiated by any criminal or legal errors and thus met the conditions stipulated in article 6 of the International Covenant on Civil and Political Rights, to which Egypt is a party.

Ethiopia: Killings by the Armed Forces in Ogaden

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

Subject(s) of appeal: 33 or more persons

Character of reply: No response

Observations of the Special Rapporteur

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

Letter of allegation sent on 11 April 2006

I would like to draw the attention of your Government to reports I have received concerning several incidents of summary executions allegedly carried out by security forces in the Ogaden in the course of the year 2005.

According to the information received, on 29 June 2005, in Shilaabo, Ogaden, your Government's armed forces opened fire on a group of civilians listening to BBC Somali Service in a teashop. There would appear to have been no reason for the use of force except that they were listening to an interview with a member of the Ogaden National Libertaion Front (ONLF). The armed forces killed six persons, among them reportedly **Ali Adan dhorre, Hurre Ali Barre, Hassan Faqid Dhuhul** and **Sahardid Abdi Ali Horor**, and wounded others, including Ms. Jamila Aden, the owner of the teashop.

It is further alleged that on 26 October 2005 in Farmadow, Ogaden, your Government's armed forces killed seven civilians, **Abide Aided Adair, Ahmed-Wail Mohamed Betel, Abide Hay be**

Ali, Mohamed Seabee, Wail Omar Gabled, Anise Abide Sofa Made and **Burial Abide Rabbi**, and wounded fifteen others. Reportedly, the killing was unprovoked and the authorities have not provided any reason for the use of lethal force.

On 15 November 2005, a jail break reportedly occurred at Birgaydhka barracks detention camp, in Qabridaharre, Ogaden. Among the fugitives were both members of the ONLF and prisoners not affiliated with the ONLF. Your Government's armed forces reportedly opened fire on a crowd that included by-standers and prevented assistance for those wounded by opening fire also on rescuers. More than twenty persons died as a result, including **Abdullahi Ahmed Aqib, Abdullahi Gani Ali, Abdiaziz Muhumed, Abdullahi Ahmed Mohamed, Yusuf Mohamed Adan, Asad Mohamed Abdullahi, Bashi Mohamed Hassan, Mohamed Mohamed, Abdirahman Hared Alaki, Geesh Olad, Anwar Sheikh, Arab Garwah, Amin Mohamed Abdullahi, Siyad Irgah, Bashi Hassan, Rage Moalim, Abdi Wali**. The authorities left the dead bodies on display for two days.

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

It is my understanding that there are in the Ogaden occasional clashes between governmental armed forces and the Ogaden National Liberation Front (ONLF). Insofar as your Government was to consider that there is an armed conflict in course in the Ogaden justifying the use of lethal force in accordance with international humanitarian law, I would like to recall that international humanitarian law requires parties to an armed conflict to distinguish at all times between combatants and civilians, and to direct attacks only against combatants (Rules 1 and 7 of the Customary Rules of International Humanitarian Law identified by the International Committee of the Red Cross); acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited (Rule 2); and launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14).

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

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

2. Please provide the details, and where available the results, of any police investigation, medical examination (autopsy), and judicial or other inquiries carried out in relation to the alleged use of lethal force in the above incidents. Please include information regarding the guarantees for independence and impartiality of the investigating and adjudicating authorities. If no inquiries have taken place, or if they have been inconclusive, please explain why.

3. Please provide the details of any disciplinary measures imposed on or criminal prosecution against members of the armed forces responsible for the above killings.

4. Please state whether any compensation was provided to the families of the victims.

Guatemala: Muerte de Juan Pablo Méndez Cartagena y Ataque contra Kevin Robles

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

Persona objeta del llamamiento: 2 individuales (un menor atacado debido a su orientación sexual y un defensor de los derechos humanos)

Carácter de la respuesta: No respuesta

Observaciones del Relator Especial

El Relator Especial lamenta que el Gobierno de Guatemala no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

Llamamiento urgente del 10 de febrero de 2006

Quisiera señalar a la atención urgente de su Gobierno la información que he recibido relativa al ataque armado a manos de la policía en contra de dos travestís profesionales del sexo, a saber **Kevin Robles, alias Sulma**, y **Juan Pablo Méndez Cartagena, alias Paulina**.

> De acuerdo con la información recibida, en la madrugada del 17 de diciembre Sulma y Paulina se encontraban en la zona 1 de la ciudad de Guatemala, en la intersección entre la Cuarta Avenida y la Calle 11, cuando cuatro hombres en motocicleta, que según testigos llevaban uniformes de la policía, les ordenaron que se detuvieran, y luego dispararon contra ellas. Paulina recibió dos disparos en la cabeza, y murió minutos después. Sulma recibió tres disparos, pero sobrevivió. Se encuentra en estado grave pero estable en el hospital. Habla con dificultad, pues, según los informes, una de las balas le destrozó todos los dientes superiores.

Sulma y Paulina colaboraban desde años con la Organización de Apoyo a una Sexualidad Integral frente al SIDA (OASIS), organización que trabaja para prevenir el VIH/sida y presta apoyo a lesbianas, gays, bisexuales y personas transgénero. Paulina había empezado a trabajar como empleada asalariada de OASIS en 2004, y desde entonces sólo había tenido que ganar dinero ocasionalmente como profesional del sexo.

OASIS ha pedido protección especial para Sulma, ya que agentes de la policía están patrullando las calles cerca del lugar donde se produjeron los disparos, en un aparente esfuerzo para intimidar a los testigos. Informes indican que la Procuraduría de los Derechos Humanos transmitió dicha solicitud al Ministerio de Gobernación. Sin embargo, hasta la fecha no se ha tomado ninguna medida de seguridad a favor de Sulma.

Sin implicar, de antemano, una conclusión sobre los hechos, requiero al Gobierno de su Excelencia que protege con efecto inmediato a Sulma y que aparte de sus puestos a todos los agentes implicados en las amenazas y homicidios. Además, solicito al Gobierno que me informe sobre los progresos realizados en las investigaciones sobre el asesinato y el ataque en contra de Paulina y Sulma.

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

1. Son exactos los hechos referidos? Si no, para que se refute esas denuncias? Favor de proporcionar los resultados de la diligencia producida, incluyendo autopsias efectuadas.

2. Si fue presentada una queja, cuales son las acciones proporcionadas en respuesta?

3. Por favor, proporcione los detalles así como los resultados, en caso que sean disponibles, de las diligencias, judiciales o de otro tipo, realizadas en relación a este caso.

4. Por favor, proporcione los detalles de cualquier diligencia que haya sido emprendida.

5. Por favor, indique si alguna compensación fue otorgado a la familia de Paulina y a Sulma.

Guatemala: Amenazas de Muerte en contra de Maynor Roberto Berganza Betancourt y su Familia

Violación alegada: Amenazas de muerte

Persona objeta del llamamiento: Un hombre (abogado y defensor de los derechos humanos) y su familia

Carácter de la respuesta: Respuesta cooperativa pero incompleta

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno de Guatemala por su respuesta. El Relator Especial espera información sobre los resultados de las investigaciones mencionadas en dicha respuesta.

Llamamiento urgente del 27 de octubre de 2006

Quisiera llamar la atención de su Gobierno sobre la información que he recibido con relación a las amenazas de muerte en contra del abogado y defensor de los derechos humanos **Maynor Roberto Berganza Betancourt**, que encontré durante mi visita a Guatemala entre el 21 y 25 de Agosto de este año.

De acuerdo a la información recibida, el 22 de Agosto, el Sr. Berganza Bethancourt recibió una llamada telefónica en la que un desconocido le dijo: "dejémonos de rodeos, pertenezco a una banda del crimen organizado y nos contrataron para matarlo". El Sr. Berganza colgó el teléfono pero según mís fuentes, unos minutos después el mismo desconocido volvió a llamar y añadió: "así como nos bajamos al gobernador así te vamos a bajar a vos. Ahora te vamos a ir a sacar de donde estás, porque te tenemos controlado".

Según se me ha informado, el 24 de Agosto, un desconocido llamó al celular del Sr. Berganza Bethancourt y lo amenazó diciéndole: "Si no quiere a su familia, hay dos personas que están conmigo que me están pidiendo que les demos agua". Ese mismo día un desconocido habría entrado a la oficina del Sr. Berganza Bethancourt. Cuando se le cuestionó sobre el motivo de su visita, el hombre mostró un carnet de miembro del "Comité Central de Acción". Al preguntársele dónde estaba ubicada la sede de la organización, el hombre respondió que en "La Casa Presidencial" e inmediatamente se fue de la oficina.

A través de una carta enviada el 7 de septiembre de 2006, el Relator Especial sobre la independencia de magistrados y abogados y el Representante Especial del Secretario-General para los defensores de los derechos humanos, informaron al Gobierno de su Excelencia sobre algunas de las amenazas de muerte que venía recibiendo el Sr. Berganza Betancourt y respetuosamente solicitaron que se les informara sobre las medidas adoptadas para garantizar su integridad física y psicológica.

Sin embargo, teniendo en cuenta que las amenazas de muerte en contra del Sr. Berganza continúan y que hasta la fecha no hemos recibido ninguna respuesta por parte de su Gobierno con relación a este caso, deseo expresar mi inquietud por la seguridad del Sr. Berganza Bethancurt, e informar con profunda preocupación que las amenazas descritas en la presente carta podrían estar ligadas a la entrevista personal que el Sr. Berganza Bethancout sostuvo conmigo, en mi calidad de Relator Especial para las ejecuciones extrajudiciales sumarias o arbitrarias, durante mi visita a Guatemala entre el 21 y 25 de Agosto de este año.

Teniendo en cuenta la urgencia del caso, agradecería recibir del Gobierno de su Excelencia una respuesta sobre las acciones emprendidas para garantizar la seguridad del Sr. Berganza Bethancourt y su familia, la investigación exhaustiva e imparcial de las amenazas en su contra, y

la imposición de sanciones adecuadas a cualquier persona responsable de las violaciones alegadas.

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

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

- Principios básicos sobre la función de los abogados, adoptados por el Octavo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, La Habana, 27 de agosto a 7 de septiembre de 1990. Según los principios 16 y 17, los gobiernos garantizarán que los abogados puedan desempeñar todas sus funciones profesionales sin intimidaciones, obstáculos, acosos o interferencias indebidas y sin sufrir, ni estar expuestos a persecuciones o sanciones administrativas, económicas o de otra índole. Cuando la seguridad de los abogados sea amenazada a raíz del ejercicio de sus funciones, recibirán de las autoridades protección adecuada.

Además, deseo llamar la atención del Gobierno de Su Excelencia sobre la resolución 1994/70, adoptada por la Comisión de Derechos Humanos el 9 de marzo de 1994, la cual pide a los Gobiernos, entre otras cosas, que se abstengan de todo acto de intimidación o represalia contra particulares y grupos que traten de cooperar o hayan cooperado con representantes de los órganos de las Naciones Unidas, prestando testimonio ante ellas, proporcionándoles información, valiéndose de los procedimientos establecidos bajo los auspicios de las Naciones Unidas para la protección de los derechos humanos y las libertades fundamentales y presentándoles comunicaciones, o prestando asistencia jurídica con tal fin. Según esta resolución, también deben ser protegidos los parientes de víctimas de violaciones de los derechos humanos.

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

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

2. ¿Fue presentada alguna queja?

3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con con las amenazas en contra del Sr. Maynor Roberto Berganza Betancourt.

4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

5. Por favor, proporcione información sobre las medidas adoptadas para garantizar la seguridad del Sr. Maynor Roberto Berganza Bethancourt y su familia.

Respuesta del Gobierno de Guatemala del 15 de diciembre de 2006

Respuesta del Estado de Guatemala sobre las observaciones que realiza el Relator Especial sobre Ejecuciones Extrajudiciales, en la cual se solicita, de respuesta a las observaciones sobre el caso del señor Maynor Roberto Berganza Bethancourt.

I- Antecedentes de la comunicación:

El Estado de Guatemala, fue notificado de 1a Comunicación de fecha 7 de septiembre de 2006, emitida par et Relator Especial sobre ejecuciones extrajudiciales en la cual se solicita, de respuesta a las observaciones sobre el caso del señor Maynor Roberto Berganza Betancourt.

El Estado de Guatemala, por medio de ministerio público está realizando la investigación de mérito sobre los hechos denunciados los días 12 y 22 de agosto del presente año.

A la interrogante, Fue presentada alguna queja sobre este extremo? el Estado de Guatemala indica:

El día 22 de agosto de 2006, el Señor Berganza presentó denuncia penal en la oficina de atención permanente del ministerio público. En cuanto al tema sobre cuales han sido las diligencias judiciales y administrativas practicadas, la comisión presidencial coordinadora de la política del ejecutivo en materia de derechos humanos, el 6 de septiembre de 2006, coordinó con el ministerio de Gobernación y el señor Berganza Betancourt, seguridad personal, como medida preventiva con el objeto de salvaguardar la integridad física y la vida de este.

Debido a lo anterior, desde el día 6 de septiembre de 2006 el señor Berganza Betancourt, cuenta con seguridad de tipo personal, por parte del estado de Guatemala.

En cuanto a las actuaciones de índole judicial el estado de Guatemala manifiesta que, el ministerio Público está realizando las investigaciones para individualizar a los responsables de los hechos denunciados.

El Ministerio Público, asignó a la Fiscalía segunda de desjudilización, para que lleva a cabo la investigación de los hechos denunciados, por el señor Berganza; debido a lo anterior el día 17 de noviembre de 2006 se ofició a la dirección de investigaciones del

ministerio público para realizar la investigación de mérito, adicionalmente el día 27 de noviembre del presente año se citó al señor Berganza Betancourt para que ratifique la denuncia presentada y amplié la ya presentada si lo considera necesario.

Sobre las medidas adopdatas para garantizar la seguridad del Señor Maynor Roberto Berganza Betancourt:

Como se indicó con anterioridad el Estado de Guatemala, por medio de la dirección de protección a personalidades de la policía nacional civil está brindando seguridad preventiva de tipo personal al señor Berganza Betancourt desde el día 6 de septiembre de 2006.

Debido a las observaciones antes indicadas el Estado de Guatemala solicita:

- se agregue a sus antecedentes las presentes observaciones del Estado de Guatemala;

- se tengan por presentadas las observaciones del estado de Guatemala

- se tome nota que, el Estado de Guatemala desde el 6 de septiembre de 2006, otorgó seguridad de tipo personal al señor Maynor Roberto Betancourt.

Guatemala: Muerte de Florentín Gudiel Ramos y Amenazas de Muerte contra su Familia

Violación alegada: Muerte a consecuencia de ataque o asesinato por fuerzas de seguridad o por grupos paramilitares; Amenazas de muerte

Persona objeta del llamamiento: 1 hombre y 1 mujer (defensores de los derechos humanos) y su familia

Carácter de la respuesta: No respuesta. (Comunicación reciente)
Observaciones del Relator Especial

El Relator Especial espera recibir una respuesta a sus alegaciones.

Carta de alegación del 30 de noviembre de 2006

Quisiera llamar la atención de su Gobierno sobre la información que he recibido con relación a la muerte del Sr. **Florentín Gudiel Ramos** y a las amenazas contra su familia.

Según las informaciones recibidas, el día 20 de diciembre de 2004 a las diez de la mañana el Sr. Gudiel se dirigía en bicicleta a su casa, ubicada en la Municipalidad de Santa Lucía Cotzumalguapa. Trescientos metros antes de llegar a su casa fue interceptado por hombres armados en una camioneta gris con vidrios polarizados, quienes le dispararon por la espalda con una escuadra 9mm. Cuando el Sr. Gudiel hizo un esfuerzo por levantarse, uno de los hombres le puso el pie en el pecho, le disparó en la sien izquierda y luego procedió a dispararle un tiro de gracia. Después de estos tiros, uno de los atacantes disparó varios tiros al aire.

Durante los ritos del velorio y en los días siguientes la familia y los amigos de la víctima recibieron varias amenazas. Alrededor de las nueve de la noche del día del ataque, una presunta patrulla de siete militares encabezados por "Kaibil" llegó en una camioneta blanca sin placas y se apostaron frente de la casa del Sr. Gudiel. Uno de los presuntos soldados, portando un rifle con mira telescópica, se subió un árbol. En otro día, durante el rezo de la novena, un coche rojo con hombres armados y vistiendo playeras del Frente Republicano Guatemalteco (FRG), se apostó frente a la casa. Las personas que participaban en los rezos empezaron a recibir amenazas indicando que sufrirían la misma suerte que el Sr. Gudiel. Los miembros de la familia del Sr. Gudiel, en particular su hija, Sra. **Makrina Gudiel Alvarez**, también recibieron mensajes indicando que deben huir. Al término de la novena, el 29 de diciembre, la familia dejó sus casas en compañía de la Policía Municipal de Tránsito de Santa Lucía Cotzumalguapa.

Se teme que el homicidio y las amenazas puedan estar ligados al trabajo de Sr. Gudiel y su hija. Sr. Gudiel fue involucrado en varios esfuerzos escolares y comunitarios. También, junto con su familia, había estado buscando justicia ante la desaparición forzada de su hijo José Miguel Gudiel Álvarez, y quince días antes de su muerte había ido a dejar los últimos papeles para completar su expediente. La Sra. Gudiel está involucrada en movimientos sociales y fue oficial y candidata de la Unidad Revolucionaria Nacional Guatemalteca (URNG). Ella también ha participado en la elaboración del expediente de su hermano.

En estas circunstancias, y sin implicar de antemano una conclusión sobre los hechos, hago un llamado al Gobierno de Su Excelencia para que me proporcione información detallada sobre las medidas adoptadas para garantizar la investigación de las violaciones mencionadas en esta carta, así como el procesamiento y castigo de las personas responsables de dichas violaciones.

A este respecto, me gustaría llamar la atención de su Gobierno sobre artículo 2 del Pacto Internacional de Derechos Civiles y Políticos, que provee que los Estados partes deben "respetar y garantizar a todos los individuos que se encuentren en su territorio y estén sujetos a su jurisdicción los derechos reconocidos en el presente Pacto," incluyendo el derecho a la vida. Según esta obligación general, los Estados deben investigar, enjuiciar y castigar efectivamente cualquiera privación arbitraria de la vida. (Véase Comité de Derechos Humanos, *Arhuacos v. Colombia*, Comunicación 612/1995, § 8.8; Comité de Derechos Humanos, Observación General 31). También, me gustaría llamar la atención de su Gobierno sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. En particular, llamo la atención sobre los principios 9 y 19 según los cuales, que explican detalladamente estos deberes.

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

1. ¿Son exactos los hechos referidos?

2. Por favor, proporcione información detallada sobre las investigaciones iniciadas con relación a la muerte del Señor Florentín Gudiel.

3. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

4. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Guatemala: Muerte de Adilio Darinel Domingo

Violación alegada: Impunidad

Persona objeta del llamamiento: 1 hombre

Carácter de la respuesta: No respuesta. (comunicación reciente)

Observaciones del Relator Especial

El Relator Especial espera recibir una respuesta a sus alegaciones.

Carta de alegación del 30 de noviembre de 2006

Quisiera llamar la atención de su Gobierno sobre la información que he recibido con relación a la muerte del Sr. **Adilio Darinel Domingo**.

Según las informaciones recibidas, el 21 de enero de 2006, el Sr. Adilio Darinel Domingo Montejo salió de su casa, ubicada en la Colonia Alioto López de Villa Nueva, Guatemala, y no regresó. Su cuerpo fue encontrado por uno de sus hermanos el 26 de enero, en la morgue de Amatitlán. Presentaba severas señales de tortura, degollado y con ambas piernas cercenadas a la altura de la ingle. Sólo una de sus piernas fue encontrada al momento del hallazgo del cuerpo. La otra fue encontrada una semana después, cerca de un barranco, en la zona 12 capitalina.

Dadas las condiciones, parece obvio que el Sr. Montejo fue asesinado por razones ajenas a la delincuencia común, y se teme que este homicidio pueda estar relacionado con el trabajo de uno de sus hermanos, el Sr. Mario Gonzalo Domingo Montejo, que actúa como Coordinador del Área de Defensa de la Dignidad Humana, de la Oficina de Derechos Humanos del Arzobispo de Guatemala. Dentro de las actividades realizadas por ésta Oficina, resaltan las investigaciones y el proceso del caso por el caso del Monseñor Juan José Gerardi Conedera ocurrida el 26 de abril de 1998. El juicio para esclarecer la muerte del Monseñor Gerardo Conedera concluyó el 7 de junio del año 2001, con sentencia para cuatro personas: el coronel Byron Disrael Lima Estrada, el capitán Byron Miguel Lima Oliva, el especialista del Ejército José Obdulio Villanueva Arévalo, y el sacerdote Mario Lionel Orantes Nájera, los tres primeros como autores del delito de ejecución extrajudicial, y el último por complicidad del mismo. La sentencia fue modificada en marzo de 2005, en donde se les endilgó, a todos, como cómplices del delito de ejecución extrajudicial. El expediente fue elevado ante la Corte Suprema de Justicia por interposición del

recurso técnico de casación, y al respecto se dictó sentencia el día 9 de enero de 2006, la cual fue notificada el 12 de enero de 2006.

En estas circunstancias, y sin implicar de antemano una conclusión sobre los hechos, hago un llamado al Gobierno de Su Excelencia para que me proporcione información detallada sobre las medidas adoptadas para garantizar la investigación de las violaciones mencionadas en esta carta, así como el procesamiento y castigo de las personas responsables de dichas violaciones.

A este respecto, me gustaría llamar la atención de su Gobierno sobre artículo 2 del Pacto Internacional de Derechos Civiles y Políticos, que provee que los Estados partes deben "respetar y garantizar a todos los individuos que se encuentren en su territorio y estén sujetos a su jurisdicción los derechos reconocidos en el presente Pacto," incluyendo el derecho a la vida. Según esta obligación general, los Estados deben investigar, enjuiciar y castigar efectivamente cualquiera privación arbitraria de la vida. (Véase Comité de Derechos Humanos, *Arhuacos v. Colombia*, Comunicación 612/1995, § 8.8; Comité de Derechos Humanos, Observación General 31). También, me gustaría llamar la atención de su Gobierno sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. En particular, llamo la atención sobre los principios 9 y 19 según los cuales, que explican detalladamente estos deberes.

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

1. ¿Son exactos los hechos referidos?

2. Por favor, proporcione información detallada sobre las investigaciones iniciadas con relación a la muerte del Señor Adilio Darinel Domingo Montejo.

3. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

4. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

India: Death in Custody of Rajendran in Kerala

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Letter of allegation dated 19 December 2005 sent with the Special Rapporteur on the question of torture

We would like to bring to your Government's attention information we have received concerning the following case:

> **Rajendran**, aged 37, a salesman of Raj Nivas, Kodamkulam, Neeleswaram Post Office, Kottarakkara, Kollam District, Kerela.
>
> On 6 April 2005, he was arrested outside Sanker Hospital by the Assistant Sub Inspector Babu of Kollam East Police Station. He was taken to Kollam East Police Station where he was forced to remove his clothes and beaten by Assistant Sub Inspector Babu. He was then beaten by five other unidentified policemen. He died in police custody and was taken to the District Government hospital where he was pronounced dead on arrival.

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency to ensure that the death of Mr. Rajendran is promptly, independently and thoroughly investigated in accordance with the United Nations Principles on the effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. We would also like to draw your Excellency's attention to Article 12 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed.

We urge your Government to take all necessary measures to guarantee that accountability of any person guilty of the murder of Mr. Rajendran is ensured in accordance with Article 7 of the Convention Against Torture. We also urge your Government to ensure that any dependents are provided with appropriate compensation in accordance with Article 14 of the Convention Against Torture. We also request that your Government adopts effective measures to prevent the recurrence of killings such as the above described.

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

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 Mr. Rajendran.

India: Deaths of Demonstrators in Assam and Orissa

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

Subject(s) of appeal: 15 persons (demonstrators)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information provided by the Government of India with respect to the incident in Orissa and will request the report of the commission of inquiry that was established. The Special Rapporteur would also note that he has received no clairification of the incident in Assam.

Letter of allegation dated 22 August 2006

I would like to draw the attention of your Excellency's Government to information I have received regarding two incidents in which lethal force was allegedly used against protesters. In the first incident, **three university students** were killed by the police on 23 December 2005 in Assam while protesting the alleged sexual molestation of their fellow students by police on a train. In the second incident, **twelve tribal people** were shot and killed by the police on 2 January 2006 while demonstrating against the construction of a Tata Steel plant in Kalinga Nagar in Orissa. It has been alleged that the use of lethal force was not justified under the circumstances.

If these allegations were correct, there would be ground for serious concern. Therefore, while I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the fundamental principles set forth in the International Covenant on Civil and Political Rights (ICCPR). Article 6 of the ICCPR provides that every individual has the right to life, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life. The U.N. Basic Principles on the Use of Firearms by Law Enforcement Officials applies this standard to the policing of unlawful public assemblies. These principles explain that to disperse a violent protest or assembly, law enforcement officials may only use firearms when less dangerous means are not practicable and only to the minimum extent necessary (§14). In all circumstances, the intentional lethal use of firearms may only be made

when strictly unavoidable in order to protect life (§9) and after a clear warning of the intention to use firearms has been provided (§10).

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

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 above mentioned victims.

3. Please provide the full details of any disciplinary action and prosecution undertaken with regard to the police officers responsible for the above mentioned shootings.

4. What instructions or guidance, if any, were law enforcement officers given with respect to the dispersal of this assembly? If no specific instructions were provided, what are the general rules or training given police on dispersing assemblies?

Response of the Government of India dated 30 August 2006 to a letter of allegation dated 22 August 2006

The Permanent Mission of India to the United Nations Office and other International Organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to the letter No. AL C/SO/2l4 (33-23) dated 22 August 2006 from the Special Rapporteur on extrajudicial, summary or arbitrary executions, requesting for information relating to the following two incidents : (i) Alleged killing of three university students by the police on December 23, 2005 in Assam State, India (ii) Alleged killing of 12 tribal people by the police on January 2, 2006 in Kalinga Nagar, Orissa State, India.

With regard to the first incident, the Permanent Mission of India would like. to convey that the details have been forwarded to the concerned authorities for ascertaining the facts.

On the second incident, the Permanent Mission of India bas the honour to forward the following Facts:

On January 2, 2006, an estimated crowd of 1000 agitators armed with bows and arrows had assembled at Salbrga Nagar, Jajpur, Orissa, to prevent the construction of a boundary wall by tata Steel LTd which was being done with the support of the district administration on land acquired by the Industrial Development Corporation (IDCO), Government of Orissa, and allotted to industrial homes for setting up industrial complexes. The displaced persons had been agitating for some time against the low compensation rate given by the State Government as compared to the sale price charged front the industrial houses benefited by land allotment. The agitation was also directed against the Government and the companies for not having delivered the promised rehabilitation package, including employment to one eligible person per family losing the land.

According to the report of the State Government, 13 persons including one police Havildar and 12 agitators were killed in police firing, three of them while undergoing treatment at the Hospital.

Immediately after the incident, the State Government announced an ex-gratia payment of Rupees 100,000 which was subsequently raised to Rs 500,000. The State Government also offered an aid of Rupees 50,000 and free specialized treatment for the injured and employment of one member of each of the affected families. Government also announced a payment of Rs. 500,000 as ex gratia from Prime Minister's National Relief Fund to the next of kin of all the 13 persons killed.

The State Government of Orissa has also set up an Inquiry Commission consisting of a sitting Judge of Orissa High Court under the Commission of Inquiries Act,1952 to submit a report within six months.

The State Government has also constituted a Group of Ministers (GOMs) on 5 January 2006 to review the rehabilitation package to the displaced persons and come up with a revised rehabilitation policy.

The Government of Orissa has been advised to take all possible steps to prevent recurrence of such incidents in future.

India: Killing of Longjam Surjit in Manipur

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

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Letter of allegation dated 17 October 2006

I would like to bring to your Excellency’s Government attention, information I have received concerning the alleged extrajudicial execution of Mr. **Longjam Surjit**, a resident of Samurou Makha Leikai within the jurisdiction of Wangoi police station of Imphal West District, Manipur.

According to the information received, on 31 August 2006, Mr. Longjam Surjit was killed by the officers from the 22 Maratha Light Infantry, based at Mayang, Imphal, Manipur. It is alleged that Surjit was shot dead by the army when he went out looking for his missing horse with his friend Mr. Naorem Brajamani. According to our source, they went separate ways looking for the horse by the banks of the river Nabul, when Mr. Brajamani heard shots coming from the direction in

which Surgit had gone. Scared of the shots Mr. Brajamani ran back home. The next morning Mr. Surjit was found dead.

The army reportedly claimed responsibility for the killing and affirmed they had to shoot at Mr. Surjit because he tried to open fire on the army officers. The army also claimed they had found arms and ammunitions in Surjit's possession, a possibility that his family has denied.

During a public meeting which local residents organized, it was decided that Surgit's family would not claim his body from the mortuary, unless there was an independent investigation into this case. During the meeting, the local residents reportedly claimed that security forces often executed alleged militants of secessionists groups instead of bringing them to trial, and affirmed that most of those summarily executed are falsely reported to have died during armed clashes between the army and militants in "encounter killings." According to our sources, this situation is linked to the fact that the Armed Forces (Special Power) Act, 1958 is in force in this area.

In a letter dated 24 August 2005, I had previously raised with your Excellency's Government information I had received concerning alleged extra-judicial executions in Manipur. On that occasion, I suggested that the (Special Power) Act, 1958 violates non-derogable provisions of international human rights law and can thus facilitate the perpetration of extrajudicial executions, by giving the security forces the power to shoot to kill in circumstances where members of the security forces are not necessarily at imminent risk. Furthermore, the Act provides that no person can start legal action against any member of the armed forces for anything done under the Act or purported to be done under the Act, without permission of the Central Government which, I understand, is rarely given. Prosecutions of security force personnel, even where the facts are well established, have apparently been rare.

While I do not wish to prejudge the accuracy of these allegations, I respectfully request that your Government ensures that the death of Mr. Longjam Surjit is promptly, independently and thoroughly investigated, in accordance with the United Nations principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions.

In this connection, I would like to recall the principle whereby all States have "the obligation (…) to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions", as recently reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4). The Commission added that this obligation includes the obligation "to identify and bring to justice those responsible, (…) to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to (…) prevent the recurrence of such executions".

Furthermore, I would like to refer Your Excellency's Government to Article 6 of the *International Covenant on Civil and Political Rights (ICCPR)* which provides that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life.

In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts,

but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

Both Article 4(2) of the *ICCPR* and Principle 8 of the *Basic Principles on the Use of Firearms by Law Enforcement Officials* provide that exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any derogation from the right to life and security of the person. Besides, Article 3 of the *Code of Conduct for Law Enforcement Officials* provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

In this connection, I would like to urge your Excellency's Government to consider either repealing the (Special Power) Act, 1958 or ensuring that it and any other such future legislative measures comply fully with international human rights and humanitarian law treaties to which India is a state party, especially the ICCPR and the four Geneva Conventions. In the interpretation of these obligations full account should be taken of the detailed standards included in the *UN Code of Conduct for Law Enforcement Officials*, the *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, and the *UN Declaration on the Protection of All Persons from Enforced Disappearances*.

It is my responsibility under the mandate provided to me by the Human Rights Council and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Council I would be grateful for your cooperation and your observations on the following six 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 (autopsy), and judicial or other inquiries which may have been carried out in relation to the death of Mr. Longjam Surjit 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 Mr. Longjam Surjit.

India: Death in Custody of Saju in Kerala

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Letter of allegation dated 30 October 2006

We would like to draw the attention of your Government to information we have received concerning Mr. **Saju**, a private bus conductor who reportedly died from custodial torture for refusing to pay bribes to police officers in Kerala state.

According to the information received, on 8 September 2006, Mr. Saju was taken into custody by three police officers from Kunnathunadu police station, on an allegation that he was involved in the theft of three telephone posts. According to our sources the posts had been abandoned by the Kunnathunadu telephone office on the road near Mr. Saju's home, and he picked them up and used them as a protective barricade around an open well so that children and animals would not fall into the well.

The police officers reportedly told Mr. Saju he had to give them 3000 rupees (68 USD) if he wanted to be released, money that Mr. Saju refused to pay. Reports indicate that Mr. Aliyar, a person who was also taken into custody by the police officers in connection with the same crime, was released by the police after he accepted to bribe the police officers.

On 9 August 2006, at about 3:00 pm Mr. Saju's wife went to Kunnathunadu police station to visit her husband who told her that he had been tortured because he refused to pay a bribe to the police officers. Ms. Saju returned home and at about 4:30 pm she received a call informing her that Mr. Saju was at the Kolenchery Medical College. At the hospital she was informed that her husband died at the police station. A doctor asked her whether Mr. Saju had any previous ailments. Ms Saju said her husband was perfectly healthy and that he had complained about the police torturing him while he was held in custody.

Without in any way implying any conclusion as to the facts of the case, we respectfully request that your Government ensures that the death of Mr. Saju is promptly, independently and thoroughly investigated, in accordance with the United Nations principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions.

In this connection, we would like to recall the principle whereby all States have "the obligation (…) to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions", as recently reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4). The Commission added that this obligation includes the obligation "to identify and bring to justice those responsible, (…) to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to (…) prevent the recurrence of such executions".

Furthermore, we would like to draw your Government's attention to articles 12 and 7 of the Convention against Torture. Article 12 requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Government's attention to paragraph 3 of Resolution 2005/39 of the Commission on Human Rights. Paragraph 3 stresses that "all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;".

It is our responsibility under the mandate provided to us by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly and extended by the Human Rights Council, to seek to clarify all cases brought to my attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters in relation to the case referred to above:

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

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

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

4. Please indicate whether compensation has been provided to the family of Mr. Saju**.**

Indonesia: Death Sentences of Amrozi bin H. Nurhasyim, Ali Ghufron, and Imam Samudera

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

Subject(s) of appeal: 3 males

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal sent on 3 May 2006 with the Special Rapporteur on Human Rights and counter terrorism

In this connection, we would like to draw your attention to information we have received regarding three men who are reportedly at imminent risk of execution: Mr. **Amrozi bin H. Nurhasyim**, Mr. **Ali Ghufron** alias **Mukhlas**, and Mr. **Imam Samudera**.

Amrozi bin H. Nurhasyim, Ali Ghufron alias Mukhlas, and Imam Samudera have been found guilty of involvement in the 12 October 2002 bombings on the island of Bali, which killed 202 people and injured a further 209. They were sentenced to death by the Denpasar District Court between August and October 2003. The men and their families have declined to seek a pardon from the President. On 14 April 2006, the Attorney General's office stated that the refusal to seek clemency would mean that they have exhausted all the legal remedies available to them and that, as a result, they would be executed immediately. On 25 April 2006, the Bali Prosecutor's Office announced that it has "completed preparations" for the execution and stated that it was waiting for the Attorney General's order to proceed with the executions.

It is our understanding that on 18 October 2002, six days after the Bali bombing, President Megawati issued two "Government Regulations in lieu of law" (Peraturan Pemerintah Pengganti Undang-Undang, or "Perpus"), Perpus 1/2002 and 2/2002. Perpu 1/2002 provides that an act of terrorism, or the planning of or assisting in an act of terrorism, is punishable by death. Section 46 allows for its retroactive application if this is authorised by another Perpu or law. Perpu 2/2002 authorised that retroactive application "in relation to the [Bali] bombing incident". Perpus 1/2002 and 2/2002 were subsequently approved by Parliament in March 2003 and converted into the Law on Combating Criminal Acts of Terrorism 15/2003. We have further been informed that on 23 July 2004, the Constitutional Court has ruled that the retroactive application of Perpu 1/2002 (i.e. Law 15/2003) violates Article 28I (1) of the Constitution and is therefore unconstitutional.

International law does not prohibit the death penalty *per se* as automatically violating the rights to life, but it mandates that it must be applied in the most restrictive manner. It is therefore crucial that all restrictions pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences. One such fundamental guarantee is that "the death penalty may be imposed only … in accordance with the law in force at the time of the commission of the crime" (Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia has become a party on 23 February 2006). This provision reinforces with regard to capital punishment the general principle that "[n]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed." (Article 15 ICCPR). We note that this principle is also enshrined in the Constitution of Indonesia, which in Article 28I(1) provides that "the right not to be prosecuted under retrospective laws [is a] basic human right that may not be diminished under any

circumstances at all." All of these provisions, or at least their core, represent universal standards and customary international law. Moreover, Article 4(2) ICCPR provides that the right to life as enshrined in Article 6 and the protection against retroactive criminal legislation in Article 15 are among those rights that cannot be derogated from even "[i]n time of public emergency which threatens the life of the nation".

While we fully recognize your Government's right and duty to forcefully combat heinous acts of terrorism such as those the three above-named men have been found to be complicit in, we recall that the fight against terrorism must be conducted within the framework of international law. In particular, we would like to recall UN GA Resolution 60/158 of 28 February 2006, which in its paragraph 1, stresses that "States must ensure that any measure to combat terrorism complies with their obligation under international law, in particular international human right, refugee and humanitarian law"

If the information we have received is correct, it would appear that the death sentence against Amrozi bin H. Nurhasyim, Ali Ghufron alias Mukhlas, and Imam Samudera is not compatible with Article 6(2) and Article 15 of the ICCPR. We accordingly urge your Government not to proceed to their execution until all doubts in this respect have been dispelled. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government.

Moreover, it our responsibility under the mandates provided to us by the Commission on Human Rights and reinforced by the appropriate resolution of the General Assembly, 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 presented in the above summary of the case accurate?

2. Please explain the grounds on which your Excellency's Government intends to proceed with the execution of Amrozi bin H. Nurhasyim, Ali Ghufron alias Mukhlas, and Imam Samudera notwithstanding Article 28I(1) of the Constitution, the ruling of the Constitutional Court and your Government's obligations under Articles 6(2) and 15 of the International Covenant on Civil and Political Rights.

Indonesia: Deaths of Four Students in Waghete

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

Subject(s) of appeal: 4 persons

Character of reply: No response

Observations of the Special Rapporteur

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

Letter of allegation dated 22 August 2006

I would like to draw the attention of your Excellency's Government to information I have received regarding lethal force used against school children. According to this information, **four students** were shot dead by Indonesian security forces in the village of Waghete in West Papua and a fifth was injured. One of these students was Moses Douw, age 15, who was a close relative of one of the 43 refugees who landed at Cape York in Australia in a few days earlier. I have also received information stating that according to Indonesian authorities, only one student was killed and two others were injured, and that the incident was caused by a violent clash between civilians and police.

Therefore, while I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the relevant human rights standards. The U.N. Basic Principles on the Use of Firearms by Law Enforcement Officials provide that, even in the context of a violent protest or assembly, law enforcement officials may only use firearms when less dangerous means are not practicable and only to the minimum extent necessary (§14). In all circumstances, the intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (§9) and only after a clear warning of the intention to use firearms must be provided (§10).

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

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

2. Please provide the details and results of any police investigation, and judicial or other inquiries carried out in relation to the deaths of the above mentioned victims.

3. Please provide the full details of any disciplinary action and prosecution undertaken with regard to the police officers responsible of the above mentioned shootings.

4. What instructions or guidance, if any, were law enforcement officers given with respect to the dispersal of this assembly? If no specific instructions were provided, what are the general rules or training given police on dispersing assemblies?

Indonesia: Killing of Munir Said Thalib

Violation alleged: Impunity; Death due to attack or killing by security forces

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

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Indonesia.

The SR regrets, however, that the information provided is not responsive to several of the issues that require clarification. In particular, the SR would renew his request for (1) a copy of the final report and recommendations of the Presidential Fact-Finding team established in December 2004 as well as a copy of the 3 October decision of the Indonesian Supreme Court overturning Pollycarpus' conviction, (2) information on the current status of legal proceedings against individuals additional to Pollycarpus, and (3) information on why key recommendations of the Presidential Fact-Finding team appear to have been ignored by the police and the attorney general's office.

Letter of allegation dated 30 November 2006

I wish to bring to your Excellency's attention information I have received regarding the recent decision of the Indonesian Supreme Court to acquit the only person convicted for the murder of **Munir Said Thalib**, a leading human rights activist, despite reported evidence of a conspiracy involving many suspects, some of whom are high-ranking intelligence officers.

According to the information I have received, Munir died of poisoning on Garuda flight 974 from Singapore to Amsterdam on 6 September 2004. This was investigated by an independent fact-finding team, *Tim Pencari Fakta* (TPF), established by presidential decree on 23 December 2004. However, I understand that the key recommendations and findings of the TPF have been ignored. Reportedly, the TPF identified Pollycarpus Budihari Priyanto, an off-duty co-pilot who was on Munir's flight, as a primary suspect in the case. It also suggested the involvement of senior employees of the Garuda airline and of high-ranking intelligence officials in Munir's death.

The trial of Pollycarpus opened 9 August 2005 at the Central Jakarta District Court. The primary charge was that he carried out, ordered, or joined in an intentional and premeditated killing, a crime under section 340 of the Indonesian Criminal Code. He was also charged with forgery under section 263, in connection with a series of internal Garuda letters enabling his presence on board.

Pollycarpus was convicted on both charges on 20 December 2005 by the Central Jakarta District Court and sentenced to 14 years in prison. The panel of judges noted in their verdict that the accused had not acted alone, and it was necessary to investigate who else had played a role in Munir's death. Pollycarpus' sentence was upheld on appeal in March 2005. The murder charge was then overturned by the Supreme Court on 3 October 2006 due to insufficient evidence. Pollycarpus remains in prison on the forgery charge, but may soon be released.

According to the information received, the effective investigation and prosecution of all persons responsible has been impeded by the failure of State Intelligence Agency officials to cooperate with investigations, by the lack of a vigorous effort by the police, and by the failure of the police to cooperate with the TPF.

Beginning in March 2005, the TPF turned its attention to the State Intelligence Agency (*Badan Intelijen Negara*, or BIN). The primary evidence of a link between Pollycarpus and the agency was a series of phone calls between Pollycarpus' home and cell phone and an office phone and cell phone used by H. Muchdi Purwopranjono, a retired general who moved to BIN as Deputy V in 2001. The calls took place in the days around Munir's death, and in the days after the autopsy results became public. In June 2005 the TPF disclosed that it had found BIN documents describing four scenarios to kill Munir, including the use of poison.

But BIN's refusal to cooperate made it difficult to confirm the documents' authenticity. A chief obstacle was the lack of a mechanism or agreement to ensure access to BIN officials and documents. After several meetings with the president, on May 2, 2005 the parties signed a protocol in which BIN agreed to cooperate. The May 2 protocol led to interviews with six low-ranking officials, but the information collected was incomplete and largely limited to general procedures.

Three senior officials refused to be interviewed: Muchdi, former BIN chief A.M. Hendropriyono and Col. Bambang Irawan (a retired Indonesian special forces officer who witnesses said was on the flight, but not the passenger list). These officials appeared to use delaying tactics until the TPF's mandate ran out. Muchdi, Hendropriyono, and Irawan negotiated meetings and then failed to appear due to missed planes, unexpected travel, or other reasons. Hendropriyono was invited on three occasions, Muchdi four times, and Irawan twice. BIN also failed to provide numerous documents requested by TPF.

The police investigation made little headway in building a case against Pollycarpus, and did not include an investigation of who planned and ordered the murder. Although the Indonesian government reportedly learned from the Dutch as early as 28 October 2004, about the cause of death, few actions were taken until later that year, despite the need to preserve crime scene evidence and to prevent the routine deletion of phone records. The police did question airline employees, family members, and others who came into contact with Munir. After the TPF found links to Garuda and BIN, police interviewed officials from both institutions. However, the police interviews were mostly brief and insubstantial, and resulted in a single weak indictment.

The police identified Pollycarpus as a suspect on 18 March 2005 and a warrant for his arrest and detention was issued the following day. No further action has been taken against other suspects, despite evidence and courtroom testimony indicating others' involvement. The TPF found evidence that two Garuda senior officials, Vice-President for Corporate Security Ramelgia Anwar, and Executive Director Indra Setiawan had assisted Pollycarpus through the provision of documents. Anwar and Secretary to the Chief of Pilots Rohainil Aini were summoned by the police for questioning in March 2005. The two crew members, Oedi Irianto and Yeti Susmiarti, were also questioned at police headquarters on April 6, 2005, and later named as suspects, but never indicted.

Anwar and Aini were named in the forgery charges against Pollycarpus, and the two crew members were named in the murder charge. The participation of all four is described in the verdicts of the District Court and the Appeals Court. But police never submitted dossiers on either the crew members or the senior officials to prosecutors so that they could be charged.

For all of the above factors, the TPF concluded that the police team was unwilling, rather than unable to solve the crime. A recent reshuffle of the investigation team underscores the problem. On 12 September 2006 President Yudhoyono promised to "revitalize" the investigation under police Brig. General Suryadharma. But Suryadharma had already served that role and been replaced due to his inaction.

I would like to commend your Excellency's Government for establishing the TPF to conduct investigations into the killing of Munir Said Thalib. This is all the more important that, as your Excellency is aware, there are allegations that Munir —who was the director of the "Commission for Disappeared Persons and Victims of Violence (Kontras) and the director Jakarta-based human rights group imparsial — may have been targeted for his human rights activities, as suggested by evidence relating to the involvement of high-ranking intelligence officials in his death.

As you are aware, under human rights law, States have a legal duty to ensure as well as respect the right to life in all circumstances. (*International Covenant on Civil and Political Rights*, Arts. 2, 4, 6). States are legally responsible for extrajudicial executions that are committed by Government agents or that are committed by persons or groups operating with official knowledge or acquiescence. In addition, States are legally obligated to take all appropriate measures to deter, prevent and punish private persons and armed groups who commit extrajudicial executions. These obligations require States to investigate – with a view to prosecution – alleged violations of the right to life promptly, thoroughly and effectively through independent and impartial bodies. (CHR resolution 2004/37, paras. 4–6; Human Rights Committee, General Comment 31; E/CN.4/2005/7, paras. 65–76). The obligation to investigate extrajudicial executions is not a pro forma requirement. Depending on the manner in which it is conducted, an investigation either will play a critical role in ensuring the right to life in the face of violence or, instead, will contribute to impunity.

In light of the allegations received, I would like to call the attention of your Excellency's Government to particular aspects of the duty to investigate.

Human rights law requires investigations to be conducted by independent and impartial bodies. (CHR resolution 2004/37, para. 5; Human Rights Committee, General Comment 31, para. 15). In this connection, I would like to draw the attention of Your Excellency's Government to the standards provided by the *United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.* Principle 11 notes that normal investigative procedures may be inadequate when there are complaints regarding their impartiality and provides that in such circumstances, "Governments shall pursue investigations through an independent commission of inquiry or similar procedure". Regardless whether an investigation is conducted through established investigative procedures or through an independent commission of inquiry, interference by individuals who are potentially implicated must be prevented, the investigation's report must be made public, and the Government must bring to justice those found responsible. (Principles 15–18). It is important to emphasize that measures taken to ensure an investigation's independence and impartiality do not reflect any pre-judgment of the allegations received in a particular case. Independence and impartiality are required in all cases out of respect for the rule of law.

The principal responsibility for investigating a murder case undoubtedly belongs to the organs of a State's domestic criminal justice organs. However, there comes a point at which it may be necessary for national measures to be supplemented with international assistance. In the case of Munir Said Thalib, this point has been reached, and I would respectfully suggest that the Government seeks international assistance in conducting the investigation into his murder.

It is my responsibility under the mandate provided to me by the Commission on Human Rights to seek to clarify all cases brought to my attention. Without in any way wishing to pre-judge the accuracy of the information received, I would be grateful for a reply to the following questions:

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

2. Please provide a copy of the final report and recommendations of the Presidential Fact-Finding team established in December 2004 as well as a copy of the 3 October decision of the Indonesian Supreme Court overturning Pollycarpus' conviction.

3. What is the current status of legal proceedings against individuals whose names appear in: (a) the indictment of Pollycarpus, (b) the District and Appeals' Court's decision convicting Pollycarpus, and (c) media accounts of the TPF findings? Do any of these individuals, including Garuda crew, Garuda officials, and BIN officials, remain under investigation? Are there any plans to charge them?

4. Please explain why key recommendations of the Presidential Fact-Finding team appear to have been ignored by the police and the attorney general's office? Is your Excellency's Government planning to establish an independent body to audit the police investigation and Attorney General's response to Munir's murder?

5. Are there any plans to request international technical assistance to further the investigation?

Response of the Government of Indonesia dated 19 January 2007

The Government provided the following clarifications on the case concerning Munir Said Thalib and Pollycarpus Budhari Priyanto.

The Government of Indonesia must once again retiterates its commitment to the promotion and protection of human rights at all levels of society. The Government has, in this regard, taken various steps to ensure that the national human rights institutions adhere to constitutional modalities, as well as to ratified international conventions and national laws.

There have in fact been numerous efforts undertaken on the part of the Government, working within Indonesia and in collaboration with various experts to shed some light into the precise sequence of events leading to Munir's death and on the genuine culprits who have so far evaded justice. This has incited a great deal of speculation and allegations relating to the investigative process. The legal integrity of the judicial proceedings have been scrutinized with deep suspicion and questioned while attempts have been made to exert international pressure on the investigations.

It must be understood that this process has been time consuming as layer upon layer of evidence has been gathered, verified and examined by various experts. At the same time this was happening, criminal proceedings whereby the main suspect in Munir's death, Mr Pollycarpus Budihari Priyanto were being undertaken. The latter has since been prosecuted under the national judicial system, only to have yet again, question raised on the legal proceedings.

On the judicial proceedngs indicting Mr. Priyanto, his case was taken to the central Jakarta district court and then to the supreme court, who by virtue of a case review later rules by majority on 3 October 2006, that his conviction for premeditated murder under article 340 of the KHUP could not be upheld as there was insufficient evidence and no testifying witnesses proving his culpability. However, the supreme court reaffirmed that Mr. Priyanto's conviction for violating article 263, section 2 of the criminal code, on the falsification of documents would be upheld and they maintained his two-year jail sentence.

The decision of the panel of judges is exempt from government interference. This is in accordance with law 14/1970, which clearly states that judges are independent and free from all influence emanating from governmental authorities. This independence is further reinforced by the Constitution, in which article 24 of the constitution of 1945, clearly guarantees that the judiciary is exempt from interference from the executive. In its decision-making process and while following the precepts of impartiality, the Supreme Court therefore also has the power to enforce law and justice as it deems fit. Nonetheless the legal proess has not been exhaustive since the possibility to reopen the case, with new evidence, is still possible. Our understanding is that the police is currently in the process of drafting a response to the decision by the supreme court.

On the international front, Indonesia has been working in collaboration with various international experts at various intervals from the beginning of this case. The President, as you may be aware, inititally set up an independent fact-finding team, the Tim Pencari Fakta (TPF) in December 2004 (by virtue of Presidential decree 111/2004) with the task of establishing and compiling a report on their findings. At the time, a large number of witnesses were interviewed, including among others, the personnel of the national carrier, Garuda. The final conclusions and recommendations were later presented to the President in June 2005, which was within months of the conviction of Mr. Priyanto at the High Court level for the murder of Mr. Thalib.

Since then, the Government of Indonesia has not discarded the possibility of international assistance in furthering its investigative processes. In actual fact, and according to the National Police Chief, general Sutanto, the government has most recently requested the help of the US Federal bureau of investigation and the Dutch Police who will be providing input into certain forensic matters. The Government is well aware that in its investigations, the police may require foreign technical assistance where there are no local experts in a certain field. In connection with this, the government is still trying to overcome some administrative difficulties in obtaining mutual legal assistance from the Dutch authorities, and technical difficulties in investigating video-data items from Singapore.

Quite apart from these efforts, the President has also ordered another fact-finding team to recommence investigations into this case. The team will be headed by Brigadier General Suryadharma Nasution and the number of skilled investigators has also been increased. Contrary

to some reports, the government has never replaced Brigadier General Suryadharma as chief of the investigation team.

The cooperation of all the independent experts, police and intelligence forces has ensured that various witnesses and suspects, were questioned and/or detained on their possible involvement in this crime. The house of representatives has since endorsed recommendations that there should be new investigations by an independent investigative team into Munir's murder. The President has reaffirmed that the legal process into Munir's death has never stopped and efforts to find the culprits have been reinvigorated with the creation of the new investigative team that will follow up the results of the old investigation and also work on new leads. The police spokesman, inspector general purwoko affirmed in September 2006, that this new team would not only focus on information provided by Mr. priyanto but would also look for new evidence.

Indeed, it has been the government's task and focus for sometime now to uncover the masterminds behind this murder and who have for so long, have remained at large. Further, it should be clear that while this process may be painstakingly difficult, it in no way lessens the government's commitment to human rights and justice, nor does it impige on the government's intentions to honour its international obligations. In this regard, the usual law enforcement institutions should be left to carry out their normal functions of enquiry and prosecution, while the judicial institutions should be allowed to make rulings and prosecutions within the framework of national legal norms.

Islamic Republic of Iran: Death Sentence of Rostam Tajik

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

Subject(s) of appeal: 1 male (juvenile offender, foreign national)

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 Commission on Human Rights.

Urgent appeal dated 8 December 2005

I would like to bring to the attention of Your Excellency's Government the situation of **Rostam Tajik**, a 20-year-old Afghan national. He is scheduled for execution on 10 December 2005 for the May 2001 murder of Ms. Nafiseh Rafi'i, a crime he allegedly committed when he was less than 18 years old.

According to the information I have received, Rostom Tajik was an apprentice with Ms. Rafi'i's husband. In May 2001, he reportedly went into the couple's house with the intention to burgle it. However, once inside, he killed Nafiseh Rafi'i and cut the throat of her 11-year-old daughter,

whose screams alerted the neighbours. Rostam Tajik fled the scene. The daughter was taken to the hospital for treatment where her life was saved. Rostam Tajik was later arrested in Qazvin, west of Tehran. He was sentenced to *qisas* (retribution specified by the victim's family) by Branch 9 of the General Court of Esfahan for the murder of Ms. Rafi'i. The sentence was reportedly upheld by the Supreme Court.

If the information I have received is accurate, there would be grounds for serious concerns. As Your Excellency is aware of, this is not the first case of juvenile offender being sentenced to death and/or facing imminent execution I have received so far this year. Indeed, you will recall that I had addressed this issue in previous correspondence with the Government of Your Excellency, some of which you have provided partial responses to (see letter dated 9 February 2005, 21 April 2005, and joint communication sent on 7 August 2005 with the Chairperson of the Committee on the Rights of the Child).

While I do not wish to prejudge the accuracy of these allegations, I would like to draw your attention once again to the fact that the execution of Rostom Tajik and any further executions of juvenile offenders are incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which I have been mandated to bring to the attention of Governments. The right to life of persons below eighteen years of age and the obligation of States to guarantee the enjoyment of this right to the maximum extent possible are both specifically expressed in Article 6 of the *Convention on the Rights of the Child*. Besides, Article 37(a) expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the *International Covenant on Civil and Political Rights* provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

In this connection, I would also remind your Excellency of the discussions of this issue that took place between your Government and the Committee on the Rights of the Child in January 2005, in which the delegation stated that all executions of persons who had committed crimes under the age of 18 had been halted. This was reiterated in a note verbale from the Permanent Mission of the Islamic Republic of Iran on 8 March 2005 to the Office of the High Commissioner for Human Rights in which it was stated:

> "*In recent years the enactment of the death penalty for individuals aged under18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged capital punishment has been incorporated into the draft Bill on Juvenile Courts, which is at present before parliament for ratification.*"

I would respectfully urge the Government of the Islamic Republic of Iran to take all necessary measures to comply with international human rights law and to prevent executions which are inconsistent with accepted standards of international human rights law. These measures were, in my view, accurately reflected in the recommendations issued by the United Nations Committee on the Rights of the Child, which called on Iran in January 2005 to "immediately suspend the execution of all death penalties imposed on persons for having committed a crime before the age of 18, to take the appropriate legal measures to convert them to penalties in conformity with the provisions of the Convention and to abolish the death penalty as a sentence imposed on persons

for having committed crimes before the age of 18, as required by article 37 of the Convention." (See CRC/C/15/Add. 254, 28 January 2005, at para. 30).

Finally, I would respectfully reiterate my requests for a comprehensive and detailed indication of the details of individuals who have been sentenced to death for crimes committed when they were less than eighteen years of age, even if such sentences have not yet been confirmed by the Supreme Court. These requests were contained in the above-mentioned previous communications sent to the Government of Your Excellency, in relation to the situation of at least 30 individuals under the age of 18 who were reportedly sentenced to death and were held in juvenile detention centres in Tehran and Raja'I Shahr. It is regrettable that no response has yet been received.

Islamic Republic of Iran: Death Sentence of Ms. Nazanin

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

Subject(s) of appeal: 1 female (juvenile offender)

Character of reply: Allegations rejected but without adequate substantiation

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of the Islamic Republic of Iran. However, the SR would reiterate that, in light of the importance attached to the issue and the need for accuracy and certainty, he would be most grateful if the Government could provide a copy of Ms. Nazanin's birth certificate, passport or other official document confirming that she was over 18 at the time of the crime.

Urgent appeal dated 10 February 2006 sent with the Special Rapporteur on the question of torture and Special Rapporteur on violence against women.

We would like to draw the attention of your Government to information we have received regarding **Ms. Nazanin**, aged 18, who has reportedly been sentenced to death for a homicide committed when she was seventeen. According to the information we have received, on 3 January 2006, Nazanin was sentenced to death for murder by a criminal court, after she reportedly admitted stabbing to death one of three men who attempted to rape her and her 16-year-old niece in a park in Karaj in March 2005. She was seventeen at the time. Her sentence is subject to review by the Court of Appeal, and if upheld, to confirmation by the Supreme Court.

In this connection, we would like to draw your attention to the positive developments in a similarly situated case recently raised with your Excellency's Government by the Special Rapporteur on extrajudicial, summary or arbitrary executions. In note no. 331-2/3459, dated 17 January 2006, your Excellency's Government informs the Special Rapporteur that "according to information received from the Judiciary of the Islamic Republic of Iran legal counsels of Ms. Darabi appealed to the Supreme Court and raised the issue of her age at the time of the crime. On

this basis the Supreme Court has overturned the sentence and has referred it to the Juvenile Legal Center for due consideration.

We wish to welcome the steps taken in Ms. Darabi's case. We urge your Excellency's Government to ensure on its own motion that Ms. Nazanin's age at the time of the offence is taken into account in appeals proceedings and the death sentence overturned, whether or not her lawyer raises the issue. It would appear that only this course of action will ensure compliance of your Government with its international human rights obligations.

Response of the Government of Islamic Republic of Iran dated 22 February 2006 to an urgent appeal dated 10 February 2006

With reference to the letter dated 10 February 2006 of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution, the Special Rapporteur on the Question of Torture and the Special Rapporteur on Violence against Women, Its Causes and Consequences, the Islamic Republic of Iran has the honour to inform the Special Rapportuers that according to information received from the Judiciary of the Islamic Republic of Iran, Ms. Nazanin was born in 1986. She, along with her niece, has committed murder about 9 months ago, when she was over 19 years of age. According to the records of the court, the crime has been committed based on personal .reasons and not in self defense as it has been reported to the Special Rapporteurs.

She has gone through due legal proceeding and the Criminal Court of the province bas reached its verdict, but the sentence must be presented to the Supreme Court and upon confirmation of the latter, it must be signed by the Head of the Judiciary. Therefore the case is still open and under consideration.

Follow-up letter dated 17 march 2006 to the urgent appeal dated 10 February 2006

I wish to refer to you letter dated 22 February 2006 in response to my communication of 10 February relating to the case of ms. Nazanin in which you mentioned that this person was born in 1986 and that "she has committed murder about 9 months ago, when she was over 19 years of age".

I greatly appreciate the information which your Excellency's Government has supplied in this particular case. Because of the importance attached to the issue and the need to accuracy and certainty, I would be most grateful if you could provide me with a copy of her birth certificate, passport or other official document confirming that she was over 18 at the time of the crime.

Additional response of the Government of Islamic Republic of Iran dated 16 May 2006 to an urgent appeal dated 22 Feburary 2006

With reference to its note verbale No. 3865 dated 22 February 2006, the Islamic Republic of Iran has the honour to inform the Special Rapporteurs that the court has ruled out self defense and sentenced Ms. Nazanin to retaliation. The sentence has been referred to the Supreme Court for final decision. Should the Supreme Court endorse the verdict, the case will be referred to an ad hoc commission of reconciliation to acquire the consent of the victim's heirs to commute the

verdict to financial compensation. This is a lengthy process; therefore the legal process is not yet completed and the verdict stays for the time being.

Islamic Republic of Iran: Execution of Hojjat Zamani and Death Sentences of Valiallah Feyz Mahdavi, Saeed Masuri, and Gholamhossein Kalbi

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

Subject(s) of appeal: 4 males

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided the Government of the Islamic Republic of Iran regarding the execution of Hojjat Zamani and the death sentences of Valiallah Feyz Mahdavi, Saeed Masuri, and Gholamhossein Kalbi.

However, the SR would note that the information provided does not reflect the thorough investigation of allegations that confessions were extracted with torture or that due process rights were violated during trial proceedings.

In addition, the SR would note that the information provided does not address a number of the more general issues raised in his communications, including the rules and practices governing (i) the handing over of mortal remains to the families of those executed and (ii) the scheduling of executions and the information provided death row inmates, their families, their lawyers and the public at large with regard to executions.

Urgent appeal dated 22 February 2006 sent with the Special Rapporteur on Torture

We would like to draw the attention of your Government to information we have received regarding four members of the People's Mojahedin of Iran (PMOI) sentenced to death after having been allegedly tortured in pre-trial detention. One of the men, Mr. **Hojjat Zamani**, was reportedly recently executed, while the other three, Messrs. **Valiallah Feyz Mahdavi**, **Saeed Masuri**, and **Gholamhossein Kalbi**, are said to be at imminent risk of execution.

Hojjat Zamani, aged 30, was most recently detained in Ghordasht prison in Karaj. We have received reports that intelligence agents removed Hojjat Zamani from his ward on 6 February 2006. He was hanged the following morning at Ghordasht Prison.

Hojjat Zamani was the subject of two communications by us to your Excellency's Government, on 24 September 2004 and 12 May 2005. In those communications, we expressed the concern that Hojjat Zamani might have been sentenced to death following a trial in which his right to effective counsel was denied, in particular because judicial officials did not cooperate with his appointed lawyer. We also brought to your Government's attention reports that he was tortured in Evin Prison in order to force him to confess to the national security-related offences he was

convicted of. We urged your Excellency's Government to suspend the capital punishment against him until the allegations of torture had been thoroughly investigated and all doubts in this respect dispelled. We received no response to our queries. (Your Excellency's Government replied to our communications on 24 May and 8 August 2005, but this reply only referred to the case of Esmaeil Mohammadi).

Valiallah Feyz Mahdavi, Saeed Masuri, and Gholamhossein Kalbi are members of the People's Mojahedin of Iran sentenced to death on national security related charges. They are also held at Ghordasht prison. Their death sentences have reportedly been confirmed by the Supreme Court.

We would further like to draw the attention of your Government to information we have received regarding Mr. Esmaeil Mohammadi. He was the subject of two urgent appeals sent on 8 September 2004 and 12 May 2005. In those communications, we brought to your Excellency's attention allegations that his death sentence was based on a confession extracted by torture. As in the case of Hojjat Zamani, we urged your Excellency's Government to suspend the capital punishment against him until the allegations of torture had been thoroughly investigated and all doubts in this respect dispelled. Your Excellency's Government replied on 24 May and 8 August 2005. In the latter communication, your Government informed us that he had been sentenced to death "after due legal process", but that "[n]evertheless, the sentence has been put on hold after further consideration". We have received reports that Esmail Mohammadi was executed on 3 September 2005 (i.e. less than a month after your assurances), in Oroumiye Prison, in western Iran. Some days later, his family went to the prison to visit him, but were told that he had been executed. They were reportedly given his clothes and personal effects, but not his body.

We have recalled the principles applicable under international law to these cases in numerous communications to your Government, including those in the cases of Hojjat Zamani and Esmaeil Mohammadi of 8 September 2004 and 12 May 2005. These include that there is an absolute prohibition on torture; 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; that in capital punishment cases, the obligation to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights (ICCPR) admits of no exception; and that these guarantees include the right not to be compelled to confess guilt and the right to adequate time and facilities for the preparation of one's defence.

In light of the apparent lack of transparency with regard to the process followed in the cases of Hojjat Zamani and Esmaeil Mohammadi between confirmation of the death sentence by the Supreme Court and their execution, we would like to additionally draw your attention to the fact that a person's due process rights and the right to be treated humanely do not come to an end with the imposition of the death sentence. A lack of transparency regarding the post-conviction process and timetable for execution implicates two sets of rights. The first is that the failure to provide notice to the accused of the timing of his execution may undermine due process rights. Most notably, in addition to "the right to his conviction and sentence being reviewed by a higher tribunal" (ICCPR Article 14(5)) – which Hojjat Zamani and Esmaeil Mohammadi were reportedly able to exercise – the death row prisoner has "the right to seek pardon or commutation of the sentence" (ICCPR Article 6(4)). The uncertainty and seclusion inflicted by opaque processes compromise this right. In addition, and regardless of the actual due process

consequences, to conceal from someone the facts of their preordained fate will constitute inhuman or degrading treatment or punishment. There are, of course, legitimate interests in security and privacy that necessarily limit access to death row and the publicity accorded to some information. However, these interests can and must be accommodated without violating rights.

Moreover, for the prisoner and for his or her family a lack of transparency in what is already a harrowing experience — waiting for one's execution — can result in "inhuman or degrading treatment or punishment" within the meaning of Article 7 of the ICCPR. The views of the Human Rights Committee in a recent decision that responded to an individual complaint of the mother of an executed Belarusian prisoner illustrate this matter. The Human Rights Committee found that "[t]he complete 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." This amounted to inhuman treatment in violation of Article 7 of the ICCPR (Human Rights Committee, Communication No. 886/1999: Belarus, para. 10.2, 77th Sess., April 28, 2003, CCPR/C/77/D/886/1999).

We therefore urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Valiallah Feyz Mahdavi, Saeed Masuri, and Gholamhossein Kalbi are respected. This can only mean

(i) providing full information to the three men, their families and lawyers, as well as to us about their outstanding remedies against capital punishment, and about the process to be followed up to their execution;

(ii) reviewing the fairness of their trial, including whether the right to assistance by counsel was respected at all stages, whether there were periods of incommunicado detention, and whether allegations of torture have been thoroughly investigated and all doubts in this respect dispelled;

(iii) suspension of the capital punishment against the three men until the two requirements above have been fully met.

In view of the urgency of the matter, we would appreciate an expeditious response on the initial steps taken by your Excellency's Government, in addition to subsequent updates on developments in these cases.

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

1. Are the facts alleged in the above summary with regard to the executions of Hojjat Zamani and Esmaeil Mohammadi accurate?

2. What rules govern the scheduling of executions and the information of death row inmates, their families, their lawyers and the public at large with regard to executions?

3. Why was Esmaeil Mohammadi's family denied hand-over of his mortal remains? And has the family of Hojjat Zamani been officially informed of his execution and been handed over his body?

We would further like to reiterate the questions asked in our communication of 12 May 2005, which have remained unanswered in your Government's communications of 24 May and 8 August 2005.

Response of the Government of the Islamic Republic of Iran dated 15 March 2006

With reference to letter dated 22 February 2006 of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Special Rapporteur on the Question of Torture, the Permanent Mission of the Islamic Republic of Iran has the honour to enclose herewith the information received from the Judiciary of the Islamic Republic of Iran.

1- Mr. Esmaeil Mohammmadi: According to the local judicial authority of Western Azerbaijan, Mr. Esmaei1 Mohammadi had been charged with terrorist armed activities which resulted in the murder of an individual by the name of Ebrahim Badeh Bedast. After legal proceeding he had been sentenced to execution. Based on his appeal, his sentence was put on hold for further consideration. Appellate court rejected his appeal and the verdict was carried out after legal formalities

2- Mr. Hojjat Zamani**:** He has been charged with bombing the property of the Tehran Revolutionary Court that caused 3 casualties and 22 injured, possession of illegal weapons, terrorist activities, escaping from the prison and illegal departure from the country. He was sentenced to execution. The verdict bas been upheld by the Supreme Court and was carried out in the presence of the victims' families.

3- Mr. Feyz Mahdavi had undergone military training in Iraq and bas gone back to Iran carrying explosives. He was charged with measures against internal security of the state and sentenced to execution, He has not appealed the verdict and thus it was upheld by the Supreme Court, however the sentence has not been carried out and it is still pending for consideration for his amnesty.

4- Mr. Saeed Masuri and Gholamhossein Kalbi have been charged with measures against internal security of the state due to their participation in terrorist activities of MKO terrorist group and possession of illegal weapons raid the Ministry of information and the seat of the Supreme Leader. They have been sentenced to execution but their case has been sent to relevant authorities for possible amnesty. The verdict has been so far stayed.

Urgent appeal dated 10 May 2006

We would like to draw the attention of your Government to new information we have received regarding **Valiollah Feiz Mahdavi** who is said to be at imminent risk of execution. We remind

your Excellency's Government that we already intervened in this case in our communication dated 22 February 2006.

According to the information received, Valiollah Feiz Mahdavi was arrested in 2001 by Intelligence Ministry agents and charged with undermining national security and attempting to join the People's Mojahedin Organization of Iran in Iraq. He was kept in solitary confinement for 546 days, during which time he was interrogated and subjected to torture. He was reportedly kept in a little, dimly lit cell and when moved for any purpose he was shackled, cuffed and blindfolded. Valiollah Feiz Mahdavi was sentenced to death by the 26th branch of the Revolutionary Court in Tehran. At his trial, he reportedly rejected all the charges against him and had no legal representation. He is now being held in Gohardasht prison in Karaj. It has been brought to our attention that over the past two weeks, the prison chief and his executive deputy told Valiollah Feiz Mahdavi that he would be executed during the Persian New Year holidays.

As your Excellency will be aware, the principles applicable under international law to this case include the absolute prohibition of torture; moreover, 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. We also recall that in capital punishment cases the obligation to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights (ICCPR) admits of no exception; and that these guarantees include the right not to be compelled to confess guilt and the right to adequate time and facilities for the preparation of one's defence.

Finally, we wish to remind your Excellency's Government that the death row prisoner has the right to "seek pardon or commutation of the sentence" (ICCPR art 6 (4)) and that the failure to provide notice to the accused of the timing of his execution may compromise this right.

In our previous communication, we asked your Excellency's Government to take all necessary measures to review the fairness of Valiollah Feiz Mahdavi's trial, including whether the right to assistance by counsel was respected at all stages, whether there were periods of incommunicado detention, and whether allegations of torture have been thoroughly investigated and all doubts in this respect dispelled. Your Excellency's response dated 15 March 2006 did not provide information relating to the concerns we had raised and mentioned that Feiz Mahdavi was charged with measures against internal security of the state and sentenced to be executed; it also explained that Valiollah Feiz Mahdavi's sentence had not been carried out and that it was still pending for consideration of an amnesty.

In view of the urgency of the matter, we urge your Excellency's Government to stay Valiollah Feiz Mahdavi's execution until the allegations of torture and unfair trial have been thoroughly investigated and all doubts in this respect dispelled.

Response of the Government of the Islamic Republic of Iran dated 29 June 2006 to an urgent appeal dated 10 May 2006

With reference to the letter dated 10 May 2006 of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Special Rapporteur on the Question of Torture, the Permanent Mission of the Islamic Republic of Iran has the honour to draw the attention of the

Special Rapporteurs to its note verbale No. 4174 of 15 March 2006 in which the Mission stated: "Mr. Feyz Mahdavi has undergone military training in Iraq and has gone back to Iran carrying explosives. He was charged with measures against internal security of the state and sentenced to execution. He has not appealed the verdict and thus it was upheld by the Supreme Court, however the sentence has not been carried out and it is still pending for consideration for his amnesty".

It is worth adding that a process of amnesty for him has been initiated by relevant department in the Office of Public Prosecutor and the case is under consideration for this purpose. The sentence would not be carried out until this process reaches a clear conclusion on the case.

It is also to be noted that the seriousness of the crime (undergoing military training by Iraqi regime of Saddam Hussein aiming the security of the state, and carrying explosives in a suitcase) has to be taken into account. He has been charged by the competent court (the only authority legally authorized to do this in the system of justice in Iran) and there has been no record of him being tortured, held in incommunicado or deprived from legal defense.

Islamic Republic of Iran: Death Sentences of Khaled Hardani, Shahram Pour Mansouri, and Farhang Pour Mansouri

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

Subject(s) of appeal: 3 males (1 juvenile offender)

Character of reply: 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 Commission on Human Rights.

Urgent appeal dated 13 March 2006

I would like to draw the attention of your Government to information I have received regarding **Khaled Hardani** and his two brothers-in-law **Shahram** and **Farhang Pour Mansouri** who have been sentenced to death for their attempt in hijacking an aircraft in January 2001. Reports indicate that at the time of hijacking, Shahram Pour Mansouri was aged 17.

According to the information received, Khaled Hardani was one of 11 members of an extended family who attempted to commandeer a scheduled flight between the southern Iranian cities of Ahvaz and Bandar Abbas, and force it to fly to Dubai, in the United Arab Emirates. Security guards already on board ended the hijack attempt by shooting Khaled Hardani while the plane was still on the runway at Ahvaz. Khaled Hardani had persuaded Shahram and Farhang Pourmansouri's to board the plane without telling them his plans, and they reportedly only intervened to help him as the security guards opened fire.

The three men were sentenced to death on charges of "acts against national security" (eqdam ‘aleyhe amniyat) and Moharebeh, or enmity with God, rather than charges relating specifically to hijacking an aircraft.

The death sentences have been upheld by the Supreme Court, while the Amnesty and Clemency Commission (Komisyon-e ‘Afv va Bakhshoudegi) has rejected an application for a pardon from their lawyer.

The Head of the Judiciary ordered the executions of all three men to be stayed because of Shahram Pour Mansouri’s age. In this context, I urge your Excellency’s Government to ensure that because of his age at the time of the offence the death sentence is commuted in conformity with the relevant international human rights obligations undertaken by your Government. The execution of a person for a crime committed while a juvenile would clearly violate the terms of both the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Commission, I would be grateful for your cooperation and your observations. I would appreciate a response on these matters before any irreversible steps are taken in relation to the fate of the accused individuals. I undertake to ensure that your Government’s response is accurately reflected in the reports I will submit to the Commission on Human Rights for its consideration.

Islamic Republic of Iran: Death Sentences of Jaafar Sawari, Risan Sawari, and Abdulredha Nawaseri

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

Subject(s) of appeal: 3 males

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Commission on Human Rights.

Urgent appeal dated 30 June 2006

I would like to draw the attention of your Government to information I have received regarding Messrs. **Jaafar Sawari**, **Risan Sawari** and **Abdulredha Nawaseri**, three men reportedly sentenced to death and at imminent risk of execution.

According to the reports received, Jaafar Sawari, Risan Sawari and Abdulredha Nawaseri were sentenced to death or had their death sentences confirmed by Branch 3 of the Revolutionary Court in Ahvaz on 10 June 2006. It would appear that the three men and others were tried on charges related to bomb explosions in Ahvaz City in June and October 2005, which killed at least 14 people, as well as explosions at oil installations. They were among nine men shown making a confession of responsibility for these terrorist attacks on Khuzestan Provincial TV on 1 March 2006. Among them were also Mehdi Nawaseri and Ali Awdeh Afrawi, who were hanged in public the following morning.

Reports indicate that the lawyers of Jaafar Sawari, Risan Sawari and Abdulredha Nawaseri and their co-accused were not allowed to adequately prepare the defense of their clients: they were notified of the trial date only one or two days in advance, and could not study their clients' files fully. Moreover, they were not allowed to meet in private with their clients despite their requests to this effect. Seven of the lawyers who appeared before Branch 3 of the Revolutionary Court in this case brought these shortcomings of the proceedings to the attention of the president of the court in writing, but it would appear that their complaint has remained without any effect. Because of the secrecy reportedly surrounding the trial, my sources have not been able to inform me about the precise procedural posture of the cases of Jaafar Sawari, Risan Sawari and Abdulredha Nawaseri, whether they have appealed the death sentence, and about what remedies they still have at their disposal.

While I am fully aware of the serious nature of the crimes these three men have been found guilty of, I respectfully remind your Excellency that “in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the (International Covenant on Civil and Political Rights) admits of no exception” (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the cases at issue, these guarantees include the right to adequate time and facilities for the preparation of one’s defence and the right to communicate in private with counsel of one’s own choosing.

Article 14 also enshrines the right of every criminal defendant to a “public hearing” and requires that “any judgment rendered in a criminal case […] be made public”. While the courts may exclude the public “from all or part of a trial” where publicity would imperil national security under the specific circumstances of the case at hand, a trial implicating a national security interest does not automatically justify a wholly secret trial. Moreover, secrecy may never extend beyond the hearing itself. The requirement that the judgment be made public allows only the narrowest of exceptions which clearly find no application in the case at issue.

I urge your Excellency’s Government to take all necessary measures to guarantee that the rights under international law of Jaafar Sawari, Risan Sawari and Abdulredha Nawaseri are respected. Considering the irremediable nature of capital punishment, this can only mean suspension of the death sentence against the three men until the complaints regarding their right to be assisted by counsel in the adequate preparation of their defense have been thoroughly investigated and all doubts in this respect dispelled.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government, including confirmation that Jaafar Sawari, Risan Sawari and Abdulredha Nawaseri are still alive.

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

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

2. Please provide full details with regard to the limitations allegedly placed on the lawyers assisting Jaafar Sawari, Risan Sawari and Abdulredha Nawaseri in the consultations with their clients and in the preparation of the defense. Please explain how the lawyers' complaint in this regard has been dealt with.

3. Please provide details regarding the publicity of the trial of Jaafar Sawari, Risan Sawari and Abdulredha Nawaseri and of the sentences imposed on them. Please elaborate on the steps taken to make information about the trial, judgment and sentence available to the public in Iran.

4. Please provide details concerning the current procedural posture of the cases of Jaafar Sawari, Risan Sawari and Abdulredha Nawaseri, on the legal remedies already exercised by them and those still open to them to challenge their conviction and the sentence imposed.

Islamic Republic of Iran: Death Sentences of Seven Men in Connection with Bombings in Khuzestan Province

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

Subject(s) of appeal: 7 males

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Commission on Human Rights.

Urgent appeal dated 2 August 2006

I would like to draw the attention of your Government to information I have received regarding Messrs **Yahia Nasseri**, **Nazem Boraihi**, **Abdolemam Zaeri**, **Abdolzahar Olichi**, **Hamza Sawaeri**, **Ali Helfi** and **Zamel Bawi** who were reportedly sentenced to death and are at imminent risk of execution. According to the information received:

> They were sentenced to death by the Islamic Revolutionary Court in Ahwaz on 7 and 8 June. They are believed to be at imminent risk of execution as they are awaiting an execution order from the "Supreme Court" in Tehran. The seven men were tried on charges related to last October bombings in Ahwaz and other cities in Khuzestan province. Reports indicate that the only evidence presented by the prosecutors related to issues such as advocating a boycott of the last presidential elections, writing and managing university newspapers and advocating human rights of Arab minority and hence "endangering the security of the state". Other charges included distributing CDs containing human rights reports published by the Ahwaz Human Rights Organization, the United Nations Commission on Human Rights, Amnesty International and Human Rights Watch.

Concern is also expressed that they were tried in secret. Therefore, I do not know whether the men have appealed their death sentence and which remedies they had at their disposal.

While I do not wish to prejudge the accuracy of these allegations, I respectfully remind your Excellency that "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the (International Covenant on Civil and Political Rights) admits of no exception" (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the cases at issue, these guarantees include right to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Article 14 enshrines the right of every criminal defendant to a "public hearing" and requires that "any judgment rendered in a criminal case […] be made public". While the courts may exclude the public "from all or part of a trial" where publicity would imperil national security under the specific circumstances of the case at hand, a trial implicating a national security interest does not automatically justify a wholly secret trial. Moreover, secrecy may never extend beyond the hearing itself. The requirement that the judgment be made public allows only the narrowest of exceptions which clearly find no application in the case at issue.

I urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Yahia Nasseri, Nazem Boraihi, Abdolemam Zaeri, Abdolzahar Olichi, Hamza Sawaeri, Ali Helfi, and Zamel Bawi are respected. Considering the irremediable nature of capital punishment, this can only mean suspension of the death sentence against the three men until the complaints regarding their right to a fair and public hearing by a competent, independent and impartial tribunal established by law have been thoroughly investigated and all doubts in this respect dispelled.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government, including confirmation that Yahia Nasseri, Nazem Boraihi, Abdolemam Zaeri, Abdolzahar Olichi, Hamza Sawaeri, Ali Helfi, and Zamel Bawi are still alive.

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights

Council, I would be grateful for your cooperation and your observations on the following matters:

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

2. Please provide details regarding the information made publicly available in relation to the trial of Yahia Nasseri, Nazem Boraihi, Abdolemam Zaeri, Abdolzahar Olichi, Hamza Sawaeri, Ali Helfi, and Zamel Bawi and to the sentences imposed on them.

3. Please provide details of any avenues of appeal already exercised by the defendants and those still open to them to challenge their conviction and sentence.

Islamic Republic of Iran: Death Sentences and Risk of Death Sentences against 22 Ahwazi Arab Activists

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

Subject(s) of appeal: 2 females; 20 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 Commission on Human Rights.

Letter of allegation sent on 31 August 2006

I would like to draw the attention of your Government to information I have received regarding the reported trial on charges carrying capital punishment of 22 Ahwazi Arab activists. According to the information received, the following 20 men and two women were arrested by your Excellency's Government in June 2006: **Ali Motirijejad** (m), **Abdullh Solymani** (m), **Mlik Banitamimt** (m), **Abolamir Farjaolh Chaabi** (m), **Mohammad Chaabpour** (m), **Khalaf Khozairi** (m), **Alireza Asakereh** (m), **Majed Albog Hbaish** (m), **Ghasem Salamat** (m), **Abdolreza Sanawati** (m), **Said Hamydan** (m), **Fahimeh Esmaili Badawi** (f), **Toameh Chaab** (m), **Nasser Farajolah Kia** (m), **Majid Mazaal** (m), **Jalil Moghadam** (m), **Mehdi Saad Nasab** (m), **Hoda Hedayati Rezaie (Hawashemi)** (f), **Sharif Asei Nawaseri** (m), **Jalil Boraihi** (m), **Mohammad Sawari** (m), and **Abdolreza Salman Delfi** (m).

It is my understanding that they are accused of having received training in Iraq by officials of the United States of America, the United Kingdom and Israel, and of having returned to Iran with the intent to destabilize the country, to sabotage oil installations and to attempt to overthrow Your Government. They are allegedly being tried in secret. According to the reports received, the competent prosecutor-general, Mr. Iraj Amirkhani, has given the official news agency ISNA an interview announcing that he was seeking the death penalty for all the accused.

It is not my general practice to write to Governments with regard to cases of criminal defendants who have not been sentenced to death yet. In the present case, however, due to the secrecy surrounding these proceedings, I see myself forced to write to you already at this stage. My concerns are heightened by the failure of your Excellency's Government to reply to the concerns I raised in letters of 30 June and 2 August 2006 regarding 10 further Ahwazi activists (Yahia Nasseri and Others) reportedly sentenced to death after a secret trial by the Islamic Revolutionary Court in Ahwaz on 7 and 8 June.

While I do not wish to prejudge the accuracy of the allegations reported above, I respectfully remind your Excellency that "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the (International Covenant on Civil and Political Rights, ICCPR) admits of no exception" (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the cases at issue, these guarantees include the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, as well as the assistance of a lawyer.

Article 14 enshrines the right of every criminal defendant to a "public hearing" and requires that "any judgment rendered in a criminal case […] be made public". While the courts may exclude the public "from all or part of a trial" where publicity would imperil national security under the specific circumstances of the case at hand, a trial implicating a national security interest does not automatically justify a wholly secret trial. Moreover, secrecy may never extend beyond the hearing itself. The requirement that the judgment be made public allows only the narrowest of exceptions which clearly find no application in the case at issue.

Please be assured that I fully understand the gravity of the charges reportedly raised against the 22 men and women. The right to life and the restrictions on the use of the death penalty enshrined in Article 6(2) ICCPR, however, do not permit any derogation, even "in times of public emergency which threatens the life of the nation" (Article 4 ICCPR).

According to the information received, in addition to charges of "destabilizing the country", "sabotage of oil installations" and "attempt to overthrow the Government", the 22 men and women are charged with the offense of "mohareb", which carries the death penalty. It is my understanding that "mohareb" can be translated as "being at war with God". I am concerned that this charge, which according to my information in Iran is waged against political dissidents, critics of the Government and persons accused of espionage, might not be sufficiently well-defined to satisfy the very strict standards of legality set by Article 6(2) ICCPR for the imposition and execution of the death penalty. Indeed, in order for sentence of death to be imposed "in accordance with the law", the law in question must be sufficiently precise to clearly allow distinction between conduct punishable with the capital sentence and conduct not so punishable. The concept of a "fair trial" similarly requires that the elements of the crime charged be known in sufficient detail to the defendant for him to be able to effectively address them.

I urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of the above-named 22 persons are respected. Should their trial still be in course, I would ask you to ensure that their right to a fair trial, to an appeal and to seek pardon

are fully guaranteed. In the event that they already have been sentenced to death, considering the irremediable nature of capital punishment, this could only mean suspension of the death sentence until the complaints regarding their right to a fair and public hearing by a competent, independent and impartial tribunal established by law have been thoroughly investigated and all doubts in this respect dispelled.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government, including confirmation that the 22 persons are still alive.

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

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

2. Please provide details regarding the information made publicly available in relation to the trial of the 22 persons and the sentences imposed on them.

3. Please provide details of any avenues of appeal already exercised by the defendants and those still open to them to challenge their conviction and sentence.

4. Please provide details concerning the legal definition of "mohareb" in Iranian law.

Urgent appeal dated 13 November 2006 with the Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the question of torture

On 31 August 2006, the Special Rapporteur on extrajudicial, summary or arbitrary executions wrote a letter to your Excellency's Government, drawing attention to information he had received regarding the reported trial on charges carrying capital punishment of 22 Ahwazi Arab activists arrested by the Government in June 2006: Ali Motirijejad (m), Abdullh Solymani (m), Mlik Banitamimt (m), Abolamir Farjaolh Chaabi (m), Mohammad Chaabpour (m), Khalaf Khozairi (m), Alireza Asakereh (m), Majed Albog Hbaish (m), Ghasem Salamat (m), Abdolreza Sanawati (m), Said Hamydan (m), Fahimeh Esmaili Badawi (f), Toameh Chaab (m), Nasser Farajolah Kia (m), Majid Mazaal (m), Jalil Moghadam (m), Mehdi Saad Nasab (m), Hoda Hedayati Rezaie (Hawashemi) (f), Sharif Asei Nawaseri (m), Jalil Boraihi (m), Mohammad Sawari (m), and Abdolreza Salman Delfi (m).

At the time, we expressed our concern about reports indicating that they were being tried in secret and that the competent prosecutor-general had announced that he was seeking the death penalty for all the accused. That communication unfortunately remains unanswered by your Excellency's Government.

Today, we have received additional information according to which on 9 November 2006 the Head of the Judiciary in Khuzestan Province, Mr. Abbas Jaafari Dowlatabadi, announced that the Supreme Court has confirmed the death sentence of ten of the defendants mentioned above,

namely **Ali Motirijejad** (m), **Abdullh Solymani** (m), **Mlik Banitamimt** (m), **Abolamir Farjaolh Chaabi** (m), **Mohammad Chaabpour** (m), **Khalaf Khozairi** (m), **Alireza Asakereh** (m), **Majed Albog Hbaish** (m), **Ghasem Salamat** (m), and **Abdolreza Sanawati** (m). Iranian media have reportedly announced that the confessions of the 10 men will be broadcasted on Khuzestan TV tonight, 13 November 2006, and that their executions will be held in public, probably on 14 or 15 November 2006.

We have further received information which corroborates the concerns expressed in the letter of 31 August 2006. Allegedly, all ten men were tortured into making false confessions. Their lawyers were not allowed to see them prior to their trial and they were given access to the prosecution case only hours before the start of the trial. The trial was held in secret. The lawyers for the defendants, Khalil Saeedi, Mansur Atashneh, Dr Abdulhasan Haidari, Jawad Tariri, Faisal Saeedi and Taheri Nasab), were arrested for having complained about violations of the relevant laws in the course of the trials and charged with threatening national security.

Without prejudging the accuracy of the allegations reported above, we would like to recall the principles set forth in the letter of 31 August 2006: in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights (ICCPR) admits of no exception. The right of every criminal defendant to a "public hearing" requires that "any judgment rendered in a criminal case […] be made public". While the courts may exclude the public "from all or part of a trial" where publicity would imperil national security under the specific circumstances of the case at hand, a trial implicating a national security interest does not automatically justify a wholly secret trial. Moreover, secrecy may never extend beyond the hearing itself. The requirement that the judgment be made public allows only the narrowest of exceptions which clearly find no application in the case at issue.

Relevant to the cases at issue, the right to a fair trial further includes the guarantee of "adequate time and facilities for the preparation of [one's] defence and to communicate with counsel" (Article 14(3)(b)). This guarantee would be seriously violated if, as alleged, the lawyers were not allowed to see the defendants prior to their trial and the defendants and their lawyers were given access to the prosecution case only hours before the start of the trial. Moreover, while we are not in a position to express any opinion about the charges of "threatening national security" reportedly brought against the lawyers and their arrest, we note that the pressure and intimidation created by such charges is difficult to reconcile with the right to effective legal assistance and to a fair hearing.

Of equal concern are the allegations that the defendants were forced under torture into signing a confession. The alleged denial of access to their lawyers during the pre-trial phase and the circumstance that the broadcasting of their confessions on TV on the eve of their execution would appear to be the only element of their case not shrouded in secrecy do not contribute to dispelling this concern.

Finally, in the Special Rapporteur on extrajudicial, summary or arbitrary executions' communication of 31 August 2006, he had raised some questions with regard to the charge of "mohareb" ("being at war with God") brought against the defendants. He expressed the concern that this charge, which according to his information in Iran was waged against political

dissidents, critics of the Government and persons accused of espionage, might not be sufficiently well-defined to satisfy the very strict standards of legality set by Article 6(2) ICCPR for the imposition and execution of the death penalty. As the other requests for information and questions put in the previous communication, this one as well remains unanswered.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Ali Motirijejad (m), Abdullh Solymani (m), Mlik Banitamimt (m), Abolamir Farjaolh Chaabi (m), Mohammad Chaabpour (m), Khalaf Khozairi (m), Alireza Asakereh (m), Majed Albog Hbaish (m), Ghasem Salamat (m), and Abdolreza Sanawati (m) are respected. Considering the irremediable nature of capital punishment, this can only mean suspension of the execution until the complaints regarding their right to a fair and public hearing by a competent, independent and impartial tribunal established by law have been thoroughly investigated and all doubts in this respect dispelled.

We would also like to receive information on the current situation of the other 12 defendants mentioned in the communication of 31 August 2006, i.e. Said Hamydan (m), Fahimeh Esmaili Badawi (f), Toameh Chaab (m), Nasser Farajolah Kia (m), Majid Mazaal (m), Jalil Moghadam (m), Mehdi Saad Nasab (m), Hoda Hedayati Rezaie (Hawashemi) (f), Sharif Asei Nawaseri (m), Jalil Boraihi (m), Mohammad Sawari (m), and Abdolreza Salman Delfi (m).

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

1. Are the facts alleged above accurate? If not so, please share all information and documents proving their inaccuracy.

2. Please provide details regarding the information made publicly available in relation to the trial of the 12 men at imminent risk of execution.

3. Please provide details concerning the legal definition of "mohareb" in Iranian law.

Islamic Republic of Iran: Death Sentences of Shamameh Ghorbani, Kobra Najjar, and Soghra Mola'i

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

Subject(s) of appeal: 3 females

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate that he has been given by the General Assembly and the Commission on Human Rights.

Urgent appeal dated 2 October 2006 sent with the Special Rapporteur on the question of torture and Special Rapporteur on violence against women, its causes and consequences

In this connection, we would like to draw the attention of your Government to information we have received regarding six women, namely **Shamameh Ghorbani**, **Kobra Najjar** and **Soghra Mola'i** who have been sentenced to death by stoning for adultery.

According to the information received:

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

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

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

Although the death penalty is not prohibited under international law, we would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner.

Accordingly, it is crucial that all fair trial and other protections provided for in international human rights law are fully respected in proceedings relating to capital offences.

It is our view that the death penalty as applied in these cases does not fall within the category of the "most serious crimes" for which international law countenances its possible application. It is generally understood that this category should not be defined as going beyond intentional crimes with lethal or extremely grave consequences (paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1984/50 of 25 May 1084). In its General Comment No. 6, the United Nations Human Rights Committee has stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure". Similarly, that Committee has observed that the restriction encapsulated in that phrase cannot be interpreted as permitting the imposition of the death penalty "for crimes of an economic nature, for corruption and for adultery, or for crimes that do not result in loss of life" (CCPR/C/28/Add.15, 3 August 2003, paragraph 8).

We would also like to draw your Government's attention to Resolution 2005/39 of the Commission on Human Rights, which reminded Governments that corporal punishment, can amount to cruel, inhuman or degrading punishment or even to torture. We would also like to draw your attention to the report of the Special Rapporteur on torture to the 60th session of the General Assembly, in which he, with reference to the jurisprudence of UN treaty bodies, concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (para.28 A/60/316). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime.

Furthermore, we would like to draw your Government's attention to article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women. We would also like to bring to your Government's attention article 4 (c) and article 4 (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. (Adopted by General Assembly resolution 48/104 on 20 December 1993).

It is our responsibility under the mandate provided to us by the Commission on Human Rights to seek to clarify all cases brought to our attention. Without in any way wishing to pre-judge the accuracy of the information received, we would be grateful for a reply to the following questions:

1. Are the facts alleged in the above summaries accurate?

2. If the three above mentioned women have in fact been sentenced to death for the offence of adultery, how does Your Excellency's Government consider that to be consistent with the applicable international legal standards?

3. 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.

Iraq: Killings of Sunnis by Armed Groups Linked to the Ministry of Interior

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

Subject(s) of appeal: More than 13 persons (at least 7 foreign nationals)

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 Commission on Human Rights.

Letter of allegation dated 14 March 2006

I have been following the reports regarding the barbaric bomb-attack on the al-Askari shrine in Samarra on 22 February 2006 and the following events with great concern and would like to offer my condolences at the terrible loss of life and destruction, particularly of religious sites, your country has witnessed in the course of the last three weeks. As Special Rapporteur on summary executions, I would like to draw the attention of your Government to information I have received concerning a wave of killings of persons belonging to the Sunni community on 22 and 23 February 2006. I am of course aware that the further increase in violence since 22 February has resulted in the killing of numerous Iraqis belonging to the Shiite community as well. The reason I am raising my concerns and seeking information from you with regard to these executions is that the armed groups reportedly responsible for them are alleged to have links to the Ministry of Interior of your Excellency's Government, and because there are specific reports that the security forces failed to protect the victims. Among the numerous incidents reported, I would like to draw your attention to the attack on the so-called Palestinian compound in Baghdad, the attack on the Basra headquarters of the Iraqi Islamic Party, and the abduction of twelve prisoners from the Al Mina detention centre in Basra with the subsequent execution of eleven of them.

On 22 February 2006 at about 10.30 a.m., militiamen wearing black clothes arrived in several vehicles and attacked the Al Baladiya neighbourhood, where many Palestinians reside (known as the "Palestinian compound"). The militia headed first to the Mohammed Abdul Ra'ouf mosque, firing at civilians and killing an unspecified number of them. Subsequently, the militia went inside the mosque, planted explosives and detonated them, destroying the mosque. Later on, other groups of similarly clad armed men headed to the Al Qods mosque, located at about 1 km from the place of the first incident. They shot at the building, entered the mosque and abducted an employee, Mr. Jamal Mohammed. He was later found dead at the Medico Legal Institute, his face burned. The militias painted messages on the walls of the building: "Now is your turn Wahabis. Praying in the mosque is now forbidden for Wahabis". The militia went to the Imam's office with the intention of planting explosives, but were prevented from doing so by armed residents of the area, who defended the mosque for about 30 minutes. 15 minutes after the attackers withdrew, the police arrived. It would appear that the police were near the area during the incidents but only intervened once the militias withdrew. Residents identify the attackers as belonging to the Mehdi Army led by Moqtada al-Sadr, but officials of Mr. al-Sadr's party have denied involvement of their organization.

On 22 February 2006 at 8:30 p.m., a group of masked men (reports vary as to their precise number, some reports speaking of 70 men) came to the Al Mina detention center in Basra. They were dressed in black, wore bullet-proof vests, and were armed with pistols, rifles and rocket propelled grenade launcher (RPGs). The men went to a cell holding Iraqi and foreign Sunni Muslims detained on charges of terrorism. According to some reports, the armed men identified themselves as members of the Iraqi police intelligence and claimed to have authority to remove the prisoners. Ten of the twelve prisoners were killed and their bodies dumped on the streets along the Hay al Hussayn part of the city. Their names, as reported to me, are

Mohamed Amin Jassim – a citizen of Iraq
Mohamed Saleh Abdurahman – a citizen of Iraq
Nabil Hareth Faris – a citizen of Iraq
Sinan Mahmood Abdulwahab – a citizen of Iraq
Mukhtiar – a citizen of Iraq
Ferej Saad Allah – a citizen of Egypt
Abdul Rahim Mohamed Abdul Rehim – a citizen of Egypt
Waleed Mohamed – a citizen of Tunisia
Mohamed Ben Hassan Ben Kassim– a citizen of Tunisia
Basse Saleh Jamil – a citizen of the Kingdom of Saudi Arabia
Mohammed Abdulahi Mohamed – a citizen of Libya
Mejat Istiyan – a citizen of Turkey

Two men are said to have survived and were reportedly returned to the detention centre.

On 23 February 2006 at 1.30 p.m., approximately one hundred persons dressed in black attacked the Basra headquarters of the Iraqi Islamic Party (IIP). Some of the witnesses identified the attackers as members of the Badr Organisation, a militia affiliated with the political party Supreme Council for the Islamic Revolution in Iraq, while others described them as belonging to the so-called Mehdi Army. After an exchange of fire, the building was set ablaze, forcing

everybody inside to go to the roof of the building. Two IIP members were injured in the attack and were taken to a hospital. Some hours later, men in black clothing abducted the two injured IIP members from the hospital and assassinated them.

Under international human rights law, and in particular under articles 2 and 6 of the International Covenant on Civil and Political Rights, the three incidents described above involve the responsibility of your Excellency's Government at a number of levels.

First and foremost, reports suggest that in some instances the perpetrators of extrajudicial killings belong in fact to the forces of the Ministry of Interior or of the Ministry of Defence. In particular, the Mehdi Army and the Badr Organisation are reported to be active within the police. In this respect, I am also aware of reports according to which perpetrators dressed in police uniforms but in fact unrelated to the police are responsible for killings. The circumstance that some of the executions have been carried out by perpetrators impersonating police officers should not, however, serve as a reason to take the reports alleging executions perpetrated by actual police officers less seriously.

Secondly, reports suggest that even where there is no direct participation of personnel belonging to the forces of the Ministry of Interior or of the Ministry of Defence, there are various forms of collusion between the security forces and the militias suspected of carrying out these attacks, in particular the Mehdi Army and the Badr Organisation. This is of course the case when officials hand over prisoners to militiamen. As to the attacks on the civilian population and Sunni organizations and mosques, they show a degree of organization and reveal that the perpetrators have access to resources and equipment (vehicles, weapons, some form of uniform, bullet-proof vests). Moreover, while it is reported that in some instances the Iraqi police and Army intervened to protect the population, mosques and funeral processions from such attacks, in other cases the security forces clearly failed in their duty to protect the population against the militias, arriving only after the aggression was completed, or withdrawing too early and allowing the assault to resume.

International human rights law requires your Government to take immediate steps to disarm all militias operating in Iraq. Where militias or their individual members have been lawfully integrated into the security forces, your Government must ensure that they are under the effective control of the competent authorities and act under the official, constitutional chain of command. The reported incidents, and all other incidents of similar gravity, must be thoroughly and independently investigated, both with a view to clarifying to what extent the perpetrators belonged to or acted in collusion with the security forces, and in order to bring those responsible to justice. I have received reports that several inquiries have been started into previous cases of executions similar to those described above, but that they have been languishing without producing results whenever there are indications that security forces or militias connected to political parties in power are implicated. Clearly, in order to re-establish trust in the security forces and their readiness to protect all citizens (and other inhabitants) of Iraq, reports of killings involving the security forces must be given priority and be investigated all the more vigorously.

It is my responsibility under the mandate provided to me by the Commission on Human Rights to seek to clarify all cases brought to my attention. Since I am expected to report on this case to

the Commission or the future 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 accurate? Please provide detailed information on the investigations carried out to clarify these incidents, in particular the allegations of direct involvement or collusion by the security forces.

2. Please provide the details of all the steps taken to disarm the militias active in Iraq, or – where their members have been lawfully integrated into the security forces – to ensure that they operate within the law and under the lawful chain of command, as well as to hold their members and commanders accountable.

3. Please provide details of all the criminal investigations and prosecutions carried out to bring those responsible for the executions described above to justice.

4. Have the victims of the incidents described above or their families been compensated?

I undertake to ensure that your Government's response to each of these questions is accurately reflected in the report I will submit to the Commission on Human Rights for its consideration.

In closing this communication I would like to reiterate that the fact that I am raising with your Government the cases described in this letter, and not incidents of equally deadly and condemnable terrorist attacks on security forces or civilians, does certainly not lie in any discrimination between the victims of the attacks. But your Government's responsibility to protect the right to life of all the persons subject to its jurisdiction is all the more relevant and pressing, both in law and from a political point of view, when there are reports of participation in the killings of personnel belonging to the security forces and to militias connected to political parties in government.

Iraq: Death Sentences of Saddam Hussein al-Tikriti, Barzan al-Tikriti, and Taha Yassin Ramadan

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

Subject(s) of appeal: 3 males

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal sent on 7 July 2006

I am writing in relation to the trial of **Saddam Hussein al-Tikriti and others** before the Supreme Iraqi Criminal Tribunal in the so-called *Dujail* case. According to the information received, the most recent developments are that on 19 June 2006 the Chief Trial Prosecutor demanded the death sentence for Saddam Hussein, his half-brother Barzan al-Tikriti and the former Vice-President, Taha Yassin Ramadan. Three days later, the bullet-ridden corpse of one of Saddam Hussein's defense lawyers, Mr. Khamis Al-Obeidi, who had been abducted from his home on 21 June 2006, was found. It is my understanding that the trial is now adjourned to 10 July, when the defence will deliver its final arguments and the court will retire to consider its verdict.

As your Excellency's Government is aware, international law – in particular the International Covenant on Civil and Political Rights (ICCPR), to which Iraq is a State party – does not ban the death penalty but attaches strict and vitally important procedural guarantees to its exercise.

One such limitation is that "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the (ICCPR) admits of no exception" (*Little v. Jamaica*, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Your Excellency's Government is well aware of the serious concerns raised with regard to the compliance of the trial of Saddam Hussein with the requirements of a fair trial – not the least, that the murder of three of his defence lawyers casts some doubt on the full enjoyment of the right to "adequate time and facilities for the preparation of his defence" and to "defend himself … through legal assistance of his own choosing" (Article 14(3) ICCPR, letters (b) and (d), mirrored in Article 19(4), letters (b) and (d) of the Law on the Supreme Iraqi Criminal Tribunal). As the first instance trial is drawing to its conclusion and the Appeals Chamber will have the jurisdiction to hear appeals on the grounds of "error of procedure" (Article 25(1) of the Law on the Supreme Iraqi Criminal Tribunal), I do not wish to pursue these concerns at the present stage.

My concern in the present letter is with Article 27(2) of the Law, the first sentence of which reads: "No authority, including the President of the Republic, may grant a pardon or reduce the penalties issued by this Tribunal." This provision would appear to be irreconcilable with paragraph 4 of Article 6 ICCPR, providing that "[a]nyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases."

I am also gravely concerned about the second sentence of Article 27(2), providing that "[p]enalties shall be enforced within thirty days of the sentence or decision reaching finality." Considering the irremediable nature of capital punishment, this provision would appear to fail to take into account the numerous serious legal issues which, as the experience of other countries retaining the death penalty shows, can and do arise even after a death sentence has become "final". A period of thirty days does not provide sufficient time for the defence or for the wheels of justice to respond adequately to any subsequent issues that might be raised.

An additional consideration concerns the desirability of ensuring that the defendants are able to stand trial for at least the most serious crimes of which they have been accused. While there may

be no formal obligation in international law to refrain from executing someone duly convicted of a most serious crime and sentenced to death before they can be tried on other charges, the interests of promoting accountability and justice would weigh strongly in favour of ensuring that the accused in the present proceedings are brought to court in relation to a reasonable cross section of the gravest charges against them. I note in this regard that your Excellency's Government has reportedly announced that a second trial against Saddam Hussein and six co-defendants is scheduled to begin on 21 August 2006. In this trial the accused are to be judged, including on charges of genocide, for their alleged role in Operation Anfal, a campaign which is said to have killed an estimated 100,000 Kurdish citizens of Iraq in 1987-88. Proceeding with the rapid carrying out of a death sentence in such circumstances would seem to be incompatible with the interests of the community at large, and of the victims in particular, in securing a careful consideration of the charges in court.

I accept of course that it will not be possible to try all the crimes against humanity and war crimes committed since 17 July 1968 by the regime led by Saddam Hussein, and that there are other transitional justice mechanisms available, such as truth commissions. Nonetheless, I consider that the provision mandating execution within thirty days unnecessarily undermines the efforts of victims of the atrocities committed by Saddam Hussein's regime to promote accountability.

In the light of the above considerations, I urge your Excellency's Government to use the time provided by the completion of the first instance trial and the (possible) appeals proceedings in the *Dujail* case to repeal Article 27(2) of the Law on the Supreme Iraqi Criminal Tribunal, or amend it as necessary to bring it in compliance with your Government's obligations under international law. As set forth above, this will require providing for the right to seek pardon or commutation of the sentence for convicts sentenced to death, as well as for adequate time to effectively exercise this right.

Iraq: Deaths in Custody of 59 Sunni Men

Violation alleged: Death in custody; Deaths due to attacks or killings by security forces, paramilitary groups, death squads, or private forces cooperating with or tolerated by the State

Subject(s) of appeal: 59 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 Commission on Human Rights.

Letter of allegation dated 18 August 2006 sent with the Special Rapporteur on the question of torture

We would like to bring to your Government's attention information we have received concerning 59 men reportedly tortured to death or executed after having been tortured, apparently by security forces of your Excellency's Government. According to the information received:

As he was leaving a mosque in Al-Huria district, Baghdad, following prayers on an unspecified date in May 2005, **Taha Mohammad Sulaiman Al Meshehdani** was arrested together with five others by members of the Iraqi Rapid Reaction Force riding in vehicles with the insignia of the National Guards. He was taken to the Ministry of Interior Detention Centre. Having received no news of his whereabouts, 19 days later his family discovered that his body was in the Medico-Legal Institute, found among six others dumped in the Al-Sha'ab district. His body exhibited wounds inflicted as a result of a power drill, his vertebrae and bones in his legs and hands were broken. Death reportedly occurred the day after he was arrested.

On 14 May 2005, **Salah Hassan Mosa**, **Yahya Hassan Mosa**, **Khalid Al-Azzawi**, **Salah Ibrahim**, **Nariman Mahmoud**, **Khudair Khamees**, **Naseir Samir**, **Laith Al-Azawi**, **Ali Hussein**, and **Mohammed Hamid Rashid** were detained by the Police Special Forces Unit (Al-Borkhan) in the Al-Eskan area of Baghdad. They were found dead in the Al-Gayarra district days later with torture signs on their bodies, including bullet holes and marks indicative of beating.

On 10 July 2005, officers of the Ministry of Interior searched the Seba Abkar district, Baghdad, and arrested men belonging to the Arab Sunni community, including **Shiekh Dhiaa Muhmood Al-Jenabi**, **Abdulsalam Abdul-Aziz**, **Amer Husain Al-Meshhedani**, **Ayad Dawood Selman**, **Selman Dawood Selman**, **Hadi Zbala**, **Foua'ad Salem Tawfeek Al-Kaisi**, **Ala'a Salem Tawfeek Al-Kaisi**, **Ali Noree Aifan**, **Mushtaq Misha'an Mutlaq**, and **Khalid Zaidan Saud Al-Lehaibie**. On 13 July 2005, the families of the victims found the bodies in the Medico-Legal Institute. The bodies bore signs of injuries, including wounds caused by power drills, gun shot wounds to the head, acid-induced injuries, and facial mutilation, such as missing eyes.

On 24 August 2005, about 80 persons belonging to the Sunni community were detained in Al-Huria district, Baghdad, by the Police Special Forces Unit (Al-Borkhan Unit). They included **Mohamed Ali Hamed Al-Mashhadaniy**, **Waleed Ali Hamed Al-Mashhadaniy**, **Mushtaq Abas Alwan Al-Msariy**, **Emad Qazi Abdullah Al-Kaabiy**, **Sadam Mohamed Mahood Al-Mashhadaniy**, **Ali Ahmed Abdul Karrim Al-Mashhadaniy**, **Hekmet Ahmed Abdul Karrim Al-Mashhadaniy**, **Mohamed Al-Najar Al-Mashhadaniy**, **Hassan Ahmed Hussien Al- Mashhadaniy**, **Ahmed Abed Ahmed Al-Mashhadaniy**, **Methaq Abass Alwan Al-Mashhadaniy**, **Adel Awad Mutlaq Al-Dulaimi**, **Mahdi Awad Mutlaq Al-Dulaimi**, **Fadel Awad Mutlaq Al-Dulaimi**, **Zead Awad Mutlaq Al-Dulaimi**, **Wessam Adnan Awad Mutlaq Al-Dulaimi**, **Hesham Adnan Awad Mutlaq Al-Dulaimi**, **Ali Adel Awad Awad Mutlaq Al-Dulaimi**, **Umer Adel Awad Mutlaq Al-Dulaimi**, **Muwafaq Dawood Mutlaq Al-Dulaimi**, **Ahmed Dawood Mutlaq Al-Dulaimi**, **Riaad Dawood Mutlaq Al-Dulaimi**, **Diaa Dawood Mutlaq Al-Dulaimi**, **Mohammed Ibrahem Aubaid Al-Dulaimi**, **Muhaned Ibrahem Aubaid Al-Dulaimi**, **Fadel Jasem Mohammed Al-Dulaimi**, **Feras Talib Dawood Mutlaq Al-Dulaimi**, **Mukhlif Garib Al-Dulaimi**, **Shawkat Mukhlif**

Garib Al-Dulaimi, **Falah Mukhlif Garib Al-Dulaimi**, **Hussain Rashed Jassem Hamadiy Al-Dulaimi**, and **Mohammed Alawi Abass Al-Ubaidiy**. On 28 August 2005, the bodies of 36 of the persons detained on 24 August in Al-Huria were found in Kut province. On 29 August 2005, a relative of other victims identified another 50 bodies in the Medico-Legal Institute, Baghdad, as belonging to persons arrested on 24 August in Al-Huria. The bodies bore signs of injuries, including acid-induced injuries, gun shot wounds to the head, missing teeth, punctures, missing skin, broken hands, and facial mutilation, such as missing eyes. The police have refused to release information as to where they found the bodies which were delivered to the Medico-Legal Institute.

Ahmad Shaker Mahmoud, aged 37, **Omar Khalil Abed**, aged 30, and **Shaker Mahmoud Ali**, aged 66, all of Baghdad, were detained by members of the Al-Mehdi Army following the bombing of two Shiite shrines in Samara on 22 February 2006. On 23 February 2006, their bodies were found dumped in the Kasra-Wattash district, Baghdad, bearing signs of torture. Ahmed Shaker's left eye was missing, his back appeared to be burned by an iron, and his body bore puncture wounds made by a power drill. Omar Khalil's neck exhibited power drill injuries; and Shakir Mahmoud had marks indicative of beatings.

Mosa'b Abdul Sattar Abdul Jabbar, aged 25, member of a counseling committee at the Muslim Scholars' Foundation, Baghdad, was deprived of his freedom by men riding in three cars belonging to the Ministry of Interior on his way to Al-Tasfeerat (the Iraqi Police Center), where he was going to visit one of the detainees. On 30 May 2006, the body of Mosa'b Abdul Sattar was found in the Medico-Legal Institute bearing signs of torture: acid burns on his face and body and power drill holes on his legs. It seems also that his head was squeezed with a metal compressor until his eyes came out of their sockets.

In none of the above cases have investigations led to the arrest of the suspected perpetrators and the initiation of criminal proceedings against them, nor has any of the victims' families received compensation.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Government's attention to the fundamental principles applicable under international law to these incidents. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) enshrines the right not to be arbitrarily deprived of one's life. Article 7 ICCPR and Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment proscribe torture and inhuman or degrading treatment.

In all cases, except for the death of Ahmad Shaker Mahmoud, Omar Khalil Abed, and Shaker Mahmoud Ali, the reports indicate that the victims were last seen alive when they were deprived of their freedom by members of your Government's security forces. Under these circumstances, human rights law establishes a rebuttable presumption of State responsibility for the violation of the rights to life and physical and mental integrity.

Also, article 12 of the Convention Against Torture requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe

that torture has been committed, and its article 7 requires State parties to prosecute suspected perpetrators of torture. The Commission on Human Rights has stressed in Resolution 2005/39 (paragraph 3) " that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and [has taken] 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".

Analogous obligations arise for your Government from the death of the men named in the case summaries above. As stated in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, international law requires your Government to carry out "thorough, prompt and impartial investigation[s] of all suspected cases of extra-legal, arbitrary and summary executions" (Principle 9). As noted by the Commission on Human Rights in Resolution 2005/34 (paragraph 4), this includes the obligation "to identify and bring to justice those responsible, …, to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to … prevent the recurrence of such executions". We would like to stress that, because of the above-mentioned presumption of State responsibility for deaths in custody, the obligation to pay compensation to the family members arises and remains even if it was not possible to clarify the circumstances of the death and the identity of the perpetrators.

In drawing your Government's attention to these principles of international law, we are of course aware of the difficult situation prevailing in Iraq at present and at the time of the alleged incidents, particularly the ongoing armed conflict in some parts of the country, the nearly daily barbaric attacks by terrorists and the activities of sectarian militias kidnapping and killing civilians on a daily basis. In this respect, we would like to recall the following considerations by the Special Rapporteur on extrajudicial, summary or arbitrary executions in his letter to your Excellency's Government of 14 March 2006, a letter that has regrettably remained unanswered:

> "First and foremost, reports suggest that in some instances the perpetrators of extrajudicial killings belong in fact to the forces of the Ministry of Interior or of the Ministry of Defence. In particular, the Mehdi Army and the Badr Organisation are reported to be active within the police. In this respect, I am also aware of reports according to which perpetrators dressed in police uniforms but in fact unrelated to the police are responsible for killings. The circumstance that some of the executions have been carried out by perpetrators impersonating police officers should not, however, serve as a reason to take the reports alleging executions perpetrated by actual police officers less seriously.
>
> International human rights law requires your Government to take immediate steps to disarm all militias operating in Iraq. Where militias or their individual members have been lawfully integrated into the security forces, your Government must ensure that they are under the effective control of the competent authorities and act under the official, constitutional chain of command. The reported incidents, and all other incidents of similar gravity, must be thoroughly and independently investigated, both with a view to clarifying

> to what extent the perpetrators belonged to or acted in collusion with the security forces, and in order to bring those responsible to justice. I have received reports that several inquiries have been started into previous cases of executions similar to those described above, but that they have been languishing without producing results whenever there are indications that security forces or militias connected to political parties in power are implicated. Clearly, in order to re-establish trust in the security forces and their readiness to protect all citizens (and other inhabitants) of Iraq, reports of killings involving the security forces must be given priority and be investigated all the more vigorously."

It is our responsibility under the mandates provided to us by the Commission on Human Rights, reinforced by the appropriate resolutions of the General Assembly and extended by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on 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 case summaries 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 these cases. If no inquiries have taken place or if they have been inconclusive, please explain why.

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

4. Please provide the details of all the steps taken to disarm the militias active in Iraq, or – where their members have been lawfully integrated into the security forces – to ensure that they operate within the law and under the lawful chain of command, as well as to hold their members and commanders accountable.

5. Have the families of the victims in the incidents described above compensated? Please provide details.

In closing this communication, we would like to stress that we are aware that the victims in all the incidents described above would appear to belong to the Sunni community. The fact that we are raising with your Government the cases described in this letter, and not incidents of equally deadly and condemnable terrorist attacks on security forces or Shiite civilians, does certainly not lie in any discrimination between the victims of the attacks. But your Government's responsibility to protect the right to life of all the persons subject to its jurisdiction is all the more relevant and pressing, both in law and from a political point of view, when there are reports of participation in the killings of personnel belonging to the security forces and to militias connected to political parties in government.

Iraq: Death Sentences of Six Men in Relation to the Kidnapping of Romanian Journalists

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

Subject(s) of appeal: 6 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 Commission on Human Rights.

Urgent appeal sent on 27 October 2006.

In this connection, we would like to draw the attention of your Government to information we have received regarding **Mohammad Munaf Mohammad al-Amin**, who holds dual American and Iraqi citizenship, **Yusuf Munaf Mohammad al-Amin**, **Salam Hikmat Mohammad Farhan al-Qassir**, **'Abd al-Jabbar 'Abbas Jasim al-Salman**, **'Omar Jasim Mohammad 'Ali al-Salman**, and **Ibrahim Yassin Kadhim Hussain al-Jibouri**.

According to the information received, the six men named were sentenced to death by the Central Criminal Court of Iraq (CCCI) on 12 October 2006 for their alleged involvement in the kidnapping of three Romanian journalists in Iraq. The trial, which considered the case of all six defendants at the same hearing, is reported to have lasted about one hour. All six defendants face execution if the Court of Cassation upholds the CCCI's verdict. The men were reportedly tortured and threatened in pre-trial detention.

Mohammad Munaf Mohammad al-Amin is currently being held by the US armed forces at Camp Cropper near Baghdad airport. He has been in US custody since his capture in May 2005, under an agreement which allows pre-trial detainees awaiting criminal prosecution in Iraqi courts to be held in detention centres run by the Multi-National Force-Iraq (MNF-I). He was reportedly held for months in US custody as a security internee before appearing before the CCCI. He is alleged to have subsequently made statements at Iraqi preliminary hearings admitting to having participated in the kidnapping of the journalists, but retracted his confession at trial. He claims that the confession was made after he received threats of violence and sexual assault against him and his family.

Mohammad Munaf Mohammad al-Amin is due to be transferred imminently to Iraqi custody. He has an application pending before a US district court for a temporary restraining order to prevent his transfer to Iraqi custody, on the grounds that his right to a fair trial may have been violated. However, the US government has argued that the US courts do not have jurisdiction in the case.

Muhammad Munaf Mohammad al-Amin was born in Iraq, and emigrated to the USA in 1990. In 2001 he moved to Romania with his Romanian wife and three children. He accompanied the three kidnapped Romanian journalists to Iraq, acting as a guide and interpreter. The journalists were held for two months before being released unharmed during a military rescue operation in May 2005. Muhammad Munaf Mohammad al-Amin was arrested during the rescue operation, and was accused of posing as a kidnap victim and of involvement in the kidnapping plot. He denies these charges.

The other five defendants are in Iraqi custody. Three of them have reportedly been tortured by being beaten with cables and the use of electric shocks in various parts of their bodies. However, their complaints were not considered by the court, and no investigation into the alleged torture is believed to have been initiated.

While we are fully aware of the most serious nature of the crimes these men have been found guilty of, we respectfully remind your Excellency that "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the (International Covenant on Civil and Political Rights) admits of no exception" (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the cases at issue, these guarantees include the right not to be compelled to confess guilt and the right to adequate time and facilities for the preparation of one's defence.

We also recall that Commission on Human Rights resolution 2005/39 urges States to ensure that any statement, which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made. This principle is an essential aspect of the right to physical and mental integrity set forth, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Furthermore, we would like to draw your Government's attention to Resolution 2005/39 of the Commission on Human Rights reminded Governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture. We would also like to draw your attention to the report of the Special Rapporteur on torture to the 60th session of the General Assembly, in which he, with reference to the jurisprudence of UN treaty bodies, concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (para.28 A/60/316). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime of as an educative or disciplinary measure.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of the six men above are respected. This can only mean suspension of the capital punishment until the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled. Moreover, international law requires that the accountability of any person guilty of subjecting these men to torture is ensured.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government.

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

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

2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegations that Mohammad Munaf Mohammad al-Amin, Yusuf Munaf Mohammad al-Amin, Salam Hikmat Mohammad Farhan al-Qassir, ‘Abd al-Jabbar ‘Abbas Jasim al-Salman, ‘Omar Jasim Mohammad ‘Ali al-Salman, and Ibrahim Yassin Kadhim Hussain al-Jibouri were subjected to torture while in pre-trial detention. If no inquiries have taken place, or if they have been inconclusive, please explain why.

3. Please provide the full details of any prosecutions which have been undertaken with regard to the alleged torture of the above-mentioned individuals. Have penal, disciplinary or administrative sanctions been imposed on the perpetrators?

Ireland: Death in Custody of Terence Wheelock

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the response provided by the Government of Ireland and would appreciate receiving the results of the inquest when it has been completed.

Letter of allegation sent on 11 May 2006

In this connection, I would like to bring to your Government’s attention information I have received regarding the death of **Terence Wheelock** on 2 June 2005 while he was in Garda custody. According to the information I have received, Terence Wheelock, along with three others, was arrested at 12.10pm on the 2nd June, 2005, for an offence under Section 112, Road Traffic Acts (unauthorized taking of a vehicle). Two of those arrested were detained at Mountjoy Garda Station, while Wheelock and one other were detained at Store Street Garda Station arriving there at 12.20pm. He was placed in a cell at 12.25pm and between that time and 2.40pm he was checked in his cell on five occasions. On each visit, police report that all was found to be in order. At 2.40pm on checking the cell, Wheelock was not visible through the inspection hatch. The Garda on duty entered the cell and found Wheelock unconscious following an attempt to

hang himself. He could not be revived and was rushed to the Mater Hospital where he died three months afterwards, in September 2005, without having regained consciousness.

Concerns have been raised in relation to the handling of this case by the Garda. It has been brought to my attention that Terence Wheelock was allegedly assaulted by police officers during his arrest. Once he was found unconscious, emergency aid was not immediately requested. In addition, Wheelock was reportedly taken out of his cell before the arrival of the medical personnel, contrary to basic first aid requirements. Other reports indicate that he had bruises and marks on his head and body. It has also been reported that the cell in which Wheelock was placed was forensically cleaned up despite a court order prohibiting such action.

My understanding is that the circumstances of his death are now subject of an enquiry as Detective Superintendent Oliver Hanley, Dun Laoghaire Garda Station, was appointed to examine the circumstances surrounding this incident.

Without in any way pre-judging the accuracy of the allegations I have received, I would like to receive information from your Government in relation to the results of the above mentioned inquiry. I am aware of the Garda regulations on the treatment of persons in Garda custody which your Government has shared with me further to my September 2005 request on the Garda Síochána records of people who have died in custody. I would be grateful if your Government could indicate the extent to which these regulations were followed in the case of Terence Wheelock.

Response of the Government of Ireland dated 3 July 2006

Request for information on the death of Mr. Terence Wheelock by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

Background

1. The late Terence Wheelock was found hanging in his cell in Store Street Garda (police) Station in Dublin on 2 June, 2005. He was removed to hospital where he died a little more than three months later.

Investigation

2. A Detective Superintendent from outside the relevant Garda Division was appointed immediately after the incident to carry out a detailed investigation into all the circumstances surrounding Mr. Wheelock's arrest, detention and removal to hospital.

The Garda authorities furnished the Department of Justice, Equality and Law Reform with a report on the matter and a copy of the Superintendent's investigation file was received on 2 February, 2006. The file had also been submitted to the Director of Public Prosecutions who issued instructions that no prosecution should ensue.

The Garda Superintendent's report concludes that the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Siochâna Stations) Regulations, 1987 were fully complied with. In

particular a custody record was completed, a notice of his rights was given to Mr. Wheelock and these rights were explained to him, a solicitor was contacted on his behalf, he was placed in a single cell and he was visited at approximately 30 minute intervals. There was no evidence of ill treatment

Further Developments

5. In the week following the incident, in the interest of health and safety of other persons who could be placed in the cell, renovations, including recessing the alarm buzzer panel into the cell wall were carried out. Photographs were taken of the ligature in situ before that work was carried out. The Garda Siochâna do not have knowledge of the Court Order referred to in the Special Rapporteur's correspondence. Furthermore, in September 2005, approximately 3 months after the incident, solicitors for the Wheelock family wrote to the Department expressing surprise that remedial works had been carried out. No reference was made in that correspondence to the existence of a Court Order.

6. An inquest into Mr. Wheelock's death is ongoing at present. An inquest is an independent statutory inquiry to ascertain the cause of death and the Coroner has statutory duties and powers, including the power to call witnesses. The Coroner cannot consider questions of civil and criminal liability. Copies of the statements made in connection with the Gardaa Superintendent's investigation have been made available by the Garda Commissioner to the Coroner. The Minister for Justice Equality and Law Reform has offered financial assistance to the Weelock family to facilitate their legal representation at the inquest. He has also indicated that he will consider the matter further when the Inquest has been completed and a verdict returned.

Further information

7. Should the Special Rapporteur require further information the Irish authorities stand ready to assist in that regard.

Ireland: Death in Custody of Brian Rossiter

Violation alleged: Death in custody

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

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information that was provided by the Government of Ireland in response to his earlier communication, but he regrets that the Government has not provided the results of the independent inquiry into the death of Brian Rossiter.

Follow-up letter dated 17 October 2006 (to a letter of allegation sent on 30 September 2005)

I would like to draw your Excellency's attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 122-125), relating to the death in custody of **Brian Rossiter** in a cell in Clomel Garda Station in September 2002. In its response, your Excellency Government informed that an independent inquiry of the case was being conducted by Hugh Hartnett whose final report was to be published by the Minister for Justice, Equality and Law Reform.

As further indicated my observations I have made in my report, I would be grateful if your Government could provide me with a copy of Mr. Hartnett's report.

Israel: Deaths of Civilians in the Gaza Strip

Violation alleged: Deaths due to attacks by the military

Subject(s) of appeal: More than 170 persons

Character of reply: No response (recent communication)

Observations of the Special Rapporteur

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

Letter of allegation dated 30 November 2006

I am writing to your Excellency's Government to express my concern about recent incidents involving the killing of civilians in the Gaza strip and Israel. I am also writing a letter to the Palestinian Authority, a copy of which is enclosed with this letter.

According to reports received, on 8 November 2006 artillery shells fired by the Israeli Defense Forces at a cluster of houses in Beit Hanun in the Gaza Strip killed 18 Palestinians, including 14 women and children. On 22 November 2006, Israeli Defense Forces reportedly killed a woman in her 30s and a 16-year-old boy, in addition to two gunmen from Hamas. On 24 November 2006, in Beit Lahiya an Israeli Defense Forces sniper reportedly killed a 10-year-old boy, Abdel Aziz Salman.

These three incidents are just a few recent examples of the consistently rising death toll since Israeli Defense Forces re-entered the Gaza Strip following the capture of Cpl Shalit. According to statistics of the non-governmental organization Physicians for Human Rights, between 28 June and 27 October 2006 Israeli military action in the Gaza Strip directly caused the death of 247 persons and the injury of another 996. 155 of the 247 dead (corresponding to more than 63 percent) were civilians. According to the same statistics, 337 of those wounded, i.e. more than a third, were children.

I do not consider it necessary to recall in any detail here the overall body of norms and principles of international humanitarian law and international human rights law applicable to the conduct of military operations by the Israeli Defense Forces in the Gaza Strip in general and to the incidents mentioned above in particular. These include several principles specifically aimed at minimizing

civilian deaths in the course of military operations, such as the principle of distinction, the prohibition of indiscriminate attacks, the principle of proportionality, and the obligation to take all feasible precautions to avoid, and in any event to minimise, incidental loss of civilian life.

I would like to recall, as noted in my 2006 annual report to the Commission on Human Rights, that "[t]he State obligation to conduct independent and impartial investigations into possible violations does not lapse in situations of armed conflict and occupation" (E/CN.4/2006/53, para. 37). This includes the obligation, whenever a State receives allegations that someone has committed or ordered a grave breach - such as the "wilful killing" of a protected civilian – to investigate the matter and either try the suspected perpetrator before its own courts or extradite him to another State that has made out a prima facie case. Should the perpetrator be found guilty, the State must impose an effective penal sanction (ibid., para. 34).

With respect to these obligations, I would like to learn:

(i) whether your Government maintains statistics of the number of civilians the Israeli Defense Forces have killed in the Gaza Strip since 28 June 2006;

(ii) how many of these civilian deaths have been investigated, and whether such investigations were carried out only internally by the Israeli Defense Forces or also by other authorities;

(iii) the outcome of the investigations your Excellency's Government has carried out into the reported killing of more than 170 civilians in the Gaza Strip since the end of June 2006;

(iv) in my letter to your Government requesting a visit of 16 June 2006 I had expressed particular concern "about the reported recent intensification of rocket fire on Israel from Gaza, the explosion killing seven civilians on a beach north of Gaza City on 9 June 2006, and the 11 June 2006 rocket attack by the Israeli Defence Forces on a vehicle allegedly carrying artillery and explosives, which resulted in the death of two Islamic Jihad militants and nine civilians". Has your Government carried out independent investigations into the 9 and 11 June 2006 incidents (in addition to the internal IDF investigations) in the meantime? With what results?

It is my responsibility under the mandate provided to me by the Commission on Human Rights and extended by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on these incidents to the Council, I would be grateful for your cooperation and your observations on the above matters. I undertake to ensure that your Government's response to each of these questions is accurately reflected in the report I will submit to the Human Rights Council for its consideration. Please note that in order to include your Government's response in my next report to the Human Rights Council, I would need to receive it before 15 January 2007.

In the light of the reports received and of the questions these reports raise, I also would like to reiterate my request to conduct a visit to Israel and the Occupied Palestinian Territories at the earliest possible date. The Palestinian Authority has indicated its consent to my request. I am

confident that such a visit could take place in the same constructive spirit as my recent visit to Israel from 10 to 14 September 2006.

Jamaica: Murder of Lenford "Steve" Harvey

Violation alleged: Impunity

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 Jamaica has failed to cooperate with the mandate that he has been given by the General Assembly and the Commission on Human Rights.

Letter of allegation dated 9 December 2005 sent with the Special Representative of the Secretary-General on the situation of human rights defenders

I would like to draw the attention of your Government to information I have received concerning **Lenford 'Steve' Harvey**, Jamaica Aids Support for Life, an organization dedicated to preserving the dignity and rights of persons living with HIV/AIDS and providing education on related issues.

> According to the information received, on 30 November 2005, at approximately 1:00 am, at least four assailants forcibly entered the home of Lenford Steve Harvey. They reportedly tied him up, along with two other persons in the residence, and stole a number of possessions. They then abducted Lenford Steve Harvey and took him away in his company car. His body was found in a rural area miles from his home with gunshot wounds in his back and head.
>
> Grave concern is expressed that the killing of Lenford Steve Harvey was related to his human rights work for Jamaica Aids Support for Life and his work for marginalized people and people living with HIV/AIDS in Jamaica and the Caribbean.

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 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, I would like to bring your Excellency's attention to the following provisions, and in particular:

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

I urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned person are respected and accountability of any person guilty of the alleged violations ensured. I also request that your Government adopts effective measures to prevent the recurrence of these acts.

Moreover, it is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Commission, 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. 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.

Jamaica: Killing of Gayon Alcott and Sandra Sewell

Violation alleged: Deaths due to attacks or killings by law enforcement officials

Subject(s) of appeal: 1 male; 1 female

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur appreciated the preliminary information provided by the Government of Jamaica in response to his earlier communication, but he regrets that the Government has not provided the results of its investigations into the deaths of Gayon Alcott and Sandra Sewell.

Follow-up letter dated 17 October 2006 (to a letter of allegation sent on 16 November 2004)

I would like to draw your Excellency's attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 136-137), relating to the killing by law enforcement officials of M. **Gayon Alcott** and Ms. **Sandra Sewell**. In its response, your Excellency Government informed that investigations were being carried out by the Bureau of Special Investigations of the Jamaica Constabulary force and the Police Public Complaints authority.

As further indicated in my observations, I would be grateful if your Government could provide me with information relating to the results of the above mentioned investigation. I would also like to know if any penal or disciplinary sanctions were imposed and if any compensation was provided to the families of M. Alcott and Ms. Sewell.

Kyrgyzstan: Deaths of Three Men in Osh

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

Subject(s) of appeal: 3 males

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 Commission on Human Rights.

Letter of allegation dated 1 September 2006 jointly with the Special Rapporteur on freedom of religion or belief

We would first like to assure you that we are conscious of the fact that States' obligation to protect and promote human rights requires them to take effective measures to combat terrorism. Further, we would like to underline that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law. We view our mandates as Special Rapporteurs as a device to support and advise States in protecting and promoting human rights and fundamental freedoms while countering terrorism.

We would like to draw your Excellency's Government's attention to the case of Mr. **Mohammadrafiq Kamoluddin,** imam of a mosque in the city of Kara-Suu, Mr. **Ayubkhodja Shahobidinov** and Mr. **Fathullo Rahimov**. According to the allegations we have received:

> On 6 August 2006, the above-mentioned individuals were killed in the city of Osh as the result of an alleged counter terrorism operation, led by the National Security Service of Kyrgyzstan, in cooperation with the security forces of Uzbekistan. It has been reported that these individuals were suspected members of the Islamic Movement of Uzbekistan and were planning to carry out a terrorist attack on the territory of the State of Uzbekistan. Other reports highlight that it was not alleged that Mr. Mohammadrafiq Kamoluddin was a member of the Islamic Movement of Uzbekistan or that he was involved in the commission of terrorist acts.

Without in any way implying any conclusion as to the facts of the case, I should like to appeal to your Excellency to seek clarification of these facts and circumstances. I wish to remind you that while Governments have a responsibility to protect their own citizens and those of other States against the excesses of non-State actors or other entities, General Assembly resolution 59/191, in its paragraph 1, stresses that: "States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law", as does Security Council resolution 1456 (2003) in its paragraph 6. In this respect, I wish to stress my concern that empowering Governments to identify and kill "known terrorists" places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative has been exhausted. (See the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the 61st Commission on Human Rights, E/CN.4/2005/7, at par. 41).

We would also like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration on Human Rights as well as of the International Covenant on Civil and Political Rights.

Since we are expected to report to the Human Rights Council on all cases brought to our attention, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate? In particular, does your Government acknowledge that these killings were the result of a counter-terrorism operation carried out by your security forces on 6 August 2006?

2. On what basis was it decided to kill, rather than capture, these three individuals? What rules of national and international law does your Excellency's Government consider to govern these incidents? Did the Government of Uzbekistan agree to carry out this operation with your Excellency's Government? What rules of international law does your Excellency's Government consider to govern this joint action?

3. Does your Excellency's Government intend to provide compensation to the families of the three individuals killed in this operation? If so, what steps have been taken in this direction?

4. Please indicate what the legal basis for qualifying an individual or an entity as "terrorist" under the law of Kyrgyzstan is. Please also indicate what the consequences are of such qualification. In this specific instance, what evidence did your Excellency's government have at its disposal to determine that these individuals were in fact alleged terrorists? Were these individuals aware that this determination had been made?

5. Lastly, please indicate what evidence your Excellency's government had at its disposal to determine that these individuals were to carry out terrorist crimes and which terrorist crimes these were.

We remain at your disposal with regard to any questions or requests for any assessment that your Excellency's Government would wish to seek, in the form of written comments, hearings before parliamentary or other bodies or through a Special Rapporteur's country visit.

Kyrgyzstan: Death in Custody of Tashkenbai Moidinov

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur appreciated the preliminary information provided by the Government of Kyrgyzstan in response to his earlier communication, but he regrets that the Government has not informed him of the results of its investigation into the death of Tashkenbai Moidinov, of any penal or disciplinary sanctions that were imposed on those responsible, or of any compensation provided to the victim's family.

Follow-up letter dated 17 October 2006 to a letter of allegation sent on 15 December 2004

I would like to draw your Excellency's attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 141-143), relating to the death in custody of **Tashkenbai Moidinov** in December 2004 at a regional militia office in Bazar-Kurgan. In its response dated February 2005, your Excellency Government informed that a criminal case investigation had been open by the Bazar-Korgon procurator's office.

As further indicated in my observations, I would be grateful if your Government could provide me with information relating to the results of the above mentioned investigation. I would also like to know if any penal or disciplinary sanctions were imposed and if any compensation was provided to the families of M. M. Tashkenbai Moidinov.

Lao People's Democratic Republic: Killing of Hmong People near Vang Vieng

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

Subject(s) of appeal: At least 26 persons

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur notes the information provided by the Government of the Lao People's Democratic Republic.

Letter of allegation dated 27 June 2006

I would like to bring your attention to reports I have received regarding **the killing of ethnic Hmong people** by governmental troops in northern Vientiane province. The deadly attack, which is alleged to have taken place some 20 kilometres northeast of the tourist town of Vang Vieng on 6 April 2006, claimed the lives of at least 26 people, reportedly mostly women and children. Another four people were wounded.

According to the information received, governmental troops launched their assault in the morning hours while the victims, reportedly unarmed, were searching for food outside of their hiding places in the jungle.

In raising my concerns with regard to the killing of civilians by military assault, I am aware of the existence of armed Hmong rebel groups that carry out attacks against governmental forces. However, I would like to bring to your attention that concerns have been expressed for the safety of the civilians that belong to Hmong groups living in hiding, some of whom are reportedly surrounded by Lao army units, struggling to find food and with no access to medical care.

Without pre-judging the accuracy of the allegations received, I would like to refer Your Excellency's Government to Article 3 of the Universal Declaration of Human Rights which provides that every individual has the right to life and security of the person.

I would also like to appeal to your Excellency's Government to ensue that all deaths that occurred in connection with the operation of 6 April 2006 are promptly, independently and thoroughly investigated in accordance with the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation … to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Commission added that this obligation includes the obligation "to identify and bring to justice those responsible, …, to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary

measures, including legal and judicial measures, in order to … prevent the recurrence of such executions".

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

(i) Are the facts alleged above accurate? If not so, please describe the investigations carried out to ascertain that the allegations are ill-founded.

(ii) 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 killings of civilians in northern Vientiane province.

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

Response of the Government of the Lao People's Democratic Republic

With reference to your letter of 27 June 2006, I wish to inform you that the allegation of the Lao People's Army troops killing ethnic Hmongs in the vicinity of Vangvieng district, Vientiane province on 6 April 2006 is simply groundless and non.-existent. It represents just a twin of the fabricated 2004 TV footage contending that "about 30-40 LPA troops had raped and slain 5 Hmong girls".

In view of the foregoing renewed allegation, I would like to further clarify as follows:

Since the proclamation of the Lao PDR in 1975, the Government has exerted every effort in leading the country to consolidate security and stability, heal wounds of the protracted and devastating aggressive war with special emphasis on economic revival and development, thus gradually improving the living conditions of our multi-ethnic people and moving the country out of the traps of abject poverty and backwardness. Thanks to an effective resettlement programme put in place by the Government, as part of its efforts to eradicate poverty and achieve sustainable development, more and more people of various ethnic groups are moving out from the rugged and isolated mountain areas to join in the development village project. Yet, it is inevitable that there would be bandits shooting and looting commercial and passenger vehicles on some occasions during the past years. At present, however, those thugs are so constrained that they are no longer in a position to carry out their banditry acts en route. There is no opposition party or anti-government force whatsoever in the Lao PDR.

Despite the incredible information and unreasonable complaint from some anonymous foreigners who could not identify the source and witness of the case, except a reference to just "it was reported as such", the Lao Government urgently formed an investigation team comprising of officials from the Ministry of National Defense and Ministry of Public Security to conduct inquiry into the allegation, in cooperation with the District Security and Military Commands as well as the District and Village authorities and local people and report the findings to the government. After thorough investigation, it was found that no one was aware of the incident.

Nor was there any evidence or sign of an attack and civilian casualties of any kind. Moreover, there has been no communication dispatched by the local people to any concerned authorities. Had there been any such incident as claimed, what pretext could they have got for justifying their ignorance? This reality has led the Lao authorities concerned to the conclusion that the alleged incident is false, groundless and non-existent, and is proved to be merely a fabrication made up by some malevolent outfits abroad to harm the reputation of the Lao People's Army. The fabricated story was also premeditated to cause concern and fear to foreign tourists and visitors who love natural sceneries and have interest in the Lao PDR's tourism attractions, particularly in the neighbourhood of the tourist town of Vanvieng. The Lao PDR Government and people as well as inhabitants of the District reaffirm that there are no Hmong or other ethnic resistance forces in Laos. The authorities and people of the district are well aware that the so-called individuals or civilians hiding in the jungle do not exist. Although there are some population living sparsely in the rugged mountain regions who had hidden themselves from the horrible bombardments by the imperialist aggressors during the war time remaining, . . they are in no way sieged by LPA troops. Conversely they are participating increasingly in the development village or development village group projects in line with policy of the Government.

Given the lack of evidence and victims of the alleged incident reported by the investigation team, there were no requests for medical examination or individual inquiry and no casualties - whatsoever. Therefore, no compensation has been paid to any person

The Lao People's Army is highly disciplined, committed to protect the people's lives and properties as well as to assist them in earning their livings and improving their living conditions. In carrying out their duties the Lao People's Army is bound to stringently follow its military rules and regulations, staying alert of machinations of evil-minded individuals aimed at driving a wedge between the people and the Army. Up tell now, no complaint or lawsuit regarding the incident has been filed to the Lao government or its relevant agencies either at the local or the central levels. This indicates that the allegation is flawed and fictional.

We sincerely hope that the clarifications mentioned above would help the international community and various organs of the United Nations to realize this case and trust the Lao People's Army, a highly disciplined and well-trained armed force with a high moral standard, which grew up from the age-long struggle for national independence and freedom of the Lao multi-ethnic people, and is presently tasked to safeguard peace and security of the Lao people and contribute to socio-economic development of the country.

Libyan Arab Jamahiriya: Death in Custody of Hafed Mansur Al-Zwai

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Libyan Arab Jamahiriya.

Urgent appeal dated 31 October 2006 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received concerning a serious incident which took place in the Tripoli Abu Salim Prison, which reportedly led to the death of one prisoner and the injuring of at least nine others. According to the allegations received, on 4 October 2006, some 190 prisoners were brought back to Abu Salim Prison following a hearing at a court in Tripoli. Upon their return to the Abu Salim prison, some of the prisoners started to protest and an altercation ensued with the prison guards. The prison administration called in security forces from outside the prison to assist the guards in order to control the situation. Between 2pm and 3pm law-enforcement officials reportedly fired tear-gas grenades and live ammunition at some of the prisoners. A prisoner, **Hafed Mansur Al-Zwai**, received a bullet to the head and died shortly afterwards. Nine other prisoners, **Rida Al-Hariri**, **'Abd Al-Mun'em Ahmad 'Abd Al-Rahman**, **Hafed Al-Amani**, **Fadlallah Al-'Arabi**, **Al-Sanussi Al-Bashari**, **Ayman Al-Busufi**, **Ashraf Al-Fazzani**, **'Abd Al-Wahab Al-Katshi** and **Khaled Al-Mansuri**, were injured and taken to hospital for treatment. Most of them received bullet wounds and are reportedly still be in a serious condition.

Abdallah Senoussi, a top security official, reportedly told the detainees to reveal the name of the detainee who had informed the media about the incident by the end of 9 October, telling them that all detainees would be attacked if they failed to do so.

Without in any way implying any conclusion as to the facts of the case, we urge your Excellency's Government to take all necessary measures to protect the physical and mental integrity of all the prisoners and guarantee that the practices of law-enforcement officials inside Abu Salim prison are consistent with international human rights standards, such as the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, 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).

Concerning the ultimatum given to the prisoners to reveal the name of the detainee who "informed the media" of the incidents in Abu Salim prison, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons.

This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.We would also like to draw your Government's attention to paragraph 8 of Resolution 2005/39 of the Commission on Human Rights. Paragraph 8 reminds Governments that, as described in article 1 of the Convention against Torture, which your Government acceded to in 1989, intimidation and coercion, including serious and credible threats, as well as death threats, (…) can amount to cruel, inhuman or degrading treatment or to torture.

Furthermore, we would also like to appeal to your Excellency's Government to ensure that all deaths that occurred in connection with the incidents in the Abu Salim prison on 4 October 2006 are promptly, independently and thoroughly investigated in accordance with the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation (…) to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Commission added that this obligation includes the obligation "to identify and bring to justice those responsible, (…) to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to (…) prevent the recurrence of such executions".

It is our responsibility under the mandate provided to us by the Commission on Human Rights and extended by the Human Rights Council to seek to clarify all cases brought to my 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? If not so, please describe the investigations carried out to ascertain that the allegations are ill-founded.

2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the death of Mr. Hafed Mansur Al-Zwai and the prisoners that were injured during the incidents in Abu Salim prison.

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

Response of the Government of the Libyan Arab Jamahiriya dated 13 November 2006

Revolt by a number of prisoners at the Abu Salim Reform and Rehabilitation Institute.

The Department of Public Prosecutions launched an investigation into the incidents that occurred at the Abu Salim Reform and Rehabilitation Institute on Wednesday, 4 October 2006, where a number of prisoners and detainees staged a revolt. The Department of Public Prosecutions took all the steps required by law, questioning security personnel and guards of the officer class and other ranks. It also questioned inmates who were not involved in the incident. The investigation revealed that several detainees being held at the Institute while on trial had returned from a session at which the court had decided to defer consideration of their case until a later date, at the

request of the defence. When they entered the Institute, they occupied a number of administrative offices and threatened to set fire to them. At the same time, they incited the other prisoners to join them and moved towards the main entrance which they proceeded to occupy, jeopardizing the security and safety of the Institute as well as the safety of prisoners, guards and prison staff. The officer in charge of the Institute went to the men to try to restore calm and convince them to return to their cells. They attempted to assault him and a number of police guards, several of whom were injured. The management had to call the General Security Department for reinforcements. After a major effort, the General Security contingent and a group of guards managed to get back into the Institute. At this point, the prisoners started to pelt the police with stones and pieces of iron that they had stolen from the site of the company carrying out maintenance work at the Institute. A number of men climbed the walls and windows in a bid to escape, compelling the guards on the roofs and at the main entrances to discharge their weapons in order to gain control of the situation. As a result, three prisoners received injuries of different kinds and were taken to hospital. The General Security officers who had been called in to help with the protection of the Institute made a great effort to force the prisoners back into their cells. Direct clashes between the police and the prisoners ensued, with the police being bombarded with iron pieces, screwdrivers and water pipes. In the clashes, eight policemen were injured, two of them slightly and the six others with various injuries, for which they were hospitalized. The names of these persons are:

1. Muhi al-Din Ashur al-Sabuni, second lieutenant, General Department of General Security

2. Mohammed Izz al-Din Salim bin Farj, policeman, General Department of General Security

3. Murad Ali al-Ziyyani, policeman, General Department of General Security

4. Mohammed Bashir Ghayth Hamid, policeman, General Department of General Security

5. Al-Najih Khalifah Abdallah, assistant officer, Internal Security Department

6. Usamah Khalifah Abdallah, corporal, Internal Security Department

After the prisoners had returned to their cells, one person was found lying on the floor. Upon examination, he was found to be dead.

The investigation showed that the dead prisoner, Hafiz Mansur al-Zawi, had been imprisoned in connection with case No. 120/98. The pathologist's report indicated that the cause of death was a single injury sustained when the head of the deceased had collided with a body, cracking the skull and precipitating a fatal haemorrhage. The report ruled out a gunshot wound as the cause of death. The relatives of the deceased were notified of the death and of the conclusions of the medical report and the Department of Public Prosecutions ordered that the body be released to the family for burial.

According to the investigation, three prisoners had been injured, namely:

1. Ayman Ali al-Busayfi

2. Al-Sanusi Mohammed al-Bashari

3. Fadlallah Mohammed al-Mughayrbi

These persons sustained various injuries and were taken to hospital for treatment. The Department of Public Prosecutions took their statements.

The investigation will continue until the testimony of prisoners associated with, or involved in the incident, and that of some of the Institute's personnel has been heard. The medical report has been annexed to the case file.

The persons who carried out these acts are known Islamic extremists who were arrested and investigated in the course of recent years. They were charged with belonging to a proscribed organization, carrying out acts of murder, sabotage and terrorism, stealing weapons, forging passports and documents, and killing foreigners. They were originally tried before the People's Court, but when that Court was abolished, pursuant to Act No. 7/2006, their case was transferred to the Criminal Court, a court which specializes in dealing with terrorist crimes, organized killings and sabotage and which was established by the Judicial Authority Act No. 51/1976. The Court held several sessions in 2005-2006. The Prosecutor-General personally oversaw the conduct of the investigation and the application of due process. He entrusted Mohammed Abd al-Wahhab Salim, Chief of the Department of Public Prosecutions for southern Tripoli, with the investigation.

Libyan Arab Jamahiriya: Disappearances from Abou Slim Prison

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

Subject(s) of appeal: 3 males

Character of reply: No response (recent communication)

Observations of the Special Rapporteur

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

Urgent appeal dated 30 November 2006

I would like to draw the attention of your Government to information I have received concerning the disappearance of **Ali Omar Al Gamoudi**, **Aissa Bachir Al Magrahi** and **Aboubekr Khelifa Al Rabbah** from the Abou Slim prison.

The three men were sentenced to death on 21 December 2004 and were detained since then at the Abou Slim prison. According to the information received, they initiated a hunger strike after the security forces intervened inside the prison on 4 October 2006, which resulted in one casualty

and 9 wounded among the detainees (incident for which I sent a communication to your Excellency's Government on 31 October 2006).

The three men were reportedly taken away by security forces on 23 October 2006 to an unknown destination. To date, their families ignore their whereabouts as they have not been transferred to any other place of detention. Fears have been expressed that they might have been executed in retaliation for their involvement in the hunger strike.

Without wishing to prejudge the accuracy or otherwise of the facts reported, I would like to draw your attention to the fact that a person's due process rights and the right to be treated humanely do not come to an end with the imposition of the death sentence. A lack of transparency regarding the post-conviction process and timetable for execution implicates two sets of rights. The first is that the failure to provide notice to the accused of the timing of his execution may undermine due process rights. Most notably, in addition to "the right to his conviction and sentence being reviewed by a higher tribunal" (ICCPR Article 14(5) the death row prisoner has "the right to seek pardon or commutation of the sentence" (ICCPR Article 6(4)). The uncertainty and seclusion inflicted by opaque processes compromise this right. In addition, and regardless of the actual due process consequences, to conceal from someone the facts of their preordained fate will constitute inhuman or degrading treatment or punishment.

Moreover, for the prisoner and for his or her family a lack of transparency in what is already a harrowing experience — waiting for one's execution — can result in "inhuman or degrading treatment or punishment" within the meaning of Article 7 of the ICCPR. The views of the Human Rights Committee in a recent decision that responded to an individual complaint illustrate this matter. The Human Rights Committee found that "[t]he complete 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." This amounted to inhuman treatment in violation of Article 7 of the ICCPR (Human Rights Committee, Communication No. 886/1999: Belarus, para. 10.2, 77th Sess., April 28, 2003, CCPR/C/77/D/886/1999).

In view of the urgency of the matter, I therefore urge your Excellency's Government to take all measures to guarantee that the rights under international law of Ali Omar Al Gamoudi, Aissa Bachir Al Magrahi and Aboubekr Khelifa Al Rabbah are respected.

I would also appreciate if your Excellency's Government could provide full information relating to the detainees' whereabouts.

Malaysia: Killing of Five Migrant Workers

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

Subject(s) of appeal: 5 persons (foreign nationals)

Character of reply: No response

Observations of the Special Rapporteur

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

Letter of allegation dated 6 March 2006 sent with the Special Rapporteur on the human rights situation of migrants

We would like to draw the attention of your Excellency's Government to information we have received alleging the killing of **five migrant workers** by agents from the Department of Immigration belonging to a volunteer service known as "RELA".

According to the information received the bodies of five migrant workers were recovered from a lake in Selayang area of Malaysia's capital city of Kuala Lumpur from 11 to 13 February 2006 following a raid by the RELA immigration officials. Two of the five bodies were recovered from the lake - a flooded open cast-mining pit - late on 11 February 2006 and the remaining three on 12 and 13 February 2006.

According to eyewitnesses, in the early hours of 11 February 2006, the Immigration Department conducted a raid on Selayang's open market where many migrants work. Migrant workers were heard screaming for help while RELA officers shouted that they would kill the migrants if they ran away.

We are aware that the Malaysian government has issued a statement in which it refuted these allegations and explained that the operation carried out by RELA officers went smoothly and involved only the checking of the documents of foreign workers, some of whom managed to run away.

Our understanding is that autopsies were conducted on four of the bodies on 13 February 2006 while the fifth one, identified as being Mr. Zaw Oo, a Burmese migrant, was not taken to hospital and was buried immediately. Reports indicate that the bodies showed no signs of stab or slash wounds and that they were too badly decomposed to be able to tell whether they had been beaten with batons, such as those carried by RELA volunteers.

The overall circumstances of these deaths and the way in which they have been presented by some observers serve to emphasize the importance of ensuring that a thorough investigation be undertaken and that it not be left to the officials involved or those working closely with them. Ideally an independent investigation, based on thorough police and forensic work would be undertaken, and the results made public.

In this regard we note the importance attached by international human rights law to investigations being conducted in a prompt and effective manner in such situations (CHR resolution 2004/37, para 6; Human Rights Committee, General Comment 31, para. 15). Similarly, Principle 9 of the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides that the purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate

autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

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

1. Are the facts alleged in the above summary accurate? Please provide the names and casualties that resulted from the operation.

2. Given the allegations that the "RELA" personnel are members of a volunteer reserve who reportedly lack adequate training, command and accountability, please provide details about their chain of command, especially in relation to their relationship with the Malaysian immigration department.

3. What were the aims of this operation?

4. Please provide a copy of the rules of engagement that were in effect during this operation.

5. Please provide the details and where available the results, of any investigation, medical examinations, and judicial or other inquiries that may have been carried out by the competent authorities in relation to this case as well as the steps taken to ensure that the provisions contained in the aforementioned international legal instruments are respected.

Mexico: Muerte de Dante Almaraz en Ciudad Juárez

Violación alegada: Impunidad

Persona objeta del llamamiento: 1 hombre, abogado y defensor de los derechos humanos

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial agradece al Gobierno por su respuesta y aprecia su decisión de adoptar medidas particulares para vigilar los domicilios de los familiares de la víctima. El Relator Especial solicita al Gobierno que lo mantega informado sobre los resultados de la investigación judicial emprendida.

Carta de alegación del 6 de marzo de 2006 mandada con la Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias y la Representante Especial del Secretario-General para los defensores de los derechos humanos

En este contexto, quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido sobre el abogado y defensor de derechos humanos **Dante Almaraz**. De acuerdo a dicha información:

> El 26 de enero de 2006 Dante Almaraz fue asesinado con un arma de fuego por hombres no identificados, mientras conducía en el centro de Ciudad Juárez, Estado de Chihuahua. En efecto, según la información recibida, en dicha fecha el vehículo del Sr. Almaraz fue interceptado por otro vehículo tripulado por varios hombres no identificados, quienes le dispararon en repetidas ocasiones. Durante dicho ataque resultó herido uno de sus acompañantes. La Comisión Interamericana de Derechos Humanos ya había ordenado al Estado de México tomar todas las medidas necesarias para proteger la integridad de Dante Almaraz.
>
> Dante Almaraz era un reconocido abogado defensor de derechos humanos de Ciudad Juárez. Antes de su muerte había defendido a Víctor Javier García Uribe, quien al parecer habría sido torturado con el fin de que confesara la autoría del homicidio de 8 mujeres en 2001. El Sr. García Uribe fue condenado a 50 años de prisión. Asimismo, según la información recibida, la familia de Dante Almaraz habría recibido varias amenazas anónimas de muerte, con el fin de que éste no continuara con la defensa del Sr. García Uribe. Este último fue liberado como resultado de un recurso de apelación.
>
> Por otra parte, otro abogado que participó en la defensa de los acusados del caso de los 8 homicidios en Ciudad Juárez, Mario Escobedo Anaya, habría resultado muerto en una persecución llevada a cabo por la policía en Febrero 2002. Su defendido, el Sr. Gustavo González Meza, murió en prisión en el año 2003.

Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de Su Excelencia sobre las Directrices de los Principios básicos sobre la función de los abogados, adoptados por el Octavo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, La Habana, 27 de agosto a 7 de septiembre de 1990 y en particular sobre:

- Principio 16. Los gobiernos garantizarán que los abogados a) puedan desempeñar todas sus funciones profesionales sin intimidaciones, obstáculos, acosos o interferencias indebidas; b) puedan viajar y comunicarse libremente con sus clientes tanto dentro de su país como en el exterior; y c) no sufran ni estén expuestos a persecuciones o sanciones administrativas, económicas o de otra índole a raíz de cualquier medida que hayan adoptado de conformidad con las obligaciones, reglas y normas éticas que se reconocen a su profesión.

- Principio 17. Cuando la seguridad de los abogados sea amenazada a raíz del ejercicio de sus funciones, recibirán de las autoridades protección adecuada.

- Principio 18. Los abogados no serán identificados con sus clientes ni con las causas de sus clientes como consecuencia del desempeño de sus funciones.

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 de conformidad con los principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias, o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. Quisiéramos asimismo instarle a que tome las medidas eficaces para evitar que se repitan tales hechos.

También quisiéramos instar al Gobierno de su Excelencia a que adopte todas las medidas necesarias para garantizar el derecho de la persona mencionada a no ser víctima de cualquier forma de violencia por cuestiones de género, discriminación y abuso. A este fin, quisiéramos llevar a la atención de su Excelencia la Declaración sobre la eliminación de la violencia contra la mujer, aprobada por la Asamblea General de las Naciones Unidas, que establece que la mujer tiene derecho, en condiciones de igualdad, al goce y la protección de todos los derechos humanos y libertades fundamentales en las esferas política, económica, social, cultural, civil y de cualquier otra índole. Entre estos derechos figuran, (a) el derecho a la vida; (b) el derecho a la igualdad; (c) el derecho a la libertad y la seguridad de la persona; y (d) el derecho a igual protección ante la ley (artículo. 3). Además, también estipula que todos los estados deberán proceder con la debida diligencia a fin de prevenir, investigar y, conforme a la legislación nacional, castigar todo acto de violencia contra la mujer, ya se trate de actos perpetrados por el Estado o por particulares (artículo 4 (c)).

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

Es nuestra responsabilidad de acuerdo con los mandatos que nos han entregado la Comisión de Derechos Humanos, los cuales han sido reforzados por las resoluciones pertinentes de la Asamblea General, intentar conseguir clarificación sobre los hechos llevados a nuestra atención. En nuestro deber de informar sobre esos casos a la Comisión, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los 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 asesino del Sr. Almaraz, incluyendo los resultados de los exámenes médicos llevados a cabo Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.

4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

5. Por favor, indique si los familiares de la víctima obtuvieron algún tipo de compensación a modo de indemnización.

Respuesta del Gobierno de México del 16 de junio de 2006

Con respecto a los dos primeras preguntas, es pertinente precisar que el homicidio ocurrió el 25 de enero de 2006, y a partir de este hecho la Procuradora General de Justicia del Estado de Chihuahua (PGJCH) inició la averiguación previa 1102-3212/06, cuya integración se encuentra supervisada directamente por la Procuradora General, la que además dispuso la conformación de un grupo especial de investigación integrado por agentes del Ministerio Público y elementos de la Agencia Estatal de Investigación, capacitados particularmente en metodología técnico-científica.

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

En lo concerniente a la cuarta pregunta, se exponen los siguientes datos:

La Directora de Atención a Víctimas del Delitos, y personal especializado en materia de psicología, estuvieron pendientes de brindar el apoyo necesario a los deudos desde et momento en que la autoridad recibió noticias del hecho. Además, se les acompañó durante et proceso de identificación y en las exequias.

El 31 de enero de 2006, la Procuradora General de Justicia se reunió con los parientes del Lic. Sergio Dante Almaraz, para informarles acerca de la investigación y para presentarles a los encargados de realizarla, asimismo, se les ha brindado información oportuna de los progresos realizados dentro de la investigación.

El Ministerio Público determinó, para efectos de protecci6n y con fundamento en lo ordenado en et articulo 120, inciso a) del Código de Procedimientos Penales del Estado de Chihuahua, establecer las medidas particulares de vigilancia de los domicilios de los familiares del Lic. Sergio Dante Almaraz Mora.

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

Para responder a la última pregunta, le informo que, ya que aún no se ha ejercido la acción penal en contra de ninguna persona, no es procedente el otorgamiento de la reparación del daño, pero en cuanto se haya cumplido con los requisitos establecidos por la ley, et Ministerio Público promoverá lo necesario para que se haga efectiva la reparación del daño.

Mexico: Muerte de Sócrates Tolentino González Genaro y Amenazas contra su Familia

Violación alegada: Muerte en detención y amenazas de muerte

Persona objeta del llamamiento: 1 hombre; 2 mujeres

Carácter de la respuesta: No respuesta

Observaciones del Relator Especial

El Relator Especial lamenta que el Gobierno de México no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

Llamamiento urgente del 1 de septiembre de 2006

Quisiera llamar la atención de su Gobierno sobre la información que he recibido en relación con los actos de intimidación en contra de la madre y las hermanas de **Sócrates Tolentino González Genaro**, quien murió bajo custodia policial en Zapotitlán Tablas, estado de Guerrero, en enero de 2004.

Según la información recibida, el 14 de julio de 2006, dos agentes de la policía municipal fueron detenidos por el homicidio de Sócrates González Genaro. A partir de esta fecha, la madre del señor Genaro, Lucía Genaro, así como sus 5 hijas, habrían sido víctimas de amenazas y actos de intimidación.

El 17 de julio de 2006, tres desconocidos se habrían presentado en el domicilio de **Lucía Genaro**. Como ella se encontraba ausente, los desconocidos le habrían dejado un mensaje con sus vecinos, mensaje en el que le informaban de las detenciones, le ponía una cita para el día siguiente y la amenazaban diciéndole que si no asistía algo malo podría sucederle.

El 19 de julio, dos hombres sin identificar acudieron a la casa del sobrino de Lucía Genaro y le preguntaron por una joven rubia que a veces se alojaba allí. Según la información recibida, cuando el sobrino de Lucía Genaro se negó a responder, los dos hombres le dijeron que secuestrarían a la joven si su madre no colaboraba con ellos. Lucía Genaro cree que los hombres buscaban a su hija, **Erika González Genaro**, cuya apariencia coincide con la descripción hecha por los dos desconocidos.

El 23 de julio, tres hombres sin identificar habrían presentado en la casa de Lucía Genaro pero al no encontrarla se habrían marchado.

Es importante señalar que esta no es la primera vez que la familia de Sócrates González Genaro es víctima de amenazas y actos de intimidación. A través de una carta enviada a su gobierno el 2 de junio del 2004, mi predecesora en este mandato sobre ejecuciones extrajudiciales, sumarias o arbitraras, la Sra. Asma Jahangir**,** ya había expresado su preocupación con relación a las múltiples amenazas de muerte que la familia del Señor Genaro habría recibido en el 2004 por parte de miembros de la policía municipal.

En este contexto, me gustaría instar a su gobierno a adoptar sin demora todas las medidas necesarias para garantizar la seguridad del los familiares del Señor Genaro. A este respecto, me permito llamar su atención sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, Resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. En particular, llamo la atención de su Gobierno sobre el principio15 según el cual "Los querellantes, los testigos, quienes realicen la investigación y sus familias serán protegidos de actos o amenazas de violencia o de cualquier otra forma de intimidación. Quienes estén supuestamente implicados en ejecuciones extralegales, arbitrarias o sumarias serán apartados de todos los puestos que entrañen un control o poder directo o indirecto sobre los querellantes, los testigos y sus familias, así como sobre quienes practiquen las investigaciones".

Igualmente, quisiera llamar la atención de su Gobierno sobre los principios 9 y 19 de los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias. De acuerdo a estos dos principios, los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.

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

1. ¿Son exactos los hechos referidos?

2. Si fueron presentadas quejas o denuncias, ¿cuales han sido las respuestas a las mismas y las acciones referidas en las respuestas?

3. Por favor, proporcione los detalles así como los resultados de las últimas diligencias judiciales o de otro tipo, realizadas en relación a la muerte del Sr. Sócrates Tolentino González Genaro.

4. Por favor, indique si alguna compensación ha sido otorgada a la familia del señor Sócrates Tolentino González Genaro. A este respecto, me gustaría señalar que la presunción de la responsabilidad estatal en casos de muerte bajo custodia significa, *inter alia*, que los Estados deben suministrar reparación a las familias de las víctimas, en ausencia de pruebas de que el Estado no fue responsable de la muerte bajo custodia.

6. ¿Cuales son las acciones tomadas o planeadas para garantizar la seguridad del los familiares del Señor Sócrates Tolentino González Genaro y prevenir la repetición de tales incidentes en el futuro?

Mexico: Muertes Durante Manifestaciones en Oaxaca

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

Persona objeta del llamamiento: 5 hombres (manifestantes)

Carácter de la respuesta: No respuesta

Observaciones del Relator Especial

El Relator Especial lamenta que el Gobierno de México no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos. El Relator Especial nota con precocupación que a pesar de haber mandado tres comunicaciones durante un período de dos meses, continuan muriendo manifestantes debido al uso excesivo de la fuerza por parte de las fuerzas de seguridad.

Carta de alegación del 12 de Septiembre de 2006 mandada con el Relator Especial sobre la tortura

En el ejercicio de nuestros mandatos respectivos, deseamos poner en su conocimiento las denuncias que hemos venido recibiendo con relación a violaciones de derechos humanos cometidas por presuntos miembros de las fuerzas de seguridad del Estado, durante el mes de Agosto de 2006 en Oaxaca.

Según la información recibida, se teme que las fuerzas de seguridad hayan sido responsables de la muerte de por lo menos dos personas desde el 10 de agosto. De acuerdo a nuestras fuentes, ese día, el Sr. **José Jiménez Colmenares** habría fallecido y varias personas habrían resultado heridas, luego de que presuntos policías dispararan en varias ocasiones contra la multitud que participaba en una marcha pacífica. De manera similar, el 22 de agosto, el Sr. **Lorenzo San Pablo Cervantes** habría muerto debido a un disparo en la espalda, después de que presuntos miembros de las fuerzas de seguridad abrieran fuego contra unos manifestantes que se encontraban en la radiodifusora “la Ley 710”.

De acuerdo a la información que hemos recibido, las fuerzas de seguridad también habrían sido responsables de malos tratos y torturas infligidas a ciudadanos en Oaxaca.

El 10 de agosto, el biólogo **Ramiro Aragón Pérez** y los Sres. **Elionai Santiago Sánchez** y **Juan Gabriel Ríos**, habrían sido detenidos y golpeados por presuntos agentes ministeriales que viajaban en vehículos sin placas. Según la información recibida, los agresores casi estrangularon al Sr. Sanchez y lo golpearon en el abdomen, las costillas y la cara. Posteriormente, los tres hombres habrían sido entregados a la Procuraduría del estado de Oaxaca, quien los acusó de posesión ilegal de armas de fuego. El 12 de Agosto, el Sr. Sanchez y el Sr. Rios quedaron en libertad bajo fianza, pero el Sr. Ramiro Aragón Perez continua detenido en la prisión de Zimatlán de Alvarez y se teme que pueda ser sometido a torturas o malos tratos. Los tres hombres afirman que los cargos en su contra son falsos.

El 17 de Agosto, habría sido detenido el Sr. Renato Cruz Morales, Líder de la Central Campesina Cardenista en su oficina ubicada en la ciudad de Tuxtepec. El Sr. Cruz habría sido trasladado a Veracruz, donde se le habría torturado y posteriormente se le habría amenazado para que no denunciara lo sucedido. Tanto la Procuraduría General de la República como la Procuraduría General del Estado dicen desconocer los hechos. Sin embargo, testigos habrían señalado que el señor Cruz fue detenido por policías ministeriales. El señor Cruz, habría sido dejado en libertad gracias a la intervención de un Diputado Federal y de varias organizaciones.

Con relación a estos incidentes, nos gustaría señalar que no es la primera vez que recibimos denuncias sobre violaciones de derechos humanos cometidas en Oaxaca durante este año. A través de tres cartas enviadas a su Gobierno el 29 de junio, el 15 de Agosto y el 29 de Agosto de 2006, el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, ya había manifestado su preocupación por el clima de violencia que se vive actualmente en Oaxaca y de manera particular, por los ataques contra varios medios de comunicación, periodistas y miembros o simpatizantes de la Asamblea Popular del Pueblo de Oaxaca (APPO).

En estas circunstancias, y sin implicar de antemano una conclusión sobre los hechos aquí descritos, nos gustaría instar a su Gobierno a que tome todas las medidas necesarias para impedir que se cometan nuevos actos de violencia en el estado de Oaxaca.

Igualmente, nos gustaría llamar la atención de su Gobierno sobre algunos principios fundamentales del derecho internacional, que resultan particularmente relevantes en el contexto de esta carta.

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

Con respecto a aquellos incidentes en los que presuntos miembros de las fuerzas de seguridad habrían disparado en varias ocasiones contra los participantes de una marcha pacífica, nos permitimos recordar los principios 4 y 5 de los Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de Hacer Cumplir la Ley. 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 esta misma perspectiva, el principio 5 recuerda 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”.

(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).

Frente a los malos tratos o torturas a las que habrían sido sometidos Ramiro Aragón Pérez, Elionai Santiago Sánchez, Juan Gabriel Ríos y Renato Cruz Morales, nos gustaría llamar la atención de su Gobierno sobre el párrafo 1 de la resolución 2005/39 de la Comisión de Derechos Humanos, en el que se "*Condena* todas las formas de tortura y otros tratos o penas crueles, inhumanos o degradantes, que están y seguirán estando prohibidos en todo momento y en todo lugar y que, por lo tanto, no pueden justificarse nunca". A este respecto, llamamos la atención de su gobierno sobre los artículos 12 y 7 de la Convención contra la Tortura, y sobre el párrafo 3 de la Resolución 2005/39 de la Comisión de Derechos Humanos. El párrafo 3 de dicha resolución, destaca en particular que "todas las denuncias de torturas u otros tratos o penas crueles, inhumanos o degradantes deben ser examinadas sin dilación y de manera imparcial por las autoridades nacionales competentes y que quienes instigan, ordenan, toleran o perpetran actos de tortura, incluidos los funcionarios encargados del lugar de detención donde se determine que se ha cometido el acto prohibido, deben ser declarados responsables de sus actos y severamente castigados".

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

1. ¿Son exactos los hechos referidos?

2. Si fueron presentadas quejas o denuncias, ¿cuales han sido las respuestas a las mismas y las acciones referidas en las respuestas?

3. Por favor, proporcione los detalles así como los resultados de las últimas diligencias judiciales o de otro tipo, realizadas con relación a la muerte de los Señores José Jiménez Colmenares y Lorenzo San Pablo Cervantes, y los malos tratos o torturas a las que habrían sido sometidos Ramiro Aragón Pérez, Elionai Santiago Sánchez, Juan Gabriel Ríos y Renato Cruz Morales.

4. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

5. ¿Cuales son las acciones tomadas o planeadas para prevenir la repetición de tales incidentes en el futuro?

Carta de alegación del 30 de octubre de 2006 mandada con el Relator Especial sobre la tortura

En el ejercicio de nuestros mandatos respectivos, deseamos poner en su conocimiento las denuncias que hemos venido recibiendo con relación a violaciones de derechos humanos

cometidas por presuntos miembros de las fuerzas de seguridad del Estado, durante el mes de octubre de 2006 en Oaxaca.

Según la información recibida, El 14 de octubre, varios desconocidos dispararon contra un grupo de simpatizantes de la Asamblea Popular del Pueblo de Oaxaca (APPO) que se encontraban protestando. El **Sr. Alejandro García Hernández** murió como consecuencia de los disparos y otras dos personas resultaron heridas. Según nuestras fuentes, uno de los desconocidos que disparó contra los manifestantes perdió su billetera en la huida, incidente que habría permitido identificarlo como miembro del ejército.

Por otro lado, el 8 de octubre, el estudiante **Pedro García García** habría quedado en libertad bajo fianza después de permanecer una semana detenido en una prisión de Tlacolula, estado de Oaxaca. Según se nos informa, mientras se encontraba detenido, el Sr. Pedro García García fue golpeado en repetidas ocasiones y amenazado de violación. Al Sr. García se le detuvo por robo y porte de arma, pero este último cargo fue posteriormente retirado. Se alega que los cargos en contra del Sr. García son falsos y se sospecha que pueden habérsele imputado por motivos políticos.

Nos gustaría señalar que no es la primera vez que recibimos denuncias sobre este tipo violaciones de derechos humanos en el estado de Oaxaca. Precisamente, 12 de Septiembre de este año, enviamos una carta a su Gobierno con relación a la muerte de los Señores **José Jiménez Colmenares y Lorenzo San Pablo Cervantes** debido a disparos efectuados por presuntos miembros de las fuerzas de seguridad. En esa oportunidad también se puso en conocimiento de su Gobierno la información que recibimos sobre los supuestos malos tratos o torturas a las que habrían sido sometidos los Señores **Ramiro Aragón Pérez, Elionai Santiago Sánchez, Juan Gabriel Ríos** y **Renato Cruz Morales** mientras se encontraban bajo custodia policial.

A través de una carta enviada el 22 de Agosto de 2006, el Gobierno de su Excelencia nos informó que intentaba solucionar por la vía del diálogo el conflicto social que se vive en el Estado de Oaxaca, y que se encontraba implementando acciones tendientes a favorecer el acercamiento entre el Gobierno de Oaxaca, el magisterio e integrantes de la APPO (párr. 8).

Quisiéramos dejar constancia de nuestro agradecimiento al Gobierno de Su Excelencia por la información proporcionada y saludar sus esfuerzos para encontrar una solución pacífica a este conflicto. Sin embargo, le recordamos que aun no hemos recibido respuesta a nuestra carta del 12 de septiembre y que continuamos recibiendo nuevas denuncias provenientes de Oaxaca.

En estas circunstancias, y sin implicar de antemano una conclusión sobre los hechos, hacemos un llamado al Gobierno de Su Excelencia para que nos proporcione información detallada sobre las medidas adoptadas para garantizar la investigación de las violaciones mencionadas en esta carta y en aquella del 12 de septiembre, así como el procesamiento y castigo de las personas responsables de dichas violaciones. Igualmente, quisiéramos conocer las acciones implementadas por su Gobierno para que este tipo de incidentes no se repitan.

A este respecto, nos gustaría llamar la atención de su Gobierno sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias,

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

Finalmente, nos gustaría llamar la atención de su Gobierno sobre el párrafo 1 de la resolución 2005/39 de la Comisión de Derechos Humanos, en el que se "*Condena* todas las formas de tortura y otros tratos o penas crueles, inhumanos o degradantes, que están y seguirán estando prohibidos en todo momento y en todo lugar y que, por lo tanto, no pueden justificarse nunca". A este respecto, llamamos la atención sobre los artículos 12 y 7 de la Convención contra la Tortura, y sobre el párrafo 3 de la Resolución 2005/39 de la Comisión de Derechos Humanos. El párrafo 3 de dicha resolución estipula que "todas las denuncias de torturas u otros tratos o penas crueles, inhumanos o degradantes deben ser examinadas sin dilación y de manera imparcial por las autoridades nacionales competentes y que quienes instigan, ordenan, toleran o perpetran actos de tortura, incluidos los funcionarios encargados del lugar de detención donde se determine que se ha cometido el acto prohibido, deben ser declarados responsables de sus actos y severamente castigados".

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

1. ¿Son exactos los hechos referidos?

2. Si fueron presentadas quejas o denuncias, ¿cuales han sido las respuestas a las mismas y las acciones referidas en las respuestas?

3. Por favor, proporcione información detallada sobre las investigaciones iniciadas con relación a la muerte de los Señores **Alejandro García Hernandez, José Jiménez Colmenares y Lorenzo San Pablo Cervantes**, así como los malos tratos o torturas a las que habrían sido sometido los Señores **Pedro García García, Ramiro Aragón Pérez, Elionai Santiago Sánchez, Juan Gabriel Ríos y Renato Cruz Morales.**

4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

5. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Carta de alegación del 8 de noviembre de 2006 mandada con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión

De acuerdo con la información recibida:

El 29 de octubre de 2006 **Alberto Jorge López Bernal** murió a consecuencia del impacto que sufrió por una bomba de gas lacrimógeno en el estómago, durante su participación en una manifestación de la Asamblea Popular de los Pueblos de Oaxaca (APPO).

El 27 de octubre **Bradley Wheyler**, camarógrafo de la agencia de prensa "Indymedia" murió cuando cubría una manifestación de la mencionada APPO a consecuencia de un disparo en el pecho, supuestamente disparado cuando miembros de la policía municipal, de la alcaldía, y de la seguridad pública abrieron fuego contra una barricada levantada por los manifestantes.

Durante los enfrentamientos del mismo 27 de octubre, **Osvaldo Ramírez**, fotógrafo del diario "Milenio", resultó herido en la pierna en un tiroteo.

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

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

Consideramos apropiado también hacer referencia a la resolución 2005/38 de la Comisión de Derechos Humanos, la cual insta a los estados a que garanticen que las víctimas de violaciones al derecho a la libertad de expresión puedan interponer recursos eficaces para investigar efectivamente las amenazas y actos de violencia, así como los actos terroristas, dirigidos contra los periodistas, incluso en situaciones de conflicto armado, y llevar ante la justicia a los responsables de esos actos, para luchar contra la impunidad.

Dicha resolución también reafirma que el derecho de reunión pacífica y de asociación, además del derecho a participar en la dirección de los asuntos públicos guardan una estrecha relación con el derecho a la libertad de opinión y expresión, y en este contexto llama a los Estados a que adopten todas las medidas necesarias para poner fin a las violaciones de estos derechos, y creen las condiciones necesarias para impedir tales violaciones.

Quisiéramos instar a su Gobierno que adopte todas las medidas necesarias para proteger los derechos y las libertades de las personas mencionadas e investigar, procesar e imponer las

sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que tome las medidas eficaces para evitar que se repitan tales hechos.

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

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

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

2. Si fueron presentadas quejas o denuncias, ¿cuales han sido las respuestas a las mismas y las acciones referidas en las respuestas?

3. Por favor, proporcione información detallada sobre las investigaciones iniciadas con relación a las muertes de Alberto Jorge López Bernal y Bradley Wheyler así como con relación a la herida de Osvaldo Ramírez.

4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

5. Por favor, indique si las víctimas o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

Mexico: Muerte en Detención de Jesús Hernández Pérez en Chiapas

Violación alegada: Muerte en detención

Persona objeta del llamamiento: 1 hombre (indígena)

Carácter de la respuesta: No respuesta

Observaciones del Relator Especial

El Relator Especial lamenta que el Gobierno de México no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

Carta de alegación mandada el 12 de septiembre de 2006 con el Relator Especial sobre la tortura

Deseamos llamar la atención de su gobierno con relación a la muerte en detención del Sr. **Jesús Hernández Pérez** y las alegaciones de malos tratos y/o torturas que se le habrían infligido.

Según la información recibida, el 22 de julio de 2006, alrededor de las 8:50 p.m, el Sr. **Jesús Hernández Pérez**, indígena *tsotsil*, habría fallecido en el Centro de Readaptación Social (CERESO) No. 14, en el municipio de Cintalapa, Chiapas. De acuerdo a nuestras fuentes, el subdirector del Centro habría dicho a la esposa del Sr. Hernandez, la Sra. Elena López Pérez, que su esposo había fallecido debido a "una comida que le había caído mal".

El cadáver de l Sr. Hernandez habría sido entregado a su esposa el 23 de julio de 2006. Según la información recibida, la Sra. Elena López Pérez habría observado que tenía un "*moretón"* en la boca y "*rasguños"* en la cara. Por otro lado, el acta de defunción entregada a la viuda señalaría que fue un tipo de defunción: « *violenta* », lo cual hace temer a los familiares del Sr. Jesús Hernández Pérez, que su muerte haya sido la consecuencia de malos tratos y/o actos de tortura perpetrados dentro del Penal.

En estas circunstancias, nos permitimos señalar que a través de una carta enviada a su Gobierno el 25 de julio de 2006, el Relator Especial sobre la tortura ya había manifestado su preocupación con relación a una serie de incidentes ocurridos al interior del CERESO n° 14, incidentes en los que varios reclusos habrían sido agredidos de manera verbal y física por otros internos con la anuencia de las autoridades penitenciarias.

En este contexto y sin implicar de antemano una conclusión sobre los hechos, deseamos instar a su Gobierno a que investigue la muerte de Sr. Jesús Hernández Pérez e imponga las sanciones adecuadas a cualquier persona que se halle responsable. A este respecto, llamamos la atención de su gobierno sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. En particular, llamamos la atención sobre los principios 9 y 19 según los cuales, los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.

Igualmente me permito llamar la atención de su gobierno sobre el Pacto Internacional de Derechos Civiles y políticos, según el cual nadie podrá ser privado de la vida arbitrariamente. Cuando el Estado detiene a un individuo, este debe proteger los derechos del detenido con gran diligencia. Como consecuencia, cuando un individuo muere bajo custodia del Estado, existe una presunción de la responsabilidad estatal. A este respecto, me permito recordar la conclusión del Comité de Derechos Humanos con relación a la muerte bajo custodia en el caso *Dermit Barbato v. Uruguay (*comunicación 84/1981): " Si bien el Comité no puede llegar a una conclusión definitiva sobre si Hugo Dermis cometió suicidio, fue impulsado a cometerlo o fue muerto de otro modo mientras estaba encarcelado, la conclusión ineludible es la de que, en cualquier circunstancia, las autoridades uruguayas fueron responsables, por acción u omisión, de no haber

adoptado medidas adecuadas para proteger su vida conforme exige el párrafo 1 del artículo 6 del Pacto “

Finalmente, quisiera instar al Gobierno de su Excelencia a tomar todas las medidas necesarias para garantizar las condiciones mínimas de seguridad y de respeto de la integridad física y psicológica de todas las personas que se encuentran detenidas en el Centro de Readaptación Social (CERESO) No. 14. A este respecto, llamamos la atención de su Gobierno sobre las Reglas mínimas para el tratamiento de los reclusos, adoptadas por el Consejo Económico y Social en sus resoluciones 663C (XXIV) del 31 de julio de 1957 y 2076 (LXII) del 13 de mayo de 1977, así como sobre el Conjunto de Principios para la protección de todas las personas sometidas a cualquier forma de detención o prisión, adoptado por la Asamblea General en su resolución 43/173 del 9 de diciembre de 1988.

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

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

2. ¿Fue presentada alguna queja?

3. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con la muerte del Sr. Jesús Hernández Pérez, incluyendo el resultado de la autopsia. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.

4. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

5. Por favor, indique si los familiares del Sr. Jesús Hernández Pérez obtuvieron algún tipo de compensación a modo de indemnización.

Morocco: Morts de migrants à la frontière entre Ceuta et Melilla.

Violation alléguée: Usage excessif de la force par des forces de sécurité

Objet de l’appel: 8 hommes (migrants ou réfugiés dont un mineur)

Caractère de la réponse: Réponse faisant preuve de coopération mais incomplète

Observations du Rapporteur Spécial

Le Rapporteur Spécial apprécie les renseignements fournis par le Gouvernment du Maroc sur son engagement de respecter le droit international relatif aux questions d'immigration et d'asile. Le Rapporteur Spécial note cependant que ces renseignements ne réfutent ni ne répondent aux allégations selon lesquelles les agents des forces de l'ordre marocaines sont responsables des morts de migrants survenues en septembre 2005.

Communication envoyé le 7 octobre 2005 avec le Rapporteur spécial sur les droits de l'homme des migrants

Dans le cadre de nos mandats, nous sommes chargés d'analyser les informations que nous recevons concernant des allégations de violations des droits de l'homme. Dans ce contexte, nous aimerions attirer l'attention de votre gouvernement sur des allégations reçues dans le courant du mois de septembre 2005 relatives à une série d'incidents au cours desquels plusieurs migrants d'origine subsaharienne seraient morts suite à des blessures par balle ou des mauvais traitements infligés par les forces de l'ordre que surveillent les frontières entre Ceuta et Melilla avec le Maroc.

Selon les informations reçues, le 29 août 2005, vers les 2 heures du matin un groupe d'environs cinquante migrants aurait tenté de traverser clandestinement la frontière qui sépare le Maroc et la ville autonome de Melilla (Espagne) en se divisant en trois groupes d'environ 16 personnes. La tentative aurait été violemment repoussée par des membres de la garde civile espagnole qui aurait utilisé du matériel anti-émeute. Cependant, huit membres du groupe auraient réussi à traverser la frontière.

Selon les rapports reçus, des agents de la garde civile espagnole auraient battu les migrants restants avec la crosse de leurs fusils et avec des matraques électriques avant de les renvoyer en territoire marocain par une porte de service située entre les points « A7 » et « A8 » sur la frontière entre Melilla et le Maroc. Joseh Abunaw Ayukabang, un camerounais de 17 ans, aurait été transporté par ses compagnons vers un bosquet où il serait décédé à la suite des coups reçus.

Un d'entre eux, soutenu par d'autres membres du groupe, serait mort peu après son retour sur le territoire marocain. Le migrant mort aurait été identifié comme étant Joseph Abunaw Ayukabang, un citoyen camerounais de 17 ans. Le jeune aurait été victime de coups répétés au ventre infligés par un des membres de la garde civile, avant d'être expulsé par la porte de service de la frontière.

Des témoins auraient indiqué qu'ils auraient vu le corps sans vie de l'autre migrant blessé près de la barrière et que le cadavre aurait été récupéré par des membres de la gendarmerie marocaine. Cependant, ils n'auraient pas réussi à s'approcher suffisamment du corps pour l'identifier.

D'après les informations reçues, les autorités de l'hôpital de Nador auraient émis un communiqué confirmant l'existence d'un seul corps.

Nous avons également reçu des renseignements concernant la mort, survenue le 12 septembre 2005 à l'hôpital communal de Melilla, d'un migrant d'origine subsaharienne qui aurait été blessé

par des agents des forces de l'ordre marocains le 8 septembre 2005. D'autres sources indiquent cependant que le migrant se serait blessé accidentellement le même jour.

Nous avons également été informé de la mort d'un migrant d'origine subsaharienne qui aurait été blessé à la gorge puis transféré le 15 septembre 2005 à l'hôpital communal de Melilla.

Enfin, cinq personnes seraient décédées à la suite de blessures par balle lors de la tentative de quelques 500 à 600 migrants de traverser en masse la frontière entre le Maroc et la ville de Ceuta le 29 septembre 2005. Par ailleurs, huit personnes auraient étés transportées à l'hôpital de Tétouan pour des blessures par balles en caoutchouc, matériel anti-émeute qui serait utilisé par la garde civile espagnole. Il semble que lors de cet incident, des membres des forces de l'ordre marocaines se serait alignées devant la frontière et auraient tiré sur les migrants avec des fusils.

Il est de notre responsabilité, en vertu des mandats qui nous ont été confiés par la Commission des droits de l'Homme et par les résolutions de l'Assemblée Générale des Nations Unies de solliciter votre coopération pour tirer au clair les cas qui ont été portés à notre attention. Dans l'obligation d'en faire rapport 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 des cas sont-ils exacts? Si tel n'est pas le cas, quelles enquêtes ont été menées pour conclure à leur réfutation ?

2. Au cas où des plaintes ont été déposées, quelles suites leur ont été données ?

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

4. Veuillez fournir toute information sur les poursuites et procédures engagées.

5. Veuillez indiquer si les victimes ou leurs familles ont été indemnisées.

Réponse du Gouvernement du Maroc du 11 janvier 2007 à une lettre d'allégation du 7 octobre 2005 (see E/CN.4/2006/53/Add.1, pp. 144-147)

Dans sa lutte contre la migration illégale, le Maroc exerce un droit légitime qui consiste à veiller au respect de sa législation interne en matière d'entrée et de séjour des étrangers sur son territoire, en plein respect des droits de l'Homme et des libertés fondamentales.

II est à rappeler que la loi 02-03 du 11 novembre 2003, relative á l'entrée et au séjour des étrangers au Maroc, á l'émigration et l'immigration irréguliéres, accorde toutes les garanties nécessaires aux étrangers et confére une protection particuliére aux catégories vulnérables, notamment, les femmes enceintes et les mineurs. Elle conforte ainsi les dispositions du Code Pénal qui incrimine la discrimination basée sur la race, l'ethnie, la langue ou la religion.

Dans le cadre de la responsabilité régionale partagée, le Maroc a organisé, avec ses moyens propres, des ponts aériens d'envergure qui ont permis, depuis 2004, le rapatriement vers leurs pays d'origine de plus de 6.600 migrants irréguliers, sur la base du volontariat, dans le respect de la dignité des

migrants et en parfaite concertation avec les représentations diplomatiques des pays concernés qui ont toujours exprimé leur gratitude á notre pays pour tous les efforts déployés.

De même, l'Organisation Mondiale pour les migrations a organisé un pont aérien pour le rapatriement vers leur pays d'origine, de plusieurs migrants irréguliers. Les représentants de cette Organisation ont pu constater le respect par le Maroc de tous les droits des migrants irréguliers et se sont assurés du caractère volontaire du rapatriement, de même qu'ils ont visité les installations et les dispositifs mis en place par le Gouvernement marocain en faveur de ces personnes avant leur rapatriement.

II y a lieu de signaler qu'aucune plainte n'a été déposée auprés des autorités marocaines compétentes concernant des allégations de mauvais traitement d'immigrés irréguliers.

Concernant la question des réfugiés, le Maroc respecte pleinement ses engagements internationaux, mais souligne qu'une majorité des demandeurs d'asile sont fondamentalement des migrants économiques.

Ce point a été largement discuté avec des responsables du HCR qui ont admis, le bien fondé de la position marocaine au sujet du risque majeur que peut constituer l'octroi systématiquement du certificat d'enregistrement á tout demandeur d'asile sur l'encouragement de l'afflux de migrants illégaux, de même qu'ils ont affirmé l'intention de leur Organisation à améliorer le système d'enregistrement en vigueur et à faire preuve davantage de rigueur dans l'octroi des certificats. Ils ont aussi précisé qu'ils allaient diligenter une enquête pour d'éventuels actes de corruption visant á faciliter l'obtention de ces certificats.

Le Maroc adhère à l'ensemble des instruments juridiques internationaux ayant pour vocation la protection des droits des migrants et l'amélioration de l'efficience des systèmes juridiques nationaux en la matiére.

La gestion de la problématique migratoire ne peut être confinée dans une logique d'incrimination d'un seul pays pour régler une question qui relève fondamentalement de la responsabilité régionale partagée.

Mozambique: Death of Julencio Gove in Matola

Violation alleged: Death due to the excessive use of force by law enforcement officials

Subject(s) of appeal: 1 male

Character of reply: No reponse

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 Commission on Human Rights.

Letter of allegation dated 22 August 2006

I would like to bring to the attention of your Excellency's Government information I have received, according to which, on 1 January 2005, **Julencio Gove** was shot by a policeman in the Southern city of Matola. Allegedly, 21 year old Gove was killed in the Matola neighborhood of T3 after he attempted to intervene on behalf of a young woman who was being beaten by policemen on the street.

According to the information received, Gove was on his way home when he came across this incident. He was threatened by an armed policeman who warned him not to interfere. When Gove insisted on advocating for the young woman, he was fatally shot by a policeman.

In this connection, I would like to remind Your Excellency's government of the fundamental principles that apply to such an incident under international law. Article 6 of the International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of his life. Law enforcement officials may employ lethal force only when there is no alternative and doing so is strictly unavoidable to protect life. (Human Rights Committee, Suarez de Guerrero v. Colombia, Communication No. 45/1979, para. 13.3; UN Basic Principles on the Use of Firearms by Law Enforcement Officials, § 9.) Otherwise, an execution is "arbitrary" and, as such, unlawful whenever an individual is killed by state agents outside the framework of a final judgment rendered by a competent court reached through a trial respecting the norms of due process (Articles 6 and 14).

When an extrajudicial execution is committed by state agents, the State incurs legal obligations: to effectively investigate the violation, to prosecute and punish those responsible, to provide compensation to the victim's family, and to adopt all necessary measures in order to prevent future violations. (HRC, General Comment 31; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; CHR resolution 2005/34, para. 5).

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

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

2. Please provide the details and results of any investigation, medical examination (autopsy), and judicial or other inquiries carried out in relation to this incident.

3. Please provide the full details of any prosecutions or disciplinary proceedings that have been undertaken in connection with this incident. Please include information on any penalties imposed.

4. If compensation has been provided to the family of the victim, what was its amount?

Myanmar: Use of Free-fire Zones in Counterinsurgency

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

Subject(s) of appeal: Unknown number of persons

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 Commission on Human Rights.

Letter of allegation dated 15 may 2006 sent with the Special Rapporteur on the situation of human rights in Myanmar

In this connection, we would like to bring to your Excellency's attention information we have received regarding the situation of ethnic minority villagers in northern Kayin (Karen) state and in the east of an area known as Bago Division, in eastern Myanmar. According to the information received the villagers are at risk of human rights violations following a recent escalation in counter-insurgency operations against the Karen National Union (KNU) - an armed ethnic minority opposition group. Reports indicate that civilians have been forcibly relocated and that several civilians, including women and children, may have been extra-judicially killed. Individuals are also reported to have been tortured by the army.

For several weeks, thousands of civilians have reportedly been fleeing their homes to hide in the forest or seek asylum in Thailand. In the ongoing military operations in Kayin state, villages have reportedly been attacked and ordered by the Myanmar military, or *tatmadaw*, to relocate as part of the its tactics to break alleged links between armed opposition groups and the local civilian population. It has been brought to our attention that some individuals have been warned that the army will exercise a shoot-on-sight policy against those who attempt to return. In addition, the army has reportedly destroyed houses, livestock and crops, depriving people of food and shelter.

Concerns have been expressed that counter-insurgency operations will continue to intensify as the Myanmar authorities reportedly stated in April 2006 that the government has taken "security measures" against the KNU and that places where "destructive elements" can hide were being cleared.

Without pre-judging the accuracy of the accounts received, we would like to refer your Excellency's Government to the fundamental principles set forth in the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*. Articles 3 and 6 of these instruments, respectively, provide that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life.

We also wish to remind your Excellency's Government that "shoot-on-sight policies" are a deep and enduring threat to human rights-based law enforcement approaches. We urge your Excellency's Government to instruct its security forces to immediately prohibit any shoot on sight policy and comply with the United Nations Basic principles on the Use of Force and Firearms by Law Enforcement Officials. These Principles note, inter alia, that law enforcement officials should "as far as possible apply non-violent means before resorting to the use of force and firearms" and that "in any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life". We would also like to draw your Excellency's attention to the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly resolution 34/169 (1979) which more succinctly stresses the limited role for lethal force in all enforcement operations.

We would also like to appeal to your Excellency's Government to ensure that all deaths that occurred in connection with the above mentioned operations are promptly, independently and thoroughly investigated in accordance with the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

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

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

2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the killings occurred the in northern and Eastern Myanmar.

3. Assuming that those responsible for the shootings have been or will be identified, please provide the full details of any prosecutions which have been undertaken, and of any other penal, disciplinary or administrative sanctions imposed in this connection.

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

Namibia: Death in Custody of Lazarus Kandara

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Letter of allegation sent on 17 August 2006

I would like to bring to your Government's attention information I have received concerning the lack of progress in the investigations concerning the death of Mr. **Lazarus Kandara**, a businessman who died of gunshot wounds while in police custody nearly a year ago, on 25 August 2005.

It is my understanding that on 23 August 2005 Mr. Kandara, the CEO of the asset management company Avid Investment Corporation, was heard in a liquidation inquiry before the High Court in Windhoek. In his long testimony, he made allegations seriously incriminating himself and implicating senior SWAPO and government officials in a major corruption scandal. The following day, Mr. Kandara was arrested in the High Court on charges of theft and fraud. He was taken into custody by the police's Serious Crime Unit. After initial registration, Mr. Kandara was taken home by three officers of the Serious Crime Unit in order to collect a mattress, blankets, clothes and medication. From there, the Serious Crime Unit officers took him to the Windhoek police station. Before entering the police station, however, Mr. Kandara was shot under circumstances that have not yet been clarified. According to statements issued by the police in the days following the incident, Mr. Kandara had pulled out a Baretta 9mm gun, which he apparently had hidden under a blanket wrapped around his shoulders, and had aimed it at the three police officers who were escorting him. He changed his mind, however, and turned the gun on himself, shooting himself through the heart at pointblank range.

In the following days, the Commanding Officer of the Police's Complaints and Discipline Division carried out an internal investigation into the death of Mr. Kandara upon instructions from the Inspector General of the Police. The investigation report of 8 September 2005 found that Mr. Kandara had committed suicide, but that his possession of a firearm was due to the negligence of the Serious Crime Unit members who were involved in his arrest and escorted him to his house and back to the police station. Mr. Kandara's lawyer reportedly alleges that he had warned the officers of the Serious Crime Unit that Mr. Kandara had expressed the intention of committing suicide in the moments before being taken into custody at the court house. The Inspector General decided the suspension of the Serious Crime Unit officer in charge. The three Serious Crime Unit officers who had escorted Mr. Kandara remained in service.

At the beginning of September 2005, a judicial inquest was started into the death of Mr. Kandara as well. Hearings were held from 22 to 27 March 2006. On 26 June 2006, however, the High Court vacated the inquest on procedural grounds (the magistrate had restricted the legal representation of the police officers during the inquest) and ordered that it must restart from the beginning.

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

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

International law further requires from your Government a "thorough, prompt and impartial investigation" into all cases of custodial death (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions).

The delays in determining the dynamics of and responsibility for Mr. Kandara's death are all the more a matter of concern in the light of reports that Kandara's death is being used by Dr. Sam Nujoma, the President of SWAPO, in public threats against political opponents. According to reports I have recently received, during a public meeting held at the Nathaniel Maxuilili Centre, Babylon Township, Windhoek, on the afternoon of 30 July 2006, Dr. Nujoma threatened the leadership of the Ex-PLAN Combatants Committee (an association of veterans of the People's Liberation Army of Namibia, PLAN), by stating that "[t]hose who are demanding compensation are bandits just like Kandara. They must remember that we still have guns, and those of you who side with them, we will shoot you". This threat was understood as being directed primarily against the President of the Ex-PLAN Combatants Committee, Ms. Ruusa Malulu. (I am aware that the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression brought these threats to your Government's attention in a communication dated 11 August 2006).

Moreover, it is my responsibility under the mandate provided to me by the Commission on Human Rights, reinforced by the appropriate resolution of the General Assembly, and extended by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on 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 an update on the current status of the inquest into Mr. Kandara's death and of the disciplinary proceedings against the four officers of the Serious Crime Unit involved.

3. Have any criminal prosecutions been undertaken in relation to Mr. Kandara's death?

4. Please indicate whether compensation has been paid to the family of Mr. Kandara. In relation to this question, I would like to point out that the above-mentioned presumption of State responsibility for cases of custodial death means, *inter alia*, that States must make reparations to the families of victims absent proof the State has no responsibility for the custodial death.

5. Please provide the details, and where available the results, of any inquiry into the threats uttered by Dr. Nujoma on 30 July 2006 and of any security measures adopted in favour of Ms. Rusulu.

Nepal: Death in Custody of Maina Sunuwar

Violation alleged: Death in custody

Subject(s) of appeal: 1 female (minor); 5 males

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 Commission on Human Rights.

Letter of allegation dated 22 August 2006

I am writing about the cases of Colonel Bobby Khatri, Captain Sunil Adhikari and Captain Amit Pun. According to the information that I have received, they were convicted on 27 September 2005 on charges relating to the death of a fifteen-year-old student, **Maina Sunuwar**.

The alleged facts regarding the killing are disturbing. Witnesses claim security forces personnel went to Miss Sunuwar's home in Kharelthok Village Development Committee, Kavre district, the morning of 17 February 2004, looking for her mother. As her mother was not there, they detained Miss Sunuwar and told her father to bring his wife to the Shanti Gate Army Barracks the next day. However, when the family went to the barracks, personnel there claimed not to know of Miss Sunuwar. It later emerged she had died in custody, allegedly after being tortured.

I have learned that a court martial sentenced Col. Khatri, Captain Adhikari and Captain Pun to six-months detention, also imposing a total fine of 100,000 rupees on the three officers and declaring them ineligible for promotion for one to two years. However, I have been informed that the three officers were released immediately following the court martial decision because of time spent in pre-trial detention.

While I do not wish to prejudge the accuracy of these allegations, I am deeply concerned that the sentence imposed by the court martial may not be proportionate to the gravity of the crimes committed. I note the obligation of States Parties to the International Covenant on Civil and Political Rights (ICCPR) to fully investigate and bring to justice the perpetrators of arbitrary executions (ICCPR Arts. 2, 6; Human Rights Committee (HRC), General Comment 31 (2004), para. 18). While I am aware of the current state of unrest in Nepal, I would emphasize that these obligations apply at all times, including during armed conflicts and other states of emergency (ICCPR Art. 4; HRC, General Comment 29, para. 15).

The obligation to prosecute and punish is not a mere formality. Inadequate punishment for grave human rights violations does an injustice to the victims and contributes to a culture of impunity that leads to further violations. The light sentences imposed upon Col. Khatri, Captain Adhikari and Captain Pun raise the issue of impunity with particular urgency.

What is especially distressing is that Miss Sunuwar's case does not seem to be an isolated incident. Miss Sunuwar's case is only one of several reported to me and to other United Nations organs. For example, I refer you to the five unexplained deaths reported to the United Nations Committee Against Torture during its 35th session in November 2005, attached as an annex to this letter.

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

(i) Are the facts alleged in the above summary of the case accurate?

(ii) Please provide the text of the final judgment of the court martial in Miss Sunuwar's case, the text of the decision with respect to the sentence, and any records of the proceedings that your Excellency's Government might be able to make available to me.

(iii) Please provide information concerning the guidance provided to members of the Royal Nepalese Army with respect to the treatment of detainees.

(iv) Please provide an explanation of the source of authority for the Royal Nepalese Army's powers of arrest and detention over civilians and copies of any relevant statutory instruments; in particular, I would like to know whether such powers are authorized under provisions of the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO), the Terrorist and Disruptive Activities (Control and Punishment) Act (TADA), or some other instrument.

(v) I understand that the court martial has asked your Excellency's Government to pay 150,000 rupees in reparations to Miss Sunuwar's family. I would be grateful if you would confirm that they have received the compensation.

Annex

Custody deaths reported to the United Nations Committee Against Torture during its 35th session in November 2005

Name	Date	Reported facts
Dorje Sherpa	27 May 2005	Suspected Maoist reportedly committed suicide in Shreejang army camp in Singhdurbar, Kathmandu. The army states he hung himself from a window using his shoelaces.

Chakra Bahadur Sherestha	15 November 2004	A schoolteacher and suspected Maoist reportedly committed suicide at the Dhadingbeshi Army Barracks. The army states he hung himself with a sleeping bag rope.
Dipendra Rayamajhi	26 June 2005	A permanent resident of the Panauti area of Kavre district reportedly committed suicide at Sinhanath Army Camp in Bhaktapur district. He was arrested on the suspicion of being a Maoist cadre. The army states he hung himself using an electric wire in his cell.
Top Bahadur Ale Magar	20 October 2004	Reportedly killed himself at Bhairabagan Barrack in Maharajgunj, Kathmandu. He was arrested on 16 October 2004, reportedly while collecting donations for the Maoists.
Sadhu Ram Devkota	19 December 2004	Reportedly committed suicide at the army barracks in Balaju, Kathmandu. The army states he hung himself from a window using his shoelaces.

Nepal: Death Threats against Journalist Rajendra Karki

Violation alleged: Death threats and fear of imminent extrajudicial execution

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

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information provided by the Government of Nepal in reponse to his earlier communication. The SR regrets , however, that the Government has not provided any updated information on penal or disciplinary sanctions taken against the police officer it had preveiously identified as responsible for the death threats.

Follow-up letter dated 17 October 2006 (to an urgent appeal sent on 25 October 2004)

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Commission on Human Rights resolution 2004/37, to the General Assembly resolution 60/251 and to Human Rights Council decision 2006/102.

I would like to draw your Excellency's attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 159-160), relating to death threats by police officers against journalist **Rajendra Karki** in October 2004. In its response dated 1 April 2005, his Excellency Government informed that the police officer who threatened Mr. Karki had been identified and that he was safe in his residence in Khalanga, Jajarkot.

As indicated in the case-related observations I have made in my report, I would be grateful if your Government could provide me with information relating to any penal or disciplinary sanctions taken against the person believed responsible.

Nepal: Deaths of Reena Rasail and Subhadra Chaulagain

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

Subject(s) of appeal: 2 females (minors)

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the additional information provided by the Government of Nepal with respect to the deaths of Reena Rasail and Subhadra Chaulagain.

The SR welcomes the efforts that the Government has made to end impunity for these crimes by providing compensation to the victims' kin and by prosecuting members of the military responsible for their deaths. Nevertheless, the SR would note that the Government should make every effort to ensure that the sentences imposed by courts martial are proportionate to the gravity of the crimes committed.

The Special Rapporteur remains concerned that he has received no clarification of the case of Tasi Lama.

Follow-up letter dated 17 October 2006 to an urgent appeal sent on 3 March 2004

I would like to draw your Excellency's attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 141-143), relating to killings by security forces in the village of Pokharichauri in March 2004. In its response dated 8 March 2005, his Excellency Government informed that the central RNA Investigation team was investigating the deaths of **Reena Rasail** and **Subhadra Chaulagain**.

As further indicated in my observations, I would be grateful if your Government could provide me with information relating to the results of the above mentioned investigation. I would also like to know if any penal or disciplinary sanctions were imposed and if any compensation was provided to the families of the victims. I would also be grateful if I could also receive clarification regarding the case of Tasi Lama which I have already brought to your attention.

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

Response of the Government of Nepal dated 8 January 2007 to a follow-up letter dated 17 October 2006

The Government provided information regarding the deaths of Reena Rasiali and Subhhadra Chaulagain and gave details about the result of the investigation carried out by the Nepal Army.

The General court-martial presided over by Brigadier General Chhatraman Gurung delivered the following sentence to the following officials of the Sher Battalion of Nepal Army, which was upheld by the competent authorities of the Government of Nepal:

a. Stern reprimand issued against the then Commander of the Battalion, Lt. Col. Karmendra Limbu,

b. Declaration of ineligibility to promotion for one year to the Deputy Commander of the Battalion, Major Sher Singh Bishta,

c. Four months of imprisonment and declaration of ineligibility to promotion for three years to the Group Commander, Captain Saroj Basnet,

d. Four months of imprisonment to Sargent Master Dewan Thapa Magar, who has resigned from the service,

e. Four months of imprisonment to Sargent Sher Bahadur Ranabhat,

An order has been issued to locate the whereabouts of absconded Corporal Kaji Bahadur Karki with the view to take stern action against him by the General court-martial

Lance Corporals Bal Bahadur Shrestha and Jagendra Pyakurel as well as soldiers Khetraj Tamang, Dipak Nepali and Lila Prasad Bim have absconded. It has been decided that the necessary action would be taken against them, following proper investigations, as soon as they corne to contact or are apprehended.

The Ministry of Defence has asked the Ministry of Home Affairs to provide compensation to next of kin of Reena Rasaili and Subhadra Chaulagain.

Nepal: Killings in Late 2004

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

Subject(s) of appeal: 25 males ; 6 females

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information provided by the Government of Nepal. However, the SR is concerned that in certain cases the information fails to clarify the allegations made.

Regarding Bishwanath Parajuli, Tomnath Poudel, Dhan Bahadur, Devendra (Mukesh), Mohanchandra Gautam, Ram Chandra Karki (Umesh), Shailendra Yadav (Tarakeshwar) and Sherman Kuber (Kunwar), the SR regrets that the Government's response states that the security forces were "compelled" to open fire without fully clarifying why it was necessary to do so.

Regarding Bouyamal Mura Kawari, Ram Narayan Sada, Chaturdev Chaudhary, Ramesh Khadka, Dilip Bk, Sagar Limbu and Hari Gautam, the SR notes that the Government's claim that "[a]ll legal documents were duly completed" provides no information to the SR as to the legality of the incident.

Regarding Ram Prasad Yadav, the SR notes that the Government's conclusion that "he is believed to be killed by the terrorists" is unsubstantiated and requires further investigation by the Government.

Regarding Rajendra Karki, the SR notes that the Government's conclusion that "[t]here is no information of arrest and beating of Mr. Karki" is unsatisfactory and requires further investigation by the Government.

Regarding the numerous cases identified as still under investigation (Lai Kaji Gurung, Laxman Pun, Lok Bahadur Pun, Prithvi Gautam, Ramnarayan Yadav, Sher Bahadur Budha), the SR looks forward to receiving the results of those investigations.

Follow-up letter dated 17 October 2006 to an urgent appeal sent on 15 March 2005

I would like to draw your Excellency's attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 162-163), **relating to killings by security forces in late 2004**.

As indicated in the case-related observations I have made in my report, I appreciate the preliminary information provided by your Excellency's Government relating to the events of 20 September, 30 September, 17 October, 26 December and 31 December 2004. As indicated in my observations, I would be grateful if your Government could provide me with information relating to the results of the investigations to which it refers.

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

Response of the Government of Nepal dated 22 March 2006

The Government of Nepal informed the Special Rapporteur about 49 cases that were brought to its attention in various communications sent since 2004:

[17 September 2004]

Regarding Badri Khada (for whom a communication was sent on 17 September 2004) who was arrested on 29 August 2004 by security forces. On 29 August 2004, at 19h15 hrs, a vehicle of security forces enroute to Rangeli of Morang district was fired upon by a group of 7/8 terrorists near a wooden bridge in Govindapur-8 of Morang district. One unidentified terrorist, possibly Badri khada was killed in the retaliatory actions of the security forces, while the other terrorists managed to escape. One pistol and some rounds were recovered from the dead body. The body was handed over to Jagadish Dum, a resident of Rangeli-2, Morang who is also an employee at the Rangeli hospital, for necessary cremation.

[15 March 2005]

Regarding Bikas, for whom a communication was sent on 15 March 2005, who was shot dead on 20 September 2004. The persons named Seema, manju, Bikas, Bharat and other 3 unknown were killed at security operations in Sihara when they attacked the security force with socket bomb.

Regarding Bir Bahadur, Bir Bahadur Kumal, Jori Lai Tharu and Pushpa, for whom a communication was sent on 15 March 2005, who was killed on 29 September 2004. On 29 September 2004, security forces patrolling in the area of Khaskhusma in Banke district came under heavy attack by the terrorists. Seven terrorists were killed in the ensuing fire-fight which lasted for one and a half hours. Explosives, detonators and Maoists related documents were recovered from the incident site. The dead bodies were identified as Bir Bahadur Kumal alias Deepak (area commander), Bir Bahadur BK, Min Bahadur Oli alias Ganesh, Pushpa alias Rachana, Dil maya Gharti Magar alias Sharmila, Gashendra and Deepak alias Andolan. There is no information of death of Mr. Dhaniram Tharu and Mr. Jori Lai Tharu as mentioned in the allegation.

Regarding Bishwanath Parajuli also called Najendra Parajuli and Tomnath Poudel, for whom a communication was sent on 15 March 2005, who was shot dead on 28 September 2004. Bishwanath Parajuli (also called Najendra Parajuli) along with Tomnath Poudel and Dhan Bahadur Tamang (involved in terrorist activities) of Hasandaha VDC in Morang district were killed on 27 September 2004 while they made an attempt to escape taking advantage of darkness and adverse terrain condition. Security forces were compelled to fire in spite of repeated warnings given to them to stop which they paid no heed. Their dead bodies were handed over in the presence of Kedar Basnet, Maha Prasad Khatiwada, Lok Bahadur Shrestha and Sushil Khatiwada of Hasandaha VDC, Morang district.

Regarding Bouyamal Mura Kawari, for whom a communication was sent on 15 March 2005, who was shot dead on 17 October 2004. On 17 October 2004, joint security forces suddenly came under attack by the terrorists who were holding meeting at Baltiya of Parthawa-7, Dhanusha district. Two terrorists including Boumayal Mura Kawari were killed in retaliatory action by the security forces. All the legal documents were duly completed.

Chaturdev Chaudhary, for whom a communication was sent on 15 March 2005, who was shot dead on 31 December 2004. On 31 December 2004 at 0200 hrs security forces patrolling in the area of Mirgaulia in Morang district were attacked by the Maoist terrorists, who threw sockets bombs. Five persons were killed in the retaliatory actions of the security forces. They were later identified as Chaturdev Chaudhary, Ramesh Khadka, Dilip Bk, Sagar limbu and Hari Gautam. All legal documentation was duly completed at the incident site and the dead bodies were handed over to biratnagar Municipality office, Morang district for necessary cremation.

Dhan Bahadur Tamang, for whom a communication was sent on 15 March 2005, who was shot dead on 28 September 2004. Dhan Bahadur Tamang, along with Tom Nath Poudel and Bishwanath Parajuli (also called Najendra Parajuli) -involved in terrorist activities- of Hasandaha VDC in Morang District were killed on 27 September 2004 while they made an attempt to escape taking advantage of darkness and adverse terrain condition. Security forces were compelled to fire in spite of repeated warnings given to them to stop, to which they paid no heed. Their dead bodies were handed over in the presence of Kedar Basnet, Maha Prasad Khatiwada, Lok Bahadur Shrestha and Sushil Khatiwada of Hasandaha VDC, Morang district. Bishwanath Parajuli (also called Najendra Parajuli) along with and Dhan Bahadur Tamang (involved in terrorist activities) of Hasandaha VDC in Morang district were killed on 27 September 2004 while they made an attempt to escape taking advantage of darkness and adverse terrain condition. Security forces were compelled to fire in spite of repeated warnings to stop to which they paid no heed. Their dead bodies were handed over in the presence of Kedar Basnet, maha Prasad Khatiwada, Lok Bahadur Shrestha and Sushi.

Dhani Ram Tharu and Min Bahadur Oli alias Ganesh, for whom a communication was sent on 15 March 2005,who was shot dead on 29 September 2004. On 29 September 2004, security forces patrolling in the area of Khaskhusma in Banke district came under heavy attack by the terrorists. Seven terrorists were killed in the ensuing fire-fight which lasted for one and a half hours. Explosives, detonators and Maoists related documents were recovered from the incident site. Their dead bodies were identified as: Bir Bahadur Kumal alias Deepak (area commander), Bir bahadur BK, Min Bahadur Oli alias Ganesh, Pushpa alias Rachana, Dil Maya Gharti Magar alias Sharmila, Gahendra and Deepak alias Andolan. There is no information of death of Mr. Dhaniram Tharu and Mr. Jori Lai Tharu as mentioned in the allegation.

Dhanjana Giri, Mahadev Gautam and Ratna Karki for whom a communication was sent on 15 March 2005, who were shot dead on 18 December 2004 on Patthari, Morang. Ratna Karki, Dhanjana Giri and Mahadev Gautam were killed during the armed clash between security forces and so called Maoists at Lamatol area, Pathari VDC ward no 3 and 4, Morang District on 18 December 2004. Security forces received Pistol-1, cash 55 thousand rupees, socket bombs and Maoists pamphlets from the incident site. Their dead bodies were handed over to their relatives in the presence of local police and HR activists.

Dilip BK, Ramesh Khadka and Sagar Limbu, for whom a communication was sent on 15 March 2005, who were shot dead on 31 December 2004. On 31 December 2004, at 2h00 hrs security forces patrolling in the area of Mirgaulia in Morang district were attacked by the Maoist terrorists, who threw socket bombs. Five persons were killed in the retaliatory actions of the security forces. They were later identified as Chaturdev Chaudhary, Ramesh Khadka, Dilip BK, Sagar Limbu and Hari Gautam. All legal documentation was duly completed at the incident site and the dead bodies were handed over to Biratnagar municipality office, Morang district for necessary cremation.

Dilamaya Gharti and Jori Lai Tharu, for whom a communication was sent on 15 March 2005, who was killed on 29 September 2004. On 29 September 2004, security forces patrolling in the area of Khaskhusma in Banke district came under heavy attack by the terrorists. Seven terrorist were killed in the ensuing fire-fight which lasted one hour and a half. Explosives, detonators and Maoists related documents were recovered from the incident site. Their dead bodies were identified as: Bir Bahadur Kumal alias Deepak (area commander), Bir bahadur BK, Min Bahadur Oll alias Ganesh, Pushpa alias Rachana, Dil Maya Gharti Magar alias Sharmila, Gahendra and Deepak alias Andolan. There is no information of death of Mr. Dhaniram Tharu and Mr. Jori Lai Tharu as mentioned in the allegation.

Hari Gautam, for whom a communication was sent on 15 March 2005, who was shot dead on 31 December 2004. On 31 December 2004, at 2h00 hrs security forces patrolling in the area of Mirgaulia in Morang district were attacked by the Maoist terrorists, who threw socket bombs. Five persons were killed in the retaliatory actions of the security forces. They were later identified as Chaturdev Chaudhary, Ramesh Khadka, Dilip BK, Sagar Limbu and Hari Gautam. All legal documentation was duly completed at the incident site and the dead bodies were handed over to Biratnagar municipality office, Morang district for necessary cremation.

Manju Das, for whom a communication was sent on 15 March 2005, who was shot dead on 20 September 2004. The persons named Seema, Manju, Bikas, Bharat and other 3 unknown were killed at security operation in Siraha when they attacked the security force with socket bomb.

Janaki Chaudhari, for whom a communication was sent on 15 March 2005, who was killed on 30 September 2004. Nineteen-year-old Janaki Chaudhari, a resident of Narayanpur VDC-8, Kallali district, was arrested by security forces on 11 April 2002 on the suspicion of her involvement in terrorist and disruptive activities. She was released on the same day at 17h00 after brief investigation and was asked to report after 7 days. However, she never showed up. According to the district police office kailali, all the documents have been destroyed during the explosion carried out by Maoist on 20 May 2004 at 18h30.

Lai Kaji Gurung, for whom a communication was sent on 15 March 2005, who was shot dead by security forces on 17 August 2004 at Lwanghalel, Kaski. He was killed in security operation at Koiwang area of Lawangghalel-7, Kaski district. A case has been duly registered in the district police office, Kaski and the case is under necessary investigation.

Laxman Pun, for whom a communication was sent on 15 March 2005, who was killed on 26 December 2004 by soldiers. The case is under investigation.

Lok Bahadur Pun alias Paisas, for whom a communication was sent on 15 March 2005, who was shot dead on 26 December 2004 by soldiers. The case is under investigation.

Madav Gautam, for whom a communication was sent on 15 March 2005, who was shot dead on 18 December 2004 on Patthari, Morang. Ratna Karki, Dhanjana Giri and Mahadev Gautam were killed during the armed clash between security forces and so called Maoists at Lamatol area, Pathari VDC ward no 3 and 4, Morang district on 18 December 2004. Security forces receovered Pistol-1, cash 55 thousand rupees, socket bombs and Maoists pamphlets from the incident site. Their dead bodies were handed over to their relatives in the presence of local police and human rights activists.

Narad Rai, for whom a communication was sent on 15 March 2005, who was shot dead on 18 december 2004 at Patthari, Morang. HMG has no information of arrest and killing of Mr. Rai.

Pheda Yadav, for whom a communication was sent on 15 March 2005, who was shot dead on 20 September 2004. HRPC vide its letter dated 2062.02.25 (309) informed that this case is under investigation and forwarded to MOH. MOH vide its letter 2062.4.23 (268) informed that there is no information about security action taken against Pheka Yadav and Ram Naravan Yadav.

Prithvi Gautam BK alias Surai, for whom a communication was sent on 15 March 2005, who was shot dead on 26 December 2004 by soldiers. The case is under investigation.

Ram Narayan Sada, for whom a communication was sent on 15 March 2005, who was shot dead on 17 October 2004. ON 17 October 2004, joint security forces suddenly came under attack by the terrorists who were holding meeting at Baltiya Dariya of Parthawa 7, Dhanusha district. Two terrorists including Ram Narayan Sada were killed in retaliatory action by the security forces. All the legal documents were duly completed.

Ramnarayan Yadav, for whom a communication was sent on 15 March 2005, who was shot dead on 20 September 2004 in Aapghari, Mohanpur Kamalpur, VDC, Siraha. The case is under investigation.

Seema Mahatto, for whom a communication was sent on 15 March 2005, who was shot dead on 20 September 2004. The persons names Seema, Manju, Bikas, Bharat and other 3 unknown were killed at security operation in Siraha when they attacked the security forces with socket bomb.

Sher Bahadur Budha alais Dinesh, for whom a communication was sent on 15 March 2005, who was killed on 26 December 2004 by soldiers. The case is under investigation.

[18 November 2004]

Devendra (Mukesh), Mohanchandra Gautam, Ram Chandra Karki (Umesh), Shailendra Yadav (Tarakeshwar) and Sherman Kuber (Kunwar), for whom a communication was sent on 18 November 2004, who were killed by security forces. On 5 September 2004, security forces on a search operation in Laxmipur, Patari VDC of Siraha district came under attack by the terrorists, near the village of Dhanchnabar. While in the process of cordoning the village, the security

forces saw six persons fleeing from the village. Despite giving them repeated warning to stop, the fleeing Maoists paid no heed to such warnings. Thereore, the security forces were compelled to open fire which resulted in their death. The bodies were later identified as Mohanchandra Gautam (member of the Maoist Central Committee), Sher Man Kuber (Leader, central communist party, Maoist) Ram Chandra Karki (Umesh), Devendra Singh (Mukesh) and Shailendra Yadav (Tarakeshwar). One dead body could not be identified. Two socket bombs, two mobile phone sets and a pistol were recovered from the dead bodies. All the legal documentations were duly completed in the presence of the locals. Last rites were performed to the bodies of Mohanchandra Gautam and Sherman Kuber and the bodies of the other persons killed in the incident were buried at the incident site by the security forces.

Ram Prasad Yadav, for whom a communication was sent on 18 November 2004, who was killed by Maoists. There is no information of arrest and detention of Mr. Yadav, he is believed to be killed by the terrorists.

[30 September 2004]

Hira Ram Rai, Indra Kala Rai (Rudra Kala Rai) and Jina Rai, for whom a communication was sent on 30 September 2004. On 1 September 2004, security forces operating in Basikhora village area in Bhojpur district were attacked by the terrorists, who fired upon the security forces with small arms and socket bombs. The security forces retaliated in self-defence and the ensuing fire-fight lasted 15-20 minutes, after which the attacking terrorists dispersed and fled from the scene. The security forces, then reorganized themselves and conducted a search of the area and recovered three dead bodies identified as of Jina rai, Indrakala Rai and Hiraram rai. Furthermore, one 303 rifle, pistol, socket bombs, pressure cooker bombs, pipe bombs, plastic hand grenades and several Maoists documents and logistic materials were recovered from the incident site. As bo one came to claim their bodies, the security forces performed the last rites to the bodies of the diseased.

[7 July and 14 October 2004 — note separate communication on this one]

Maina Sunuwar, for whom a communication was sent on 7 July and 14 October 2004, who was shot dead by security forces on 18 February 2004. Ms Sunuwar was brought to Panchkai Barracks at 8h30 on 17 February 2004 for investigations from her home in Kharelthok. The commanding officer, a colonel, instructed two captains to question her. The two captains then used wrong techniques and methods during the interrogations and she died at 11h30. A court of inquiry conducted to look into the case recommended to form a general court martial against the three officers according to the military law. The general court martial found these three officers according to the Military Law. The General Court Martial found these three officers guilty and sentenced them six months of imprisonment, forfeiture of promotion (two years for the colnel and one year for the captains) and ordered to pay 50,000 rupees by the colonel and 25000 rupees each by the two captains as compensation.

[21 November 2003]

Raj Man Gole, for whom a communication was sent on 21 November 2003, who was shot on 3 October 2003 in Khatmandu by the security police. On 4 October 2003, Mr. Gole, an assistant

sub-inspector of police, came inside the barrack and was highly intoxicated. An internal investigation revealed that under the influence of alcohol, he abused and created a mess in the barrack. He was very aggressive in his behaviour. In order to take control of the situation, Inspector Santosh Singh Rathor and others grabbed him and took him to the hospital for medical examination. He was not detained, but he was persuaded and calmed. He was not tortured while in custody. Later, he left the barrack on 26 May 2004 without informing the official and remained absent for prolonged period and therefore, he was dismissed from police service on 27 July 2004 in accordance with existing police rule.

[25 October 2004 — note separate communication on the one]

Rajendra Karki, for whom a communication was sent on 25 October 2004, who was beaten and threatened to death by police on 7 October 2004 in Jajarkot. There is no information of arrest and beating of Mr. Karki.

[12 February 2004]

Tasi Lama, for whom a communication was sent on 12 February 2004 by the security forces. Mr Lama was taken into custody for interrogation by security forces on 12 February 2004 along with Ms Subhadra Chaulagain. He was found to be in possession of explosives and terrorist related documents. He made an attempt to escape from the security cordon, repeated warnings were given to him to stop, to which he paid no heed, hence security forces were compelled to fire at him resulting in his death. The court martial found the commander of the operation, a Lieutenant, guilty of using excessive force and not following the correct procedures for the handling of the body. The officer was sentenced to four months of imprisonment and forfeiture of promotion for three years.

Nigeria: Killings by the Police in Umuhaia, Abia State

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

Subject(s) of appeal: 16 males (1 minor)

Character of reply: Allegations rejected but without adequate substantiation

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Nigeria. However, the SR is concerned that the account provided does not appear to reflect a thorough investigation conduct by persons independent of those alleged to be responsible.

Letter of allegation dated 20 September 2006

In this connection, I would like to draw the attention of your Government to information I have received regarding recent report of extrajudicial killings by the police. According to the information received, in August 2006 four individuals were shot by police officers in Umuhaia in Abia State. The police claimed that the four men were suspected armed robbers and that they

were killed in a shoot-out. Twelve other suspects, including a 13 year old boy, were detained during the same raid and were transferred to the Abia State police headquarters. On 10 August at 9 am, the police reportedly brought them out into the grounds of the Abia State police headquarters and made them sit on the ground in full view of journalists and other spectators. Reports indicate that some of the suspects were displaying gun shot wounds.

On Friday 11 August, the dead bodies of the twelve suspected armed robbers were seen dumped outside the morgue at a government hospital. Sources have reported that the bodies were brought in by the police.

The police public relations officer in charge of the Abia State Police Command reportedly said to the media that he was not aware of the deaths and that he thought the suspects were still being interrogated.

If these allegations were correct, there would be ground for serious concern. Moreover it would demonstrate a continuing pattern of the practice to which I drew attention in the report I have submitted following my country visit to Nigeria (see E/CN.4/2006/53/Add.4, para 8-18).

While I do not wish to prejudge the accuracy of these allegations, I would like to draw your Government's attention to the fundamental principles applicable under international law to this case. Article 6 of the International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of his or her life.

As mentioned in my report (see E/CN.4/2006/53/Add.4, para. 43-47), it is entirely unacceptable that there are so many cases of alleged "armed robbers" killed by police officers before or after being taken into custody. The problem lies in part in the elevation of armed robbery to the level of capital offence as provided in Police Order No. 237. As I have explained in my report, this gives a justification to shoot to kill any person who has committed a capital offence and is seeking to flee. I wish to reiterate my recommendation that Public Order be amended immediately to bring it into conformity with the UN Basic Principles on the Use of Force and Firearms by Law Officials. The resulting emphasis should be on proportionality, on the use of lethal force as an absolute last resort, and only "when strictly unavoidable in order to protect life".

I would also like to appeal to your Excellency's Government to ensure that all deaths that occurred in connection with the incidents in the Abia State police headquarters are promptly, independently and thoroughly investigated in accordance with the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation … to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Commission added that this obligation includes the obligation "to identify and bring to justice those responsible, …, to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to … prevent the recurrence of such executions".

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

1. Are the facts alleged above accurate? If not so, please describe the investigations carried out to ascertain that the allegations are ill-founded.

2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the killings of the above mentioned suspected armed robbers.

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

Response of the Government of Nigeria dated 21 November 2006 to a letter of allegation dated 2 September 2006

The Government provided information in response to an allegation letter on alleged extrajudicial killings by the police in Abia State of Nigeria. On 8th August 2006, following a tip-off that a dangerous robbery gang was in a town called Bende in Urnuahia, a team of operatives from the Abia State Criminal Investigation Department (CID) trailed them to their hideout. However, before the police team arrived, they fled, abandoning their rifles and other robbed items. The police team further trailed them to their new location at Obokobe in Umuahia North Local Government Area of Abia State. Upon sighting the police, the suspected robbery gang opened fire and police responded in self defence. During the fierce exchange of gunfire, three of the armed robbery suspects died on the spot while nine others sustained various degrees of injury from the shootout. Before they could be given medical attention, the remaining nine suspects, who survived the shootout died as a result of the injuries they sustained. Their corpses were thereafter deposited at the Federal Medical. Centre, Umuahia for post mortem.

Contrary to the allegations, the number of persons involved in the incident was twelve (12) as against the sixteen (16) reported in some newspapers. It is also erroneous that there was a thirteen (13) year old among the deceased armed robbery suspects as they were all adults.

On the day of the incident, the Deputy Commissioner of Police, Abia State, granted a press interview on the incident and since then, no press statement was issued by the police.

Nigeria: Death Sentences of Shuaybu Yahaya and Sule Mai Tukwane

Violation alleged: Non-respect of international standards relating to the imposition of the death penalty

Subject(s) of appeal: 2 males

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 30 October 2006

I would like to draw the attention of your Government to information I have received regarding Mr. **Shuaybu Yahaya** and Mr. **Sule Mai Tukwane** who have been sentenced to death for sodomy.

According to the information received, on 29 June 2006 Shuaybu Yahaya and Sule Mai Tukwane were sentenced to be stoned to death for sodomy by the Gwarzo upper Sharia court, Kano State. They have reportedly not appealed their convictions and are currently held at the Central Kano prison.

If these allegations are correct, there would be grounds for serious concern. As I noted in the report following my visit to Nigeria (see E/CN.4/2006/53/Add.4, para .26-38), the characterization of sodomy as a capital offence leading to death by stoning is contrary to Nigerian federal law and to applicable international law. Sodomy cannot be considered to be one of the 'most serious crimes' for which the death penalty may be prescribed. It is generally understood that this category should not be defined as going beyond intentional crimes with lethal or extremely grave consequences (paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1984/50 of 25 May 1084). In its General Comment No. 6, the United Nations Human Rights Committee has stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure". Similarly, that Committee has observed that the restriction encapsulated in that phrase cannot be interpreted as permitting the imposition of the death penalty "for crimes of an economic nature, for corruption and for adultery, or for crimes that do not result in loss of life" (CCPR/C/28/Add.15, 3 August 2003, paragraph 8).

In accordance with the recommendations contained in my report on Nigeria (see E/CN.4/2006/53/Add.4, para 104), I call upon the Federal Government to underscore the fact that the imposition of the death penalty for offences such as sodomy is unconstitutional.

It is my responsibility under the mandate provided to me by the Commission on Human Rights, and extended by the Human Rights Council, to seek to clarify all cases brought to my attention. Without in any way pre-judging the accuracy of the information received, I would be grateful for a reply to the following questions:

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

2. If Shuaybu Yahaya and Sule Mai Tukwane have in fact been sentenced to death for the offence of sodomy, how does Your Excellency's Government consider that to be consistent with the applicable international legal standards?

Pakistan: Death Sentences of Four Men

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

Subject(s) of appeal: 4 makes

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 Commission on Human Rights.

Urgent appeal dated 16 December 2005

I would like to bring to the attention of Your Excellency's Government the situation of Mr. **Shahzad**, Mr. **Muhammad Ashraf**, Mr. **Umer Hayat** and Mr. **Mubarak Ali** who are reportedly scheduled to be hanged on 21 December 2005 in Faisalabad District Jail, Punjab province.

According to the information I have received, the four men were found guilty by the Faisalabad Anti-Terrorism Court of gang-raping a Christian girl in Faisalabad in 1999. They have exhausted all possibilities of appeal that were available to them.

I have been informed that the laws relevant to this case are currently being challenged in a petition pending before the Federal Shariat Court. The legal challenge reportedly relates both to the validity of a death sentence imposed pursuant to Section 10(4) of the Zina Ordinance VII and to the competence of Anti-Terrorism Courts over charges of rape.

I urge your Excellency's Government to stay these executions pending a final judgment on the petition. Especially when the right to life is at stake, the strictest attention must be given to the due process of law. It was to that end that the international community formulated Safeguards guaranteeing protection of the rights of those facing the death penalty in Economic and Social Council resolution 1984/50 (25 May 1984). As you know, these Safeguards affirm that "[c]apital punishment may only be carried out pursuant to a final judgement rendered by a competent court" (paragraph 5) and that "[c]apital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission" (paragraph 2). I understand that a final judgment was rendered in the cases of Mr. Shahzad, Mr. Muhammad Ashraf, Mr. Umer Hayat and Mr. Mubarak Ali. However, inasmuch as both the competence of the court that rendered those judgments and the validity of their statutory basis within the domestic legal order are currently being challenged, respect for the norms of due process and the right to life dictates that these men should not be executed prior to a final judgment on the pending petition.

It is my responsibility under the mandate provided to me by the Commission on Human Rights to seek to clarify all cases brought to my attention. Without in any way wishing to pre-judge the accuracy of the information received, I would respectfully request your Excellency's

Government to provide me with details regarding the measures taken with respect to Mr. Shahzad, Mr. Muhammad Ashraf, Mr. Umer Hayat and Mr. Mubarak Ali.

Pakistan: Honour Killing of Four Persons

Violation alleged: Impunity for honour killings

Subject(s) of appeal: 2 females (1 minor), 2 males (1 minor)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information provided by the Government of Pakistan with respect to the cases of Shehar Banu, Ali Nawaz Brohi, and their children. The SR would request that he be informed of the results of the Government's investigations into these cases.

Letter of allegation dated 3 February 2006 sent with Special Rapporteur on violence against women, its causes and consequences

We would like to bring to your Government's attention information we have received concerning the murders of **Shehar Banu**, her husband **Ali Nawaz Brohi**, her 5-year old son **Liaquat Ali** and her 3-years old daughter **Hanifa**. According to information received,

> Shehar Banu and their two children were shot and killed in their home village of Mohammad Bux Odhu, Taluka Garhi Khero, District Jacobabad, Sindh Province on 4 January 2006. The murders were allegedly committed by Shehar Banu's brothers Sikandar and Qaisar and their accomplices Sain Bux, Ghulam Rasool, Qalandar Bux and Niaz. The alleged perpetrators also shot and severely injured Ali Nawaz Brohi. He was taken to Larkana Hospital where the same perpetrators later allegedly attacked Ali Nawaz Brohi again and killed him.
>
> Eight years earlier, Shehar Banu had married Ali Nawaz Brohi against her family's will. Subsequently, the married couple fled their hometown of Ratodero, District Larkana to live in Mohammad Bux Odhu. Sources allege that Sikandar and Qaisar committed the murders with the intent to restore their family's "honour," which they considered tarnished by Shehar Banu's decision to exercise her right to choose her husband and marry.
>
> Reportedly, neither Sikandar, nor Qaisar nor any of their accomplices have been arrested and all six men remain at large.

Without in any way implying any conclusions as to the facts of the case and while appreciating that the alleged murders may still be under investigation, we call on your Excellency's Government to ensure that the perpetrators of this and other so-called "honour killings" are prosecuted and appropriately punished taking into account the grave nature of their crimes.

We would also like to refer Your Excellency's Government to the fundamental principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Articles 3 and 6 of these instruments, respectively, provide that every individual has the right to life and security of the person; that this right shall be protected by law and that no-one shall be arbitrarily deprived of his or her life. We would also like to refer Your Excellency's Government to the Convention on the Elimination of Discrimination against Women, which calls on States Parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (Art. 5(a)). Furthermore, and in accordance with developing standards of international law and human rights protection, the United Nations General Assembly adopted by consensus the Declaration on the Elimination of Violence against Women in its resolution 48/104 of 20 December 1993. The Declaration stipulates that all States Parties should 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 (Art. 4(c)).

We urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and accountability of any person guilty of the alleged violations ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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

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

2. 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.

Response of the Government of Pakistan dated 13 July 2006

The Permanent Mission of the Islamic Republic of Pakistan accredited to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to refer to its letter No. AI G/SO 214 (33-23) G/SO 214 (89-11) PAK 3/2006 dated 3 February 2006. The information received from the concerned authorities on the case is given below:

Murder of Sahar Bano and her Family in Jacobabad.

The case was duly registered under Crime No.01/2006 U/S 302-324 Pakistan Penal Code of Police State Muhammad Pur Odho, District Jacobabad. Detailed investigation is under process. Police has conducted many raids to arrest the accused who have absconded.

Pakistan: Targeted Killings in the Federally Administered Tribal Areas

Violation alleged: Deaths due to attacks or killings by security forces; death threats and fear of imminent extrajudicial execution

Subject(s) of appeal: 31 persons (killed) ; 1 male, journalist (threats to life)

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 he has been given by the General Assembly and the Commission on Human Rights.

Letter of allegation dated 7 March 2006 sent with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

We would like to bring to your Excellency's attention information we have received regarding three incidents of air strikes by United States unmanned aircraft against targets in Pakistan, each of them resulting in the death of several civilians. We have written to the Government of the United States of America in this matter as well.

On 5 November 2005, an unmanned aircraft operated by the US Central Intelligence Agency (CIA) fired a missile at a house in North Waziristan, Pakistan (no further details of the location reported). The CIA had received information that al-Qaeda operative **Hamza Rabia**, a citizen of Egypt alleged to have been involved in an attempt on the life of President Pervez Musharraf in December 2003, was staying there with his wife and children. While an overall **eight persons, including his wife and children**, were reportedly killed in the attack, Hamza Rabia managed to escape with an injured leg.

On 1 December 2005, an unmanned drone operated by the CIA fired a missile at a house in the village Haisori, near the town of Mir Ali, North Waziristan, about 30 kms from the Afghani border, killing five persons. It would appear that the dead are **Hamza Rabia**, two other foreign

men, and the 17-year-old son and an eight-year-old nephew of the owner of the house. While officials of your Excellency's Government stated that the blast resulting in the deaths was caused by explosives handled or stored in the house, reports indicate that residents of the area saw an unmanned aircraft fire a missile at the house and recovered fragments of the missile.

In the early morning hours of 13 January 2006 a remote-piloted Predator aircraft of the United States security services launched a strike with "Hellfire" missiles on the village of Damadola in the Bajaur Agency, North Western Pakistan, close to the border with Afghanistan. Reports indicate that US Predator drones were circling the area of Damadola village during the three days preceding the missile strike. The attack is reported to have killed **18 persons, including women and children**. The target of the strike reportedly was **Ayman al-Zawahri**, who is commonly referred to as the "number two" of al-Qaeda. He was reportedly expected at a dinner in Damadola on the evening of 12 January 2006. However, he appears not to have been in the village at the time of the attack. Your Government is reported to have stated that 5 senior al-Qaeda figures were among those killed, including a chemical and explosives expert, **Midhat Mursi al-Sayed alias Abu Abu Khabab, Abu Obaidah al-Misri**, allegedly al-Qaeda chief of operations for Afghanistan's eastern Kunar province, and Ayman al-Zawahiri's son-in-law **Abdur Rehman al-Maghribi**. However, the reports we have received indicate that the bodies of the five "Arab fighters" killed in the strike were pulled out of the rubble and taken away from the scene soon after the strike, so that only the bodies of 13 Pakistani victims could be identified.

It is our understanding that the US Central Intelligence Agency (CIA) is authorized to operate such Predator operations under presidential authority signed after the September 11, 2001 terrorist attacks. As to your Government's position, the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in his letter to you of 1 September 2005, concerning the death on 8 May 2005 of Mr. Haitham al-Yemeni, that his understanding is that your Government's Information Minister, Sheik Rashid Ahmed, reportedly denied at the time that any such incident had ever happened near the Pakistan-Afghanistan border. In a similar vein, your reply to the mentioned letter, dated 17 October 2005, states that "a car blew up with an explosion … resulting in the killing of a local and an unidentified foreigner" without further elaborating on the causes of that explosion. With regard to the incident in Haisori of 1 December 2005, as noted above your Government's position reportedly was that the deaths were caused by the explosion of explosives stored in the house. With regard to the incident in Damadola on 13 January 2006, however, media reports suggest that your Excellency's Government attributes the deaths to a missile fired by a US aircraft. Your Government's Prime Minister, Mr. Shaukat Aziz, is reported to have publicly stated that such attacks are not acceptable to Pakistan.

In connection with these conflicting reports, we would also express our concern at information received regarding Mr. Hayatullah Khan, a reporter for the Urdu-language daily "Ausaf" and photographer for the European Press Photo Agency, who reportedly found and reported evidence that the deaths in Haisori village on 1 December 2005 were caused by a US air strike, thus contradicting your Government's official version of the events. He was abducted by armed men on 5 December 2005, in Mir Ali, North Waziristan, and has since then remained unaccounted for. An official at the Governor's House in Peshawar, however, is reported to have recently told journalists who were protesting in favor of Hayatullah Khan's release: "The more noise you make, the more you prolong Hayatullah's captivity". We urge your Excellency's Government to

clarify the whereabouts of Mr. Khan and to ensure that his rights to life, physical integrity, personal freedom and freedom of expression are respected.

We wish to remind you that while Governments have a responsibility to protect their own citizens and those of other States against the excesses of non-State actors or other entities, the UN GA Resolution 59/191, in its paragraph 1 stresses that "States must ensure that any measure to combat terrorism complies with their obligation under international law, in particular international human right, refugee and humanitarian law". In this respect, we wish to stress our concern that empowering Governments to identify and kill "known terrorists" places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative has been exhausted. (See the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the 61st Commission on Human Rights, E/CN.4/2005/7, at par. 41).

Without in any way wishing to pre-judge the accuracy of the information received, we would be grateful for a reply to the following questions.

1. Are the above reports accurate? In particular, does your Excellency's Government accept that there were three air strikes by unmanned CIA drones on targets in Pakistan on 5 November 2005, 1 December 2005, and 13 January 2006, as described above?

2. On what basis was it decided to kill, rather than capture, Ayman al-Zawahri? On what basis was it decided to kill, rather than capture, Hamza Rabia?

3. What rules of international law does your Excellency's Government consider to govern these incidents? If your Excellency's Government considers the incidents to have been governed by humanitarian law, please clarify which treaty instruments or customary norms are considered to apply.

4. What procedural safeguards, if any, were employed to ensure that these killings complied with international law?

5. Did the Government of Pakistan agree to the killing of Hamza Rabia and Ayman al-Zawahri? More in general, does the Government of Pakistan agree to the United States carrying out air strikes against targets in Pakistan in order to kill terrorism suspects?

6. In case your Excellency's Government did not consent to these air strikes, what steps were taken to investigate the incidents and hold those responsible accountable?

7. Does your Excellency's Government intend to provide compensation to the families of the persons killed in these air strikes? If so, what steps have been taken in this direction?

Pakistan: Indiscriminate Attacks in Dera Bugti, Balochistan

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

Subject(s) of appeal: 36 females (at least 15 minors); 49 males (at least 16 minors)

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 he has been given by the General Assembly and the Commission on Human Rights.

Letter of allegation dated 16 March 2006

I would like to draw the attention of your Government to information I have received regarding the killing of civilians in allegedly indiscriminate military attacks by security forces in the Dera Bugti district of Balochistan.

On 17 March 2005, at least 43 non combatants were killed by Frontier Corps forces in Dera Bugti town. Reports vary as to what caused the outbreak of violence, but it would appear that it was triggered by a group of armed tribesmen blocking a military convoy at a crossing outside Dera Bugti town. Thereafter, Frontier Corps forces stationed in Dera Bugti launched an attack lasting several hours on the town, including a neighbourhood inhabited mostly by Hindus, with rocket launchers and machine guns, killing at least 43 non combatants (a list of their names is in the annex to this letter). Reports indicate that among the combatants the casualties might have been eight on the Government side and around 20 among the armed Bugti tribesmen. None of the reports received identify any military necessity underlying the attack on the neighbourhoods where the civilian deaths occurred, and according to my knowledge, your Excellency's Government has not provided any explanation of a military rational underlying the attack.

While unique in its gravity, the attack of 17 March 2005 appears not to be an isolated incident. On the contrary, reports indicate that since 30 December 2005 the use of rocket launchers, gunship helicopters and other heavy weaponry by the Frontier Corps against civilian targets has become regular. From 31 December 2005 to 10 January 2006, such attacks have reportedly killed 11 men, 11 women and 19 children in Dera Bugti, Loti, Jori, and other places in the area (a list of the alleged victims is in the annex). As a result of these attacks, 85 percent of the population of Dera Bugti town (approximately 25,000) have left the town, there is no water or electricity except in very few locations and schools are closed.

I would further like to draw the attention of your Government to allegations of retaliatory extrajudicial execution of persons held captive by security forces in Dera Bugti. On 11 January 2006, at the Pattar Nala the Frontier Corps raided a hamlet and burnt down several dwellings. On their return, three Frontier Corps soldiers were injured by the explosion of a land mine. While the soldiers were transported to Sui hospital, a raid was conducted on the same hamlet. The Frontier Corps apprehended 12 local men (names in the annex) and took them to the Frontier Corps headquarters in Dera Bugti. Around 4 p.m., news reached the headquarters that the three soldiers had died of their injuries at the hospital. In reaction thereto, the Frontier Corps soldiers summarily executed all 12 persons in their custody. They then sent for their families to collect the dead bodies. Some women went but were sent back by the Frontier Corps and asked to send their male family members. On 15 January 2006, two old men of the tribe (names in the annex)

went to the Frontier Corps headquarters. They did not return. The next day all 14 bodies were handed to an official in Dera Bugti, who delivered the bodies to the families.

In raising my concerns with regard to the killing of civilians by rocket fire and other forms of military action, I am aware of the existence of armed tribal militias in Balochistan which carry out attacks against governmental forces and infrastructure. I am also aware that a compound of the Nawab Akbar Bugti, a tribal leader accused by your Government of commanding substantial militia, is located in the town of Dera Bugti.

I would like to recall, however, that international humanitarian law requires parties to an armed conflict to distinguish at all times between combatants and civilians, and to direct attacks only against combatants (Rules 1 and 7 of the Customary Rules of International Humanitarian Law identified by the International Committee of the Red Cross); acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited (Rule 2); attacks by bombardment which treat as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are prohibited (Rule 13); launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14).

I have drawn your attention to applicable rules of international humanitarian law because the reports received suggest that your Government is currently waging an armed conflict against rebel forces in some parts of Balochistan, including Dera Bugti district. Assuming, however, that the situation in Dera Bugti district was a question of "law and order" and did not constitute an armed conflict, as reportedly argued by your Excellency's Government, the lack of any justification for the reported lethal attacks against civilians with rockets and other heavy military equipment would appear all the clearer.

As to the alleged shooting of 14 men in custody of the security forces in retaliation for the death of three soldiers on 11 and 15 January 2006, it would appear that there cannot be any possible justification for the killings under either international human rights or humanitarian law. Common Article 3 of the Geneva Conventions of 1949, applicable in the case of armed conflict not of an international character, prohibits the killing of any person taking no active part in an armed conflict, such as persons in captivity.

Whether the legal framework is that of law enforcement or that of an internal armed conflict, in order to assess whether the use of lethal force was proportionate and thus justifiable, there must be a "thorough, prompt and impartial investigation" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation … to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Commission added that this obligation includes the obligation "to identify and bring to justice those responsible, …, to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary

measures, including legal and judicial measures, in order to … prevent the recurrence of such executions".

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

(i) Are the facts alleged above accurate? If not so, please describe the investigations carried out to ascertain that the allegations are ill-founded.

(ii) Does your Excellency's Government consider that it is engaged in an armed conflict with rebel forces in Dera Bugti district, Balochistan?

(iii) With regard to the rocket attacks or shelling resulting in the death of non-combatants, please describe the investigations carried out to determine whether the use of force was lawful, and if not so, the action undertaken to bring those responsible to justice.

(iv) With regard to the alleged summary execution of 14 men held in captivity by the Frontier Corps in Dera Bugti on 11 and 15 January 2006, please describe the action undertaken to investigate the matter and bring those responsible to justice.

(v) Have the families of the victims of the attacks described above received compensation?

Annex

Non combatants killed as a result of rocket and shell fire on civilian dwellings in Dera Bugti on 17 March 2005

Children below age 10

1. Atti Divi daughter of (d/o) Bacha Mal
2. Quvita Devi d/o Dewan Chand
3. Sarkasha Devi d/o Saroon Kumar
4. Amar Devi d/o Rajes Kumar
5. Deepak Kumar son of (s/o) Narenjan Kumar
6. Vicky Kumar s/o Tara Kumar
7. Ajeet Kumar s/o Vicky Kumar
8. Washal s/o Manoher Lal
9. Raveet s/o Manoher Lal
10. Rekha Devi d/o Rukan Chand
11. Ameer Chand s/o Rukhan Chand
12. Sant Kumar s/o Nand Lal
13. Sangeeta Davi d/o Nand Lal
14. Narmeeta Devi d/o Moti Lal
15. Vikram s/o Sant Lal
16. Barkha Devi d/o Luchhman Singh

17. Ramesh Kumar s/o Preetam Kumar
18. Ravi Kumar s/o Ramesh Lal
19. Ameet Kumar s/o Dewan Chand (aged 16)

Women

1 Zarka Devi wife of (w/o) Manoher Lal
2 Sharmeela Debe w/o Rukhan Chand
3 Mai Conish Devi w/o Moti Lal

Men

1 Mukhi Mohan Mal s/o Brama Mals
2 Dewan Chand s/o Tara Chand
3 Saroom Kumar s/o Deyal Dass
4 Laloo Mal s/o Deyal Dass
5 Ram Lal s/o Chander Lal
6 Rajesh Kumar s/o Chander Lal
7 Narjen Kumar s/o Ranjhan Dass
8 Nand Lal s/o Sobha Singh
9 Resha Dass s/o Nand Lal
10 Bacha Mal s/o Mokhi Mohan Mal
11 Suresh Kumar s/o Santu

Men executed at the Frontier Corps quarters in Dera Bugti on 11 January 2006

1. Gulu s/o Muhammad Murad
2. Kamal s/o Wazir Khan
3. Qadir Bux s/o Murad
4. Said Ali s/o Murad
5. Razi s/o Badu Khan
6. Ghulam Hussain s/o Badu Khan
7. Lal Bux s/o Maujan
8. Lal Mohammad s/o Moujan
9. Mamir s/o Lal Muhammad
10. Amir Khan s/o Sher Khan
11. Zarin s/o Malang
12. Tao s/o Lal Bux

Two old men executed at the Frontier Corps quarters in Dera Bugti on 15 January 2006

Muhammad Murad s/o Sakib Khan
Malang s/o Wazir Khan

List of non combatants killed by military action since 31 December 2005

On 31 December 2005, attack.	2 men, 2 women, 6 children in Peekal in Gunship
On 1 January 2006, near Pesh Boghi,	Muhammad Amin s/o Dil Karim
On 2 January 2006, in Jori,	Shah Dost s/o Shohil Male and Mst. Dauli w/o Hakim
On 4 January 2006, in Dera Bugti,	Gullu s/o Daurani Umeda s/o Rugha Eido s/o Jetha Daruesh s/o Tanghav Qadoo s/o Jetha W/o Shehan W/o Rahu W/o Haideran Khudija d/o Rahu (child) Huran d/o Marri Khan (child) Fakhardin s/o Humbo Child (child)
On 5 January 2006, in Pehs Boghi,	Hoor Bibi w/o Haji Khan
On 10 January 2006, in Dera Bugti,	Samad s/o Mularak Bakhtawar w/o Samad Noor Bibi d/o Qadir (child) Fatima d/o Samad Child (child) Ghulam d/o Allah Baksh (child) Ejaz s/o Allah Baksh (child) Gulab s/o Noor Elahi (child)
On 10 January 2006, in Loti,	Mehar Ali s/o Ganhawar Raj Bibi d/o Ganhawar Ali Gul s/o Mehar Ali (child) Naz Bibi d/o Garu (child) Mah Gul d/o Garu (child)
On 10 January 2006, location not reported,	Jan Bakht w/o Mubarak Rani Bibi w/o Qadir Female Gul Khan s/o Samad (child) Mehrullah s/o Qadir (child)

Pakistan: Death Sentence of Mirza Tahir Hussain

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

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 10 May 2006

I would like to draw your attention to information I have received regarding Mr. **Mirza Tahir Hussain**, a man sentenced to death whose execution is reportedly scheduled for 1 June 2006.

According to the information received, the facts of the criminal case against Mirza Tahir Hussain involve the death of a taxi driver more than 17 years ago, on 17 December 1988. Some courts have found that Mirza Tahir Hussain murdered the taxi driver, while others gave credence to the defense version that the taxi driver was fatally injured when his gun went off in the scuffle that followed his attempts to sexually assault Mirza Tahir Hussain under the threat of his gun.

Mirza Tahir Hussain was sentenced to death in 1989 at the Sessions Court in Islamabad. Following an appeal, this sentence was quashed by the Lahore High Court. The case was returned to the Sessions Court where Mirza Tahir Hussain was sentenced to life imprisonment in 1994. Following a second appeal, the Lahore High Court dismissed this sentence in 1996, and Mirza Tahir Hussain was acquitted of all charges against him.

A week later, Mirza Tahir Hussain's case was referred to the Federal Shariat Court on charges including robbery involving murder, which falls under Islamic offences against property. The case against Mirza Tahir Hussain was reopened, and in 1998, he was sentenced to death by the Federal Shariat Court. The Supreme Court upheld the judgment in 2003 and dismissed a further appeal in 2004. The President rejected a petition for clemency in 2005.

International law does not prohibit the death penalty, but it mandates 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. As a consequence, in capital punishment cases the "right to a fair and public hearing … in the determination of … any criminal charge", enshrined in Article 10 of the Universal Declaration of Human Rights, must be observed particularly scrupulously. A hallmark of the right to a fair trial in criminal cases is the principle of ne bis in idem, i.e. – in the words of the International Covenant on Civil and Political Rights – the principle whereby "[n]o one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country." While I am aware that Pakistan is not a State party to the Covenant, this principle can be considered to be a general principle of international law which finds expression in Article 13 of the Constitution of Pakistan which provides that "No person (a) shall be prosecuted or punished for the same offence more than once …".

I understand that the murder of which Mirza Tahir Hussain is accused has been characterized in a slightly different fashion in the charges formulated against him before the Federal Shariat Court. Nonetheless, it would appear that the Shariat Court did in effect try him anew for the same offence which had been the subject of the proceedings before the Sessions Court and the Lahore High Court. The legal defect would be all the greater if, as has been reported to me, the distinctive element of the charges brought against him in the Shariat Court was the accusation of "robbery", which was later on dismissed entirely by that same court. To sum up, Mirza Tahir Hussain appears to be at risk of being punished again for an offence of which he has already been finally acquitted by Pakistan's judicial system, in violation of the obligations of your Excellency's Government under both international and Pakistani law.

In view of the irrevocable nature of the death penalty, I therefore urge your Government not to proceed with the execution. This question requires a thorough re-examination in order to ensure that the relevant laws have been complied with. In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government.

Moreover, it is my responsibility under the mandates provided to me by the Commission on Human Rights and reinforced by the appropriate resolution of the General Assembly, to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful 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 how the Government of Pakistan seeks to ensure that the principle of ne bis in idem, as recognized in both Pakistani and international law, is upheld in relation to the concurrent jurisdiction of the ordinary secular court system and the Federal Shariat Court.

Urgent appeal dated 18 August 2006

I would like to refer to a communication I sent your Excellency's Government on 10 May 2006 concerning Mr. **Mirza Tahir Hussain**, a man sentenced to death whose execution was, at the time, scheduled for 1 June 2006. I was relieved to learn that your Government has twice postponed the execution of Mirza Tahir Hussain, most recently until 1 September 2006, in order to allow his family more time to seek a pardon from and to offer monetary compensation to the family of the alleged murder victim.

These welcome efforts of your Government, however, do not address the serious legal concerns I raised in my communication of 10 May 2006, which has regrettably remained without a reply. As you will recall, these concerns relate to the preoccupation that the trial of Mirza Tahir Hussain before the Federal Shariat Court, which reportedly imposed the death sentence against him after he had been acquitted by the Lahore High Court, violates the principle of non bis in idem enshrined in both international law and the Pakistani Constitution.

I therefore again urge your Government to indefinitely suspend the execution of Mirza Tahir Hussain and to initiate a thorough re-examination of the case in order to ensure that the relevant

domestic and international law has been complied with. In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government.

Pakistan: Killing of Abdul Sattar Gopang

Violation alleged: Impunity

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 he has been given by the General Assembly and the Commission on Human Rights.

Letter of allegation dated 5 July 2006 with the Special Rapporteur on freedom of religion or belief.

We would like to draw the attention of your Government to information we have received concerning Mr. **Abdul Sattar Gopang** who was reportedly stabbed to death while he was on trial on blasphemy charges at the District and Session Court of Muzzafargarh on 16 June 2006.

According to the information received, his murder was instigated by Maulana Abdul Rasheed, and carried out by five members of his seminary. Two of the perpetrators were subsequently captured by bystanders and handed over to the police while two policemen who allegedly tried to overpower the attackers were injured.

Mr. Abdul Sattar Gopang worked as a tax collector for the union council in Jatoi town, Muzzafargarh. Mr. Rasheed, in charge of a seminary, had not been paying his toll tax and had verbally threatened Mr. Gopang when asked to do so. On 13 March 2006, Mr. Rasheed again refused to pay his toll tax. He then went to the police and filed a fabricated case of blasphemy against Mr. Gopang.

According to the information received, Mr. Rasheed allegedly told members of his seminary that they would go to heaven if they killed Mr Gopang for having committed blasphemy. Concerns have been expressed that fabricated blasphemy charges are possible as a consequence of the Blasphemy Laws (295-B, 295-C, 298-C).

To date, it is our understanding that the three remaining perpetrators remain at large and that no charges have been brought in connection with the murder of Mr. Gopang.

While we do not wish to prejudge the accuracy of these allegations, we should like to appeal to your Excellency to ensure that the death of Mr. Abdul Sattar Gopang is promptly, independently and thoroughly investigated in accordance with the United Nations principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions.

We urge your Government to take all necessary measures to guarantee that accountability of any person guilty of the murder of Mr. Gopang. We also request that your Government adopts effective measures to prevent the recurrence of killings such as the above described.

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

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

2. Has a complaint been lodged?

3. What was the nature of the blasphemy charges brought against Mr. Gopang? What safeguards exist in the current law to prevent unfounded allegations from forming the basis of blasphemy prosecutions?

4. 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.

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

6. Please indicate whether compensation has been provided to the family of Mr. Gopang.

Philippines: Impunity for Killings of Leftist Activists

Violation alleged: Impunity

Subject(s) of appeal: 2 females; 8 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information provided by the Government of the Philippines, and he would appreciate being updated on the progress of investigations.

The Special Rapporteur also appreciates the Government's commitment to provide reports on the cases of Andy Pawikan, Vicente Denilla, Porferio Magsalang, and Enrico Cabanit when available.

Letter of allegation dated 2 June 2006 with the Special Representative of the Secretary-General on the situation of human rights defenders

In this connection, we would like to bring to your Government's attention information we have received concerning a sharp increase in reports of killings of human rights activists who are believed to be targeted for their activities for the promotion of human rights. According to the information we have received, more than thirty killings of human rights defenders have taken place during the first quarter of 2006 alone. The cases listed in the annex to this letter are illustrative of this broader tendency and share certain common elements: a majority of victims are reported to have been shot at point-blank range by unidentified gunmen. Besides, none of these killings has reportedly been investigated and perpetrators remain at large. Reports also indicate that this figure is only indicative of a much higher criminal rate against human rights activists who continue to carry out their work in an increasingly dangerous environment.

In this connection, we regret that your Excellency's Government has failed to provide us with sufficient information as requested in our letters -sent over the last two years- with regard to the thorough investigation of such killings and the outcome of relevant criminal and judicial proceedings.

While we do not wish to prejudge the accuracy of these allegations, we urge your Excellency's Government to take effective measures against impunity to deter and prevent further assassinations of human rights defenders.

In this respect, we would like to recall that, as reiterated in Commission on Human Rights Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), all States have "the obligation … to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, … and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions". This obligation, affirmed also in the jurisprudence of the Human Rights Committee (*see*, e.g. the Committee's views in *Arhuacos v. Colombia*, Communication no. 612/1995, § 8.8.), is indeed part and parcel of the obligation to respect and protect the right to life enshrined in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights.

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

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

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

The Special Rapporteur on extrajudicial, summary or arbitrary executions also wishes to remind your Excellency's attention that, to date, he has not received a response to his request for a fact-finding mission. If accepted, a visit would allow him to examine *in situ* questions relating to impunity and to formulate pertinent recommendations with the objective of strengthening the protection of the right to life.

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

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

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

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

5. Please indicate whether witnesses to these attacks have been afforded with adequate security and witness protection.

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

Annex

On 27 March 2006, Mr **Vicente Denila**, member of the Camansi Farm Workers' Cooperative (CFWC) and an active defender of farmers' rights, was shot and killed by unknown armed men in Negros Oriental.

On 5 April 2006, Mr **Florencio Perez Cervantes,** an active supporter of the Bayan Muna (People First) political party and community spokesman, was killed in his house in Barngay

village, Santa Cruz, Rosario, Agusan del Sur. Armed men clad in bonnets forcibly entered the house and reportedly shot at Mr Perez Cervantes and his family while they were asleep. Mr Perez Cervantes suffered 47 gunshot wounds to his body. According to a statement made by the 36th Infant Battalion of the Philippine Army, Mr Perez Cervantes was killed in crossfire. To date, his murder has not been investigated.

On 15 April 2006, Mr **Rico Adeva,** a land rights activist and staff member of the *Task Force Mapalad* (TFM), was shot and killed with his wife while he was on his to Talisay. Three armed men reportedly asked the couple to lie down and shot several times in their head, neck, hands and torso.

On 22 April 2006, Mr **Porferio Magsalang,** an active defender of rural workers and Chair of the Pambansang Katipunan ng Makabayang Magbubukind (PKMM), was shot and killed by four unidentified armed men, who entered his home in Sitio Caraan, Brangay Tampalon.

On 24 April 2006, **Mr Enrico Cabanit,** Chairperson of WADECOR Employees Agrarian Reform Beneficiaries Association Inc. (WEARBAI) and Secretary General of *Pambansang Ugnayan ng mga Nagsasariling Lokal Organisasyon sa Kanayunan (National Coordination of Local Autonomous Rural People's Organisations- UNORKA),* was shot in the head and killed at the Panabo Public Market by two unidentified individuals. His 23 year old daughter, **Daffodil** also member of UNORKA, was also seriously injured in the attack, sustaining a gunshot wound in her chest. She was transferred in a critical condition to the hospital. A few hours before his killing, Mr Cabinet had participated in a successful dialogue between the Davao del Norte plantation workers and officials of the Department of Agrarian Reform. During this meeting, he had requested that some land belonging to a local landowner Don Antonio Floirendo be included in the list of plots to be redistributed by the Comprehensive Agrarian Reform Programme (CARP) to poor farmers in the region. This attack occurred less than two months before the National Congress of UNORKA was to be held in Panabo in June 2006.

On 10 May 2006 Ms **Elena Mandiola,** secretary general of the Bayan Muna (People First) party, and her husband Mr **Ricardo Balauag**, were killed by armed men in Barangay Gair, Echague, Isabela. It is reported that Ms **Elena Mandiola** had previously been the subject of an attempt on her life on 10 March 2006.

On 18 May 2006 Ms **Annaliza Abanador-Gandia** a pro democracy activist and leader of the *Pagkakaisan ng Kababababain* (Kaisa Ka), an organisation that works in defence of women's rights, was shot and killed by two unknown gunmen. It is alleged that she was working inside the Duckie shop in Batanga City when two men arrived on a motorcycle and entered the shop. It is reported that Ms **Annaliza Abanador-Gandi** suffered multiple gun shot wounds to her head and body.

On 21 May 2006 **Reverend Andy Pawican**, a pastor with the United Church of Christ in the Philippines and a defender of the rights of rural workers was shot and killed by armed men in Barangay Fatima, Pantabangan, Nueva Ecija.

On 27 May 2006 Mr **Noel Capulong**, spokesperson for the Southern Tagalog Environmental Action Movement and deputy secretary general of Bayan Muna in Southern Tagalog was shot and killed by unknown armed men.

Since August 2005, the Special Representative of the Secretary-General on the situation of human rights defenders, along with other Special Procedures mandate holders, has issued five communications concerning the killings of eight human rights defenders. On 11 May 2005, the Special Rapporteur on extrajudicial, summary or arbitrary executions also sent a letter of allegation concerning the extrajudicial killing of a labour rights activist by members of the military forces. To date, the Government of the Philippines has only responded to one of the communication sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions as reflected in his report on communications (see E/CN.4/2006/53/Add.1).

Response of the Government of the Philippines dated 11 September 2006

With reference to your joint letter dated 02 May 2006 and 02 June 2006, please find attached the replies of the Philippine Government to the questions raised in said letters concerning cases of the following:

1. Mr. Florencio Perez Cervantes
2. Mr. Rico Adeva
3. Ms. Elena Mendiola
4. Mr. Ricardo Balauag
5. Ms. Annaliza Abanador-Gandia
6. Mr. Noel Capulong

Information on the case of Ms. Annaliza Abanador-Gandia was also transmitted in a separate letter dated 08 September 2006 addressed to the Special Representative on the situation of human rights defenders and the Special Rapporteur on violence against women.

The Philippine National Police-Directorate for Investigation and Detective Management is still awaiting reports from the Police Regional Office on the case of Pastor Andy Pawikan. Information pertaining to this case, as well as the cases of Messrs. Vicente Denilla, Porferio Magsalang, and Enrico Cabanit will be transmitted to your office once they are received from concerned agencies.

Killing of Mr. Florencio Perez Cervantez

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

It was alleged in the communication that:

"On 5 April 2006, Mr. Florencio Perez Cervantes was killed in his house in Barangay Santa Cruz, Rosario, Agusan del Sur. It is reported that armed men clad in bonnets forcibly entered the house of Mr. Cervantes while he and his family were sleeping and shot and killed him. It is further reported that an announcement was made by elements of the Philippine Army's 36"^{h} Infantry Battalion that Mr. Cervantes was killed in crossfire and that there has been no investigation to look into allegations that he was murdered. "

The Directorate for Investigation and Detective Management of the National Police Commission reported that the Regional Intelligence and Investigation Division of the Philippine National Police has conducted an investigation on the case. Police investigation reveals that on 01 Apri12006, a certain Julito Acevedo Piling a.k.a. Ka Dimpol, a member of the New People's Army (NPA), was arrested by members of the 36th Infantry Battalion of the Philippine Army. It appears that Mr. Piling is the Vice Commanding Officer and platoon leader of Front Committee 14, North Eastern Mindanao Regional Committee of the NPA, the armed wing of the Communist Party of the Philippines. Upon his arrest, Mr. Piling divulge to the arresting officers that he entrusted his firearm to Mr. Cervantes.

With this information, members of the 36`h Infantry Battalion together with police officers from the Agusan del Sur Police Provincial Office proceeded to the house of Mr. Cervantes to recover the firearm. While the officers were approaching the house of Mr. Cervantes, Mr. Cervantes opened fire upon them. One of the soldiers, a certain Pfc. Asara Nahar, was hit thereby prompting responding soldiers to retaliate and fire upon Mr. Cervantes. Mr. Cervantes was killed in the encounter. The police and the military recovered two pieces of firearm in the house of Mr. Cervantes.

2. Has a complaint been lodged?

At the moment, there is no information on whether the family of Mr. Cervantes has instituted a complaint against the members of the 36`h IB for his death.

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.

Police investigation reveals that Mr. Cervantes died as a result of a legitimate military operation.

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?

At the moment, there is no information on whether the family of Mr. Cervantes has instituted a complaint against the members of the 36`x' IB for his death. As such, an answer to this question canne be provided.

5. Please indicate whether compensation bas been provided to the victim or to the family of the victim.

Inasmuch as there is no information on whether the family of Mr. Cervantes has instituted a complaint for his death, an answer to this question cannot be provided.

Killing of Mr. Rico Adeva

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

It was alleged in the communication that:

"On 15 Apri12006 Mr. Rico Adeva was shot and killed while he and his wife were on their way to Talisay, Negros Occidental, when three armed men blocked their way. It is reported that the armed men asked Mr. Adeva and his wife to lie down with their faces turned to the ground and that Mr. Adeva was shot seven times and suffered wounds in his head, neck and torso. "

The Directorate for Investigation and Detective Management of the National Police Commission reported that police investigation resulted in the filing of complaint against the suspects for the killing of Mr. Rico Adeva.

Mrs. Nenita Adeva, wife of Mr. Adeva, survived the attack and was able to describe her husband's killers. One of the suspects was identified as Ronald Europa y Porras, member of the Revolutionary Proletariat Army Red Fighter. According to Mrs. Adeva, Mr. Europa is a distant relative of her husband who used to visit their house at Hacienda de Fuego II. Mrs. Adeva was able to identify the other killer from police cartographic files.

2. Has a complaint been lodged?

Yes, a complaint for the killing of Mr. Adeva has been filed against Mr. Ronald Europa, a certain Boy Negro, and four John Does, before the Prosecutor's Office in Silay City, Negros Occidental and is docketed as IS No. 06-092.

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.

For a better understanding of the issues at hand, it is essential to discuss the procedure involved in the prosecution of criminal offenses under the domestic criminal justice system.

The usual domestic procedure begins with a police investigation of the case. Thereafter, a criminal complaint is filed against the person who was found by the police to have committed the offense.

The complaint is filed before the municipal/city prosecutor's office (of the Department of Justice) or in place where there are no prosecutors, before the municipal trial court judge of the place where the criminal act was alleged to have been committed.

The prosecutor or the municipal trial court judge, then conducts a preliminary investigation or examination of the complaint. In the course of the investigation or examination, the prosecutor or the judge calls upon the complainant, the person being accused of the offense, and their witnesses to determine the veracity of the complaint. If the prosecutor or the judge is satisfied that there is reasonable ground to believe that the crime charged has been committed and that the accused is probably guilty thereof, lie recommends the filing of a criminal case before the trial court. After the filing of the criminal complaint (which is also called an "information"), trial on the case ensues.

During trial, the accused is accorded all the rights due an accused under the Constitution, such as, but not limited to the following: the right to be presumed innocent; right to counsel; right to be informed of the accusation against him; right to speedy, impartial and public trial; right to confront witnesses against him; and the right to compel the attendance of witnesses in his behalf. Upon the conclusion of trial, the trial court which heard the case will make a finding on the guilt of the accused and impose civil sanctions if it finds the accused guilty of the crime charged.

In the present case, the killing of Mr. Adeva is pending preliminary investigation before the prosecutor's office.

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?

Inasmuch as the killing of Mr. Adeva is still pending preliminary investigation, the question relating to the imposition of sanctions against the supposed perpetrators cannot be answered at this instance.

5. Please indicate whether compensation has been provided to the victim or to the family of the victim.

As mentioned above, the killing of Mr. Adeva is still pending preliminary investigation; hence the question relating to the payment of compensation to the family of Mr. Adeva cannot be answered at this instance.

Killings of Ms Elena Mendiola and Mr. Ricardo Balauag

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

"On 10 May 2006, Ms. Elena Mendiola, Secretary General of the Bayan Muna (People First) Party, and her husband, Mr. Ricardo Balauag were killed by armed men in Barangay Gair, Echague, Isabela. It is reported that Ms. Elena Mendiola had previous1y been the subject of an attempt on her life on 10 March 2006. "

Investigation disclosed that on 10 May 2006 at around 7:30 p.m., the spouses Elena V. Mendiola, Secretary General of Bayan Muna, Isabela and Ricrdo A. Balauag, Chairman of Bayan Muna, Isabela were killed in Silauan Sur, Echague, Isabela.

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

Police investigation revealed that on 10 May 2006 at around 7:30 p.m., the spouses Elena V. Mendiola, Secretary General of Bayan Muna, Isabela and Ricardo A. Balauag, Chairman of Bayan Muna, Isabela, were killed in Silauan Sur, Echague, Isabela. The police recovered three spent shells of M14 rifle at the crime scene.

Investigation further disclosed that an eyewitness, a certain Bayani Villanueva, identified the suspects as Renato Busania and Timoteo Cruz, Jr., members of the Southern Front Communist Party of the Philippines/National People's Army (CPP/NPA), Cagayan Valley Regional Committee, Silauan Sur, Echague, Isabela.

Motive of the killing may have been the alleged malversation/misappropriation of funds for livelihood projects of the local Bayan Muna members, which could be the reason why the spouses were killed.

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

A complaint has been filed against the suspects Renato Busania and Timoteo Cruz, Jr., before the prosecutor's office. The complaint is undergoing preliminary investigation and is docketed as IS No. 2006-E-635.

Inasmuch as the killings of Ms. Mendiola and Mr. Balauag are still under preliminary investigation, the question relating to the imposition of sanctions cannot be answered at this time.

4. Please indicate whether compensation has been provided to the family of the victim.

Inasmuch as the killings of Ms. Mendiola and Mr. Balauag are still under preliminary investigation, the question relating to the payment of compensation to the family of the victim cannot be answered at this time.

Killing of Ms. Annaliza Abanador-Gandia

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

It was alleged in the communication that:

"On 18 May 2006 Ms. Annaliza Abanador-Gandia was shot and killed by two unknown gunmen. It is alleged that she was working inside the Duckie shop in Balanga City when two men arrived on a motorcycle and entered the shop. It is reported that Ms. Abanador-Gandia suffered eight gun shot wounds to her head and body. It is also reported that on 16 May 2006 Ms. Abanador-Gandia had been followed by two men on motorcycle... "

The Directorate for Investigation and Detective Management of the National Police Commission reported that police investigation resulted in the filing of a complaint against suspects. A certain Zenaida P. Alcoreza has reported to the police that she found the lifeless body of Ms. Abanador-Gandia, leader of the *Pagkakaisa sa Kababaihan*, inside her shop in Balanga City, Bataan. Investigators from the Balanga Municipal Police Station and the Scene of the Crime Operatives recovered four empty shells and one deformed caliber .45 slug from the crime scene. Police also took the testimonies of witnesses who were able to identify the suspects.

2. Has a complaint been lodged on behalf of the victim?

Yes, a complaint for the killing of Ms. Abanador-Gandia has been filed against a certain Allan Prado a.k.a. Lan, and a certain Jose Carrabero aka. Tok-Tok before the Office of the City Prosecutor, Balanga City. According to the police, both suspects belong to the New People's Army, the armed wing of the Communist Party of the Philippines.

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.

For a better understanding of the issues at hand, it is essential to discuss the procedure involved in the prosecution of criminal offenses under the domestic criminal justice system.

The usual domestic procedure begins with a police investigation of the case. Thereafter, a criminal complaint is filed against the person who was found to have committed the offense.

The complaint is filed before the municipal/city prosecutor's office (of the Department of Justice) or, in places where there are no prosecutors, before the municipal trial court judge of the place where the criminal act was alleged to have been committed. The prosecutor, or the municipal trail court judge, then conducts a preliminary investigation or examination of the complaint. In the course of the investigation/examination, the prosecutor or the judge calls upon the complainant, the person being accused of the offense, and their witnesses to determine the veracity of the complaint. If the prosecutor or judge is satisfied that there is reasonable ground to believe that the crime charged has been committed and that the accused is probably guilty thereof, he recommends the filing of a criminal case before the trial court. Alter the filing of the criminal complaint (which is also called an "information"), trial on the case ensues.

During trial, the accused is accorded all the rights due an accused under the Constitution, such as, but not limited to the following: the right to be presumed innocent; right to counsel; right to be informed of the accusation against him; right to speedy, impartial and public trial; right to confront witnesses against him; and the right to compel the attendance of witnesses in his behalf Upon the conclusion of trial, the trial court which heard the case will make a finding on the guilt of the accused and impose civil sanctions if it finds the accused guilty of the crime charged.

In the present case, it appears that the killing of Ms. Abanador-Gandia is pending preliminary investigation before the prosecutor's office. The compliant is docketed as I.S. No. CP-162-06.

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?

Inasmuch as the killing of Ms. Abanador-Gandia is still pending preliminary investigation, the question relating to the imposition of sanctions against the supposed perpetrators cannot be answered at this instance.

5. Please indicate whether compensation has been provided to the family of the victim.

Again, inasmuch as the killing of Ms. Abanador-Gandia is still pending preliminary investigation, the question relating to the payment of compensation to the family of Ms. Abanador-Gandia cannot be answered at this instance.

Killing of Mr. Noel Capulong

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

It was alleged in the communication that:

"On 27 May 2006, Mr. Noel Capulong, Spokesperson for the Southern Tagalog Environmental Action Movement and Deputy Secretary General of Bayan Muna in Southern Tagalog was shot and killed by unknown men. "

Investigation disclosed that on 27 May 2006, at about 6:00 p.m., Mr. Noel Capulong was shot while maneuvering his vehicle in Calamba City, Laguna by an unidentified assailant riding on a motorcycle.

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

Investigation conducted by the Calamba Municipal Police Station revealed that on 27 May 2006 at about 6:00 p.m., Mr. Capulong was shot to death while maneuvering his owner type jeep at a vacant lot in Barangay Parian, Calamba City. The assailants arrived on board a motorcycle and approached the victim and without any provocation shot the victim repeatedly.

Four spent shells of caliber.45 were recovered at the crime scene. A witness to the crime, a certain William Pol Atienza Pilayo, is coordinating with the Task Force USIG to establish the identity of the suspects.

Further investigation is being undertaken to establish the identity of the suspects and to file appropriate charges against them.

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

Inasmuch as the killing of Mr. Capulong is still pending police investigation and no suspects have been identified yet, the question relating to imposition of sanctions cannot be answered at this instance.

4. Please indicate whether compensation has been provided to the family of the victim.

As mentioned above, inasmuch as the killing of Mr. Capulong is still pending police investigation, the question relating to the payment of compensation to the family of Mr. Capulong cannot be answered at this instance.

Philippines: Impunity in Killing of the Bulane Brothers

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

Subject(s) of appeal: 3 males (members of indigenous group)

Character of reply: No response

Observations of the Special Rapporteur

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

Letter of allegation dated 5 September 2006 sent with Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

In this connection, we should like to refer to our previous communication of 16 March 2005 [Ref. AL G/SO 214 (33-22)], in which we brought to your Government's attention allegations concerning the killings of three brothers, Mr. **Francisco Bulane**, Mr. **Padilla Bulane**, and Mr. **Prudencio Bulane**, members of the B'laan's indigenous tribe. The three brothers were reportedly killed by members of 25th Infantry Battalion (IB) of the Philippine Army based in Santa Cruz on 8 February 2005 in Sitio Latil, Barangay Colonsabak, Kiblawan, Davao del Sur. The alleged perpetrators of these acts were under the command of Lieutenants Robert Betita and Josue Erie.

> According to new communications we have recently received, the Office of the Ombudsman for the Militar and Other Law Enforcement Office (MOLEO) has incurred in serious delays in resolving the complaint filed against the two military lieutenants and their men. We have been informed that the Ombudsman allegedly failed to act on a resolution submitted by the Office of the Prosecutor on 15 June 2005 concerning the killing of the Bulane brothers. We have been informed that under the existing procedure, complaints against the military should be submitted to the Ombudsman's Office for appropriate action whether or not the case should be filed in court. The MOLEO's delay thus would leave the perpetrators of those serious crimes remain in impunity.

We urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and accountability of any person guilty of the alleged violations ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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

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

2. Has a complaint been lodged?

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

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

5. Please indicate whether compensation has been provided to the victims or the family of the victims.

Philippines: Impunity for Killings of Leftist Activists

Violation alleged: Impunity; Deaths due to attacks or killings by the military

Subject(s) of appeal: 25 males (1 minor); 5 females

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information from the Government of the Philippines regarding its investigation into the death of Isaias Sta. Rosa and its prosecution of those suspected of killing Victor Olayvar. He also appreciates being informed that the deaths of Ceasar Quimco and Napoleon Bautista are being investigated. The Special Rapporteur would request that the Government inform him of the results of each of these proceedings.

The Special Rapporteur would also observe that it would seem especially problematic that even the identities of those suspected of killing Isaias Sta. Rosa have yet to be established. The difficulties in solving that case would appear relatively minor. There were witnesses, the body of one suspect was found at the scene, that suspect was a member of the Army, and, according to an undisputed allegation, was carrying a signed mission order. The Special Rapporteur would suggest that it is crucial to ensure that the investigation into this and other cases is independent of those alleged to have been involved and that witness are provided the necessary security.

Letter of allegation dated 15 September 2006 sent with the Special Representative of the Secretary-General on the situation of human rights defenders

We would like to draw the attention of your Government to information we have received regarding the extrajudicial killings of Pastor **Isaias Sta. Rosa**, **Ceasar Quimco**, **Victor Olayvar**, and **Napoleon Bautista** allegedly by members of the military.

According to the information received, Pastor **Isaias Sta. Rosa**, a United Methodist Church religious worker and a member of the leftist Kilusang Magbubukid ng Bicol (Peasant Movement of Bicol), was killed in Barangay (village), Malobango, Daraga, Albay. On 3 August 2006, several armed men reportedly entered the house of Pastor Sta Rosa and ordered all those inside to drop to the floor. They then grabbed Pastor Isaias and beat him while trying to force him to admit that he was in fact a person named "Elmer". Pastor Isaias allegedly denied being that person and told them to check his identification card.

According to our source, Pastor Isaias was then taken outside. When his family was certain that the armed men had left, they rushed outside. His family found the dead body of Pastor Isaias lying in a nearby creek, some 40-50 meters away from their residence. He reportedly suffered six gunshot wounds in his chest, thigh and foot.

According to the information received, this case appears to involve the military, given that the body of an alleged perpetrator was found next to the Pastor's body. The local police have identified the body as being that of Corporal Lordger Pastrana. The following items were found on his body: an identification card showing that he was a member of the Army's 9th Infantry Division (ID), based in Pili, Camarines Sur; a 45-caliber pistol; a cellular phone allegedly taken from Sta. Rosa's house; and a mission order detailing the operation he was part of and signed by Major Earnest Mark Rosal.

Corporal Pastrana is believed to have been one of the armed men who entered the house of Pastor Isaias, but it is thought that he was accidentally shot by his own men while Pastor Sta. Rosa was trying to escape. The Corporal reportedly received a bullet in the right side of his body.

On 22 August 2006, **Ceasar Quimco** was killed in Barangay (village), Ipil, Carmen, Cebu. According to our source, Mr. Quimco had received death threats and his family was being harassed by elements of the Army's 78th Infantry Battalion. It is reported that Mr Quimco had a conflict with two military attached to the said Battalion.

On 7 September 2006, **Victor Olayvar** was shot dead by armed men riding on a motorcycle at Bridge Caban, Barangay (village), Cantubod, Danao. At the time of his death, Mr. Olayvar was an active leader of Bagong Alyansang Makabayan or Bayan-Bohol. He was also the former president of HUMABOL (Bohol Peasant Organisation) from 1997 to 2000. Mr. Olayvar is believed to have been targeted by the military in Bohol as he was been threatened by elements of the 302nd Brigade.

According to the information received, the same day the death body of **Napoleon Bautista** was found in Barangay (village) Pungo, Calumpit, Bulacan. His hands were tied with wire and his feet had torture marks. He suffered two gunshot wounds to his head and back. According to our source, on 30 August 2006, Mr. Bautista was abducted together with his wife, allegedly by elements connected to the military. His wife was released a day after she was abducted while her

husband remained disappeared. Napoleon Bautista was a member of Samahang Bantay Palaisdaan, a group of fishermen that belongs to a national organisation of fishermen Pambansang Lakas ng Kilusang Mamamalakaya ng Pilipinas (Pamalakaya). El Sr. Bautista was amongst those who survived the Mendiola massacre in 1987. In that incident, government forces reportedly opened fire at a crowd of peasants and protesters killing several of them while they were holding a protest demanding land reform.

We are gravely concerned by the increase in reports of extra-judicial killings in the Philippines. Indeed, more than 50 killings have taken place since January 2006, many of which were brought to your attention in our letters sent to your Government in 2006. In the Annex to this letter you will find the latest cases of alleged extra-judicial executions which have been brought to our attention. The cases are illustrative of this broader tendency and share certain common elements: witnesses have reported victims being shot dead by unidentified men, with suspected links to the military police, and other security forces. The principal targets of the shootings are political opponents (in particular left-wing party activists), human rights defenders, journalists, lawyers, community leaders, and union workers who speak out against the authorities. According to the information received, the lack of effective investigation and prosecution of perpetrators creates a climate of impunity which further fuels human rights violations and extrajudicial killings.

While we do not wish to prejudge the accuracy of these allegations, we urge your Excellency's Government to take effective measure against impunity to deter and prevent further assassinations political activists.

In this respect, we would like to recall that, as reiterated in Commission on Human Rights Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), all States have "the obligation (…) to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, (…) and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions". This obligation, affirmed also in the jurisprudence of the Human Rights Committee (*see*, e.g. the Committee's views in *Arhuacos v. Colombia*, Communication no. 612/1995, § 8.8.), is indeed part and parcel of the obligation to respect and protect the right to life enshrined in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights.

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

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

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

The Special Rapporteur on extrajudicial, summary or arbitrary executions also wishes to remind your Excellency's attention that, to date, he has not received a response to his request for a fact-finding mission. If accepted, a visit would allow him to examine *in situ* questions relating to impunity and to formulate pertinent recommendations with the objective of strengthening the protection of the right to life.

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

1. Are the facts alleged above and in the annexed table accurate?

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

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

4. Please indicate whether witnesses to these attacks have been afforded with adequate security and witness protection.

5. Please indicate whether compensation has been provided to the victim and the families of the victim.

EXTRA-JUDICIAL KILLINGS IN THE PHILIPPINES (JANUARY-JULY 2006)[9]

DATE OF INCIDENT, SURNAME, FIRST NAME, AGE, SEX, ORGANIZATION, PLACE OF INCIDENT, SUSPECTED PERPETRATOR.

10 January 2006,**ADRIALES ANTONIO,** 60,M,Leader of Aguman Dareng Maldang Talapagobra Quenh Gabun (AMTG) in Mexico, Pampanga San Isidro, Laug, Mexico, Pampanga, reportedly killed by two unidentified gunmen

*16 January 2006,***RODRIGUEZ OFELIA,** 61, F, Member of Divisoria Farmers Association, affiliated with Agumandareng magal alautang Capampangan (AMC) and Alyansang magbubukid sa gitnang Luzon (AMGL)Barangay Divisario, Mexico, reportedly killed by two armed men on motorcycles believed to be members of the 69th Infantry Battalion of the Philippine army (IBPA) headed by 2nd Lt. John Paul Nicolas

31 January 2006, **IBASAN ALLAN,** 18, M, Farm labourer Santa Ignacia, Tarlac
reportedly killed by four military men attached to the 71st Infantry Batallion, Philippine Army led by an officer named Canlas

31 January 2006, **SALGADO DANTE,** 17, M, Farm labourer Santa Ignacia, Tarlac, reportedly killed by four military men attached to the 71st Infantry Batallion, Philippine Army led by an officer named Canlas.

13 February 2006, **LUCERO AUDIE,** 19, M, Member of Youth for Nationalism and Democracy- Battaan, Brgy. Capitangan, Abucay, Battaan
Reportedly killed by policemen attached to Balanga and Lubao Police in Bataan, elements of either 24 th or 64th Infantry Battalion of Philippine army.

17 February 2006, **EVANGELISTA MELANIO,** 43, M, a peasant leader of the Kapunungan sa mga Mag-uuma sa Surigao Sur (KASMASS) (organisation of peasants in Surigao Sur) Purok Brotherhood, Barangay Unidad, Gatwait, Surigao del Sur, killed by unidentified armed men

4 March 2006, **CALOZA ARTURO,** 28, M, a peasant and member party list Bayan Muna (People first) Zone 5, Barangay villa Marina, San Jose cityNueva Ecija, center, reportedly killed by armed men wearing a ski mask and a black and blue jacket/ Soldiers were stationned 60 meters to the crime scene and did not move

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[9] This table does not purport to be an exhaustive list.

*7 March 2006,***ARINQUE NESTOR,** 39, M, Chaiman of Hugpong sa mga Mag-uuma sa mabini (United peasants in Mabini), Provincial road of Purok 1, Acaba, Mabini, Bohol, killed by three unknown gunmen riding a motorcycle

9 March 2006, **SANCHEZ ROMEO,** 39, M, Leader and Coordinator of Bayan Muna (a legitimate and progressive party highly critical of the government), for Ilocos, in front of Cebuana Lhuillier and Western Union Bank along 3rd Kayang St., Baguio City, killed by unidentified gunmen

10 March 2006, **TEODORO CRISANTO,** 45, M, Member of party list Bayan Muna/ chairperson of Bagong, Alyansang Makabayan (BAYAN), Menzyland Subdivision, Malolos, Bulacan, killed by two gunmen on a motorcycle

17 March 2006, **CRUZ TIRSO,** 33, M, Board of director of the United Luisita Workers Union (ULWU) and member of the barangay council Barangay Pando, conception, Tarlac, reportedly killed by armed men riding a motorcycle believed to be elements of the 71st Infantry Battalion of the Philippine army (IBPA)

19 March 2006, **HUGO CRIS,** 20, M, Journalist student, regional Coordinator and National Council, Member of the League of Filipino Students (LFS)
Barangay Bagumbayan, Washington drive, Legaspi City, Albay, killed by two motorcycle riding armed men.

20 March 2006, **ABELON AGNES,** 30, F, Wife of Amante ABELON, Vice chairman Alliance of Peasant from central Luzon or AMGL-Zambales Sitio Mauao, Barangay San Isidro, Castillejos, Zambales, reportedly killed by
Members of the Army intelligence Group.

20 March 2006, **ABELON AMANTE JR,** 5, M, Son of Amante ABELON, Vice chairman Alliance of Peasant from central Luzon or AMGL-Zambales
Sitio Mauao, Barangay San Isidro, Castillejos, Zambales, reportedly killed by members of the Army intelligence Group

3 April 2006, **ESTORBA-CUNADO LIEZELDA,** 30, F, Staff member of the Gabriela Women's Party Barangay Panadtaran, Candijay, Bohol, reportedly killed by the victim's neighbour, Joel Bayron, a member of the Barangay Intelligence Network Handled by the 15th Infantry Battalion, Philippine Army

22 April 2006, **SANCHEZ MARILOU,** 42, F, A member of party list Bayan Muna (People first), Barangay Magsikap, General Nakar, Quezon, reportedly killed by 10 armed men believed to be members of the 16th Infantry Battalionn Philippine army (IBPA)

22 April 2006, **RUBIO VIRGILIO,** 40, M, The brother of Marilou Sanchez, Member of party list Bayan Muna (People first) Barangay Magsikap General Nakar, Quezon, reportedly killed by 10 armed men believed to be members of the 16th Infantry Battalionn Philippine army (IBPA)

2 May 2006, **CERVANTES NICHOLAS,** 66, M, Newspaper columnist of a provincial newspaper in Suriago, Philippines, Mandaluyong City, killed by unidentified armed men

9 may 2006, **TINAMBACAN JEMIAS,** 49, M, Resident Pastor, United Church of Christ in the Philippines (UCCP), Provincial Chairman of Bayan Muna-Misamis , On the road between Oroquieta City and Lopez Jaena, Misamis Occidental, killed by 4 armed men, one of them was identified by his wife as Mr. Mamay Guimalan who is military intelligence personnel

16 May 2006, **DOTON JOSE,** 62, M, Member of the United Church of Christ in the Philippine (UCCP), Secretary General of Bayan Muna-Pagasinan and President of Tignayan dagiti Mannalon A Mangwayawaya (TIMMAWA)
San Nicola, Pangasinan, killed by two gunmen on a motorcycle

7 July 2006, **DIAZ PAQUITO,** 44, M, Chairman of the Confederation for unity, recognition and adcance of government employees for esatern Visayas
In front of his house, Tacloban city, Palo, Leyte, killed by two unidentified armed men on a motorcycle XPM model type, wearing white tee-shirt and jeans, the driver wore a baseball cap while his companion was hooded with a black bonnet

20 July 2006, **CASTILLO ALMABELLA,** F, Bayan Muna-Isabela Secretary-general, also in Echagüe, Near Isabela State University, Echague, Isabela
Killed by two unidentified armed men

26 July 2006, **LADICA ERNESTO,** 43, M, Bayan Muna member in Salay
In front of his house, Misamis Oriental , killed by three unidentified armed men

28 July 2006, **GONZALES ALBERTO,** 40, M, Farmworker in Barangay
Barangay Veronica in Lopez, Quezon, reportedly killed by members of the 76th Infantry Batallion of the Philippine Army,
30 July 2006, **FLORENDO MARIO,** 56, M, Bayan Muna member
Inside his home in Barrangay (village) Parista in the town of Lupao, province of Nueva Ecija, reportedly killed by members of the 71st Infantry battalion

31 July 2006, **GURAN RIE MON,** 21, M, Spokesperson of League of Filipino Students in Aquinas University in Legazpi City, Bulan, Sorsogon, killed by unidentified armed man

Response of the Government of the Philippines dated 27 November 2006 to an allegation letter dated 15 September 2006

The Government of the Philippines responded to a communication sent by the Special Rapporteur on 15 September 2006 concerning the alleged extrajudicial killings of Pastor Isaias Sta.Rosa, Mr. Ceasar Quimco, Mr. Victor Olayvar, and Mr. Napoleon Bautista.

The case of Mr. Ceasar Quimco, killed in Barangay Ipil, Carme, Cebu on 22 August 2006, is still under investigation by the Philippine National Police- Police Regional office (PNP-PRO) 7. Meanwhile, the case of Mr. Napoleon Bautista, killed in Barangay Pungo, Calumpit, Bulacan on

30 August has been referred by the Philippine National Police- Directorate for Investigations and Detective Management (PND-DIDM) to PNP-PRO 3 for in depth investigation.

Alleged extrajudicial killings of Pastor Isaias Sta.Rosa, Mr. Ceasar Quimco, Mr. Victor Olayvar, and Napoleon Bautista.

Are the facts alleged in the above summary accurate?

Pastor Isaias Sta. Rosa

The shooting incident that resulted in the death of Pastor Isaias Sta. Rosa together with Cpl. Lordger G. Pastrana, member of the Philippine Army, transpired on 30 august 2006 in Barangay Malobago, Daraga, Albay. Preliminary investigation by Philippine National Police-Police Regional Office (PNP-PRO) 5 revealed that Cpl. Pastrana together with unidentified suspects forcibly dragged Pastor Sta. Rosa outside his residence and successive gunshots were heard afterwards. The suspects took the mobile phone, laptop computer and undetermined amount of money from the victim. Investigators recovered from the crime scene, near the body of Cpl. Pastrana, one mobile phone believed to be taken from the daughter of the victim, brown wallet containing ID and other documents of Cpl. Pastrana, 1 cal. 45 pistol with silencer and a magazine loaded with 6 live ammunitions.

Pastor Sta. Rosa was a high-ranking member of *Kilusang Magbubukid ng Pilipinas* holding a high position in the National Democratic Front. Investigators from PNP-PRO 5 are still conducting in-depth investigation regarding said killing.

Victor Olavvar

The alleged killing of Mr. Victor Olayvar, Chairman of *Hiukbong Maguumang Bolanon* (HUMABOL) on 07 September 2006, at Barangay Cantubod, Danao, Bohol is believed to be motivated by purging, as his own comrades in the Communist Party of the Philippines/New People's Army/National Democratic Front (CPP/NPA/NDF) ordered the killing of Mr. Olayvar.

Based on the accounts of the witnesses, the suspects were identified as Rolando Torres, Marlou Betas and Neil Logronio. Mr. Torres was arrested on 11 September 2006 and recovered from him was the red motorcycle apparently used in the killing of Mr. Olayvar.

A case of murder was filed against all suspects before the Bohol Provincial Prosecutor's Office under I.S. No. 06-2860.

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

Pastor Isaias Sta. Rosa & Victor Olavvar

Reference is made to the results of the investigations as provided for in question number 1.

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

Pastor Isaias Sta. Rosa

No prosecution has been undertaken yet as the identities of the alleged perpetrators have not yet been established.

Victor Olavvar

A case of murder was filed against all the suspects before the Bohol Provincial Prosecutor's Office under I.S. No. 06-2860.

Please indicate whether witnesses to these attacks have been afforded with adequate security and witness protection.

Pastor Isaias Sta. Rosa & Victor Olavvar

The PNP reports did not indicate whether witnesses have been afforded with security and protection.

Please indicate whether compensation has been provided to the victim and the familles of the victim.

Pastor Isaias Sta. Rosa & Victor Olayvar

No compensation has yet been provided to the victims or the familles of the victims.

Qatar: Death Sentences Related to 1996 Coup Attempt

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

Subject(s) of appeal: 18 males

Character of reply: Allegations rejected but without adequate substantiation

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Qatar. However, he regrets that the Government’s response to allegations that the confessions were the product of torture consist of conclusory denials that lack the factual substantiation that would be provided by investigations and medical examinations.

Urgent appeal dated 9 February 2006 sent with the Special Rapporteur on the question of torture.

I would like to bring to the attention of your Government the scheduled execution of 18 men, namely **Fahd 'Abdullah al-Maliki**, **Salim Mubarak Dahham**, **Mohammed 'Ali al-Muhannadi**, **Ibrahim Sa'ad Ismail**, **Khashan Salim al-Karabi**, **Hamad 'Ali Jahman**, **'Abdul Hadi Rashid al-Shafia'a**, **'Abdul Hadi Jabir al-Rakib**, **Rashid 'Ali al-'Arak** -all Qatari nationals- **Jabir Salih al-Jallab**, **Jabir 'Ali Anan**, **Hamad Mohammed 'Abdu**, **'Abdul Hadi Ali al-Jaznah**, **Jabir Hamad Jabir al-Jallab**, **Mohammed al-Mee'a Salih**, **Rashid Nasir Alliwa'a**, **Fawaz 'Ali al-Muhanadi**, and **Wabran 'Ali al-Yami**, all Saudi Arabian national. According to the information received:

The 18 men named above have been sentenced to death for their alleged involvement in an attempted coup that did not cause any casualty. They were arrested at different times in the mid- to late- 1990s for their involvement in a failed attempt to overthrow the government of the Amir in 1996. All 18 men were sentenced to life imprisonment at their trial before a lower Court in February 2000, but after taking their case to the Court of Appeal, they received death sentences in May 2001.

Concern has been expressed that they were sentenced to death following a trial that may have fallen short of international fair trial standards. Following their arrest, many of the 18 men were held incommunicado until their trial hearings began. Some of them alleged that they had been tortured in order to force them to "confess".

It is our understanding that their only remaining option is to have their sentences commuted by the Amir of Qatar who also has the power to pardon, grant clemency or ratify death sentences.

If these allegations were correct, there would be grounds for serious concern. We would like to remind your Excellency's Government that the death penalty must be regarded as an extreme exception to the fundamental right to life and that it must therefore be applied in the most restrictive manner. While we are fully aware of the most serious nature of the crime the 18 men named above have been found guilty of, it is crucial that all fair trial and other protections provided for in international human rights law are fully respected in proceedings relating to capital offences. Accordingly, we respectfully remind your Excellency that "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights admits no exception" (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para.10). Relevant to the case at issue, these guarantees include the right not to be compelled to confess guilt.

We also recall that Commission on Human Rights resolution 2005/39 urges States to ensure that any statement, which is established to have been made as a result of torture, shall not be invoked in any proceedings. This principle is an essential aspect of the right to physical and mental integrity set forth, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We have further been informed that two other men, Bakhit Marzouq al-'Abdallah and Shaikh Hamad bin Jassem bin Hamad al-Thani, who were also sentenced to death in relation to the attempted coup, were recently granted a royal pardon and released in January and September 2005 respectively.

In this context, we urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of the 18 men above mentioned are respected. Considering the irremediable nature of capital punishment, this can only mean suspension of the death sentence until the allegation of torture have been thoroughly investigated and all doubts in this respect dispelled. Finally, international law requires that the accountability of any person guilty of subjecting these men to torture is ensured.

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

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

2. Please provide the details, and where available the results, of any investigation, medical examinations and judicial or other inquiries carried out in relation to the allegations that some of the above mentioned men were subjected to torture while in pre-trial detention. If no inquiries have taken place or if they have been inconclusive, please explain why.

3. Please provide the full details of any prosecutions which have been undertaken with regard to the alleged torture of the men above mentioned. Have penal, disciplinary or administrative sanctions been imposed on the perpetrators?

Response of the Government of Qatar dated 23 July 2006

The Government provided information relating to a letter of the Special Rapporteur dated 9 February 2006 concerning 18 individuals convicted of taking part in an attempted coup.

The Government assured the Special Rapporteur that it took great interest in the contents of the above-mentioned letter, as the subject of the promotion and protection of human rights is a cornerstone of the comprehensive reform policy on which Qatar has embarked.

The Government informed that the names of some of the convicted persons are not correct. The correct names are: Fahd Ali Abdullah Jasim al-Maliki; Salim Mubarak Salim Dahman; Mohammed Ali Mohammed Salman al-Muhannadi; Ibrahim Sa`d Isma`il; Hashan Salim Haziq al-Karabi; Hamad Ali Jahman al-Ghufrani al-Mirri; Abd al-Hadi Rashid Nasir Shafi`ah al-Mirri; Abd al-Hadi Jabir Hadi al-Rakib; Rashid Ali Jabir al-Araq al-Mirri; Jabir Salih Jabir Jallab al-Mirri; Jabir Ali Jabir Anan al-Awir al-Mirri; Hamad Mohammed Abduh Al-Mirri; Abd al-Hadi Ali Hamad Hadhnah al-Mirri; Jabir Hamad Jabir Jallab al-Mirri; Mohammed Lami` Ali Salih Jahman; Rashid Nasir Ali al-Liwa'; Fawaz Ali Mohammed Salman al-Muhannadi; Buran Ali Ja`mal; and Buran Al Kalib.

Apart from Buran Ali Ja`mal and Buran Al Kalib, who are Saudi nationals, and Rashid Nasir Ali al-Liwa', who has his original Saudi nationality (the nationality of his father), the rest of the convicted men named in your letter are Qatari nationals, according to the documents attached to the case file.

As for Fawaz Ali Mohammed Salman al-Muhannadi, he was sentenced to life imprisonment, not death.

The public prosecutor brought a criminal prosecution before the court of first instance having charged the defendants with the following three offences:

1. An offence under article 64, paragraph 2, of the Qatari Criminal Code No. 14 of 1971 which is punishable by life imprisonment.

2. An offence under article 65 of the Code which is punishable only by death.

3. An offence under article 66, paragraph 2, of the Code which is punishable only by death.

The court of first instance found the defendants guilty only of the first offence, and sentenced them to life imprisonment. It acquitted them on the second and third counts.

The public prosecutor and the convicted persons were not satisfied with the verdict and filed an appeal with the appeal court pursuant to article 114 of the Code of Criminal Procedures No. 15 of 1971. The public prosecutor asked for the death sentence to be imposed on the defendants for committing the second and third offences in addition to the first. The convicted persons asked to be acquitted of the first count, as the case against them had not been proved.

The appeal court concluded that on the first count, namely, that of attempting to remove the Emir from power, an offence which is punishable by life imprisonment under paragraph 2 of article 64 of the Criminal Code, all 18 individuals named in your letter, including Fawaz Ali Mohammed Salim al-Muhannadi, were guilty. Except for the latter, it further concluded that on the second count, that of bearing weapons against the State, an offence which is punishable by death under article 64 of the Code, the other 17 defendants were all guilty. As for the third count, that of working for a foreign State and for persons intent on committing hostile acts against the State of Qatar, an offence which carries a penalty of death under article 66, paragraph 2, of the Code, the court found against only four of the persons named in your letter - Abd al-Hadi Jabir Hadi al-Rakib, Jabir Hamad Jabir Jallab al-Mirri, Jabir Salih Jabir Jallab al-Mirri and Buran Al Kalib - who were also found guilty on the first and second counts.

The conviction handed down by the courts of first and second instance were based on proper evidence that satisfied all legal standards and had been obtained from confessions which the defendants had made against themselves and each other. The confessions were made freely and voluntarily before the court in the court building, and were supported by witness testimony given at trial. As for the statements which the defendants made to the police during questioning, the court did not accept them without being perfectly convinced that they had been obtained without any form of coercion or duress. The court replied, with arguments, to all the pleadings and

defence arguments put forward by the defendants' lawyers and the appeal judgement No. 642/2000 can be consulted.

The court acted in accordance with international standards relating to the guarantee of a fair trial before ordinary courts in accordance with Qatari laws, and not before special or military courts. The court sessions were attended by representatives of international non-governmental organizations such as the International Committee of the Red Cross, attending as observers.

The judgment became final and cannot be appealed before any judicial body. It remains for the Emir to exercise his power to confirm the judgment or grant an amnesty, as permitted by law.

I should also like to inform you that the Qatari Constitution, which was adopted by a popular referendum held in 2003 and confirmed by the country's beloved Emir in 2004, entered into force in June this year. Chapter III, articles 34-58, are devoted to the protection of fundamental rights and freedoms. The Constitution upholds the principle of the interdependence and indivisibility of human rights, and thus guarantees economic, social, cultural, civil and political rights. Among the rights which the Constitution guarantees, we should like to mention, by way of example, equality before the law, non-discrimination, personal liberty, the right to a fair trial and the prohibition of torture.

The rights recognized in the Constitution have been strengthened and promoted through the adoption of a series of laws and through the guarantees of the independence of the judiciary as an important mechanism and tool for the protection of human rights. The constitutional and legal framework has been further strengthened by the creation of several institutions for the promotion and protection of human rights at the governmental level (for example, the Office of Human Rights at the Ministry of Foreign Affairs and the Department of Human Rights at the Ministry of the Interior) and at the civil society level (for example, the National Committee for Human Rights and the Qatari Foundation for the Protection of Children and Women).

Allow me to assure you that we are mindful of our obligations vis-à-vis international human rights treaties and standards, and we are working to implement them with the requisite transparency, believing as we do that the subject of human rights is the cornerstone of the comprehensive reform policy to which everyone aspires.

In conclusion, we should like to assure you that we stand ready to respond to any other requests for clarification on this matter and on any other subjects of mutual concern, in the quest for the promotion and protection of human rights.

Russian Federation: Deaths in Custody of Anzor Umaev and Ilman Umaev

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

Subject(s) of appeal: 2 males

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information provided by the Government of the Russian Federation with respect to the cases of Anzor Umaev and Ilman Umaev. The SR would request that he be informed of the results of the criminal proceedings to which the Government's response refers.

Letter of allegation dated 21 April 2006 sent with the Special Rapporteur on the question of torture

In this connection, we would like to bring to your to your Government's attention information we have received concerning **Umaev Ilman**, 22 years, **Umaev Anzor**, 33 years and **Umaev Issa**, 52 years. According to the information received,

> On 18 April at 5 am, these three persons together with Ilman Umaev's wife, Madina Umaeva, were arrested in Sayasan village, Nozhay-Yurtovskii District, Chechnya, in the house of Ilman Umaev by a division of fighters called "Groza". When they were being taken, Issa Umaev was badly beaten and Anzor Umaev sustained grave injuries. Around 4 pm the same day, Ilman and Anzor Umaev were found dead at a crossroad close to Sayasan village. They had been redressed as if they were separatists. The remaining two, the father and wife of one of the victims, were released.

While we do not wish to prejudge the accuracy of these allegations, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture. We would also like to draw your Government's attention to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, Principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment." (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 urge your Government to take all necessary measures to ensure the accountability of any person guilty of the alleged violations. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

Moreover, it is our responsibility under the mandates provided to us by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all cases brought to our attention. 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. Have complaints been lodged?

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

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

5. Please indicate whether compensation has been provided to the victims/ the family of the victims.

Response of the Government of the Russian Federation dated 24 November 2006

On 18 April 2006, in the settlement of Sayasan, in the Nozhai-Yurt district of the Chechen Republic, during the conduct of a targeted check, officers of the Ministry of Internal Affairs of the Chechen Republic came up against resistance from I.E. Umaev and A.A. Umaev, members of an illegal armed gang. During the armed clash, two police officers, M. Ilyasov and U.I. Badidov, were wounded. Firearms and other munitions were seized at the place of the encounter. In response to this assault on the lives of law-enforcement officers, on 18 April 2006 the Nozhai-Yurt district procurator's office in the Chechen Republic instituted criminal case No. 62007 on the evidence of the commission of an offence under article 317 of the Criminal Code of the Russian Federation (Attack against the life of a law-enforcement officer).

A.A. Umaev and I.E. Umaev were arrested and transferred to the town of Gudermes in the Chechen Republic, where they agreed to reveal their stash of weapons.

Later that same day they were escorted by internal affairs officers of the Chechen Republic to the outskirts of the settlement Sayasan for the purposes of verifying evidence at the scene of the offence. During the inspection of the scene, A.A. Umaev picked up a grenade and tried to throw it at the police officers. The latter, acting both to prevent an explosion and to stop their detainees from escaping, opened fire with their standard-issue weapons, inflicting gunshot wounds on both A.A. Umaev and I.E. Umaev, from which both men later died on the spot.

In response to this incident, on 12 May 2006, the procurator's office of the Chechen Republic instituted criminal proceedings on the basis of evidence of the commission of offences under article 105, paragraph (a) (Murder) and article 286, paragraphs (b) and (c) (Exceeding official authority) of the Criminal Code of the Russian Federation. A range of investigative actions and detective work is currently being carried out.

In addition, an in-house inquiry is being conducted by the internal security office in the Ministry of Foreign Affairs of the Chechen Republic relating to the death of the Umaevs.

Russian Federation: Killing of Journalists

Violation alleged: Impunity

Subject(s) of appeal: 13 journalists (2 females; 11 males)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of the Russian Federation. The SR would request that he be informed of the results of the ongoing investigations and pending criminal proceedings to which the Government's response refers. As to the completed cases, the SR notes that the Government's response failed to provide any information as to sentences for those convicted or compensation for the victims, as requested in the original communication of the SR.

Letter of allegation dated 30 October 2006

I would like to bring to your Government's attention information I have received regarding the killing of **Anna Politkovskaya** on 7 October 2006 whose body was found with two gunshots in the elevator of her apartment building. According to the information I have received, her murder appears to have been a contract killing and is believed to be linked to her investigative reports on human rights abuses by the Russian military in Chechnya. Ms. Politkovskaya was due to publish an investigative article on 9 October 2006 about torture and kidnappings in Chechnya based on witness accounts and photos of tortured bodies.

I welcome President Vladimir Putin's public condemnation of the murder of journalist Anna Politkovskaya, and am aware that the Moscow General Prosecutor's office has opened a murder investigation into her death. I call on your Excellency's Government to ensure that the death of Ms Politkovskaya is promptly, independently and thoroughly investigated, in accordance with the United Nations principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions.

This killing is all the more concerning given the allegation that a total of 13 journalists have been killed in Russia since the year 2000 because of their reporting activities. Many of these cases appear to share common elements. In particular, a majority of the victims are reported to have been shot or hit at point-blank range by unidentified gunmen in contract style murders. All journalists appear to have been targeted because of their attempts to investigate allegations of corruption or of human rights abuses in the Chechen conflict. According to the information received the investigations into these killings have been inconclusive and the perpetrators have not been found.

According to the information received, **Igor Domnikov**, reporter and editor for the Moscow paper Novaya Gazeta, died on 12 May 2002 after being struck in the head with a heavy object in the entryway of his apartment building. It is believed that the assailant have mistaken him for Novaya Gazeta investigative reporter Oleg Sultanov, who lived in the same building and received threats after reporting on oil industry corruption.

Sergey Novikov, owner of the independent Vesna Radio Station, was shot four times in the staircase of his apartment building on 26 July 2000. Three days before the killing, Novikov participated in a television panel on alleged corruption in the deputy governor's office.

Iskandar Khatloni, a reporter for the Tajik language service of Radio Free Europe/Radio Liberty was attacked in his apartment in Moscow on 21 September 2000 by an axe-wielding assailant. Khatloni had been working on reports about human rights abuses in Chechnya.

Sergey Ivanov, director of the independent Lada-television company was shot five times in the head and chest in front of his apartment building in the town of Togliatti. Lada-TV was reportedly a significant force on the local political scene.

Adam Tepsurgayev, a cameraman for Reuters, was shot at a neighbour's house in Alkhan-Kala on 21 November 2000. During the first Chechen war, Tepsurgayev worked as a driver and fixer for foreign journalists. Later, he shot footage from the front lines.

Eduard Markevich, editor and publisher of the local newspaper Novy Reft, was found dead after being shot in the back on 12 September 2001 in Reftinsky. Novy Reft was known to often criticize local officials. Eduard Markevich was reportedly receiving threatening telephone calls and in 1998, two assailants had broken into his apartment and severely beat him.

Natalya Skryl, a business reporter from the Nashe Vremya newspaper in the south-western city of Rostov-on-Don, died after being struck a dozen times with a heavy object while she was returning home on 9 March 2002. She was investigating the struggle for control of a metallurgical plant.

Valery Ivanov, an editor in chief of the Tolyattinskoye Obozreniye newspaper was shot eight times in the head at point-blank range outside his home in Togliatti on 29 April 2002. The newspaper was known for its investigative reports on crimes and government corruption.

Aleksei Sidorov, editor in chief of the Tolyattinskoye Obozreniye newspaper, was stabbed in the chest with an ice pick near his apartment building in Togliatti on 9 October 2003. He was the second editor of Tolyattinskoye Obozreniye to be murdered in as many years.

Dmitry Shvets, deputy director-general of the independent television station TV-21 Northwestern Broadcasting**,** was shot several times outside the station's offices. His colleagues said that TV-21 had been receiving threats for critical reporting on several influential politicians.

Paul Klebnikov, editor of Forbes Magazine who reported about the workings of the country's billionaire tycoons, was killed outside his Moscow office on 9 July 2004 and was struck several times by shots fired from a passing car.

Magomedzagid Varisov, a prominent journalist who often criticized the Dagestan opposition in the biggest regional newspaper, the Novoye Delo weekly, sustained multiple bullet wounds on 28 June 2005 in Makhachkala. He died on the spot when machine-gun assailants opened fire on his car as he was returning home with his wife and driver

While I do not wish to prejudge the accuracy of these allegations, I urge your Excellency's Government to take effective measures against what appears to be a consistent pattern of failure to prosecute and to take measures designed to prevent further assassination of journalists.

In this respect, I would like to recall that, as reiterated in Commission on Human Rights resolution 2004/37 on "Extrajudicial, summary or arbitrary executions" (OP 4), all States have "the obligation … to conduct exhaustive and impartial investigation into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, … and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions". This obligation, affirmed also in the jurisprudence of the Human Rights Committed (*see*, e.g. the Committee's views in *Arhuacos v. Colombia,* Communication no. 612/1995, § 8.8), is indeed part and parcel of the obligation to respect and protect the right to life enshrined in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights.

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

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

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

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

5. Please indicate whether witnesses to these attacks have been afforded with adequate security and witness protection.

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

Response of the Government of the Russian Federation dated 23 January 2007

The Permanent Mission of the Russian Federation to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and, with reference to enquiry No. AL G/SO 214 (33-24) RUS 30/2006, submitted by the Special Rapporteur on extrajudicial, summary or arbitrary executions, has the honour to transmit the attached information from the Russian Federation.

The Permanent Mission of the Russian Federation takes this opportunity to convey to the Office of the United Nations High Commissioner for Human Rights the renewed assurances of its highest consideration.

Upon verification, it was found that criminal proceedings in connection with all the cases referred to in the enquiry were instituted in a timely manner.

The murder in Moscow of I.A. Domnikov, head of the *Novaya Gazeta* special projects department, the murder in Tolyatti of S.A. Ivanov, director-general of the television channel TV-6 OAO AvtoVAZ, and the murder in Murmansk of D.V. Shvets, deputy director-general of TV-21, have now been solved.

In the criminal proceedings in connection with the murder of S.A. Ivanov, 10 persons were found guilty and sentenced by the court. Upon the completion of the investigation into the murder of I.A. Domnikov in May 2006, the criminal case was referred to the Supreme Court of the Republic of Tatarstan. Following the death of V.G. Gallo, who had been accused of the murder of D.V. Shvets, criminal proceedings were terminated.

At present, the Office of the Procurator-General of the Russian Federation is continuing its investigation into the murder in Moscow on 7 October 2006 of A. Politkovskaya, a journalist for *Novaya Gazeta*. All leads are being pursued. The Procurator-General is overseeing the investigation.

Upon the completion of the investigation into the murder in Moscow on 9 July 2004 of United States citizen P. Khlebnikov, editor of the Russian edition of *Forbes* magazine, the criminal case was referred to the Moscow city court.

The pretrial investigation of the murders of S.S. Novikov, owner of the independent radio station Radio Vesna; of I. Khationi, a Radio Liberty correspondent; of E.B. Markovich, editor of the newspaper *Novy Reft*; of N.V. Skryl, economic correspondent for the newspaper *Nashe Vremya*; of M.-Z.M. Varisov, a freelance political analyst for the newspaper *Novoe Delo*; of A.L. Tepsurkaev, a cameraman for Reuters; of L.V. Sidorov, editor-in-chief of the newspaper *Tolyattinskoe obozrenie*; and of V.E. Ivanov, a deputy to the Tolyatti city duma, following an investigation of all possible leads, was suspended in accordance with article 208, paragraph 1.1, of the Code of Criminal Procedure of the Russian Federation in connection with the failure to identify any persons against whom charges can be brought. In these criminal cases, the authorities conducting the preliminary investigation and the authorities involved in police operations are taking measures to identify any suspects or persons against whom charges can be brought.

The progress and results of the investigation of the aforementioned cases are being monitored by the Office of the Procurator-General of the Russian Federation.

Spain: Muertes de Migrantes Cruzando la Frontera en Melilla

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

Persona objeta del llamamiento: 3 hombres

Carácter de la respuesta: Respuesta en gran parte satisfactoria

Observaciones del Relator Especial

El Relator Especial aprecia la información proporcionada por el Gobierno de España y solicita información sobre los resultados de las investigaciones mencionadas en dicha respuesta.

Carta de alegación del 17 de julio de 2006 mandada con el Relator Especial sobre los derechos humanos de los migrantes.

En este contexto, deseamos poner en su conocimiento que en el ejercicio de nuestros mandatos respectivos, continuamos recibiendo información sobre presuntas violaciones de derechos humanos en la frontera de España con Marruecos. Según la información recibida:

> El 3 de julio de 2006, tres hombres murieron en la frontera del enclave español de Melilla, en el norte de Marruecos, cuando trataban de entrar en España. Uno de los hombres, identificado como de origen sub-sahariano, murió en el lado español de la frontera aparentemente debido a una herida de bala. Las otras dos muertes ocurrieron en el lado marroquí de la frontera. Las víctimas habrían sufrido heridas mortales al caerse de lo alto de la valla que delimita la frontera, aunque se desconoce la razón por la que se cayeron. Según la información recibida, los 3 hombres que murieron formaban parte de un grupo de 32 personas que intentaban cruzar la frontera. Cinco integrantes del grupo habrían logrado saltar la valla y entrar en España, 7 habrían sido detenidos, y por lo menos 7 más habrían resultado heridos, entre ellos una persona a la que se habría dejado sangrando entre las dos vallas durante aproximadamente una hora.

A través de una carta enviada a su gobierno el 7 de octubre del 2005 ya habíamos expresado nuestra preocupación en relación a una serie de incidentes en los cuales varios migrantes de origen sub-sahariano habrían muerto en similares circunstancias. En su respuesta, su Gobierno proporcionó detallada información relativa a las investigaciones de dichas muertes. Como anunciado en su informe sobre comunicaciones a la comisión de Derechos Humanos (E/CN.4/2006/53/Add.1, p. 210) el Relator Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias agradecería recibir más información relativa a los resultados de los procesos judiciales que ya han sido emprendidos, en particular en cuanto a sanciones disciplinarias o penales contra los presuntos responsables de las muertes o de uso excesivo de la fuerza. Asimismo, quisiéramos instar a su Gobierno que adopte todas las medidas necesarias para que continúe a investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas de conformidad con los principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 del 24 de mayo de 1989 del Consejo Económico y Social. En particular, llamamos la atención de su Gobierno sobre los principios 9 a 19 según los cuales los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya

sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción. Quisiéramos asimismo instarle a que tome las medidas eficaces para evitar que se repitan tales hechos.

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

1. ¿Son exactos los hechos referidos? Si no, para refutar estas alegaciones, agradeceríamos nos proporcione los resultados de las diligencias efectuadas, incluyendo las necropsias que eventualmente se han realizado.

2. Si fueron presentadas quejas o denuncias, ¿cuales han sido las respuestas a las mismas y las acciones referidas en las respuestas?

3. Por favor, proporcione los detalles así como los resultados, en caso de que sean disponibles, de las diligencias, judiciales o de otro tipo, realizadas en relación con estos casos.

4. Por favor, proporcione los detalles de cualquier diligencia que haya sido emprendida.

5. Por favor, indique si alguna compensación ha sido otorgada a las familias de las víctimas.

6. ¿Cuales son las acciones tomadas o planeadas para prevenir la repetición de tales incidentes en el futuro?

Respuesta del Gobierno de España del 10 de noviembre de 2006 a una alegación mandada el 17 de julio de 2006

El Gobierno trasmitió la respuesta que ha elaborado la Secretaria de Estado de Seguridad, del Ministerio del Interior, sobre ejecuciones extrajudiciales, sumarias o arbitrarias, y sobre los derechos humanos de los migrantes.

I. <u>Primera cuestión: información sobre la situación actual de las investigaciones abiertas el pasado año.</u>

a. El intento por parte de un grupo de unas cincuenta personas de cruzar la valla que separa Marruecos de Melilla et 29 de agosto de 2005, y la muerte del nacional camerunés Joseph Abunaw Ayukabang.

Las Gendarmería Real marroquí se hizo cargo del cadáver, hallado en et territorio de aquél país y de las correspondientes diligencias.

Sin perjuicio del resultado de las investigaciones finales que las autoridades marroquíes hayan abierto y de las conclusiones que al respecto nos puedan hacer Ilegar, según las informaciones de que dispone et Ministerio del Interior, no hay ningún indicio objetivo ni de otro tipo con carácter determinante que vincule et desgraciado fallecimiento de este ciudadano subsahariano con la actuación Ilevada a cabo por la Guardia Civil con ocasión asalto a la frontera realizado en la noche del 28 de agosto de 2005.

b. El traslado al Hospital Comarcal de Melilla en septiembre de 2005 del cuerpo de una persona de origen subsahariano que presentaba heridas supuestamente imputables a las fumas de seguridad marroquíes.

Se trataba de un inmigrante herido que fue asistido - junto con otros inmigrantes - por la Guardia Civil y trasladada al Hospital Comarcal de Melilla donde, posteriormente, fallecería. Las heridas, según manifestaron las personas que le acompañaban, se habrían producido en territorio marroquí cuando cayó par un desnivel huyendo de las fuerzas de aquél país.

En Espana se instruyeron, por et Juzgado de instrucción número uno de Melilla, las diligencias previas núm. 1279/05. Con fecha 30 de junio de 2006, el Juzgado de Instrucción dictó auto de archivo de las actuaciones por ausencia de infracción penal. La fiscalía española presentó recurso que está pendiente de resolución.

c. La muerte el 15 de septiembre de 2005 de otra persona cuyo cuerpo fue también trasladado al Hospital Comarcal de Melilla.

En la fecha indicada se aproximaron a la valla fronteriza de Melilla dos personas solicitando auxilio, al encontrarse herida una de ellas y tener graves dificultades respiratorias. Falleció al poco tiempo de ser ingresado en et Hospital Comarcal.

En relación *con este* asunto se instruyen diligencias previas número 1344/05 por et Juzgado de instrucción número Dos de Melilla. Con fecha 19 de abril de 2006, se acordó su sobreseimiento provisional y archivo. Posteriormente fue presentado un recurso por la Fiscalía.La Audiencia Provincial, con fecha 12 de junio de 2006 estimó el recurso de apelación e instó la práctica de pruebas complementarias solicitadas por el Ministerio Fiscal. Se revocó et auto de sobreseimiento. En este momento se están practicando diligencias complementarias sin que todavía se conozca el resultado.

En conclusión:

No han concluido las iniciadas en territorio español sobre los hechos citados.

Los hechos están siendo investigados por órganos judiciales independientes.

No puede exigirse responsabilidad penal o disciplinaria alguna antes de que el Juzgado competente haya determinado su existencia.

II. Segunda cuestión: información sobre los incidentes del pasado 3 de junio de 2006.

En relación con la segunda cuestión, los relatores realizan una descripción inicial de los hechos - según la información de que disponen - y formulan una serie de preguntas al Gobierno a fin de determinar su veracidad y conocer la realidad de lo sucedido.

El relato preliminar es el siguiente:

E13 de julio de 2006, tres hombres, murieron en la frontera del enclave español de Melilla, en el norte de Marruecos, cuando trataban de entrar en España. Uno de los hombres, identificado come de origen subsahariano, murió en et lado español de la frontera, aparentemente debido a una herida de bala. Las otras dos muertes ocurrieron en et lado marroquí de la frontera. Las victimas habrían sufrido heridas mortales al caerse de lo alto de la valla que delimita la frontera, aunque se desconoce la razón por la que se cayeron.

Según la información recibida, les 3 hombres que murieron formaban parte de un grupo de 32 personas que intentaban cruzar la frontera. Cinco integrantes del grupo habrían logrado saltar la valla y entrar en España, 7 habrían sido detenidos, entre ellos une persona a la que se habrían dejado sangrando entre las dos vallas durante aproximadamente una hora.

Sobre estos hechos, los relatores plantean las siguientes preguntas:

Primera pregunta: Son exactos les hechos referidos? Si no, para refutar estas alegaciones agradeceríamos nos proporcionen Ios resultados de las diligencias efectuadas, Incluyendo las necropsias que eventualmente se hayan realizado".

Los hechos referidos son totalmente inexactos. Según la información de que dispone esta Secretaria de Estado de Seguridad, en base a los informes emitidos par la Comandancia de la Guardia Civil de Melilla y la delegación del Gobierno en dicha ciudad los hechos sucedieron en la forma siguiente:

a) Descripción general de los incidentes

El pasado 3 de julio de 2006, sobre las 5.13 horas, un grupo de entre 50 y 70 inmigrantes subsaharianos protagonizaron una tentativa de vulneración fronteriza "en grupo" del perímetro fronterizo de Melilla por la zona comprendida entre et Paso fronterizo de Farhana y et Zoco Had.

Los inmigrantes, que portaban para ello un gran número de escaleras artesanales y cuerdas provistas de ganchos metálicos, se habían reunido previamente en territorio marroquí y, en concreto, a las afueras de la localidad de Farhana.

Con objeto de no ser avistados por las Fuerzas de Seguridad y militares marroquíes, se aproximaron al perímetro fronterizo a través del lecho del arroyo de Farhana que desemboca perpendicularmente en la valla que rodea la ciudad de Melilla

Al llegar al vallado perimetral y antes de escalar la valla exterior con intención de saltar hacia et interior de nuestro país fueron avistados, desde territorio español, par la Guardia Civil, lo que les

obligó a desviarse en paralelo a la valla dirección a la loma del Zoco Had, buscando otro lugar más apropiado para intentar et salto.

A unos 80 metros, colocaron las escalas sobre la valla exterior e intentaron superar et obstáculo. En et momento de iniciar et sa1to intervinieron las Fuerzas do Seguridad marroquíes (Ejército y Fuerzas Auxiliares), que les conminaron a detenerse

En ese momento se formó un gran revuelo entre et grupo de inmigrantes, algunos de ellos fueron detenidos, en et lado marroquí; por los militares de aquél país y la mayoria huyó adentrándose de nuevo en el territorio de Marruecos.

b) Hechos sucedidos en territorio español:

Cinco de estos inmigrantes, lograron escalar la valle exterior y acceder al espacio entre-vallas del sistema anti-intrusión.

De ellos:

Uno falleció en et transcurso de los incidentes- los miembros de la Guardia Civil que participaron en el dispositivo observaron su Caída desde lo alto de vallado, cuando se disponía a saltar hacia et interior. Otro fue evacuado al Hospital Comarcal de Melilla por presentar heridas graves, y los otros tres fueron conducidos a la comandancia de la Guardia Civil a fin de llevar a cabo su identificación, toma de declaración como testigos, puesta a disposición judicial y posterior entrega en Comisaría del Cuerpo Nacional de Policía, a efectos previstos par la legislación de extranjería.

Un equipo médico trasladado a la zona reconoció et cuerpo del inmigrante fallecido, decretando su muerte y detectando, como resultado de este primer reconocimiento una herida de unos 4 cms de diámetro sin aparente orificio de salida, presumiblemente causado por et impacto de un proyectil Tras personarse la Autoridad Judicial y autorizar et levantamiento del cadáver, fue trasladado al depósito municipal al objeto de practicar la correspondiente autopsia.

El inmigrante herido, que según estas primeras apreciaciones padecía traumatismo abdominal abierto, fue evacuado al Hospital Comarcal de Melilla donde fue intervenido. Quirúrgicamente, quedando ingresado en la U. C I del Hospital Comarcal, donde posteriormente se determinaría que las lesión podría tener su origen en una 'herida por arma de fuego ".Los otros tres inmigrantes sufrieron apenas algunos rasguños y levísimas contusiones.

Por tanto:

El fallecimiento del inmigrante muerto en territorio español no se debió a una caída modal desde la valla. No es cierto que las heridas del inmigrante atendido en territorio español fueran debidas a su caída desde la valla.
No es cierto que ningún herido haya permanecido por espacio de una hora desangrándose entre las dos vallas.

c) Hechos sucedidos en territorio marroquí

Los relatores dan cuenta, en su escrito, del fallecimiento de otros dos inmigrantes en territorio marroquí.

Corresponde a las Autoridades de aquél país pronunciarse sobre estos hechos en base a las comprobaciones o investigaciones que sobre los mismos hayan efectuado.

Segunda pregunta: Si fueron presentadas quejas o denuncias, cuales han sido las respuestas a las mismas y la acciones referidas en las respuestas?

El Ministerio del Interior no tiene constancia de que haya sido presentada en España denuncia ni queja alguna ni par las inmigrantes que participaran en las hechos ni por terceras personas u organizaciones en su nombre. En aplicación de las leyes españolas se han abierto diligencias judiciales para la investigación de los hechos. En este momento se están incoando las diligencias previas número 726106, par et Juzgado de Instrucción número 2 de Melilla, que aún no han concluido.

Tercera pregunta:"Por favor, proporcione las detalles, así coma los resultados, en casa de que sean disponibles, de las diligencias, judiciales o de otro tipo, realizadas en relaci6n con estas casas".

Según se desprende de las actuaciones practicadas hasta et momento, de las que tiene conocimiento et Ministerio del Interior, pueden establecerse las siguientes conclusiones:

Primero: El inmigrante fallecido y et inmigrante herido en territorio español lo fueron, no como consecuencia de heridas producidas al caer desde et vallado, sino como consecuencia del impacto de proyectiles. Del cuerpo del inmigrante fallecido y de su vestimenta se extrajeron diversos fragmentos metálicos. Sus características, según las informes del Departamento de Balística, se corresponderían con las de un proyectil de los que monta *la* munición metálica de percusión central del calibre 7,62 mm.

Según et informe médico oficial sobre las lesiones que presentaba *et* herido y une vez realizado un TAC de control, se observa en et cuerpo "un trayecto compatible con herida de arma de fuego, con orificio de entrada en et glúteo izquierdo, que perfora la gala iliaca izquierda, siendo et orificio de salida la herida incisa referida anteriormente (herida incisa en la fosa iliaca derecha)

Segundo: La Guardia Civil no efectuó los disparos que causaron la muerte al inmigrante fallecido en territorio español y heridas graves a otro.

Según se desprende de los informes del Departamento de Balística y de los cumplimentados par la Comandancia de la Guardia Civil en Melilla: 'Va persona fallecida recibid un único impacto de proyectil por arma de fuego, del calibre 7 62 mn, con trayectoria ligeramente ascendente, y de atrás y a la derecha hacia delante e izquierda (...). Por tanto (..) la hipótesis más que probable es que et origen del disparo se e establece en territorio marroquí; no pudiendo concretarse más la trayectoria descrita por et proyectil':

Las características de los fragmentas encontrados no se corresponden con el tipo de munición utilizado por la Guardia Civil. En un informe del Hospital de Melilla se recogen algunas de las manifestaciones realizadas por et herido al equipo médico: "cuando el paciente se encuentra en condiciones de explicar las circunstancias de su lesión, refiere que ha sufrido et impacto de un disparo procedente de Marruecos cuando intentaba subir la valla del lado marroquí".

En las declaraciones que el herido prestó ante la unidad orgánica de Policía Judicial, manifestó que "recibió et disparo mientras trepaba con una escala la valla exterior del lado marroquí. De hecho, durante los incidentes, ninguno de los 35 guardias civiles que participaron en su control, desenfundó ni utilizó sus armas cortas reglamentarias de dotación individual. Só1o se empleó por algunos de estos guardias civiles -los autorizados - material antidisturbios de modo disuasorio, en concreto lanzaron al aire pelotas de goma. No es posible, par tanto, que los impactos recibidos par los inmigrantes se debieran a la actuación de la Guardia Civil. Las anteriores son las conclusiones que pueden extraerse con la información disponible hasta el momento.Aún no se dispone del resultado de la autopsia ni se han concluido las diligencias judiciales.

Cuarta pregunta: Por favor, proporcione las detalles de cualquier diligencia que haya sida emprendida

Se han abierto actuaciones judiciales, en concreto, las diligencias previas número 720106, par et Juzgado de instrucción número 2 de Melilla, a las que se ha hecho referencia.

Quinta pregunta: indique si alguna compensación ha sida otorgada a las familias de las victimas:

No se tiene constancia de que haya sida solicitada ni haya sida otorgada ningún tipo de compensación a las familias de las victimas. En cualquier caso, el inmigrante fallecido no ha podido ser identificado.

Sexta Pregunta: Cuales son las acciones tomadas o planteadas para prevenir la repetición de tales incidentes en et futuro?

El cerramiento perimetral de la Ciudad y et sistema antiintrusión instalado entre las dos vallas que lo configuran ha demostrado no resultar lesivo ni ser el agente causante de las incidentes del pasado 3 de julio. Tampoco lo ha sido la actuación de la Guardia Civil.

Aún así se han adoptado las dos siguientes decisiones:

Para minimizar et riesgo que conlleva cualquier caída accidental de un inmigrante al intentar saltar la valla fronteriza desde une altura de seis metros (que es la que tiene en su parte más alta):

El Ministerio del Interior ha dada instrucciones a la empresa constructora del sistema antiintrusion instalado entre las dos vallas para que compruebe la instalación y se lime o rebaje cualquier saliente o arista del sistema que sea detectada y se revistan (con capuchones de goma) aquellos elementos con las que puedan darse accidentalmente en el momento de dar el salto.

Para minimizar et riesgo de que puedan producirse Incidentes durante los asaltos de inmigrantes a la doble valla garantizando a más escrupuloso respeto a la indemnidad y a los derechos humanos de los asaltantes.

El Ministerio del Interior ha pedido a la dirección Subdirección General de Operaciones de la Guardia Civil que tenga previstas unas nuevas instrucciones de servicia para los agentes que vigilan el perímetro fronterizo que, a la vez que recuerde, expresamente, los principios básicos de actuación y de proporción en el empleo de medios - que ya conocen perfectamente - sirvan para adaptar los procedimientos de intervención a las características físicas del nuevo cerramiento.

Sri Lanka: Deaths in Pungudutivu and Trincomalee

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

Subject(s) of appeal: 1 female; 5 males

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the very detailed information provided by the Government of Sri Lanka on the conduct of its investigations into these killings and would request that he be informed of their results.

Letter of allegation dated 16 January 2006

We would like to draw the attention of your Government to information we have received concerning two incidents of killing of Tamil civilians.

According to the reports received, **Ilaiyathamby Tharshini**, a woman aged 20 from Pungudutivu, Jaffna Peninsula, was last seen alive on 16 December 2005, when she left her home at 6.15 pm. directed towards the camp of the Sri Lankan Navy in Pungudutivu. On the evening of 17 December 2005, her body was found in a well. It had been weighed down with heavy stones. On the following morning, the body was taken to the Jaffna Teaching Hospital, where a post mortem was performed. The Judicial Medical Officer reportedly found stab wounds in her chest and near her hips and concluded that Tharshini had been raped before being killed. The medical report was submitted to the police, who submitted it to the Magistrate's Court on 20 December 2005. The Criminal Investigation Department (CID) has been at the crime scene and has heard the victim's relatives.

On 2 January 2006, around 7.45 pm, **Thangathurai Sivanantha**, **Logithasan Rohanth**, **Shanmugarajah Sajeenthiran**, **Manoharan Rajeehar**, and **Yogarajah Hemachandran**, five Tamil youths, were shot in Trincomalee near Dockyard Road. Two other Tamil youths (Pararajasingham Kokilaraj and Yogarajah Pookulanlon) sustained serious injuries in the incident. According to the information received, the young men were chatting on the road-side when from a passing three-wheeler a grenade was thrown at them, injuring them. Immediately

thereafter, armed men arrived in a car and shot at five of the young men, three in the head and two in the abdomen and chest, causing their death. Some reports state that the killers arrived on a vehicle of the Sri Lankan armed forces. The dead bodies and the two injured persons were taken to the General Hospital, Trincomalee. The President has appointed a commission to investigate the deaths.

As stated above, we do not prejudge the accuracy of the reports attributing the killings to your Government's armed forces. Whoever might be responsible, however, international law demands that your Excellency's Government carry out an impartial, expeditious, and effective investigation into the killings, and that those responsible be held to account under criminal law. Considering the not entirely implausible allegations of involvement of security forces in the killings, it is all the more urgent that the investigations not only are in fact impartial and independent, but also clearly appear to be so in the eyes of all communities in Sri Lanka. Moreover, considering the risk that these killings might lead (or already have led) to further, retaliatory killings, it is of paramount importance that the results of any inquiry be brought to the knowledge of the public expeditiously and in a transparent manner.

With respect to the killing of Tharshini, we note with concern that before the signing of the Ceasefire Agreement there had been a series of incidents in which Tamil women were allegedly raped and killed by the security forces or died in consequence of grievous abuse. These incidents had become a rarity in the last three years. It is therefore all the more imperative that this murder be rapidly and effectively investigated and prosecuted in order to nip any possible re-emergence of this practice in the bud.

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

1. Are the facts alleged in the above summaries accurate?
2. Please provide the details, and where available the results, of the police investigations, medical examinations, prosecutions and trials or other inquiries carried out in relation to the killings.

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

Response of the Government of Sri Lanka dated 30 June 2006

In its letter, the Government refered to the joint communication from the Special Rapporteur on extrajudicial, summary and Arbitrary Executions, Mr. Philip Alston (AL G/SO 214 (33-23) and the Special Rapporteur on violence against women, its causes and consequences, Ms. Yakin Ertürk (G/SO 214 (89-11) dated 16.01.06 concerning the case of IIaiyatahmby Tharshini.

Ilaiyathamby Tharshini

According to the allegations contained in communication No. G/S0214(33-23)G/SO214(89-11) LKA2/2006 dated 16 January 2003, Ilaiyathamby Tharshini, a woman aged 20 from Punguduthivu, Jaffna peninsula, was last seen alive on 16 December 2005 when she left her home at 6.15 p.m. directed towards the camp of the Sri Lankan Navy in Punguduthivu. Her

body was found in a well on the following day. The Judicial Medical Officer had found stab wounds on her chest and concluded that Tharshini was raped before being killed.The initial investigations into this incident was carried out by the Kayts police and later taken over by the Criminal Investigation Division (CID) under the directions of the Inspector General of Police

Initial investigations into the incident were hampered to a great deal due to agitation campaigns covertly organized by the LTTE and the interference by various Cher disruptive elements bringing frivolous and baseless accusations. The police were prevented from guarding the scene until the arrival of the Magistrate due to public agitations which resulted in tampering of evidence at the scene as well as destroying valuable evidence. The Magistrate was able to visit the scene only on 18.12.2005 (day alter the incident). Even at the time the Magistrate visited the scene there was a public agitation covertly organized by the LTTE.

The Magistrate ordered the conduct of a post mortem inquiry and subsequent to this the Police were able to remove the body to the Jaffna Teaching Hospital. The post mortem conducted on the body of the deceased, revealed that death had been caused due to strangulation subsequent to committing vigorous rape. The Judicial Medical Officer, Jaffna, who conducted the autopsy on the body of the deceased, had obtained vaginal, anal and mouth swabs of the deceased as well as her nail clippings and pubic combings for the purpose of forensic examinations.

Investigations

During the initial investigations, the Kayts police recovered one rubber slipper and subsequently the CID recovered the other slipper in a thicket on the way to the house of the deceased.

The CID during their investigation found the braces used by the deceased at the scene and it was identified by the mother and the relatives of the deceased. The CID recorded statements from a number of witnesses but none of them were able to give any information to the actual incident of rape or murder. Members of the public who were agitating near the scene of the crime had handed over a lady's underwear and a white coloured rope with one end tied to a concrete block as being recoveries made by them at the scene of the crime.A camouflage cap with No. 410836 similar to those used by the security forces had been handed over to the Kayts police by the Magistrate, Jaffna.

Inquiries conducted by the CID with regard to the camouflage cap revealed that the number written in that corresponded to the regimental number of Cpl. W W N A K Weerasuriya of the 8th battalion Gemunu watch of the Sri Lanka Army who is based in Batticoloa. Cpl. Weerasuriya who resides in Gampola had given a statement confirming that one of the two camouflage caps he had in his possession had got lost in November 2005. Cpl. Weerasuriya had admitted that he wrote his regimental number in the camouflage cap. His handwriting has been obtained and submitted for examination to the Examiner of Questioned Documents to confirm if his handwriting corresponded with that of the writing on the camouflage cap allegedly found at the scene of the crime. Inquiries are proceeding to ascertain as to how a camouflage cap issued to a soldier in Batticoloa could surface at the scene of crime in the Jaffna peninsula.

The security situation in the area has restricted the movements of the investigators in gathering of information and intelligence. The lack of cooperation by the public has also hindered the ongoing investigations.

Judicial Proceedings

The facts have been reported to the Magistrate Courts, Kayts under case No. B21312005 and the case will be called on 12th July 2006 to report the progress of investigations. A further investigation has been conducted by the Sri Lanka Navy due to public agitation and accusations leveled at the personnel of the Sri Lanka Navy.

Conclusion

Further inquiries are being conducted to identify and apprehend the culprits, in spite of the Jack of public cooperation and in thé midst of campaigns and interferences by various fronts acting at the behest of the LTTE.

Response of the Government of Sri Lanka dated 30 June 2006

According to the allegations contained in communication No. G/S0214(33-23)G/S0214(89-11) LKA2/2006 dated 16 January 2003, refer to the murder of five Tamil youths named Thangathurai Sivanantha, Logithasan Rohanth Shanmugarajah Sajeenthiran, Manoharan Rajeehar and Yogarajah Hemachandran. Police investigations into the incident revealed that on 02.01.2006, at about 1945 hrs. an explosion occurred followed by gunfire at Gandhi Statue Junction bordering Dock Yard Road and Koneswaran Temple Road. Five youths succumbed due to this incident of explosion and gunfire, whilst two other youths received grievous injuries.

The deceased were:

1. Shanmugarajah Sayendran
2. Thangadurai Shivananda
3. Manoharan Arrear
4. Lihithadasan Rohanthan
5. Yogarajah Hemachandran

The injured are:

1. Pararajasinghem Kovulraj
2. Yoganandan Punkallohan

Acting OIC/Harbour Police, Inspector of Police (IP) Sawahir visited the scene on receipt of information at about 2010 hrs. followed by Assistant Superintendent of Police (ASP), Trincomalee (1). Detailed observations of the scene have been recorded by the Inspector and also by the ASP. The seven victims were dispatched to the Trincomalee Hospital by Police and of the seven, on admission, five were pronounced dead. The autopsy on the five deceased were conducted by Dr. Gamini Gunatunga, MO/General Hospital Trincomalee. According to the opinion of the doctor who held the post mortem examination the cause of deaths on all five deceased were due to fire

arm injuries and there were also multiple blast injuries on their bodies. This confirmed the explosion part and the subsequent shooting.

Police summoned Mr. Ramakamalan Magistrate Trincomalee and he too had made detailed observations of the scene, followed by subsequent several visits to the scene independently. During an extensive search of the scene conducted by the Police initially and thereafter, they recovered seven empty casings of 7.62 caliber, one unexploded hand grenade, the leaver of an exploded hand grenade, a motor cycle, several push cycles and a helmet.

The Govt. Analyst was informed promptly by the Police to visit the scene of crime. From the time of the first visit by the Police until the arrival of the Govt. Analyst for the examination of the scene, the entire scene was placed under police guard. Certain productions from the crime scene relevant to the scientific examinations were taken charge by the Govt. Analyst.

Two special teams headed by the Criminal Investigation Department and the anti Range Crime Division, Trincomalee recorded statements of ten civilians who were living and working in close proximity to the scene of incident. However, they were unable to give any descriptions of the assailants but only confirmed the hearing of an explosion and minutes later sounds of firing.

In addition to above, the investigators recorded statements of 97 witnesses, including security forces and police personnel who were on road block duties along Dock Yard Road, Koneswaran, Temple Road, New Town Hall Junction, other deployments in the town area and the STF team who were the first to visit the scene subsequent to the explosion and sounds of gun fire.

The statements of Tamil speaking witnesses were recorded by police officers who were conversant in Tamil language.

This exercise was done in order to keep the inquiry open and transparent and the opportunity was given to all witnesses to divulge what they fully knew in the language they can read and understand giving an equal opportunity to tell all what they need to mention in their own language freely with no threat, inducement or promise to them. The 13 weapons issued to 12 STF personnel and the police officers were taken charge as it transpired that they were the first to visit the scene of crime, armed with weapons, soon after the explosion and gunfire. This was done as a process of elimination, denoting impartiality and as an exercise of transparency.
The weapons that were issued to the security forces/police personnel who were on road block duties at the far end of Koneswaran Temple Road, Dock Yard Road, UC Junction, were examined for smell of gun powder and found negative.

Several attempts were made immediately to record the statements of the two injured but they refused to make statements to the police until they made statements to the Magistrate. Their statements were recorded by the Magistrate on 8.1.2006 without the presence of the police. It was consequent to this that the police were able to obtain their statements in the presence of two ICRC officiais and their Tamil translator.

These two statements were recorded by the police in Tamil giving an opportunity for them to narrate details of the incident and the events they witnesses, once again displaying transparency and impartiality, leading to the conduct of an independent inquiry.

The police investigators requested the Hon. Attorney General the services of a senior official from the AG's Department to assist the court during the hearing of the inquest proceedings. Hon. Attorney General was represented by Deputy Solicitor General, Mr. Dappula de Livera and Senior State Counsel Mr. Damith Totawatta, during the inquest proceedings which commenced on 16.01.2006 and ended on 18.01.2006.

During the inquest proceedings the Magistrate, solicited evidence of independent witnesses in open Courts and if not willing to do so to come forward to give evidence in camera.

On this request made by the Magistrate, five witnesses came forward and their statements were recorded by the Magistrate in open court. However, they failed to give any material relevant to the identification of assailants and/or provide any eyewitness account corresponding to the explosion or the shooting. Their statements also did not give any clues leading to further probing.

Besides these witnesses, the statements of two injured youths, the Medical Officer and the security forces and police personnel who were manning the road blocks and the STF and police personnel who visited the scene were called by the Magistrate and their statements too were recorded by him during the inquest. On conclusion of inquest proceedings the Magistrate returned an open verdict and directed the police investigators to conduct further investigation.

Statements of 97 civilians, injured persons and STF and police personnel were recorded by the investigating teams during a protracted inquiry. Since some suspicion was cast on the STF personnel and the IP from Trincomalee who accompanied them, all thirteen of them were arrested and were held in detention at the CID for a period of nearly two months. They were questioned at length and their statements verified. The positions taken up by them were that they were on road block duty at a point close to the scene in the Trincomalee town and they rushed to the scene having heard of the explosion and firing. They were detained until the receipt of the Government Analyst's report as the weapons they had at the time were sent to Govt. Analyst through courts. The Govt. Analyst reported that their weapons did not tally with the foreign body recovered from the deceased persons or with the empty casings of 7.62 found at the scene. There was also no other material disclosing their complicity. Hence, the detention orders severed on them were revoked and they were released on 12.04.2006.

Further inquiries are being conducted with the aim of identifying those responsible for the said incident.

Sri Lanka: Death in Custody of Lelwala Gamage Nandiraja

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Letter of allegation dated 7 March 2006

In this connection, we would like to bring to your to your Government's attention information we have received concerning **Lelwala Gamage Nandiraja**, aged 53, a physician. According to the information received,

> On 29 May 2005, he was arrested during the night at his home by two police officers wearing uniforms of the Weliweriya police and four other men in civilian clothing. They entered the house and beat him all over his body before dragging him naked from the house to their vehicle. On 30 May 2005, he was reportedly rushed to Gampaha District Government Hospital. He died of his injuries, although it is not clear whether he died before or after arriving at the hospital. According to the information received, it would appear that this is a case of mistaken identity. The police had been looking for a 40 year old man named Lalewela Nandiraja on suspicion of theft and they mistakenly arrested Lelwala Gamage Nandiraja due to the similarities between his name and the name of the suspect.

Without prejudging the facts of the case, we should like to appeal to your Excellency to seek clarification regarding the ill-treatment and death of Lelwala Gamage Nandiraja. In this regard, we would like to draw your Excellency's attention to Article 12 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed. I would also like to draw your attention to Article 7 of the Convention Against Torture, which requires state parties to prosecute alleged offenders. With regard to the alleged killing of Lelwala Gamage Nandiraja, the same obligations arise under Article 6 of the International Covenant on Civil and Political Rights.

We urge your Government to take all necessary measures to guarantee the accountability of any person guilty of the alleged violations ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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

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

2. Has a complaint been lodged on behalf of Lelwala Gamage Nandiraja?

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.

Sri Lanka: Death Threats against Dr. K. Manoharan and Family

Violation alleged: Death threats and fear of imminent extrajudicial executions

Subject(s) of appeal: 1 male and his family

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 Commission on Human Rights.

Urgent appeal dated 21 March 2006

I would like to draw the attention of your Government to information I have received regarding death threats against Dr. **K. Manoharan** and other family members of Manoharan Rajeehar, one of four youths who were allegedly shot by security forces in Trincomalee on 2 January 2006. As your Excellency will recall, I sent a communication to your Government on 16 January 2006 in which I called for an immediate and impartial investigation into these killings. I understand that a ministerial inquiry was set up at the Trincomalee Magistrate court and that it started its investigative work on 10 January 2006.

According to the information received, as soon as Dr. K. Manoharan testified, he began to receive anonymous calls threatening to kill him and his family for having given evidence. Subsequently, unknown people have banged on his door and thrown stones onto the roof of his house. Unknown individuals, their faces concealed by motorcycle helmets, have come to his clinic and requested his services but have then refused to be examined by his wife who is also a medical practitioner. His sons are no longer able to attend school, as members of the security forces have intimidated them by calling them the brothers of the “late kottiya” (Tiger). These threats have compelled him and his family to sleep away from home at different locations. However, since pictures of him and his sons were published in a local newspaper, it appears that even moving to another part of the country would not ensure their safety.

Recent events indicate that these death threats should be treated with the utmost seriousness. In particular, Subramaniyam Sugirdharajan, a journalist from the Tamil-language newspaper Sudar

Oli who had taken photos of the five students killed and reported on the incident, was killed on 24 February 2006.

While I do not wish to prejudge the accuracy of these allegations, I would note that they implicate important legal standards. First, human rights law requires States to provide effective protection to those whose lives are in danger. Principle 4 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65 of 24 May 1989) explains 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.

Second, human rights law requires States to effectively investigate extrajudicial executions, and threats against witnesses undermine the effectiveness of investigations by deterring the cooperation of persons with relevant information. Principle 15 elaborates on the measures required to ensure the integrity of such investigations:

> Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

These obligations are part and parcel of the requirement of the International Covenant on Civil and Political Rights that States ensure the right to life (Articles 2, 6(1)).

I urge your Excellency's Government to take all measures necessary to safeguard the lives of Dr. K. Manoharam and other family members of Manoharan Rajeehar.

While I do not wish to prejudge the accuracy of these allegations, it is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Commission, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the cases accurate? If not, in order to refute these allegations, please provide details of any inquiries carried out.

2. Please provide information on the measures that have been taken to safeguard the lives of Dr. K. Manoharam and other family members of Manoharan Rajeehar.

3. Please provide information on the measures that have been taken to remove persons potentially implicated in the death of Manoharan Rajeehar from any position of control or power, whether direct or indirect, over his family members and other potential witnesses.

4. Please provide the details, and where available the results, of any investigations carried out in relation to these death threats and the details of any prosecutions which have been undertaken against persons responsible for these death threats.

Sri Lanka: Death Threats against Dawundage Pushpakumara and His Family

Violation alleged: Death threats and fears for safety

Subject(s) of appeal: 1 male (minor) and his family

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information that was provided by the Government of Sri Lanka in response to his earlier communication, but he regrets that the Government has not provided the results of the judicial hearing and disciplinary proceedings.

Follow-up letter dated 17 October 2006 to a letter of allegation sent on 11 February 2006

I would like to draw your Excellency's attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 217-219), relating to the death threats against **Dawundage Pushpakumara and his family**.

As indicated in my report, I welcome the information provided by your Excellency's Government indicating that the accused police officers have been indicted, that their hearing had been postponed to 25 April 2005 and that a disciplinary inquiry against accused Police Inspector Samarakoon was under way. As further indicated in my observations, I would be grateful if your Government could provide me with information relating to the results of the above mentioned judicial hearing and disciplinary proceedings. I would also be grateful if your Government could inform me on measures adopted to ensure the safety of Dawundage Pushpakumara and his family.

Sudan: Death Sentences of Bakhiet Mohamed Bakhiet and Abd Almalik Abdalla Mahmoud

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

Subject(s) of appeal: 2 males

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 23 December 2005

I would like to bring to the attention of Your Excellency's Government the situation of Mr. **Bakhiet Mohamed Bakhiet** and Mr. **Abd Almalik Abdalla Mahmoud** who have reportedly been sentenced to death by the Special Criminal Court for the Events in Darfur sitting in Al-Fashir.

According to the information I have received, the two men are lance corporals in the Sudanese army. Together with a third member of the military, they were accused of having tortured to death a man (named Adam Idris Mohamed Hatim) they had arrested on the suspicion of belonging to a rebel group. The three men were charged with murder under Article 130 of the 1991 Penal Code of the Sudan. The trial before the Special Criminal Court for the Events in Darfur sitting in Al-Fashir began in June 2005 (case no. 408/2005). On 17 November 2005, the Special Criminal Court found Cpl Bakhiet Mohamed Bakhiet and Cpl Abd Almalik Abdalla Mahmoud guilty and sentenced them to death, acquitting the third defendant. According to the information I have received, the two corporals had two weeks to file an appeal against the judgment.

My predecessor as Special Rapporteur on extrajudicial, summary or arbitrary executions stated in her report on the visit to the Sudan in June 2004 that "it is of the utmost importance that investigations be carried out to ascertain the details of the events in Darfur, including extrajudicial killings, and to bring the alleged perpetrators to justice" (E/CN.4/2005/7/Add.2, § 60). In this respect, I welcome the trial and conviction of two soldiers of the Sudanese armed forces for the murder of a civilian.

At the same time, however, I would like to express my concern about the imposition of the death penalty in this case. As you know, although the death penalty is not prohibited under international law, it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Therefore, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences. As stated by the Human Rights Committee, "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the [ICCPR] admits of no exception" (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10).

As I wrote in the Summary of information received regarding the follow-up to the recommendations made by the Special Rapporteur in her Report on the visit to the Sudan, which I transmitted to Your Excellency's Government as an attachment to my letter of 21 September 2005, reports I have received indicate that international fair trial standards are not guaranteed in criminal proceedings before the Special Criminal Court for the Events in Darfur. In particular, there appears to be no rule clearly establishing the right not to be coerced to admit guilt (§§ 66-67 of the Summary). There also appears to be some lack of clarity surrounding the right to legal representation (§§ 68-70 of the Summary). Finally, I am concerned by the reportedly very short dead line for appeals (two weeks), which risks compromising the effectiveness of the right to appeal.

I urge your Excellency's Government to ensure that these concerns are given full consideration in the appeals proceedings or, should the appeal already have been decided, in any further proceedings in which the defendants might seek commutation of their sentence.

It is my responsibility under the mandate provided to me by the Commission on Human Rights to seek to clarify all cases brought to my attention. Without in any way wishing to pre-judge the accuracy of the information received, I would respectfully request your Excellency's Government to provide me with details regarding the following matters:

- the composition of the court (number of professional and/or lay judges);

- the duration of the proceedings since Cpl Bakhiet Mohamed Bakhiet and Cpl Abd Almalik Abdalla Mahmoud were charged with the murder, and in particular of the trial hearings;

- whether Cpl Bakhiet Mohamed Bakhiet and Cpl Abd Almalik Abdalla Mahmoud were represented by counsel of their own choosing, how much time such counsel was afforded to prepare the defense, and whether there were any limitations on the right of counsel to communicate freely with the defendants (both before and during trial), to call witnesses in defense and to examine witnesses called by the prosecution;

- whether the guilty finding against Cpl Bakhiet Mohamed Bakhiet and Cpl Abd Almalik Abdalla Mahmoud was based on an admission of guilt on their side, and if so, whether this admission was obtained during the pre-trial phase or in open court;

- whether the two weeks to file an appeal against the judgment run from the proclamation of the sentence in court or from the delivery of the written judgment to the defendants;

- whether the appeal has been decided, and if so what the outcome is;

- what other procedural avenues are open to Cpl Bakhiet Mohamed Bakhiet and Cpl Abd Almalik Abdalla Mahmoud against the execution of capital punishment;

- whether your Excellency's Government has investigated the question of command responsibility of the superiors of the two lance corporals, and whether any prosecution of them is envisaged or under way; and, if not so, the reasons for this omission.

Sudan: Attacks on Civilian Populations in Chad by the Armed Forces and Janjaweed Militia

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

Subject(s) of appeal: More than 45 persons

Character of reply: No response

Observations of the Special Rapporteur

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

Letter of allegation dated 6 March 2006

I would like to bring to your Excellency's attention information I have received regarding attacks by the Sudanese armed forces and by Janjaweed militias on **civilian populations belonging mostly to the Masalit tribe** in areas of Chad bordering with the Sudan.

According to the information received, between 5 and 11 December 2005 armed forces of the Sudan and Janjaweed militias attacked twenty-two villages in the prefecture of Goungour, eighty kilometers south of Adré. The governmental soldiers and vehicles were assisted by two attack helicopters, which fired rockets at civilian targets in the settlements attacked. Fragments of air-to-ground rockets, shrapnel, stabilizing fins, and other ordnance reportedly gathered by the villagers and handed over to investigators corroborate these accounts. It is reported that a total of forty-five people were killed in the course of this wave of attacks. Moreover, livestock and food were stolen in large quantities. Among those summarily shot were civilians resisting looting.

Between 16 December 2005 and 5 January 2006, Sudanese soldiers, police and Janjaweed militia attacked and looted forty villages (out of the eighty-five) in the prefecture of Borota, one hundred kilometers south of Adré. While the members of your Government's forces were dressed the same way as Janjaweed militiamen, they were recognized by their faces by villagers in settlements close to the border with the Sudan. Your Government's forces and the Janjaweed accompanying them killed twelve civilians in the course of this wave of attacks. The main purpose of the attacks, however, appears to have again been the looting of horses, cattle, grain and other goods. In this connection, it is reported that Antonov aircraft belonging to your Government were repeatedly seen flying over areas ahead of attacks by the ground forces, presumably gathering information on the location of cattle herds.

These two waves of attacks are, according to the reports received, only examples of an ongoing pattern of cross-border raids by Janjaweed militias (supported by the armed forces of your Excellency's Government) into Chad, which have caused the displacement of an estimated 20,000 persons within Chad, in addition to the refugees from the Darfur.

I am not aware of any reasons put forth by your Excellency's Government to justify these alleged attacks on civilian populations in Chad. Insofar as these attacks were linked to your Government's armed conflict with rebel forces active in the Darfur, I would like to recall the applicable principles of international humanitarian law. This body of law requires parties to an armed conflict to distinguish at all times between combatants and civilians, and to direct attacks only against combatants (Rules 1 and 7 of the Customary Rules of International Humanitarian Law identified by the International Committee of the Red Cross); acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited (Rule 2); attacks by bombardment which treat as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are prohibited (Rule 13); launching an

attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14).

While the reported killings would appear to be in violation of the applicable law if your Government's incursions (including those by militias whose operations are supported by your Government) pursued a military aim in the context of an armed conflict, it would be even harder to justify them under human rights law in the absence of an armed conflict.

In this respect, I would also recall that State parties to the Covenant on Civil and Political Rights can be held responsible for violations of rights under the Covenant where the violations are perpetrated by authorized agents of the State on foreign territory, "whether with the acquiescence of the Government of [the foreign State] or in opposition to it". (See *Lopez v. Uruguay*, communication No.52/1979, CCPR/C/OP/1 at 88 (1984), paras. 12.1-12.3.)

I therefore urge your Excellency's Government to finally comply with its obligation to stop all attacks against the civilian populations, to disarm the Janjaweed militias and to stop supporting them. These obligations were set forth in the report submitted to the Commission on Human Rights by my predecessor after she visited the Sudan at your Government's invitation twenty months ago (E/CN.4/2005/7/Add.2, para. 59). More importantly, they have been asserted by the Security Council in resolutions 1556 (2004), 1590 (2005), and 1591 (2005), and by the Commission on Human Rights in resolution 2005/82 on the situation of human rights in the Sudan.

It is my responsibility under the mandate provided to me by the Commission on Human Rights to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Commission or the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters. I undertake to ensure that your Government's response is accurately reflected in the reports I will submit to the Commission on Human Rights for its consideration.

(i) Are the allegations reported above accurate? If not so, please describe the investigations carried out to ascertain that the allegations are ill-founded.

(ii) Does your Excellency's Government consider that the operations of its armed forces and of the Janjaweed militias it acts in co-operation with in the Goungour and Borota prefectures of Chad are part of an armed conflict against Darfurian rebel forces?

Please describe any investigations carried out to determine whether the use of force by your Governments armed forces and the Janjaweed militias in the Goungour and Borota prefectures of Chad was lawful, and if not so, the action undertaken to bring those responsible to justice

Sudan: Attack on Crowd in Marawi, Northern Sudan

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

Subject(s) of appeal: 3 males

Character of reply: No response

Observations of the Special Rapporteur

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

Letter of allegation dated 5 July 2006 sent with the Special Rapporteur on the right to food and Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

In this connection, we would like to bring to your Government's attention information we have received concerning an attack by security forces against a peaceful civilian gathering in Marawi on 22 April 2006, which reportedly resulted in the death of three civilians and serious injuries to numerous others.

According to the information received, on 22 April 2006 villagers gathered in Amri school in Marawi to discuss how the building of a dam in the area has affected their livelihood. At 11 a.m., however, while the villagers were having breakfast in the school yard, security forces armed with machine guns and heavy artillery fired live ammunition into the crowd, killing three men and injuring over fifty persons. The persons killed are Mr. **Atta Al Sayed Al Khidir Al Mahi**, aged 30, a farmer from Abu Haraze Village, Mr. **Yassin Mohamed Al Khair**, aged 20, a farmer from Al Sor village, and Mr. **Salah Al Faky Al Kheder**, aged 27, a farmer from Alsweage village. Moreover, following the attack, the security officers arrested and detained three of the villagers, charging them with waging war against the state, criminal mischief and assault.

We would like to enquire about the reasons that prompted your Government's security forces to open lethal fire on a crowd of civilians gathered in a school yard, reportedly having breakfast. In this connection, we would like to refer your Excellency's Government to the fundamental principles applicable to such an incident under international law. Article 6 of the International Covenant on Civil and Political Rights, to which Sudan is a State Party, provides that no one shall be arbitrarily deprived of his or her life. As the Human Rights Committee has clarified, "arbitrarily" means in a manner "disproportionate to the requirements of law enforcement in the circumstances of the case" (Views of the Committee in the case *Suárez de Guerrero v. Colombia*, Communication no. 45/1979, § 13.3). In order to assess whether the use of lethal force was proportionate to the requirements of law enforcement, there must be a "thorough, prompt and impartial investigation" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Commission on Human Rights at its 61st session in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation … to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Commission added that this obligation includes the obligation "to identify and bring to justice those responsible, …, to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to … prevent the recurrence of such executions".

It is reported that the incident is related to the construction of a dam that has resulted in the displacement of thousands of people along the riverbanks. Among the reportedly affected people are the Amri people, who have allegedly been in negotiations with the government over the past two years regarding resettlement sites. It is further reported that the project was carried out with no prior consultation with the communities, and that no provisions for compensation have been made for the loss of their houses and livelihoods. Your Excellency's Government is reportedly insisting that the Amri people be relocated in Bayouda desert, an area they are refusing to move to.

In this respect, we would like to draw your Government's attention to article 11 paragraph 1 of the Covenant on Economic, Social and Cultural Rights, by which States parties recognize "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions", while pursuant to article 11 paragraph 2 they recognize that more immediate and urgent steps may be needed to ensure "the fundamental right to freedom from hunger and malnutrition". The human right to adequate food is of crucial importance for the enjoyment of all rights. States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11.

Moreover, as your Excellency may be aware, the Special Rapporteur on adequate housing has repeatedly drawn the attention of the Commission on Human Rights to the worrying practice of forced evictions worldwide. Forced evictions constitute prima facie violations of a wide range of internationally recognized human rights and large-scale evictions can only be carried out under exceptional circumstances and in full accordance with international human rights law. In view of this, the Special Rapporteur has recently developed a set of guidelines, presented in his most recent report to the Commission on Human Rights (E/CN.4/2006/41) aiming at assisting States in developing policies and legislation to prevent forced evictions at the domestic level.

It is finally our responsibility under the mandates provided to us by the Commission on Human Rights 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. We undertake to ensure that your Government's response is accurately reflected in the reports we will submit to the Commission on Human Rights for its consideration.

1. Are the allegations reported above accurate? If not so, please describe the investigations carried out to ascertain that the allegations are ill-founded.

2. What prompted the security forces to open fire on the crowd gathered in the school yard?

3. Please describe any investigations carried out to determine whether the use of force by your Government's security forces in Marawi on 22 April 2006 was proportionate to the requirements of law enforcement in the circumstances of the case, and if not so, the action undertaken to bring those responsible to justice.

4. Please provide information on the measures taken to protect the rights of the people affected by the construction of the dam, including in regard to adequate housing.

5. Please indicate whether compensation and rehabilitation have been provided to the people affected by the construction of the dam, and what measures have been taken to provide alternative housing to affected families.

Sudan: Deaths during Demonstrations in Port Sudan

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

Subject(s) of appeal: At least 20 persons (demonstrators)

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 Commission on Human Rights.

Letter of allegation dated 18 October 2006

I am writing in relation to the incidents which took place in January 2005 in Port Sudan. According to the information received, on 26 January 2005, peaceful demonstrators organized by members of the Beja ethnic group presented a list of demands to the Red Sea State Governor, asking him to respond to their memorandum within 72 hours. On 29 January, a second demonstration took place. Government security forces reportedly used live ammunition against demonstrators although they were allegedly only armed with sticks and stones.

I have further been informed that the security forces also attacked houses outside the area of the demonstration, and reportedly threw grenades inside houses which wounded residents, including children. Reports indicate that at least **20 people were killed in the clashes**. A similar protest was reported in Kassala town, leading to arrest and the reported beating of two students by security forces.

On 17 February 2005, the Sudanese Minister of Interior, Major-General Abdel Rahim Mohamed Hussein, set up a commission of inquiry headed by a judge to investigate the situation. It has completed its final report which has reportedly been submitted to the Government. However, to date the report has not been made public and no prosecutions are reportedly carried out.

I have received reports indicating some victim's families refused to accept diyah and as demand a serious investigation and prosecution. Other victims' families who were reportedly pressured by security forces to accept diyah received less important than initially promised.

While I welcome the immediate establishment of a Commission of enquiry set up by the Ministry of Interior in February 2005, I would like to enquire about the reason why its findings have not yet been published and would be grateful if your Government could provide me with a copy of its final report. In this connection, I would like to refer your Excellency's Government to article 6 of the International Covenant on Civil and Political Rights, to which Sudan is a State

party, which provides that no one shall be arbitrarily deprived of his of her life. As the Human Rights Committee has clarified, "arbitrarily" means in a manner "disproportionate to the requirements of law enforcement in the circumstances of the case" (Views of the Committee in the case Súarez de Guerrero v. Colombia no 45/1979, § 13.3). In order to assess whether the use of lethal force was proportionate to the requirements of law enforcement, there must be a "thorough, prompt and impartial investigation (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, arbitrary and Summary Executions). This principle was reiterated by the Commission on Human Rights at its 61 st session in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions (OP4), providing that all States have "the obligation … to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Commission added that it includes the obligation to identify and bring to justice those responsible,…, to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to … prevent the recurrence of such executions".

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

1. Are the allegations reported above accurate? If not so, please describe the investigations carried out to ascertain that the allegations are ill-founded.

2. What prompted the security forces to open fire at the crowd on 29 January 2005?

3. Please describe any investigation carried out (such as the work of the February 2005 Commission of enquiry) to determine whether the use of force by your Government's security forces on 29 January in Port Sudan was disproportionate to the requirements of law enforcement in the circumstances of the case, and if not so, the action undertaken to bring those responsible to justice.

4. Please indicate whether adequate compensation has been provided to the victims' families. Were the diyah received by some of them less important than initially promised?

Sudan: Attacks on Civilian Populations in Jebel Moon Area of Darfur by the Armed Forces and Janjaweed Militia

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

Subject(s) of appeal: About 50 persons

Character of reply: No response (recent communication)

Observations of the Special Rapporteur

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

Letter of allegation dated 30 November 2006

I would like to bring to your Excellency's attention information I have received regarding attacks by heavily armed militias (referred to as "Janjaweed") on civilian populations of the Jebel Messeriya tribe in the Jebel Moon area of Western Darfur, near the border with Chad.

According to the Sixth Periodic Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan (dated 3 November 2006), at sunrise on 29 October 2006 more than 500 hundred armed men on horses and camels attacked the village of Khabesh (estimated population: 600). The report (§ 5) quotes witnesses of the attack who recount how the attackers announced their intention to "destroy" the village's population and then proceeded to shoot and kill civilians in the village, particularly targeting male children. The attackers reportedly killed 22 inhabitants of Khabesh village and injured five more. The villagers tried to fend off the attackers with guns and killed six of them.

On the same morning, around 6.30 am, a large group of similarly clad and equipped armed men attacked Hijilija IDP camp. From a distance, they launched rocket propelled grenades (RPGs) and other projectiles at the IDP camp. They then entered the camp and shot the inhabitants with Kalashnikov guns and assault rifles, killing twelve. As in Khabesh, the attackers stated their intention to destroy the civilian population and opened fire on unarmed women and children. The attackers further looted everything of value, loaded it onto camels and then left.

Hashaba village was similarly attacked early in the morning on 29 October 2006 by approximately 60 armed men wearing green camouflage uniforms. The attack lasted until about 9:00 am. Again the assault on the village was preceded by RPG fire from a distance. The attackers killed eight inhabitants and looted all the livestock and other valuables.

Further attacks were carried out on villages named Hila Awin, Kiskis, Damara, Agra,Haskanita, Taif, all in the same area, resulting in further nine dead.

The OHCHR Report estimates that overall fifty people were killed by the militiamen that morning. The report also states that "[e]yewitness testimony and lists provided by the communities indicate that the majority killed were young male children and elderly men. According to information gathered, 26 children were killed, and of those 21 were under the age of ten. Eight of the men killed were reportedly 70 years old or older." Other reports concerning the same events provide higher estimates of the number of victims.

The militias had reportedly built up their forces in the area over the period of a month, of which the authorities in West Darfur were aware. The Sudanese Armed Forces, who have a base nearby in Guzmino, did not take action. There are also troubling indications that Sudanese military personnel may have participated in the attacks, based on descriptions of some of the attackers.

In addressing this communication to your Excellency's Government, I am aware that members of rebel groups not supportive of the Darfur Peace Agreement (DPA) are reported to be currently very active in the Jebel Moon area. Insofar as the attacks described above are linked to your Government's armed conflict with rebel forces active in the Darfur, I would like to recall that international humanitarian law requires parties to an armed conflict to distinguish at all times

between combatants and civilians, and to direct attacks only against combatants (Rules 1 and 7 of the Customary Rules of International Humanitarian Law identified by the International Committee of the Red Cross).

I welcome reports that, in response to the attacks of 29 October 2006 described above, the Governor of West Darfur established an Investigative Committee and promised to prevent similar events in the future. An inquiry by the local government into the events can have a significant impact, both to promote accountability and to prevent such attacks in the future, provided the investigative committee offers sufficient guarantees of independence, inspires some level of trust in the victims, and makes its findings public.

Such an inquiry cannot, however, be a substitute for criminal investigations and prosecution. As noted in my 2006 annual report to the Commission on Human Rights, that "[t]he State obligation to conduct independent and impartial investigations into possible violations does not lapse in situations of armed conflict and occupation" (E/CN.4/2006/53, para. 37). This includes the obligation, whenever a State receives allegations that someone has committed or ordered a grave breach - such as the "wilful killing" of a protected civilian – to investigate the matter and either try the suspected perpetrator before its own courts or extradite him to another State that has made out a prima facie case. Should the perpetrator be found guilty, the State must impose an effective penal sanction (ibid., para. 34).

Most importantly, I urge your Excellency's Government to finally comply with its obligation to disarm the Janjaweed militias. Your Excellency's Government has repeatedly committed itself to do so, including in the N'Djamena Agreement and the Protocol between the Government of the Sudan (GOS), the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) on the Enhancement of the Security Situation in Darfur. Numerous Security Council resolutions on the situation in the Sudan have called on your Excellency's Government to respect this commitment, including resolutions 1556 (2004), 1564 (2004), 1590 (2005), 1591 (2005) and 1714 (2006). The Commission on Human Rights has called on your Government to live up to this obligation in resolution 2005/82. My predecessor as Special Rapporteur on extrajudicial, summary or arbitrary executions stressed this obligation in the report she submitted to the Commission on Human Rights after she visited the Sudan at your Government's invitation in June 2004 (E/CN.4/2005/7/Add.2, para. 59), and the Special Rapporteur on the human rights situation in Sudan reiterated this in her 2006 report (E/CN.4/2006/111, para. 81).

It is my responsibility under the mandate provided to me by the Commission on Human Rights and extended by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters. I undertake to ensure that your Government's response is accurately reflected in the reports I will submit to the Commission on Human Rights for its consideration.

(i) Are the allegations reported above accurate? If not so, please describe the investigations carried out to ascertain that the allegations are ill-founded.

(ii) Please describe the steps taken by your Excellency's Government to protect the population of the Jebel Moon area of Western Darfur against attacks by militia forces.

(iii) Please describe the steps taken by your Excellency's Government to disarm the Janjaweed militias.

(iv) Please describe the progress and results of the Investigative Committee reportedly established by the Governor of West Darfur.

(v) Please describe the progress and results of any criminal investigations and prosecution in relation to the attacks of 29 October 2006 in the Jebel Moon area.

Syrian Arab Republic: Honour Killing of Huda Abu Assaly

Violation alleged: Impunity for honour killings

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 Commission on Human Rights.

Urgent appeal dated 22 August 2006

I am writing in relation to information that I have received about a continuing pattern of honour killings in the Syrian Arab Republic in which women are killed by a family member, usually because she has married outside her religion or because of suspicions of sexual impropriety. Most recently, I have received information regarding **Huda Abu Assaly**, who was stabbed and shot to death by her brother in late August for having married a Christian man.

While I do not wish to prejudge the accuracy of these allegations, there would be ground for serious concerns if they were correct. To the extent that honour killings are not met with stringent punishments, the State acquiesces in the practice. As a State Party to the *International Covenant on Civil and Political Rights*, the Syrian Arab Republic has assumed the legal obligation to ensure the right to life by effectively punishing those who commit murder. Article 6(1) recognizes that every human being has the right not to be arbitrarily deprived of his or her life. Article 2(1) requires the State to ensure to all individuals within its territory the rights recognized in ICCPR, without distinction as to sex. Article 2(2) elaborates that each State Party must undertake all necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the ICCPR. These obligations are not mere formalities: The punishments imposed may not be so lenient as to invite future violations. As I noted in my report to the Commission on Human Rights, "Crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators. . . ." (E/CN.4/2005/7, para. 71.)

In this context, I urge your Government to take all necessary measures to prevent and punish honour killings.

While I do not wish to prejudge the accuracy of the facts reports in this incident, it is my responsibility under the mandate provided to me by the Commission on Human Rights to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Commission I would grateful for your responses to the following questions:

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

2. Please provide the details and results of any investigation, medical examination (autopsy), and judicial or other inquiries carried out in relation to this incident.

3. Please provide the full details of any prosecutions or disciplinary proceedings that have been undertaken in connection with this incident. Please include information on any penalties imposed.

4. If compensation has been provided to the family of the victim, what was its amount?

I undertake to ensure that your Government's response to each of these questions is accurately reflected in the report I will submit to the Commission on Human Rights for its consideration.

Thailand: Death Sentences of Wichai Somkhaoyai and Bualoi Posit

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

Subject(s) of appeal: 2 males

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 1 February 2006

I would like to draw the attention of your Government to information I have received regarding the imposition of the death sentence against Messrs. **Wichai Somkhaoyai** and **Bualoi Posit**, the two men found guilty of the rape and murder of Katherine Horton, a tourist from the United Kingdom, on 1 January 2006. My concern with this case is raised by the extraordinary speed with which the two suspects were tried, convicted and sentenced to death. It is my understanding that Ms. Horton's body was found on 2 January 2006, and Wichai Somkhaoyai and Bualoi Posit were arrested on 7 or 8 January 2006. By 9 January 2006 they had reportedly confessed to the crime. On 13 January 2006, the two men were tried at Surat Thani. According to the information received, the two men confessed to the police, and limited themselves to confirming their

statements to the police at trial. Reports state that DNA samples were taken and matched with DNA traces found on the victim's body. On 18 January 2006, the Surat Thani court delivered the guilty verdicts and sentenced Wichai Somkhaoyai and Bualoi Posit to death.

Although the death penalty is not prohibited under international law, I would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Therefore, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences. This includes the presumption of innocence, right to a trial by an independent and impartial tribunal and the right to adequately prepare one's defence. "In capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the [ICCPR] admits of no exception" (*Little v. Jamaica*, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10).

It is in the light of these guarantees with which international law surrounds the imposition of the death penalty that I would raise my concerns regarding the extraordinary speed with which capital punishment has been imposed in this case. The fact that Wichai Somkhaoyai and Bualoi Posit have confessed the crime does not render their right to adequately prepare their defense and to receive a full and fair trial redundant. The speed with which the death penalty was imposed is all the more alarming in the light of the statements allegedly made by the Prime Minister of your Excellency's Government before the sentencing, calling on the death sentence to be imposed because of the damage the crime caused to Thailand's image.

I understand that the judgment and sentence against Wichai Somkhaoyai and Bualoi Posit will be reviewed by an appeals court, and urge your Excellency's Government to ensure that the adequacy of the first instance trial is closely scrutinized in the course of those appeals proceedings.

The Commission on Human Rights has consistently requested me and my predecessors as Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of all standards relating to the imposition of capital punishment. Without in any way pre-judging the accuracy of the information I have received, I would respectfully request Your Excellency's Government to provide me with the following information regarding the criminal proceedings against Wichai Somkhaoyai and Bualoi Posit:

a) did they confess to the rape and murder in the presence of a lawyer acting on their behalf?

b) how much time did the lawyers assigned to act on behalf of Wichai Somkhaoyai and Bualoi Posit have to prepare for the trial?

c) details concerning the DNA evidence.

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on this case to the Commission, I would be grateful for your cooperation and your observations. In addition to an expeditious first

reply, I would greatly appreciate being informed about the further developments in this case. I undertake to ensure that your Government's response is accurately reflected in the report I will submit to the Commission on Human Rights for its consideration.

Tunisia: Mort en Détention de Moncef Louhichi

Violation alléguée: Mort à la suite de torture by des agents de l'Etat

Objet de l'appel: 1 homme

Caractère de la réponse: Allégation rejetée sans preuve adéquate

Observations du Rapporteur Spécial

Le Rapporteur Spécial apprécie les renseignements préliminaires fournis par le Gouvernment de Tunisie relatif au cas de Moncef Louhichi. Le Rapporteur Spécial note qu'il est difficile d'accepter la preuve selon laquelle la victime a souffert d'une hémorragie cérébrale causée par des mauvais traitements infligés à la tête avec la réponse selon laquelle la victime est décédée naturellement d'une tumeur au cerveau. Le Rapporteur spécial regrette qu'aucune preuve subtantielle n'ait été fournie pour étayer cette affirmation. Le Rapporteur spécial demandera à être informé des résultats de l'intruction judiciaire.

Lettre d'allégation envoyée le 13 juillet 2005 avec le Rapporteur sur la torture, reproduit de E/CN.4/2006/53/Add.1, p. 251

Lettre d'allégation envoyée concernant M. Moncef Louhichi, 42 ans. Selon les informations reçues,

M. Moncef Louhichi aurait été arrêté le 9 juin 2005 à Tabarka par des agents de la police politique suite à une convocation orale par celle-ci. Dès son arrestation, M. Moncef Louhichi aurait été transféré à Jendouba et aurait été victime d'actes de torture. Les agents l'auraient notamment frappé à la tête. Le 10 juin 2005 à 21h, il aurait été remis, inconscient, à son frère aîné M. Houcine Louhichi, chauffeur de taxi à Tabarka par des agents de la police politique de Jendouba. Ces derniers lui auraient interdit d'hospitaliser la victime et de parler publiquement de cette affaire.

M. Houcine Louhichi aurait néanmoins emmené son frère au service des urgences de l'hôpital de Tabarka. M. Moncef Louhichi aurait d'abord été transféré à l'hôpital de Jendouba, puis à l'hôpital « La Rabta » à Tunis, où il est décédé le 16 juin 2005 des suites d'une hémorragie cérébrale, causée, d'après les résultats d'une analyse médicale effectuée à l'hôpital de Jendouba, par des mauvais traitements infligés à la tête.

Réponse du Gouvernement de Tunisie du 10 mars 2006 à une lettre d'allégation envoyée le 13 juillet 2005 (see E/CN.4/2006/53/Add.1 p. 251)

Le Gouvernement de la Tunisie a répondu à une lettre du Rapporteur Spécial envoyée le 13 juillet 2005 faisant état d'allégations concernant les circonstances du décès de M. Moncef Louhichi.

Selon le Gouvernment, M. Louhichi a été interrogé, dans un commissariat de police, au sujet de son éventuelle implication dans une affaire de transport de personnes soupçonnées de trafic illicite, ainsi qu'au sujet de son frère, M. Houcine Louhichi. Son audition s'est déroulée dans des conditions tout à fait normales.

L'examen du dossier médical par le Ministère public auprès du Tribunal de première instance de Jendouba (saisi d'une plainte émanant de la famille du défunt) a révélé que M. Moncef Louhichi était atteint d'une tumeur cérébrale qui serait probablement á l'origine du décès.

Le Ministère public a, néanmoins, ordonné l'ouverture d'une instruction judiciaire afin d'élucider les circonstances du décès et engager éventuellement les poursuites pertinentes á l'encontre de toute personne dont l'implication dans ce décès serait prouvée. L'affaire a été enrôlée sous le n° 13174/2 et elle suit encore son cours.

Tunisia: Mort de Tarek Ayari

Violation alléguée: Usage excessif de la force par des forces de sécurité

Objet de l'appel: 1 homme

Caractère de la réponse: Réponse faisant preuve de coopération mais incomplète

Observations du Rapporteur Spécial

Le Rapporteur special apprécie les renseignements fournis par le Gouvernment de la Tunisie selon lequel une instruction judiciaire a été ouverte pour le cas de Tarek Ayari. Le Rapporteur spécial demandera à être informé des résultats de cette enquête.

Lettre d'allégation du 30 juin 2006

J'ai l'honneur de m'adresser à vous en ma qualité de Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires conformément à la résolution de la Commission des Droits de l'Homme 2004/37.

A cet égard, je souhaiterais attirer votre attention la mort le 11 mars 2006 de M. **Tarek Ayari**, (un commerçant âgé de 24 ans), suite au coup de manche de pioche qui lui aurait été asséné à la tête par M. Bechir Rahali (dit Fella), chef du poste de police de la Cité Ennour, El Ouardia IV, Tunis.

Selon les renseignements dont je dispose, M. Tarek Ayari aurait été pris en chasse au volant de sa voiture par le chef de poste M. Bechir Rahali dans le cadre d'une rafle opérée par les services de police du commissariat de la Cité Ennour. Une fois arrêté, le policier serait descendu de son véhicule, et aurait porté un coup de manche de pioche à la tête de M. Tarek Ayari, qui se serait

aussitôt effondré. Il lui aurait alors dérobé ses chaussures et son téléphone portable, puis l'aurait abandonné sans secours.

M. Tarek Ayari a été conduit par son frère à l'hôpital Habib Thameur où il a été placé sous assistance respiratoire. Il est décédé le 11 mars 2006 vers 19h45. D'après les renseignements reçus, la police s'est rendue au domicile de ses parents vers 3h00 du matin pour leur annoncer le décès de leur fils.

La dépouille a été transférée par la police à l'hôpital Charles Nicole pour y être autopsiée. Ses parents ont pu récupérer le corps le 13 mars 2006, date à laquelle a eu lieu l'inhumation sous forte surveillance policière.

Sans vouloir à ce stade me prononcer sur les faits qui m'ont été soumis, je souhaiterais néanmoins intervenir auprès de votre Excellence afin de tirer au clair les circonstances ayant provoqué les faits allégués ci-dessus et ce, conformément aux dispositions pertinentes de la Déclaration universelle des droits de l'Homme et du Pacte international relatif aux droits civils et politiques.

J'aimerais rappeler au Gouvernement de votre Excellence les principes fondamentaux énoncés par l'article 3 de la Déclaration universelle des droits de l'Homme et réitérés par l'article 6 du Pacte international relatif aux droits civils et politiques, où il est stipulé 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.

Par ailleurs je prie votre Gouvernement de diligenter une enquête sur le meurtre de M. Tarek Ayari et de traduire les responsables en justice conformément aux principes relatifs à la prévention efficace des exécutions extrajudiciaires, résolution 1989/65 du 24 mai 1989 du Conseil économique et social. En particulier les principes 9 à 19 obligent les Gouvernements à mener des enquêtes approfondies et impartiales dans tous les cas où l'on soupçonnera des exécutions extrajudiciaires, arbitraires ou sommaires ; à rendre publiques les conclusions d'enquêtes ; et à veiller à ce que les personnes dont l'enquête aura révélé qu'elles ont participé à de telles exécutions sur tout le territoire tombant sous leur juridiction soient traduites en justice. Des procédures et des services officiels d'enquête doivent être maintenus, alors que les plaignants, les témoins, les personnes chargés de l'enquête et leurs familles doivent être protégés contre les violences ou tout autre forme d'intimidation.

Il est de ma responsabilité en vertu du mandat qui m'a été confié par la Commission des droits de l'Homme et par les résolutions de l'Assemblée Générale des Nations Unies de solliciter votre coopération afin de tirer au clair les cas qui ont été porté à mon attention. Dans l'obligation d'en faire rapport au Conseil des droits de l'Homme, je serais reconnaissant au Gouvernement de son Excellence de ses observations sur les points suivants :

1. Les faits tels que relatés dans le résumé sont-ils exacts ? Si tel n'est pas le cas, quelle enquêtes ont été menées pour conclure à leur réfutation ?

2. Au cas où une plainte a été déposée, quelle suite lui a-t-il été donné ?

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. Veuillez fournir toute information sur les poursuites et procédures engagées ?

5. Veuillez indiquer si la famille de M. Tarek Ayari a été indemnisée.

Réponse du Gouvernement de Tunisie du 4 décembre 2006

Le Gouvernement de la Tunisie a répondu à une lettre du Rapporteur Spécial du 30 juin 2006, faisant état d'allégations concernant le décès de M. Tarek Ayari. Selon le Gouvernement, cette affaire fait l'objet d'une instruction juidiciare ouverte auprès du Tribunal de première instance de Tunis et enrôlée sour le no 3/4804. Cette instruction suit encore son cours.

Tunisia: Mort en Détention de Badreddine Ben Hassen Ben Mokhtar Reguii

Violation alléguée: Mort en détention à la suite de torture

Objet de l'appel: 1 homme

Caractère de la réponse: Réponse faisant preuve de coopération mais incomplète

Observations du Rapporteur Spécial

Le Rapporteur spécial apprécie les renseignements fournis par le Gouvernment de la Tunisie selon lesquels une instruction judiciaire a été ouverte au sujet des circonstances du décès de M. Badreddine Reguii et que celle-ci suit son en cours. Le Rapporteur Spécial demandera à ce que les résultats de ces procédures lui soient communiqués une fois terminés.

Lettre de suivi du 17 Octobre 2006 au sujet d'une communication envoyée le 25 mars 2004

A cet égard, je souhaite attirer votre attention sur notre échange de correspondance relatif à la mort en détention de **Badhreddine Ben Hassen Ben Mokhtar Reguii** qui a dûment été reflété dans mon dernier rapport à la Commission des Droits de l'Homme (E/CN.4/2006/53/Add.1, p. 250-251). Dans sa réponse du 15 avril 2005, le Gouvernement de son Excellence a fourni des renseignements préliminaires relatifs à l'enquête sur la mort de ce détenu en précisant notamment que l'instruction suivait son cours.

Dans contexte, et comme indiqué dans mes observations relatives à ce cas, je saurais gré au Gouvernement de son Excellence de bien vouloir me faire parvenir dans les plus brefs délais, des renseignements complémentaires quant aux résultats de l'instruction judiciaire ouverte par le juge d'instruction, de même que des renseignements relatifs aux poursuites et procédures engagées et de bien vouloir indiquer si elles on donné lieu a une indemnisation des ayants droit de M. Badhreddine Ben Hassen Ben Mokhtar Reguii.

Réponse du Gouvernement de Tunisie du 4 décembre 2006

Le Gouvernement de la Tunisie a répondu à une lettre du Rapporteur Spécial du 17 octobre 2006, concernant l'instruction judiciaire ouverte au sujet des circonstances du décès de M. Badreddine Reguii. Selon le Gouvernment, il convient de souligner que cette instruction est en cours (affaire no 96555).

Turkey: Events Occurring in Semdinli, Hakkari in November 2005

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

Subject(s) of appeal: 2 persons

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information provided by the Government of Turkey. The Special Rapporteur would request the he be provided the results of the prosecutions and investigations mentioned: (a) the criminal case, (b) the Inquiry Commission established by the Turkish Grand National Assembly, and (c) the administrative investigation.

Letter of allegation sent on 23 January 2006

I would like to bring to your Excellency's attention information I have received regarding the recent incidents that took place in the town of Semdinli, in the province of Hakkari.

According to the information received, on 9 November 2005 the Umut Kitabevi bookshop was bombed in Semdinli, killing one man and injuring others. The suspected bomber and his accomplices were apprehended in their car as they were trying to escape. Reports indicate that weapons, along with several lists of names of political opponents, personal information about a number of individuals in Semdinli (including the bookshop owner's name as well as his home and workplace map) were found in the vehicle.

It has been brought to my attention that that the two men were plainclothes gendarmerie intelligence officers as revealed by the identity card they were bearing during the operation. The alleged bomber was charged for murder and placed in detention. Press reports subsequently disclosed that the man was a PKK informant, information which, to my knowledge, has not been officially denied by the authorities.

I have been further informed that, as the prosecutor subsequently carried out a scene-of-crime investigation, the assembled crowd was fired upon from a car, resulting in the death of one civilian and injury of others. A gendarmerie special sergeant has been detained on charges of disproportionate use of force resulting in death.

While I am aware that the Turkish Prime Minister, Justice Minister and Interior Minister have expressed strong determination to uncover all dimensions of this incident and to expend every

effort in bringing the perpetrators to justice, I would like to appeal to your Excellency's Government to ensure that all deaths that occurred in connection with the Semdinli bookshop bombing are promptly, independently and thoroughly investigated in accordance with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

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

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

2. 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 killings occurred around the bombing of the Semdinli bookshop.

3. Assuming that those responsible for the shootings and bombing have been identified, please provide the full details of any prosecutions which have been undertaken, and of any other penal, disciplinary or administrative sanctions imposed in this connection.

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

Response of the Government of Turkey dated 25 April 2006 in response to a letter of allegation sent on 23 January 2006

Information Note regarding the incidents which took place on 9 November 2005 in Semdinli, Hakkari. Turkey

On 9 November 2005, the Umut Bookshop was bombed in Semdinli in the province of Hakkari, Turkey, killing ove and injuring another person. After the incident, a person who was allegedly trying to escape was attacked by the crowd at the scene of the incident. The escalation of the attacks by the crowd was immediately prevented and the suspect was apprehended alter the intervention by the law enforcement authorities.

The same day, a crime-scene investigation was conducted by the Public Prosecutor in Van during which the assembled crowd was fired upon from a car, resulting in the death of one person and injuring of 4 people.

3 suspects were detained in conjunction with the bombing incident and one suspect was detained in connection with the shooting incident which took place on 9 November in Semdinli. Two of the suspects were arrested during the initial investigation, whereas, the other two were released pending their trial. During the course of the investigation by the Public Prosecutor, the two suspects who had been released previously were also arrested on 28 November 2005. The suspect who had been arrested in convection with the shooting incident was released on 18 January 2006 during the trial.

As a result of the investigation conducted by the Public Prosecutor regarding the incident, in Semdinli, a public criminal case was commenced in the 3rd High Penal Court of Van. The first hearing will be held on 4 May 2006.

Furthermore, an Inquiry Commission was established by the Turkish Grand National Assembly to carry out inquiries regarding the facts surrounding the incidents.

An administrative investigation was also initiated. To this end, inspectors of the Ministry of Interior were assigned to conduct thorough investigations in all dimensions of the incidents which took place following the bombing of the bookshop in Semdinli and bring the perpetrators to justice.

The administrative and Parliamentary investigations are underway. As the judicial process is ongoing, it would not be legally possible to further comment on the validity of the allegations regarding the case.

Turkey: Deaths during Violence in Diyarbakir, Batman, and Kiziltepe in March and April 2006

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

Subject(s) of appeal: 14 persons (5 minors)

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Turkey regarding the context of these deaths. He also appreciates the information that Ismail Erkek is alive and that Halit Aktas is unknown. The Special Rapporteur would request that the Government provide the results of the investigations concerning the other persons mentioned.

Letter of allegation dated 27 June 2006

I would like to draw your Excellency's attention to information I have received regarding incidents that have taken place in several provinces of the South East and East regions of Turkey since 28 March 2006.

According to the information received, violent riots erupted following the funerals of suspected militants of the PKK killed by the army in the Mus-Bingol area on 24 March 2006. Eleven civilians -including three children- were allegedly shot dead on 30 March as Turkish security forces opened fire and used tear gas and truncheons on protestors. Those killed include **Enez Atak** (8-years-old), **Ismail Erkek** (8-years-old), **Abdullah Duran** (9-years-old), **Mashsum Mizrak** (27-years-old), **Emrah Fidan** (17-years-old), **Mehmet Isikci** (19-years-old), **Halit Sogut** (18-years-old), **Tarik Ataykaya** (23-years-old), **Mehmet Akbulut** (18-years-old), **Mustafa Erylmaz** (22-years-old) and **Halil Aktas** (20-years-old). The situation in Diyarbakir

was said to have been volatile and gendarme and police officers reportedly called in reinforcements from paramilitary and special commando forces.

The violence also affected other provinces. In Batman, reports indicate that a child, **Fatih Tekin** (3-years-old), was reportedly killed by security forces on 29 March. In Kiziltepe, two civilians, **Ahmet Arac** (27-years-old) and **Mehmet Siddik Onder** (22-years-old) were reported to be killed by security forces in similar outburst of violence on 1 and 2 April 2006.

Without pre-judging the accuracy of the accounts received, I would note the relevance in such situations of two international legal instruments designed to elaborate on the content of the human rights principles applicable in such situations. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials note, inter alia, that law enforcement officials should "as far as possible apply non-violent means before resorting to the use of force and firearms" and that "in any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life". And the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly resolution 34/169 (1979), more succinctly stresses the limited role for lethal force in all enforcement operations.

I would like to appeal to your Excellency's Government to ensure that all deaths that occurred in connection with the above mentioned operations are promptly, independently and thoroughly investigated in accordance with the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

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

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

2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the killings of demonstrators in Diyarbakir, Batman and Kiziltepe.

3. Assuming that those responsible for the shootings have been or will be identified, please provide the full details of any prosecutions which have been undertaken, and of any other penal, disciplinary or administrative sanctions imposed in this connection.

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

Response of the Government of Turkey dated 3 July 2006

In connection with the incidents referred to in your letter of 27 June 2006 I am enclosing herewith an information note related to those incidents.

Incidents in Diyarbakir:

During a counter-terrorist operation conducted by the security forces in Bingöl on 25 March 2006, 8 members of the terrorist organization PKK/KADEK originally from the provinces of Batman, Siirt, Adiyaman, Adana and Diyarbakir in Turkey lost their their lives during armed clashes with the security forces.

Prior to the funerals of the terrorists in these provinces, the terrorist organization PKK/KADEK orchestrated a provocation campaign through the internet and its affiliated broadcasting organizations such as the ROJ TV. In these broadcasts, the leadership of the terrorist organization PKK/KADEK urged its supporters to turn the funerals into a series of provocative actions in order to display support for the terrorist organization PKK/KADEK, the deceased terrorists and their families.

During the funeral of the terrorists in Diyarbakir on 28 March 2006, the traffic was disrupted by a gathering of 1,500 to 2,000 people who burned tires on the road, chanted slogans in support of the terrorist organization PKK/KADEK, displayed its symbols, flags, pictures of its chief and banners supporting the terrorist organization. The law enforcement officials repeatedly warned the crowd through megaphones to refrain from illegal demonstrations and actions, from slogans supporting terrorist organization and from displaying flags that symbolize terrorist organization. Despite these efforts, the group continued their illegal actions disturbing the public order until they reached the Yeniköy Cemetery. The law enforcement authorities did not deliberately intervene in this unlawful procession in order to ensure the safety of children and elderly people in the group.

However, after the funeral a group of 1,000 people continued to stage illegal protests and violently attacked the law enforcement officers who stood guard at the perimeter and their vehicles, hurling molotov cocktails, stones and batons. Therefore, the law enforcement authorities had to intervene with water cannons and tear gas to push back the crowd. The group then scattered into nearby streets and gathered in various parts of the province to again attack the security forces, public premises, banks, private property and work places, public and private vehicles, hurling molotov cocktails and stones that resulted in a large-scale damage.

These acts of violence continued on 29, 30, 31 March and 1 April 2006 in various parts of Diyarbakir. During these incidents, a series of shootings from a Kalashnikov assault rifle and gunshots occurred in the streets near Medine Boulevard.

In various parts of the province banks, their ATM machines, premises of provincial branches of several political parties and public buildings were violently attacked with stones and molotov cocktails and were looted. Vehicles belonging to law enforcement authorities, judges and citizens were also attacked and burned down. Furthermore, the private residences of 65 law enforcement officials were attempted to be invaded and were marked with specific signs in order to be later targeted by the terrorist organization. Within those 65 residences, a private residence of a law enforcement official was infact invaded and looted. The demonstrators used garbage containers and bricks of sidewalks on the roads as barricades while hurling molotov cocktails and disrupting the traffic. The Turkish flags at the official buildings were taken down. The demonstrators violently intruded into classes at the Universities, threatened the

students not to attend the classes, bumed the tables and seats in the campuses. The authorities called for an immediate end to these incidents of violence and warned that they would have to intervene with water cannons and tear gas if they continued. Despite these warnings, the demonstrators responded with attacks against the law enforcement authorities, public buildings, banks, ATM machines, private work places, private and public vehicles with firearms, molotov cocktails, knives, stones and sticks. The public order was restored after the intervention of the law enforcement authorities.

The following arms were confiscated from the demonstrators who were apprehended during the incidents. They were then transferred to the Criminal Police Laboratory for ballistic examination:

1) 4 pistols of various types and calibers of pistols,

2) 3 replica pistols,

3) 6 chargers (for those pistols),

4) 11 loaded cartridges,

5) 26 blank cartridges,

6) 4 unused molotov cocktails

During the incidents in Diyarbakir, one gendarmerie soldier who stood guard at the perimeter around the premises of the Justice and Development Party was injured by a shot gun, 2 security officials were stabbed, 215 law enforcement officials were seriously wounded as a result of the violent attacks with molotov cocktails, stones, batons and sticks by the demonstrators. Furthermore, 4 medical personnel from the Emergency Clinic at the State Hospital, who were on duty to transfer the injured persons on the streets to the hospital, sustained serious injuries and their ambulance was seriously damaged, as a result of the attacks with molotov cocktails and stones by the demonstrators. 2 members of the press who were attacked by the demonstrators with stones and molotov cocktails were also seriously injured.

75 persons whose work places, shops or vehicles were destroyed during the demonstrations, lodged formal complaints with the Police Headquarters for the damages and losses they had sustained. After their statements were taken, they were transferred to the judicial authorities and the Loss Assessment Commissions of the Office of Governor

It was established that Halit Sögüt, Emrah Fidan, Tank Atakay, Mehmet Isikçi, Abdullah Duran, Enes Ata, Mahsum Mizrak, Mehmet Akbulut and Mustafa Eryilmaz lost their lives during the incidents. The Office of the Chief Public Prosecutor has initiated investigations in connection with their deaths, registered with the Initial Investigation Registry No. 2006/520, 2006/525, 2006/474, 2006/475, 2006/476, 2006/485, 2006/486, 2006/490 and 2006/504. The investigations are still underway.

It has been confirmed that Ismail Erkek referred to in your letter is alive. He is attending Mesut Yilmaz Primary School in Diyarbakir. Neither he nor any member of his family has sustained injury or lost their lives during the incidents in Diyarbakir

It has been established that no person by the name Halit Aktas was among the persons who died during the incidents

Incidents in Kiziltepe:

Similar provocation campaign was instigated by the terrorist organization PKK/KADEK in Kziltepe district in Mardin. On 1 April 2006 a group of persons attacked the security officers in front of the premises of the provincial branch of the DPT ("Democratic Society Party") with stones, bricks and molotov cocktails. A security officer who tried to prevent the attacks was seriously beaten by the group who took his gun and threw him from the second floor of the building. The security officer is in critical condition in the hospital.

The branches of two private banks, Akbank and Yapi Kredi and the Revenue Office building were also attacked with molotov cocktails, causing fire in these buildings. During the incidents, many private and public buildings as well as the vehicles of the law enforcements authorities were damaged and several officials and demonstrators were injured. The incidents of violence continued on 2 Apri12006 in various parts of Kiziltepe

It has been established that Ahmet Araç was shot by a gun during the incidents on 1 April 2006 in Kiziltepe. He was immediately taken to the State Hospital of Mardin where lie lost his life due to his serious injuries. Mehmet Siddik Onder was also shot during the incidents on 2 April 2006 in Kiziltepe. He lost his life during his treatment in the State Hospital of Mardin.

The Office of the Chief Public Prosector of Kziltepe initiated investigation in connection with the deaths of Ahmet Araç and Mehmet Siddik Onder. Autopsy was also carried out on the bodies of the two deceased. In order to establish the causes of death and their perpetrators the results of the Auopsy and the relevant evidence were sent to the Institution of Forensic Medicine of Istanbul. An on-site investigation was also carried out in connection with the death of Ahmet Araç upon the request by his family. The lawyer instructed by the Araç family also submitted evidence to the Office of the Chief Publie Prosecutor of Kziltepe. Several suspects were interrogated with regard to these deaths. The investigations are still underway.

Incidents in Batman:

Similar incidents of violence also erupted in Batman between 30 -31 March 2006, during which a group of 2500 persons attacked the public and private institutions, banks and private work places.

It was reported to the Office of the Chief Public Prosecutor that a four year old child named Fethi Tekin died at a hospital due to the injuries lie sustained from a shotgun. An investigation was launched by the Office of the Chief Public Prosecutor in connection with

his death. According to the statement of the brother of Fethi Tekin who was with him when lie died, they were on the roof of their one storey house in Petrol district of Batman, watching the clashes between a group of protestors and security forces when ail of a sudden Fethi Tekin fell down. During the postmortem examination on his body traces of a bullet were found. An on-site investigation was also carried out by the Penal Court of First Instance. The investigation is still underway.

Turkey: Killings Related to the Village Guard System

Violation alleged: Deaths due to attacks or killings by secruity forces and private forces cooperating with or tolerated by the state

Subject(s) of appeal: 11 persons (2 minors)

Character of reply: No response

Observations of the Special Rapporteur

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

Letter of allegation dated 27 June 2006

I would like to draw the attention of your Excellency's Government to killings of unarmed villagers by village guards in southeast Turkey. According to the reports I have received, the village guard system is giving rise to some of the most serious human rights violations, which prevents displaced persons from returning to their former homes.

In the past four years village guards have killed at least eleven unarmed villagers, and attacked or threatened with death many others. The cases are outlined below. Five of those killed were displaced villagers who had recently returned.

Yusuf Abdurrahim and **Abdulsamet Ünal** of Nureddin village, Muş province, were reportedly killed by village guards, on July 9, 2002. The Ünal family had been expelled in 1994 when security forces destroyed the village, but on July 1, 2002, the family had applied to the local governor and gendarmerie for permission to stay temporarily in their village to gather their hay crop. According to an eyewitness, village guards came and argued with Yusuf Ünal, saying that he could not sell the hay. Village guards then beat Yusuf Ünal and attacked other members of the family. There was a melee, and the eyewitness ran off with members of the Ünal family to nearby Konakkuran gendarmerie station. Gunshots were heard, and Yusuf, his son and his brother were killed. Fourteen village guards were arrested in connection with the killings; four years later the trial continues.

Under pressure to join the village guard system, the Tekin family of Uğrak village, near Bismil in Diyarbakır province, left their homes in 1994. As soon as they left, neighboring village guards moved into the Tekin family's houses, and began farming their fields. The Tekin family moved back to Uğrak on September 26, 2002, but within hours of their return village guards attacked

the family, killing **Nezir Tekin**, **Ikram Tekin**, and five-year-old **Agit Tekin**, and gravely wounding six other members of the family. Ten village guards were charged with the killings and are now on trial at Diyarbakır Criminal Court No. 3.

Şemsettin Sarıhan, **Şamil Sarıhan**, **Remzi Sarıhan**, **Mustafa Sarıhan**, and **Ali Sarıhan** from Akpazar village in Ağrı province had not been displaced. They seem to have been targeted for their longstanding refusal to serve as village guards. According to a survivor, on July 31, 2004, the Sarıhans were grazing flocks in the high pasture when two village guards came to their tent and invited Şamil Sarıhan to tea. An argument broke out, and the two village guards machine-gunned the family. Five village guards are currently on trial at Doğubeyazıt Criminal Court for the killing of the Sahiran family.

On March 19, 2005 **Selahattin Günbay**, a thirteen-year-old boy and two of his relatives were grazing sheep near the village of Düzce, near Nusaybin in Mardin province, when village guards warned them not to graze their animals in that area. When Selahattin Günbay took no notice, one of the village guards shot him dead with an automatic weapon. Four village guards were arrested in connection with the killing and are awaiting trial.

I would also like to draw your attention to the following cases of extremely serious violence by village guards that have also been brought to my attention. Although non-lethal, these acts must be reported and cannot remain unpunished.

On October 20, 2004, village guards from a neighboring village next to Bağgöze took **Abdurrahman Aydın** from his house to a nearby pasture. There, a waiting gendarmerie officer accused Aydın of sheltering PKK militants. According to Aydın's account, when he threatened to complain to an international human rights organization, the gendarmerie officer started to beat him, and ordered the village guard to kill him. Village guards ordered Aydın to undress. When he refused, they tore his clothes, and attempted to strip him naked. He resisted, and they beat him with the butts of their rifles and kicked him, as a result of which he was bedridden for three days. Aydın later learned that his cousin Resul Aydın had been subjected to a similar assault.

On the night of November 29, 2004, five village guards from Taşlıçayır village, near Karlıova in Bingöl province, accompanied by five plainclothes persons (one of whom he recognized as a gendarmerie officer), raided **Kamer Şemci**'s house in Aktaş settlement of Kaynarpınar village. Şemci reported that one of the village guards immediately accused him of feeding armed militants, insulted him, and threatened to break his teeth. The group fired shots into the ground between his wife and his son Öğren Şemci, and beat his son and another villager, Mehmet Açığ. The village guards and plainclothes officers occupied Şemci's house for two days while carrying out an operation in the area. During that time, the guards demanded food and threatened violence if Semci's family refused. Şemci made a formal complaint, but learned in February 2005 that the local prosecutor had decided not to prosecute.

On June 12, 2005, village guards from Taşlıçayır were again accompanied by gendarmes when they raided Burmataş claiming that Burmataş villagers were sheltering PKK militants. The gendarmes and village guards allegedly beat **Nebahat Mert, Naima Sayak, Songül Mert, Belkıs Biçer, Zübeyde Mert, Aziz Mert, Atik Mert, Yakup Mert, Özal Sayak, İsmet Sayak,** and **Celalettin Mert.** The female villagers were reportedly insulted, and the security forces fired

shots at random around the village, killing livestock. No PKK militants were found in the village, and no villagers were arrested. The villagers submitted a complaint to a local sub-governor, but according to the villagers this official tore up their complaint. A complaint to the local gendarmerie allegedly produced a threat from the gendarmerie to burn the village.

On February 17, 2005, two provisional village guards whom **Kazım Şen** knew drove up to his house in Kumgölü village, near Silvan, Diyarbakır province and told him that their father had summoned him. According to his account, the village guards took him to a deserted valley 1.5 kilometers from the village and beat him severely. Şen complained to the gendarmerie, but was told that "if you do not abandon your complaint against these people we will find a way to have you found guilty and punished." Kazım Şen dropped his complaint, but later decided to make the attack and threats public.

Hasan Keren, forced out of Cevizli village in Mardin province in 1994, reported that since returning to his home in 2000, he and his family had been subjected to attacks by village guards who were unlawfully using their land. On January 29, 2004, following a dispute about grazing animals, Keren was beaten by village guards, resulting in injuries to his eyes, head and back that required hospital treatment and fifteen days recuperation. Keren reported the incident to the Mardin public prosecutor, who opened an investigation, which is apparently still pending at this writing.

On June 1, 2005, villager **N.Y.** (identity withheld) of Düzpelit hamlet, Bağcılar village near Kulp, reported that village guards from Kulp had occupied the 5,625 hectare high pasture of Serespi (Teli Meskisi), owned by N.Y.'s family for more than a century. Since 1991 village guards have been renting the land out to a third party. When N.Y. attempted to use the land in 2005, he was threatened by relatives of these guards. In May 2005, while traveling to a wedding, N.Y. and his family were attacked by village guards, who shot and wounded a member of the party with a pistol. Two village guards were arrested in connection with the shooting; as of this writing it is unclear whether they are being prosecuted.

It is my understanding that the system of village guard has been widely condemned by various intergovernmental bodies. Its abolition has been recommended by my predecessor, Ms. Asma Jahangir, after she visited your country (see E/CN.4/2002/74/Add1, paragraph 125), as well as by the Representative of the United Nations Secretary-General on the human rights of internally displaced persons, Mr. Francis Deng, in the aftermath of his country visit (see E/CN.4/2003/86/Add 2, paragraph 42). As your Excellency is aware, the European Court of Human Rights has also made numerous judgments against Turkey with respect to village guard abuses. In May 2005, *in Acar and Others v. Turkey*, the court found the Turkish government responsible for violating the right to life of six villagers from Çalpınar near Midyat in Mardin province on April 14, 1992. The Court also held that the authorities failed to carry out an adequate and effective investigation into the said deaths and wounding.

Despite this condemnation, the village guard system remains in place. To date, I am aware that very few of its members responsible for abuses have been prosecuted and sentenced. I recall your Excellency's Government that human rights law imposes 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).

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

1. Are the facts alleged in the above summaries accurate?

2. Please provide the details, and where available the results, of any police investigation, medical examination (autopsy) and other inquiries carried out in relation to the alleged use of lethal force in the above incidents.

3. Please provide the details of any disciplinary measures imposed on or criminal prosecution against members of the village guards responsible for the above violations.

4. Please state whether any compensation was provided to the families of the victims.

Turkey: Killing of Ugur Kaymaz and Ahmet Kaymaz

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

Subject(s) of appeal: 2 males (1 minor)

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the preliminary information that was provided by the Government of Turkey in response to his earlier communication, but he regrets that the Government has not provided the results of the prosecutions to which it had referred in its response.

Follow-up letter dated 17 Octobre 2006 to a letter of allegation dated 11 February 2005

I would like to draw your Excellency's attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 252-256), relating to the killing of **Ugur Kaymaz** and **Ahmet Kaymaz** by police officers in November 2004 in Kiziltepe.

As indicated in my report, I appreciate the information provided by your Excellency's Government indicating that the Kiziltepe Public prosecutor's office initiated two separate investigations against the police officers who participated in the operation against Ugur and Ahmet Kaymaz. As further mentioned in my observations, I would be grateful if your Government could provide me with information relating to the results of the prosecutions

described. I would also like to know if any penal or disciplinary sanctions were imposed and if any compensation was provided to the families of Ugur and Ahmet Kaymaz.

Turkmenistan: Death in Custody of Ogulsapar Muradova

Violation alleged: Death in custody

Subject(s) of appeal: 1 female (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 Commission on Human Rights.

Urgent appeal dated 19 September 2006 sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the question of torture and Special Representative of the Secretary-General on the situation of human rights defenders

We would like to draw the attention of your Government to information we have received regarding the death in custody of Ms **Ogulsapar Muradova**, a prominent human rights activist associated with the Turkmenistan Helsinki/Foundation (THF) and journalist for Radio Free Europe/Radio Liberty, for whom two urgent appeals were already sent to your Government on 29 June and 24 July 2006.

According to the information received, Ms Muradova was arrested in mid-June on accusations of "subversive activities, along with Mr. Amankurban Amanklychev and Mr. Sapardurdy Khajiev, two other human rights defenders both members of the THF.

Mr. Amanklychev had been arrested on June 16, 2006 by police officers, when he was working on a documentary with two French production companies, dealing with the deterioration of the health and education systems in Turkmenistan, and the personality cult of the President of the Republic. Mr. Khajiev and Mrs. Muradova were arrested on June 18, 2006, at their homes. They all remained detained incommunicado in a National Security Service pre-trial detention centre for more than two months, during which they were reportedly subjected to ill-treatments. Besides, they were never notified about the charges against them, nor their lawyers, and were not allowed to meet them.

On June 19, 2006, the highest authorities' representatives, such as the President of the Republic and the National Security Minister, publicly accused the three defendants of having conspired with foreigners in order to destabilize the State.

According to the information received, their trial took place in camera. Indeed, the lawyers were denied access to Court, as they were kicked out by soldiers just before the hearing, while trying

to meet their clients. As a consequence, only the Prosecutor and the defendants were allowed to attend the hearing, which lasted just a few minutes. Moreover, the Court building and the streets leading to it were cordoned off by armed soldiers, preventing the defendants' relatives and supporters from coming in.

On August 25, 2006, the Azatlyk District Court of Ashgabat respectively condemned Mrs. Muradova and Mr. Amanklychev to a six-year and a seven-year prison terms, while Mr. Khajiev was sentenced to a seven-year term in a high-security prison. All three were sentenced for "illegally possessing ammunitions" (article 287-2 of the Criminal Code), on the basis that police officers would have found some arms in Mr. Amanklychev's car. The three defendants decided to appeal this verdict on August 29 and 30, 2006.

In the morning of 14 September 2006, members of the security forces came to the house of Ms Muradova and took her three children, Sana, Maral and Berdy Muradova, to the morgue where they were asked to sign a document identifying and reclaiming Ms. Muradova's body. The siblings requested an examination of the body by an independent doctor, which was reportedly denied. According to reports, they went to the United States Embassy and returned with an American representative who was permitted to accompany them to view their mother's body which bore signs of ill treatment, with various wounds in the head and the neck.

Reports indicate that Ms. Muradova's children are under surveillance and that their phone line has been cut. They reportedly approached the police who refused to acknowledge their complaint. Concerns are expressed for the security of Ms Muradova's children as there has been no further contact with them since their telephone line got cut off.

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency to ensure that the death of Ms. Muradova is promptly, independently and thoroughly investigated in accordance with the United Nations Principles on the effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. We would also like to draw your Excellency's attention to Article 12 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed.

We would further like to draw your Government's attention to article 4 of the Convention Against Torture which requires States Parties to ensure that all acts of torture are offences under its criminal law and to make the offences punishable by appropriate penalties. In this regard I would also like to draw your 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 States Parties to prosecute suspected perpetrators of torture. We would also like to draw your Government's attention to paragraph 3 of Resolution 2005/39 of the Commission on Human Rights which, "Stresses in particular that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been

committed, and takes note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;".

We would also like to draw the attention of your Government to paragraph 9 of Resolution 2005/39 of the Commission on Human Rights, which reminds all States that "prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person."

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

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

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

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

In addition, we should like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression of the above mentioned persons, in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and reiterated in article 19 of the International Covenant on Civil and Political

Rights which provide that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

We urge your Government to take all necessary measures to guarantee that accountability of any person guilty of the murder of Ms. Muradova is ensured in accordance with Article 7 of the Convention Against Torture. We also urge your Government to ensure that any dependents are provided with appropriate compensation in accordance with Article 14 of the Convention Against Torture. We also request that your Government adopts effective measures to prevent the recurrence of killings such as the above described.

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

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 Ms. Muradova.

Uganda: Death in Custody of Abdu Semugenyi

Violation alleged: Death in custody

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Letter of allegation dated 8 August 2006 sent with the Special Rapporteur on the question of torture

We would like to bring to your to your Government's attention information we have received concerning **Abdu Semugenyi**, a 55-year-old businessman, who was reportedly tortured to death in a government "safe house" maintained by the Joint Anti-Terrorist Task Force in Kampala.

According to the information received, security agents arrested Abdu Semugenyi in April 2006, along with another man, while they were driving in the village of Ntoroko, near Kasese in western Uganda. It would appear that his arrest was motivated by suspected links with the Allied Democratic Forces, a rebel group. The two men were then transferred to the Karugutu barracks of the Uganda Peoples' Defense Force in western Uganda and from there taken to a so-called "safe house" maintained by the Joint Anti-Terrorist Task Force in Kololo, a neighborhood of Kampala. There Abdu Semugenyi was subjected to torture by state security agencies. On 4 May 2006 he died of electrocution.

The authorities first denied holding Semugenyi. Subsequently, however, they claimed that he was killed while trying to escape. The authorities have so far refused to hand over his body to his family.

Without in any way implying any conclusion as to the facts of the case, 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 International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We would in particular like to draw your Government's attention to paragraph 9 of Resolution 2005/39 of the Commission on Human Rights, which reminds all States that "prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person." Also, article 12 of the Convention Against Torture requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and its article 7 requires State parties to prosecute suspected perpetrators of torture.

Furthermore, we would like to recall paragraph 3 of Resolution 2005/39 of the Commission on Human Rights which, "Stresses in particular that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture".

We would also like to refer Your Excellency's Government to the fundamental principles applicable under international law to deaths in custody or on the occasion of purported attempts to escape from custody. Article 6 of the International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of his or her life. As the Human Rights Committee has clarified, "arbitrarily" means in a manner "disproportionate to the requirements of law enforcement in the circumstances of the case" (Views of the Committee in the case

Suárez de Guerrero v. Colombia, Communication no. 45/1979, § 13.3). In order to assess whether the use of lethal force was proportionate to the requirements of law enforcement, there must be a "thorough, prompt and impartial investigation" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on "Extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "the obligation … to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Commission added that this obligation includes the obligation "to identify and bring to justice those responsible, …, to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to … prevent the recurrence of such executions".

We therefore urge your Government to hand over the body of Abdu Semugenyi to his family and to initiate an inquiry into the circumstances surrounding his death, 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 family. We also request that your Government adopts effective measures to prevent the recurrence of such acts of torture, i.e. primarily to immediately proceed to closing all so-called "safe houses" where detainees are held incommunicado, releasing the detainees or handing them over to the authorities and the facilities competent under the criminal procedure law. We would finally suggest that – in addition to criminal investigations into the circumstances of the death of Abdu Semugenyi – your Excellency's Government institute an independent commission of inquiry into the general question of safe houses run by security forces, currently and in the recent past.

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

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

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

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

4. Please indicate whether the body of Abdu Semugenyi has been handed over to his family and whether compensation has been paid to the family.

5. Please provide the details, and where available the results, of any inquiry into the general question of safe houses run by security forces.

United Arab Emirates: Death Sentence of Shahin 'Abdul Rahman

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

Subject(s) of appeal: 1 male (foreign national)

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Government of the United Arab Emirates has failed to cooperate with the mandate that he has been given by the General Assembly and the Commission on Human Rights.

Letter of allegation dated 16 June 2006

I am writing to you in relation to **Shahin 'Abdul Rahman**, a foreign national, who has been sentenced to death by stoning by a Shari'a (Islamic) court in the Emirate of Fujairah on 10 June 2006. Shahin 'Abdul Rahman, whose nationality has not been communicated to me, was sentenced for committing adultery after he was allegedly found naked in bed with Asma Bikham Bijam, a domestic worker. The couple was denounced by Asma Bikham Bijam's employer who reportedly called the police when he realised that they were in bed in his house. Shahin 'Abdul Rahman who is a married man, reportedly admitted to having a sexual relationship outside wedlock with Asma Bikham Bijam. Reports indicate that she was sentenced to receive 100 lashes in addition to a one-year prison term.

I would like to remind your Excellency's Government that the death penalty must be regarded as an extreme exception to the fundamental right to life and that it must therefore be applied in the most restrictive manner. Accordingly, it is crucial that all fair trial and other protections provided for in international human rights law are fully respected in proceedings relating to capital offences.

It is my view that the death penalty as applied in this case does not fall within the category of the "most serious crimes" for which international law countenances its possible application. It is generally understood that this category should not be defined as going beyond intentional crimes with lethal or extremely grave consequences (paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1984/50 of 25 May 1084). In its General Comment No. 6, the United Nations Human Rights Committee has stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure". Similarly, that Committee has observed that the restriction encapsulated in that phrase cannot be interpreted as permitting the imposition of the death penalty "for crimes of an economic nature, for corruption and for adultery, or for crimes that do not result in loss of life" (CCPR/C/28/Add.15, 3 August 2003, paragraph 8).

It is my responsibility under the mandate provided to me by the Commission on Human Rights to seek to clarify all cases brought to my attention. Without in any way wishing to pre-judge the accuracy of the information received, I would be grateful for a reply to the following questions:

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

2. If Mr Shahin 'Abdul Rahman has in fact been sentenced to death for the offence of adultery how does Your Excellency's Government consider that to be consistent with the applicable international legal standards?

3. 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.

United States of America: Execution of Jaime Elizalde

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

Subject(s) of appeal: 1 male

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of the United States of America with respect to the execution of Jaime Elizalde.

The Special Rapporteur finds it necessary to also respond to the issues raised by the Government regarding the scope of the mandate that he has been granted:

(1) With respect to the question raised by the Government regarding whether it was appropriate for the Special Rapporteur to "respectfully urge [it] to put the execution of Jaime Elizalde on hold until the Inter-American Commission on Human Rights has adopted its report concerning his petition", the Special Rapporteur would note that calling to the attention of States the importance of procedural protections in preventing the violation of human rights norms pertaining to capital punishment is clearly within his mandate.

(2) With respect to the question raised by the Government regarding whether it was appropriate for the Special Rapportuer to refer to the American Declaration on the Rights and Duties of Man, the Special Rapporteur would note that the mandate has been defined in terms of a phenomenon — extrajudicial, summary or arbitrary executions — that was of concern to the Commission and now to the Council rather than by reference to a particular legal regime.

(3) With respect to the suggestion by the Government that it would "avoid redundancy and increase efficiency" to apply the principle of not examining matters already subject to examination under another international human rights procedure, the Special Rapporteur observes that there is an important distinction between judicial and other procedures and that the

non-duplication rule does not apply to the latter. Moreover, the Special Rapporteur would note that it if difficult to see how his communication was superfluous when the Government did in fact elect to disregard the requests of the other procedure and proceed to execute person concerned.

Urgent appeal dated 31 January 2006

I would like to draw the attention of your Government to information I have received regarding the execution of Mr**. Jaime Elizalde**, which is reportedly scheduled for today. I understand that Mr. Elizalde was sentenced to death by a court in Texas in 1994 for the murder of two men. His conviction and sentence were upheld on appeal, and the execution was re-scheduled at least once.

Although the death penalty is not prohibited under international law, I would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Therefore, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences. It would appear that Mr. Elizalde has petitioned the Inter-American Commission on Human Rights and that his case is currently pending before the Commission. According to the information I have received, the Commission has adopted a precautionary measure requesting your Excellency's Government not to proceed with the execution as long as the case is pending.

I am aware that your Excellency's Government has taken the position that the Commission does not have the authority to make requests for precautionary measures to non-States Parties to the American Convention on Human Rights, such as the United States. Nonetheless, I would remind you of the Commission's position that "it is beyond question that the failure of an OAS member state to preserve a condemned prisoner's life pending review by the Commission of his or her complaint undermines the efficacy of the Commission's process, deprives condemned persons of their right to petition in the inter-American human rights system, and results in serious and irreparable harm to those individuals. For these reasons, the Commission has determined that a member state disregards its fundamental human rights obligations under the OAS Charter and related instruments when it fails to implement precautionary measures issued by the Commission in these circumstances." (Inter-American Commission on Human Rights, Report No. 1/05, 28 January 2005, *Roberto Moreno Ramos v. United States*, para. 79). As the Commission has pointed in its Resolution No. 1/05 of 8 March 2005, "[p]recautionary measures are issued in compliance with the Commission's functions to promote and defend human rights, as set forth in Articles 106 of the OAS Charter, 41 of the American Convention on Human Rights, and 18 of the Statute of the IACHR. The juridical basis for the precautionary measures is found in the obligation of States to respect and ensure the human rights of all persons subject to their jurisdiction, and the general practice of compliance with them on the part of the great majority of States is based on the existing understanding of their binding nature."

I therefore respectfully urge your Excellency's Government to put the execution of Jaime Elizalde on hold until the Inter-American Commission on Human Rights has adopted its report concerning his petition.

Response of the Government of the United States of America dated 24 March 2006

This letter responds to your correspondence of January 31, 2006, requesting information regarding the case of Jaime Elizalde, Jr. and that the execution of Jaime Elizalde be "put.... on hold until the Inter-American Commission on Human Rights has adopted its report concerning his petition." Mr. Elizalde was accused of a heinous crime, capital murder, for the deaths of two men. A jury of his peers found Mr. Elizalde guilty of capital murder, and a Texas judge sentenced him to death. Following exhaustive review of his claims by several federal and state trial and appellate courts in the United States, on January 31, 2006, Mr. Elizalde was executed. The United States Government provides the following additional information regarding Mr. Elizalde

On November 5, 1994, Mr. Elizalde fatally shot victims Juan Guajardo and Marcos Vasquez outside a Houston bar. The manager of the bar witnessed Mr. Elizalde first shoot Mr. Guajardo in the head and then shoot Mr. Vasquez as lie turned to run away. A second witness saw Mr. Elizalde flee with a gun. In March 1997, a Texas jury of his peers found Mr. Elizalde guilty of capital murder. The jury then weighed aggravating factors concerning Mr. Elizalde's criminal history and his involvement in prison assaults, and concluded that he posed a continuing threat to society. Tex. Code Crim. Proc. Article 37.071 (in order to impose the death sentence, the jury must conclude "there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society"). The trial judge then sentenced him to death.

On direct appeal, the Texas Court of Criminal Appeals affirmed Mr. Elizalde's conviction and sentence. Elizalde v. State, No. 72,813 (Tex. Crim. App. July 5, 1999).

On April 11, 2001, the Texas Court of Criminal Appeals denied Mr. Elizalde's petition for a writ of habeas corpus. Mr. Elizalde filed a writ of habeas corpus in the U.S. District Court of the Southern District of Texas on February 25, 2002, and later filed an amended petition on December 2, 2002. Alter responsive pleadings by the State and Mr. Elizalde, the District Court denied relief and the opportunity to appeal. Elizalde v. Cockrell, No. H-02-0745 (S.D. Tex. Apr. 16, 2003). Mr. Elizalde then requested permission of the U.S. Court of Appeals for the Fifth Circuit to appeal. The Fifth Circuit denied the appeal on March 8, 2004. Elizalde v. Dretke, 362 F.3d 323 (5th Cir. 2004). Mr. Elizalde subsequently petitioned the U.S. Supreme Court for a writ of certiorari, which was denied on October 4, 2004. Elizalde v. Dretke, 543 U.S. 849 (2004).

On January 20, 2006, Mr. Elizalde filed a state petition for a writ of habeas corpus based on mental incapacity. The petition was denied by the Texas Court of Criminal Appeals on January 30, 2006. Ex Parte Jaime Elizalde, WR-48957-02 (Tex. Crim. App. Jan. 30, 2006). Mr. Elizalde's application to the U.S. Court of Appeals for the Fifth Circuit to file a successive writ based on mental incapacity was denied on January 31, 2006. In re Jaime Elizalde, No. 06-20072 (5th Cir. 2006).

On January 27, 2006, Mr. Elizalde also sought in U.S. District Court a stay of execution based on the use of lethal injection under 42 U.S.C. u 1983. The court denied it sua sponte. Elizalde v. Livingston, No. 06-297 (S.D. Tex. Jan. 27, 2006) (unpublished). Mr. Elizalde's

appeal to the U.S. Court of Appeals was denied on January 31, 2006. Elizalde v. Livingston, No. 0670002, (5th Cir. 2006) (unpublished). His subsequent appeal to the U.S. Supreme Court was denied on January 31, 2006. Elizalde v. Livingston, 2006 U.S. LEXIS 1078 (U.S. Jan. 31, 2006). Mr. Elizalde was executed on January 31, 2006.

Under Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR):

> 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. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

ICCPR, Article 6(2). The United States has not chosen to abolish the death penalty. The use of the death penalty in the United States is a decision left to democratically elected governments at the federal and individual state levels and continues to be the subject of vigorous and open discussion among the American public.

Mr. Elizalde was convicted of capital murder for the intentional killing of two men, one of the most serious crimes possible under the law in force in the United States or anywhere else in the world. See Tex. Penal Code u 19.03 (Capital murder is a higher offense than murder, manslaughter, or criminally negligent homicide, and is reserved for certain categories of murder, including the murders of two or more individuals). As detailed above, his conviction was upheld on appeal, and his many motions for relief were exhaustively reviewed by state and federal appellate and trial courts. Mr. Elizalde not only received "a final judgment rendered by a competent court" in accordance with Article 6(2) of the ICCPR, but also received the full panoply of procedural due process protections available to him under United States law. Thus, in view of the gravity of Mr. Elizalde's crime and the procedural review he received with due process of law, the United States has complied with relevant international obligations.

As acknowledged in your letter of January 31, 2006, "the death penalty is not prohibited under international law." The mandate of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions does not encompass capital punishment that is imposed only for the most serious crimes and is fully within the bounds of due process and consistent with a State Party's obligations under the International Covenant on Civil and Political Rights.

In addition to the substantive points made above, as the Special Rapporteur is aware, this matter is pending before the Inter-American Commission on Human Rights (IACHR). The IACHR is considering the filing of the United States in this case, including inter alia our position that the IACHR does not have jurisdiction to issue a request for precautionary measures to the United States, which is not a State Party to the American Convention on Human Rights, and otherwise has jurisdiction only to make recommendations to non-States Parties. The United States for this and other reasons declines any request for precautionary measures. The Special Rapporteur is additionally advised that recommendations of the IACHR are, as the name suggests, recommendations only and are not binding on a State. See, e.g., Fourth Summit of the Americas Plan of Action paragraph 62 ("To continue supporting and strengthening the functioning of the

bodies of the Inter-American System of Human Rights, promoting ...due consideration of the recommendations of the Inter-American Commission of Human Rights...").

We additionally underscore that the mandate of the Special Rapporteur does not extend to issues regarding the competence and jurisdiction of the IACHR nor the American Declaration on the Rights and Duties of Man.

Further, the United States would like to underscore the principle applied in international human rights mechanisms not to examine the same matter that is being examined under another international human rights procedure. While we appreciate that this may not be a rule of the special procedures, we point this out to the Special Rapporteur in an effort to avoid redundancy and increase efficiency in use of the limited resources of the special procedures. See Optional Protocol to the International Covenant on Civil and Political Rights, Article 5.2(a); European Convention on Human rights and Fundamental Freedoms, Article 35(2)(b).

United States of America: Targeted Killing of Haitham al-Yemeni

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

Subject(s) of appeal: 1 male (foreign national)

Character of reply: Allegations rejected but without adequate substantiation

Observations of the Special Rapporteur

The Special Rapporteur appreciates the detailed legal arguments provided by the Government of the United States of America. However, the arguments it provides for not clarifying the facts surrounding the death of Haitham al-Yemeni are not persuasive, as discussed in the SR's communication dated 30 November 2006 (below).

Allegation letter sent on 26 August 2005, reproduced from E/CN.4/2006/53/Add.1, pp. 264–265

Letter of allegation sent in relation to information received that Haitham al-Yemeni, an alleged al-Qaeda senior figure, was killed on the Pakistan-Afghanistan border on or around the 10 May 2005 by a missile fired by an un-manned aerial drone operated by the US Central Intelligence Agency. Mr. al-Yemeni had reportedly been under surveillance for more than a week by US intelligence and military personnel. Reports indicate that the Predator drone, operated from a secret base hundreds of kilometers from the target, located and fired on him in Toorikhel, Pakistan, an area where Pakistani forces had allegedly been looking for al-Qaeda leader, Osama Bin Laden. It is my understanding that the CIA is authorized to operate such Predator operations under presidential authority signed after the September 11, 2001 terrorist attacks.

According to the information received, although Mr. al-Yemeni was not listed by that name neither in the FBI's, nor in Pakistan's, "most wanted" list, the active surveillance of his activities would suggest that he was playing an important role inside the al-Qaeda organization. It has been suggested that those undertaking the surveillance were hoping that he would lead them to Osama

bin Laden. However, after Abu Faraj al-Libbi, another suspected al-Qaeda leader, was arrested by Pakistani authorities a month before, it is reported that a decision was taken to kill Mr. al-Yemeni for fear that he would go into hiding and thus be lost track of. My understanding is that the CIA reportedly refused to comment on the situation. Similarly, Sheik Rashid Ahmed, Pakistan's Information Minister denied that any such incident had ever happened near the Pakistan-Afghanistan border.

In drawing the attention of your Excellency's Government to this information and seeking clarification thereof, I am fully aware of the stance taken by your Government in correspondence with my predecessor with respect to the mandate's competence regarding killings that are said to have occurred within the context of an armed conflict (I refer to your Government's letters dated 22 April 2003 and 8 April 2004). As I have explained in my Report to the 61st Commission on Human Rights, however, both the practice of the General Assembly and of the independent experts successively holding the mandate since its creation in 1982 make it clear that questions of humanitarian law fall squarely within the Special Rapporteur's mandate (See E/CN.4/2005/7, at par. 45).

In the light of these considerations, I would reiterate my concern that empowering Governments to identify and kill "known terrorists" places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative has been exhausted. (See E/CN.4/2005/7, at par. 41). I would also recall that the Human Rights Committee has held that a State party can be held responsible for violations of rights under the Covenant where the violations are perpetrated by authorized agents of the State on foreign territory, "whether with the acquiescence of the Government of [the foreign State] or in opposition to it". (See *Lopez v. Uruguay*, communication No.52/1979, CCPR/C/OP/1 at 88 (1984), paras. 12.1-12.3.)

Finally, I wish to stress that, while Governments have a responsibility to protect their citizens against the excesses of non-State actors or other entities, efforts to eradicate terrorism must be undertaken within a framework clearly governed by international human rights law as well as by international humanitarian law.

Without in any way wishing to pre-judge the accuracy of the information received, I would be grateful for a reply to the following questions:

1. What rules of international law does your Excellency's Government consider to govern this incident? If your Excellency's Government considers the incident to have been governed by humanitarian law, please clarify which treaty instruments or customary norms are considered to apply.

2. What procedural safeguards, if any, were employed to ensure that this killing complied with international law?

3. On what basis was it decided to kill, rather than capture, Haitham al-Yemeni?

4. Did the government of Pakistan consent to the killing of Haitham al-Yemeni?

Response of the Government of the United States of America dated 4 May 2006

This letter responds to your correspondence of August 26, 2005 requesting information regarding Haitham al-Yemeni, an alleged A1 Qaida senior figure, who was allegedly killed on the Pakistan-Afghanistan border on or around May 10, 2005 by a missile fired by an un-manned aerial drone. The United States has no comment on the specific allegations regarding the May 2005 incident concerning Mr. al-Yemeni. The United States recalls its response of April 14, 2003 to a similar request for observations regarding an alleged aerial drone incident (E/CN.4/2003/G/80). The United States respectfully submits that inquiries related to allegations stemming from military operations conducted during the course of an armed conflict with Al Qaida do not fall within the mandate of the Special Rapporteur. The conduct of a government in legitimate military operations, whether against Al Qaida operatives or any other legitimate military target, would be governed by the law of armed conflict. Nevertheless, as a matter of courtesy, we provide the following information:

Immediately following the attacks of September 11, 2001 against the United States, most of the world, including the United Nations Security Council and NATO, condemned these attacks as a "threat to international peace and security," recognized the inherent right of individual and collective self-defense, and expressed determination to combat by all means threats to international peace and security caused by terrorist acts. NATO's North Atlantic Council determined on October 2, 2001, that the September 11th attack was directed from abroad by the world-wide terrorist network of Al Qaida and "shall therefore be regarded as an action covered by Article 5 of the Washington Treaty, which states that an armed attack on one or more of the Allies of Europe or North America shall be considered an attack against them all." Foreign Ministers of the States Parties to the 1947 Inter-American Treaty of Reciprocal Assistance ("the Rio Treaty"), likewise resolved on September 21, 2001, that "these attacks against the United States are attacks against all American states and that in accordance with all the relevant provisions of the ... [Rio Treaty]... and the principle of continental solidarity, all States Parties to the Rio Treaty shall provide effective reciprocal assistance to address such attacks and the threat of any similar attacks against any American state, and to maintain the peace and security of the continent."

Consistent with this widely held international view, President Bush stated in Military Order No. 1 of November 13, 2001 that "international terrorists, including members of Al Qaida, have carried out attacks on the United States diplomatic and military personnel and facilities abroad and on citizens and property within the United States on a scale that has created a state of armed conflict that requires the use of the United States Armed Forces."

The United States believes that it is in a continuing state of international armed conflict with A1 Qaida. Members of A1 Qaida have attacked our embassies, our military vessels and military bases, our capital city, and our financial center. They have trained, equipped, and supported armed forces and have planned and executed attacks around the world against the United States on a scale that has required a military response. A1 Qaida attacks have deliberately targeted civilians and protected sites and objects. For example, the A1 Qaida network headed by Abu Musad al-Zargawi helped establish a poison and explosive training center camp located in northeastern Iraq, in cooperation with the radical organization Ansar al-Islam. Other attacks attributed to Al Qaida and Al Qaida-linked groups include the attempted

bombing on December 22, 2001, of a commercial transatlantic flight from Paris to Miami by convicted shoe bomber Richard Reid; on January 23, 2002, the kidnapping of U.S. reporter Daniel Pearl from Karachi, Pakistan, who was later killed; on March 17, 2002, a grenade attack on a Protestant church in Islamabad killing five people, including two U.S. citizens; on June 14, 2002, a car bomb attack on the U.S. Consulate in Karachi, Pakistan, killing 12 Pakistanis and damaging the consulate; on October 2, 2002, a bomb explosion in the Philippines, resulting in the death of a U.S. serviceman; on October 12, 2002, a car bomb outside a nightclub in Bali, Indonesia, killing nearly 200 international tourists, including seven U.S. citizens, and injuring about 300; on October 28, 2002, the fatal shooting of a USAID employee in Amman, Jordan; on February 28, 2003, attacks by a gunman on police posts outside the U.S. consulate in Karachi, killing four local police; on May 12, 2003, suicide bombings in Saudi Arabia attacking three residential compounds of foreign workers killing 34, including 10 U.S. citizens, and injuring 139 others; in 2004, at least 11 attacks, killing more than 60 people, including 6 U.S. citizens, and wounding more than 225; and on July 7, 2005, the coordinated suicide bombings of London's public transportation system, killing over 50 and injuring about 700, including U.S. citizens. Moreover, no one needs reminding of the attacks on United States persons and property prior to 9/11 linked to Al Qaida, including the embassy

Despite coalition successes in Afghanistan and around the world, the conflict is far from over. The Al Qaida network today is a multinational enterprise with operations in numerous countries. Some captured A1 Qaida operatives have escaped from detention to plan and to mount further terrorist attacks against the United States and coalition partners. The continuing military operations undertaken against the United States and its nationals by the Al Qaida organization both before and after September 11 necessitate a military response by the armed forces of the United States. To conclude otherwise is to permit an armed group to wage war unlawfully against a sovereign state while precluding that state from defending itself.

The law of armed conflict (also known as international humanitarian law) is the applicable law in armed conflict and governs the use of force against legitimate military targets. Accordingly, the law to be applied in the context of an armed conflict to determine whether an individual was arbitrarily deprived of his or her life is the law and customs of war. Under that body of law, enemy combatants may be attacked unless they have surrendered or are otherwise rendered hors de combat. Al Qaida terrorists who continue to plot attacks against the United States may be lawful subjects of armed attack in appropriate circumstances.

In addition, the mandate of the Special Rapporteur for extrajudicial, summary, or arbitrary executions does not include the competence to review alleged violations of the law of armed conflict. See Commission on Human Rights resolution 1982/29. The United States disagrees with the assertion contained in the Special Rapporteur's August 26, 2005 communication and report to the 61st Commission on Human Rights (E/CN.4/2005/7) that issues arising under the law of armed conflict are within the Special Rapporteur's mandate. This assertion by the Special Rapporteur rests on a series of inapplicable farts, the first of which is that "All major relevant resolutions in recent years have referred explicitly to that body of law" (E/CN.4/2005/7, para. 45). While recent Commission on Human Rights and UN General Assembly resolutions have made mention of international humanitarian law in the context of suggestions or admonitions to governments, this does net somehow impart upon the Special Rapporteur a mandate to consider issues arising under the law of armed conflict.

As support for his assertion, the Special Rapporteur also notes, "Most recently, the General Assembly, in resolution 59/197 of 20 December 2004, dealing with the mandate of the Special Rapporteur, urged Governments 'to take all necessary and possible measures, in conformity with international human rights law and international humanitarian law, to prevent loss of life...during...armed conflicts.` (E/CN.4/2005/7, para. 45; emphasis added). The emphasis here is relevant because the General Assembly was urging Governments to take action, not modifying or extending the Special Rapporteur's mandate. This resolution did not, in fact, deal with the mandate of the Special Rapporteur other Special Rapporteur to operate within his mandate. For example, operative paragraph 13 of the Resolution "[u]rges the Special Rapporteur to continue, within his mandate, to bring to the attention of the United Nations High Commissioner for Human Rights ... situations of extrajudicial, summary or arbitrary executions that are of particularly serious concern or in which early action might prevent further deterioration." (59/197; emphasis added.) The Special Rapporteur's final support for his assertion that lie has a mandate to consider issues arising under international humanitarian law is that "every single annual report of the Special Rapporteur since at least 1992 has dealt with violations of the right to life in the context of international and non-international armed conflicts" (E/CN.4/2005/7, para. 45). The United States notes that while the Special Rapporteur may have reported on cases outside of his mandate, this does not give the Special Rapporteur the competence to address such issues.

For the foregoing reasons, the Commission and Special Rapporteur lack competence to address issues of this nature arising under the law of armed conflict. The United States remains fully committed to the work of the Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions.

Allegation letter dated 30 November 2006

This communication is in response to your correspondence of 4 May 2006, which replied to my earlier communication of 26 August 2005 requesting information regarding the alleged killing of Haitham al-Yemeni on the Pakistan-Afghanistan border on or around 10 May 2005 by a missile fired by an unmanned aerial drone operated by the US Central Intelligence Agency. Your 4 May 2006 correspondence took the position that your government is in a continuing state of international armed conflict with Al Qaida, stated that “Al Qaeda terrorists who continue to plot attacks against the United States may be lawful subjects of armed attacks in appropriate circumstances”, and implied that Haitham al-Yemeni was targeted on that basis. While I greatly appreciate your Government’s willingness to engage in a dialogue on this issue, I regret that your correspondence of 4 May 2006 provides a partial response to only the first of the four questions posed in my communication, namely, that you consider international humanitarian law applicable to the incident in question.

Your letter also stated that the communication concerning Haitham al-Yemeni exceeded my mandate as Special Rapporteur on extrajudicial, summary or arbitrary executions because: (1) international humanitarian law is applicable to that armed conflict and operates to the exclusion of human rights law; (2) issues governed by international humanitarian law do not fall within the terms of reference of the Commission on Human Rights (“Commission”), and thus by extension, of its successor, the Human Rights Council (“Council”); (3) the examination of questions related

to alleged violations of international humanitarian law is not included in the mandate of the Special Rapporteur for extrajudicial, summary, or arbitrary executions; and (4) States may determine for themselves whether an individual incident is covered by the mandate of the Special Rapporteur.

If these positions were to be accepted, they would present a significant challenge not only to the work of this mandate but, more importantly, to a significant amount of the activities undertaken by the Human Rights Council. In brief, one of the consequences would be to disable the Council in relation to a large number of situations involving armed conflicts in which it has been actively involved over the past decade and more. In view of the potentially dramatic implications of the position put forward by your Excellency's Government it is essential that they be subject to very careful scrutiny. That is the purpose of the present communication.

International human rights law and international humanitarian law are complementary, not mutually exclusive

Your position is that, as a general matter, international humanitarian law operates to the exclusion of international human rights law in times of armed conflict. I respectfully submit that the relationship between the two bodies of law in times of armed conflict is significantly more complex than this characterization would suggest. In its *Nuclear Weapons* Advisory Opinion, the International Court of Justice concluded that the test of what is an arbitrary deprivation of life in the context of hostilities "falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities",[10] a position your Government had advocated in its written pleadings to the Court.[11] Thus, even under the *lex specialis* principle, and even if my mandate were specifically limited to human rights law (which, as I will explain below, it is not), I would be not only permitted but required to examine international humanitarian law as a necessary prerequisite to interpreting human rights law.

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[10] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996,* p. 240, para. 25.

[11] The US Government's written submission to the International Court of Justice in the *Nuclear Weapons* Advisory Opinion was premised on the *lex specialis* principle, arguing that a full examination of the principle of 'arbitrary deprivation of life' under human rights law must include examination of international humanitarian law during armed conflict.. *Legality of the Threat or Use of Nuclear Weapons,* Written Statement of the Government of the United States of America (June 20, 1995) online at http://www.icj-cij.org/icjwww/icases/iunan/iunan_ipleadings/iunan_ipleadings_199506_WriStats_18_USA.pdf. For this reason, your Government argued that *Id.* at p. 44-45 ("Rather than attempt to identify all the possible circumstances under which the taking of life might be justified, the drafters [of the ICCPR] agreed to a simple prohibition on the 'arbitrary' deprivation of life. In any event, we know of no significant opposition to the proposition that the deprivation of life as a 'lawful act of war' would not be violative of the protected right to life. The European Convention, which also guarantees the right to life, specifically recognizes the right of States to deprive persons of their lives through lawful acts of war").

The Court has since consistently added another important layer to this analysis, as exemplified in its most recent case (*Congo* v. *Uganda*):

> [T]he protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights. As regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law.[12]

The Court stated this principle of complementarity and the *lex specialis* principle in the same paragraph, with the clear implication that the complementarity principle continues to operate alongside the *lex specialis* principle.[13] In *Congo v. Uganda* it reiterated the complementarity principle and then found separate violations of international humanitarian law and human rights law, thus demonstrating conclusively that international humanitarian law does not wholly replace human rights law during an armed conflict.[14] This is consistent with the conclusion of the Human Rights Committee that "[w]hile, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive."[15] Thus, under current international law, human rights law is applied alongside international humanitarian law during armed conflict, and the interpretation of human rights law requires examination of international humanitarian law. In contrast, it is noteworthy that in support of its assertion of the exclusivity of international humanitarian law the United States' Government offers no authority to support its position. It also clearly and directly contradicts earlier positions taken by the United States.

The Commission on Human Rights, the body specifically charged with oversight of my mandate (until its replacement by the Human Rights Council earlier this year),[16] has also clearly endorsed the complementarity of human rights law and international humanitarian law. In Resolution 2005/34 on extrajudicial, summary, or arbitrary executions, the Commission explicitly "[a]cknowledg[ed]… that international human rights law and international humanitarian law are

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[12] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004,* para. 106; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), I.C.J. Reports 2005*, para. 216.

[13] *The Wall* Advisory Opinion, *supra* note 12, at para. 106.

[14] *Congo v. Uganda, supra* note 12, at paras. 216-20, 345(3).

[15] Human Rights Committee, General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant (art. 2), UN Doc. CCPR/C/21/Rev.1/Add.13, para. 11 (26 May 2004).

[16] *See infra* Part III.

complementary and not mutually exclusive".[17] Similarly, in Resolution 2002/36, the Commission "[e]xpresse[d] grave concern over the continued occurrence of violations of the right to life highlighted in the report of the Special Rapporteur as deserving special attention [including] violations of the right to life during armed conflict".[18] It would be inexplicable for the Commission to explicitly endorse this aspect of the report if it considered human rights law inapplicable during armed conflict or believed such violations were beyond the mandate.

Finally, the International Law Commission has recently addressed the applicability of human rights law during armed conflict in its work on the effect of armed conflict on treaties. In that context, the applicability of human rights law in armed conflict was separately endorsed by governments,[19] the Special Rapporteur on the topic,[20] and the Legal Office of the United Nations Secretariat.[21] It should be noted in particular that the applicability of human rights law during armed conflict received the direct support and approval of the US Government.[22]

The Commission on Human Rights could and did consider international humanitarian law within its terms of reference

Your assertion that the Commission on Human Rights lacked the competence to address issues arising under the law of armed conflict is deeply concerning, both because of a complete lack of support for the proposition and because of the radical consequences that would flow from removing many of the worst situations in the world today from the purview of the Council. In the decades since the Commission was established as a subsidiary body of the Economic and Social Council ("ECOSOC"), the Commission has consistently included international humanitarian law within its terms of reference, and this approach has been endorsed by ECOSOC. The resolutions discussed below provide illustrative examples:

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[17] Resolution 2005/34 on extrajudicial, summary, or arbitrary executions, preamble (19 April 2005).

[18] Comm. Hum. Rts., Res. 2002/34, para. 13(a) (22 April 2002).

[19] *Official Records of the General Assembly, 60th sess., Supp. No. 10* (A/60/10), p. 66, para. 172 ("The view was expressed [by governments] that the category of treaties in subparagraph (d) [human rights treaties] was one in which there probably was a good basis for continuity [during armed conflict], subject to the admonition of the International Court of Justice, in the *Nuclear Weapons* Advisory Opinion, that such rights were to be applied in accordance with the law of armed conflict").

[20] Second report on the effects of armed conflicts on treaties by Mr. Ian Brownlie, Special Rapporteur, Int'l Law. Comm., 58th sess., UN Doc. A/CN.4/570, paras. 30, 41, Draft Art. 7(2)(d) (16 June 2006).

[21] The effect of armed conflict on treaties: an examination of practice and doctrine: Memorandum by the Secretariat, Int'l Law Comm., 57th sess., UN Doc. A/CN.4/550, para. 32 ("[I]t is well-established that non-derogable provisions of human rights treaties apply during armed conflict").

[22] UNGA, Sixth Cmt., summary record of the 20th mtg., 3 Nov. 2005, statement of the United States, UN Doc. A/C.6/60/SR.20, p. 6, para. 33 (29 Nov. 2005) (accepting that "certain human rights and environmental principles did not cease to apply in time of armed conflict").

- In Resolution 1992/S-1/1, on the situation of human rights in the territory of the former Yugoslavia, adopted by the Commission at its first special session in 1992, the Commission "call[ed] upon all parties … to ensure full respect for … humanitarian law"[23] and "[r]emind[ed] all parties that they are bound to comply with their obligations under international humanitarian law, and in particular the third Geneva Convention relating to the treatment of prisoners of war and the fourth Geneva Convention relating to the protection of civilian persons in time of war, of 12 August 1949, and the Additional Protocols thereto of 1977".[24] Significantly, in Decision 1992/305, ECOSOC explicitly "endorsed resolution 1992/S-1/1 of 14 August 1992, adopted by the Commission on Human Rights at its first special session."[25]

- In Resolution 1994/72, on the situation of human rights in the territory of the former Yugoslavia, the Commission "[c]ondemn[ed] categorically all violations of human rights and international humanitarian law by all sides".[26] It then applied international humanitarian law to the situation and "denounce[d] continued deliberate and unlawful attacks and uses of military force against civilians and other protected persons … non-combatants, …[and] … relief operations".[27] Taking note of this resolution, the ECOSOC "approved … [t]he Commission's … request that the Special Rapporteur … continue to submit periodic reports … *on the implementation of Commission resolution 1994/72*".[28] It also approved "[t]he Commission's request to the Secretary-General to take steps to assist in obtaining the active cooperation of all United Nations bodies *to implement Commission resolution 1994/72*".[29] Again, rather than denounce the Commission for exceeding its mandate in Resolution 1994/72, ECOSOC provided continued funds for the Special Rapporteur to implement that resolution, and called upon all UN bodies to cooperate in its implementation.

- In Resolution S-3/1 of 25 May 1994 on the Situation of human rights in Rwanda, the Commission "[c]ondemn[ed] in the strongest terms all breaches of international humanitarian law … in Rwanda, and call[ed] upon all the parties involved to cease immediately these breaches".[30] It also "[c]all[ed] upon the Government of Rwanda to … take measures to put

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[23] Comm. Hum. Rts., Res 1992/S-1/1, The situation of human rights in the territory of the former Yugoslavia, para.1 (14 August 1992).

[24] *Id*. at para. 9.

[25] ECOSOC Decision 1992/305 (18 Aug. 1992).

[26] Comm. Hum. Rts., Res. 1994/72, Situation of human rights in the territory of the former Yugoslavia: violation of human rights in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), para. 4 (9 Mar. 1994).

[27] *Id*. at para. 7.

[28] ECOSOC Res. 1994/262 (22 July 1994) (emphasis added).

[29] *Id* (emphasis added).

[30] Comm. Hum. Rts., Res. S-3/1, The Situation of human rights in Rwanda, para. 1 (25 May 1994).

an end to all violations of … international humanitarian law by all persons within its jurisdiction or under its control".[31] ECOSOC, in special session, explicitly "endorsed resolution S-3/1 of 25 May 1994, adopted by the Commission on Human Rights".[32]

- In Resolution 1996/68, the Commission "call[ed] upon the Government of Israel, the occupying Power of territories in southern Lebanon and West Bekaa, to comply with the Geneva Conventions of 1949, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War".[33] ECOSOC then "approve[d] the Commission's requests to the Secretary-General … [t]o bring the resolution to the attention of the Government of Israel and to invite it to provide information concerning the extent of its implementation thereof".[34]

As these examples make clear, during the life of the Commission, ECOSOC clearly and repeatedly accepted that international humanitarian law formed part of its terms of reference. Similarly, in establishing the Council in replacement of the Commission, the General Assembly in no way undertook to narrow its competence.[35]

The mandate of the Special Rapporteur for extrajudicial, summary, or arbitrary executions includes examination of alleged violations of international humanitarian law

With regard to your position that the mandate of the Special Rapporteur for extrajudicial, summary, or arbitrary executions does not include the competence to review alleged violations of international humanitarian law, I would note that the mandate as stated in the resolutions creating the post of Special Rapporteur for extrajudicial, summary, or arbitrary executions is "to examine … questions related to summary or arbitrary executions," without reference to the specific legal framework within which that mandate is to be implemented.[36] The mandate thus has been defined in terms of a phenomenon — extrajudicial, summary or arbitrary executions — that was of concern to the Commission and now to the Council rather than by reference to a particular legal regime.

Your correspondence stated that "while the Special Rapporteur may have reported on cases outside of his mandate, this does not give the Special Rapporteur the competence to address such issues." This position, however, does not accurately reflect the consultative process within

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[31] *Id.*

[32] ECOSOC Decision 1994/223 (6 June 1994).

[33] Comm. Hum. Rts., Res. 1996/68, Human rights situation in southern Lebanon and West Bekaa, para. 3 (23 April 1996).

[34] ECOSOC Decision 1996/274 (23 July 1996).

[35] GA Res. 60/251 (3 April 2006).

[36] Comm. Hum. Rts. Res. 1982/29, para. 2; ECOSOC Res. 1982/35, para. 2.

which the legal framework supporting the mandate has been developed. While the Special Rapporteur alone cannot, and has not, determined the contours of the legal framework within which the mandate is to be implemented, neither may any single government do so. This power is held by the Council and was previously held by the Commission, which reviewed and accepted the interpretations provided by successive mandate-holders. The cases below provide illustrative examples:

- In the very first report under the mandate in 1983, Mr. S. Amos Wako observed that summary and arbitrary executions frequently occur during armed conflicts and that, therefore, international humanitarian law formed an important element of the mandate's legal framework. With that in mind, he included a substantive section on "Killings in war, armed conflict, and states of emergency" under the heading "International legal standards".[37] In that section, after discussing application of human rights law in accordance with the relevant derogation rules, he notes that "[t]he Geneva Conventions of 12 August 1949 are also relevant. …. Each of the Geneva Conventions clearly prohibits murder and other acts of violence against protected persons. They explicitly provide that 'wilful killings' are to be considered 'grave breaches' of the Geneva Conventions, that is, war crimes subject to universality of jurisdiction."[38] The report was accepted in its entirety by the Commission.[39]

- In January 1992 the Special Rapporteur, Mr. S. Amos Wako, published a special annex to his annual report entitled *List of Instruments and other Standards which Constitute the Legal Framework of the Mandate of the Special Rapporteur*.[40] The Geneva Conventions appear as item three of that fourteen point list. This report was accepted in its entirety by the Commission.[41] Moreover, the Commission explicitly "welcome[d] his recommendations with a view to eliminating extrajudicial, summary, or arbitrary executions".[42] These recommendations contained recommendations on extrajudicial executions during armed conflict.[43] If the Commission did not accept that international humanitarian law formed part of the legal framework within which the mandate is to be implemented, it is difficult to understand why the Commission would explicitly endorse recommendations of the Special Rapporteur as to extrajudicial executions in armed conflict.

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[37] Report by Mr. S. Amos Wako, Comm. Hum. Rts., 39th sess., UN Doc. E/CN.4/1983/16, pp. 8-10, paras. 29-39 (31 Jan. 1983).

[38] *Id.* at pp. 8-9, paras. 33-34.

[39] Comm. Hum. Rts., Res. 1983/36, para. 3 (8 Mar. 1983).

[40] Report by Mr. S. Amos Wako, Comm. Hum. Rts., 48th sess., UN Doc. E/CN.4/1992/30, p. 176 (31 Jan. 1992).

[41] Comm. Hum. Rts., Res. 1992/72, para. 3 (5 March 1992).

[42] *Id.*

[43] Report by Mr. S. Amos Wako, *supra* note 40, at p. 173, para. 649(f), p. 174, para. 651(b).

- In December 1992, Mr. Bacre Waly Ndiaye in his first report as Special Rapporteur included a section on "Violations of the right to life during armed conflicts" under the heading "Legal framework within which the mandate of the Special Rapporteur is implemented".[44] That section stated that "[t]he Special Rapporteur receives many allegations concerning extrajudicial, summary or arbitrary executions during armed conflicts. In considering and acting on such cases, the Special Rapporteur takes into account the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977. Of particular relevance are common article 3 of the 1949 Conventions, which protects the right to life of members of the civilian population as well as combatants who are injured or have laid down their arms, and article 51 of Additional Protocol I and article 13 of Additional Protocol II concerning the protection of the civilian population against the dangers arising from military operations."[45] This report was accepted in its entirety by the Commission.[46]

- In the first report of Ms. Asma Jahangir as Special Rapporteur in 1999, she adopted the legal framework elaborated by Mr. Ndiaye.[47] This report was accepted in its entirety by the Commission in its Resolution 1999/35 on extrajudicial, summary, or arbitrary executions.[48]

- In my first report as Special Rapporteur in 2005, concerning your responses to my inquiries regarding alleged extrajudicial killings in Yemen and Iraq, in which your government maintained a similar legal position as in the present case, I stated that "[t]hese responses raise a number of matters which warrant clarification. The first concerns the place of

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[44] Report by R. Bacre Waly Ndiaye, Comm. Hum. Rts., 49th sess., UN Doc. E/CN.4/1993/46, p. 15, paras. 60-61 (23 Dec. 1992).

[45] *Id.* at p. 15, para. 60. Mr. Ndiaye repeatedly stated this interpretation in his report to the Commission each subsequent year. *See* Report by Mr. Bacre Waly Ndiaye, Comm. Hum. Rts., 50th sess., UN Doc. E/CN.4/1994/7, p. 8, para. 10(l) (7 Dec. 1993); Report by Mr. Bacre Waly Ndiaye, Comm. Hum. Rts., 51st sess., UN Doc. E/CN.4/1995/61, p. 8, para. 7(d), p. 121, paras. 394-96 (14 Dec. 1994); Report by Mr. Bacre Waly Ndiaye, Comm. Hum. Rts., 52nd sess., UN Doc. E/CN.4/1996/4, p. 7, para. 10(f), p. 138, paras. 587-89 (25 Jan. 1996); Report by Bacre Waly Ndiaye, Comm. Hum. Rts., 53rd sess., UN Doc. E/CN.4/1997/60, pp. 12-13, paras. 38-41 (24 Dec. 1996); Report of Mr. Bacre Waly Ndiaye, Comm. Hum. Rts., 54th sess., UN Doc. E/CN.4/1998/68, pp. 13-14, paras. 42-43, p. 31, paras. 126-127 (23 Dec. 1997)

[46] Comm. Hum. Rts., Res. 1993/71, para. 4 (10 Mar. 1993) ("T[aking] note with appreciation of the report of the Special Rapporteur and welcome[ing] his recommendations with a view to eliminating extrajudicial, summary or arbitrary executions").

[47] Report of Ms. Asma Jahangir, Comm. Hum. Rts., 55th sess., UN Doc. E/CN.4/1999/39, p. 6, para. 7 (6 Jan. 1999). Ms. Jahangir repeatedly stated this interpretation in each subsequent year. *See* Report of Ms. Asma Jahangir, Comm. Hum. Rts., 56th sess., UN Doc. E/CN.4/2000/3, p. 8, para. 6(f), pp. 13-15, para. 30, p. 34, paras. 103-105 (25 Jan. 2000); Report of Ms. Asma Jahangir, Comm. Hum. Rts., 57th sess., UN Doc. E/CN.4/2001/9, p. 6, para. 7(b), pp. 18-19, paras. 51-53 (11 Jan. 2001); Report of Ms. Asma Jahangir, Comm. Hum. Rts., 58th sess., UN Doc. E/CN.4/2002/74, p. 7, para. 8(b), pp. 22-23, paras. 66-71 (9 Jan. 2002); Report of Ms. Asma Jahangir, Comm. Hum. Rts., 59th sess., UN Doc. E/CN.4/2003/3, p. 7, para. 8(b), pp. 15-17, paras. 35-44 (13 Jan. 2003); Report of Ms. Asma Jahangir, Comm. Hum. Rts., 60th sess., UN Doc. E/CN.4/2004/7, p. 11, paras. 27-29 (22 Dec. 2003).

[48] Comm. Hum. Rts., Res. 1999/35, para. 8 (26 April 1999).

humanitarian law within the Special Rapporteur's mandate. The fact is that it falls squarely within the mandate."[49] The Commission accepted this report in its Resolution 2005/34 on extrajudicial, summary, or arbitrary executions.[50] That resolution also explicitly "[a]cknowledg[ed]… that international human rights law and international humanitarian law are complementary and not mutually exclusive".[51] This endorsement of the complementarity of human rights and international humanitarian law by the Commission – the body that determined my mandate – is unequivocal.

I note with respect that the United States did not object to Mr. Wako's characterization of the legal framework when first published, nor did the United States ever object to the inclusion of international humanitarian law instruments in the legal framework supporting the mandate until 2003, two decades after international humanitarian law was first applied under the mandate.[52] Even my comments in the 2005 report, which were in direct response to the United States' position on this question, received no objection from your Government. If your Government wished to take issue with my position on the mandate which I elaborated in the report, then as a member of the Commission your Government could have called for a rewording of this resolution so as to challenge my conclusions. Instead, the United States made a number of substantive interventions in the debate on the resolution, but none concerning this language.[53] In the vote on the resolution, your Government chose to abstain.[54]

It is abundantly clear that the United States did not, in fact, persuade the Commission to modify its long-standing interpretation of the mandate. It can also be added that, under the principle of good faith in international law, a State should not benefit from its own inconsistency.[55] After

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[49] Report of Mr. Philip Alston, Comm. Hum. Rts., 61st sess., UN Doc. E/CN.4/2005/7, p. 16, para. 45 (22 Dec. 2004).

[50] Resolution 2005/34 on extrajudicial, summary, or arbitrary executions, para. 12 (19 April 2005).

[51] *Id.* at *Preamble.*

[52] Letter dated 14 April 2003 from the Chief of Section, Political and Specialized Agencies, of the Permanent Mission of the United States of America to the United Nations Office at Geneva addressed to the secretariat of the Commission on Human Rights (E/CN.4/2003/G/80).

[53] Commission des Droits de l'Homme, Compte Rendu Analytique de la 56e Séance, tenue au Palais des Nations, à Genève, le mardi 19 avril 2005, à 12 heures UN Doc. E/CN.4/2005/SR.56, p. 16, para. 88-89 (16 Feb. 2006).

[54] Comm. Hum. Rts., Report of the Sixty-First Session, UN Doc. E/CN.4/2005/135, Supp. 3, p. 136 (2005). Under the principle of acquiescence in international law, such "tacit recognition manifested by unilateral conduct … may [be] interpret[ed] as consent." *Delimitation of the Maritime Boundary in the Gulf of Maine Area, I.C.J. Reports 1984*, p. 246, at p. 305, para. 130. *See also Temple of Preah Vihear, I.C.J. Reports 1962*, p. 6, at 23 (finding that because Thailand did not object to maps provided by France delimitating the border at issue, they "thereby must be held to have *acquiesced*"); D.W. Bowett, *Estoppel Before International Tribunals and its Relation to Acquiescence*, BRIT. Y.B. INT'L L. 176, 201 (1957).

[55] For example, in the case of *The Mechanic*, the Ecuador-U.S. Claims Tribunal held that "Ecuador . . . having fully recognised and claimed the principle on which the case now before us turns, whenever from such a recognition rights or advantages were to be derived, could not in honour and good faith deny the principle when it imposed an obligation." *Atlantic Hope Insurance Companies Claim (The Mechanic) (U.S. v, Ecuador)* (award of Aug. 17,

twenty-three years of silence on the topic while an unbroken line of Special Rapporteurs submitted legal frameworks including international humanitarian law to the Commission for public debate, it would be difficult to accept that your Government could now avoid responding to an individual communication simply by objecting that international humanitarian law falls outside the mandate.

States may not unilaterally determine that a specific incident complied with international law and is therefore not covered by the mandate

Under the reinterpretation of the mandate suggested by your Government, States are given the power unilaterally – without any external scrutiny – to determine whether a specific incident is covered by the mandate of the Special Rapporteur.

The response your letter gives regarding the killing of Haitham al-Yemeni provides a clear example of why this reinterpretation of the mandate would have unacceptable implications:

> The United States respectfully submits that inquiries related to allegations stemming from military operations conducted during the course of an armed conflict with Al Qaida do not fall within the mandate of the Special Rapporteur. . . . [E]nemy combatants may be attacked unless they have surrendered or are otherwise rendered hors de combat. Al Qaida terrorists who continue to ploy attacks against the United States may be lawful subjects of armed attack in appropriate circumstances.

This response suggests that the Special Rapporteur should automatically accept a State's unsubstantiated assertion that a particular individual was an "enemy combatant" attacked in "appropriate circumstances". According to this understanding, a Government may target and kill any individual without any detailed explanation to the international community simply by stating that he was an enemy combatant.

In essence, your Government's position has the effect of placing all actions taken in the "global war on terror" in a public accountability void, in which no public and transparent international monitoring body would exercise oversight.[56] It is in the interest of all parties that no such void

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1865), reprinted in 3 Moore, International Arbitration (1898) at p. 3221, 3226. Similarly, in the *Meuse* Case, the Permanent Court of International Justice held that where two States were bound by the same treaty obligations, State A could not complain of an act by State B of which it itself had set an example in the past. *Diversion of Water from the Meuse (Netherlands v. Belgium), 1937 P.C.I.J. (ser. A/B) No. 70* at p. 4, 25. Finally, in the *North Atlantic Coast Fisheries* Case, the Permanent Court of Arbitration stated that if a State has sought the assistance of a second State to protect its interests or those of its nationals, it should not then dispute a claim to jurisdiction over the territory in question advanced by that second State. *The North Atlantic Fisheries Case (Gr. Brit. v. U.S.), Hague Ct. Rep. (Scott)* at p. 141, 186 (Perm. Ct. Arb. 1910).

[56] The International Committee on the Red Cross (ICRC), although exercising significant oversight in matters of international humanitarian law, does not for tactical reasons do so in a public manner.

exists in international law. For this reason, the Special Rapporteur, in his capacity as an independent expert, would need to receive a full account of all incidents pertaining to his mandate, so that he may conduct an independent analysis of whether each incident falls within the scope of that mandate. That assessment cannot be left in the hands of each individual State. As I explained in my 2006 report:

> [T]he Special Rapporteur cannot determine whether a particular incident falls within his mandate without first examining its facts. When he receives information alleging a violation, he will often need to be informed by the State concerned of the evidentiary basis for its determination regarding any status or activity that may have justified the use of lethal force. Conclusory determinations that the deceased was a combatant or was taking part in hostilities when killed do not enable the Special Rapporteur to respond effectively to information and swiftly pursue the elimination of extrajudicial, summary or arbitrary executions.[57]

A State which receives a communication from the Special Rapporteur requesting information may, of course, express its opinion as to whether the given situation falls within the mandate, but it also has a duty to provide the requested information so that the Special Rapporteur can himself make this determination and communicate it to the Council. Any failure to do so is directly contrary to the repeated requests by the Commission to States to "cooperate with and assist the Special Rapporteur so that her or his mandate may be carried out effectively".[58]

<u>The reinterpretation of the mandate your Government is advocating would be detrimental to the effective protection of individuals</u>

The reinterpretation of the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions which your Government advocates would drastically limit the effectiveness of that mandate in protecting individuals. As has been noted, throughout the mandate's history, "a very high proportion of summary or arbitrary executions occur in situations of armed conflict."[59] These include, to name but a few cases:

- Rwanda – During the Rwandan civil war in 1993, Special Rapporteur Ndiaye conducted a mission to Rwanda to document extrajudicial executions taking place during that armed

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[57] Extrajudicial, summary or arbitrary executions, Report of the Special Rapporteur, Philip Alston, UN Doc. E/CN.4/2006/53, pp. 16-17, para. 42 (8 Mar. 2006).

[58] *See, e.g.*, Comm. Hum. Rts., Res. 2004/37, para. 14 (19 April 2004).

[59] Report of the Special Rapporteur, Mr. S. Amos Wako, Comm. Hum. Rts., 42d sess., UN Doc. E/CN.4/1986/21, p. 89, para. 150 (7 Feb. 1986).

conflict.[60] The report of his mission is widely heralded for sounding the alarm bells to the world of the impending genocide in that country.[61]

- India/Pakistan – During the armed conflict between India and Pakistan in 1999, the Special Rapporteur transmitted to the Government of India thirteen allegations of violations of the right to life.[62] She sent sixteen allegations to Pakistan.[63]

- Ethiopia/Eritrea – During the armed conflict between Ethiopia and Eritrea from 1998-2000, the Special Rapporteur sent twelve individual allegations regarding extrajudicial executions in Ethiopia in 1998 and one regarding an alleged extrajudicial execution in 2000.[64]

- Democratic Republic of the Congo (DRC) – In response to alleged extrajudicial executions during the civil war in the DRC, Special Rapporteur Jahangir conducted a mission to the DRC in June 2002. Her report provided crucial information concerning the massacre of civilians in Kisangani by the Rassemblement Congolais pour la Démocratie-Goma on 14 May 2002.[65]

- Israel/Occupied Palestinian Territories – international humanitarian law also applies to situations of occupation.[66] In this regard, the Special Rapporteur has intervened in many cases of alleged targeted killings by Israel in the Occupied Palestinian Territories, a total of 38 such interventions in 2005 alone.[67] Following the targeted killing of spiritual leader Sheikh Ahmed Yassin by an Israeli helicopter strike in 2004, the Special Rapporteur sent a communication which elicited a detailed response from Israel.[68]

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[60] Report by Mr. B.W. Ndiaye, Special Rapporteur, on his mission to Rwanda from 8 to 17 1993, UN Doc. E/CN.4/1994/7/Add.1 (11 August 1993).

[61] *See* Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda (15 Dec. 1999), online at http://www.ess.uwe.ac.uk/documents/RwandaReport1.htm (last accessed 9 Oct. 2006).

[62] *Id.* at p. 41, para. 225.

[63] *Id.* at p. 63, para. 348.

[64] UN Doc. E/CN.4/1999/39/Add.1, UN Doc. E/CN.4/2001/9/Add.1, p. 25, para. 77 (6 January 1999); p. 40, para. 178 (17 Jan. 2001).

[65] Report of the Special Rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 2002/36, Addendum, Mission to the Democratic Republic of the Congo, UN Doc. E/CN.4/2003/3/Add.3 (4 Nov. 2002).

[66] Geneva Conventions of 1949, Common Article 2; Hague Regulations of 1907, Arts. 42-56; Fourth Geneva Convention, Arts. 27-34 and 47-78.

[67] Report of the Special Rapporteur, Philip Alston, Extrajudicial, summary or arbitrary executions, Addendum, UN Doc. E/CN.4/2006/53/Add.1, Pp. 125-136 (27 March 2006).

[68] Philip Alston, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Addendum, Summary of cases transmitted to Governments and replies received, UN Doc. E/CN.4/2005/7/Add.1, pp. 137-138, paras. 357-358 (17 March 2005).

The position of your Government appears to be that the Special Rapporteur on extrajudicial, summary or arbitrary executions was abusing his or her mandate in addressing each of these situations. Furthermore, the position of your Government appears to be that the Special Rapporteur should cease forthwith to consider any allegations of violations received from victims of the conflict in the Darfur region of Sudan, of the conflict in Sri Lanka, and of a great many other vitally important situations. I sincerely hope that I have misinterpreted the position adopted in the correspondence of your Government. If that is not the case I would nevertheless hope or that your Government might be prepared to reconsider its position in light of the compelling evidence offered above.

Conclusion and Request for Further Information

In light of these considerations, I respectfully request a reply to the four questions posed in my correspondence of 26 August 2005 with respect to the alleged killing of Haitham al-Yemeni on the Pakistan-Afghanistan border on or around 10 May 2005 by a missile fired by an un-manned aerial drone operated by the US Central Intelligence Agency. To reiterate, these questions are:

1. What rules of international law does your Excellency's Government consider to govern this incident? If your Excellency's Government considers the incident to have been governed by humanitarian law, please clarify which treaty instruments or customary norms are considered to apply.

2. What procedural safeguards, if any, were employed to ensure that this killing complied with international law?

3. On what basis was it decided to kill, rather than capture, Haitham al-Yemeni?

4. Did the government of Pakistan consent to the killing of Haitham al-Yemeni?

I make these observations and requests for information in the hope that they will prove helpful to your Government and other governments in ensuring compliance with international law prohibiting extrajudicial, summary, or arbitrary executions, and I look forward to further constructive dialogue with your Government on this issue in the future.

United States of America: Targeted Killings in Pakistan

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

Subject(s) of appeal: 31 persons (foreign nationals)

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 he has been given by the General Assembly and the Commission on Human Rights.

Letter of allegation dated 7 March 2006 sent with Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

We would like to bring to your Excellency's attention information we have received regarding three incidents of air strikes by United States unmanned aircraft against targets in Pakistan, each of them resulting in the death of several civilians. We have written to the Government of Pakistan in this matter as well.

On 5 November 2005, an unmanned aircraft operated by the US Central Intelligence Agency (CIA) fired a missile at a house in North Waziristan, Pakistan (no further details of the location reported). The CIA had received information that al-Qaeda operative **Hamza Rabia**, a citizen of Egypt alleged to have been involved in an attempt on the life of President Pervez Musharraf in December 2003, was staying there with his wife and children. While an overall **eight persons, including his wife and children**, were reportedly killed in the attack, Hamza Rabia managed to escape with an injured leg.

On 1 December 2005, an unmanned drone operated by the CIA fired a missile at a house in the village Haisori, near the town of Mir Ali, North Waziristan, about 30 kms from the Afghani border, killing five persons. It would appear that the dead are **Hamza Rabia**, **two other foreign men, and the 17-year-old son and an eight-year-old nephew of the owner of the house**. While Pakistani authorities stated that the blast that resulted in the deaths was caused by explosives handled or stored in the house, reports indicate that residents of the area saw an unmanned aircraft fire a missile at the house and recovered fragments of the missile.

In the early morning hours of 13 January 2006 a remote-piloted Predator aircraft of the United States security services launched a strike with "Hellfire" missiles on the village of Damadola in the Bajaur Agency, North Western Pakistan, close to the border with Afghanistan. Reports indicate that US Predator drones were circling the area of Damadola village during the three days preceding the missile strike. The attack is reported to have killed 18 persons, including women and children. The target of the strike reportedly was **Ayman al-Zawahri**, who is commonly referred to as the "number two" of al-Qaeda. He was reportedly expected at a dinner in Damadola on the evening of 12 January 2006. However, he appears not to have been in the village at the time of the attack. The Pakistani Federal authorities are reported to have stated that 5 senior al-Qaeda figures were among those killed, including a chemical and explosives expert, **Midhat Mursi al-Sayed alias Abu Abu Khabab, Abu Obaidah al-Misri**, allegedly al-Qaeda chief of operations for Afghanistan's eastern Kunar province, and Ayman al-Zawahiri's son-in-law **Abdur Rehman al-Maghribi**. However, the reports we have received indicate that the bodies of the five "Arab fighters" killed in the strike were pulled out of the rubble and taken away from the scene soon after the strike, so that only the bodies of 13 Pakistani victims could be identified.

It is our understanding that the US Central Intelligence Agency (CIA) is authorized to operate such Predator operations under presidential authority signed after the September 11, 2001

terrorist attacks. The Government of Pakistan is reported to have lodged a diplomatic protest over the incident on 14 January 2006. Pakistan's Prime Minister, Mr. Shaukat Aziz, reportedly stated publicly that such attacks are not acceptable to Pakistan.

In drawing the attention of your Excellency's Government to this information and seeking clarification thereof, we are fully aware of the stance taken by your Government in correspondence with the predecessor to the Special Rapporteur on extrajudicial, summary or arbitrary executions with respect to the mandate's competence regarding killings that are said to have occurred within the context of an armed conflict (we refer to your Government's letters dated 22 April 2003 and 8 April 2004). As explained in the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the 61st Commission on Human Rights, as well as in a letter to your Excellency's Government of 26 August 2005, however, both the practice of the General Assembly and of the independent experts successively holding the mandate since its creation in 1982 make it clear that questions of humanitarian law fall squarely within the Special Rapporteur's mandate (See E/CN.4/2005/7, at par. 45). As to the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, it should be pointed out that reference to "fundamental freedoms" in the title of the mandate established by paragraph 14 of Commission on Human Rights resolution 2005/80 is to be understood in the light of operative paragraph 1 of the same resolution which explicitly refers to, inter alia, international humanitarian law.

In the light of these considerations, we would express the concern (stated by the Special Rapporteur on extrajudicial, summary or arbitrary executions in his Report to the 61st Commission on Human Rights and in his letter of 26 August 2005 concerning the killing of Haitham al-Yemeni, which unfortunately has remained without a reply from your Government), that empowering Governments to identify and kill "known terrorists" places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative has been exhausted. (See E/CN.4/2005/7, at par. 41). Moreover, as these incidents dramatically illustrate, such "targeted killings" may (and all too often do) result in the death of numerous bystanders, while missing the target.

We would also recall that the Human Rights Committee has held that a State party can be held responsible for violations of rights under the Covenant where the violations are perpetrated by authorized agents of the State on foreign territory, "whether with the acquiescence of the Government of [the foreign State] or in opposition to it". (See Lopez v. Uruguay, communication No.52/1979, CCPR/C/OP/1 at 88 (1984), paras. 12.1-12.3.)

Finally, we wish to remind you that UN GA Resolution 59/191 of 10 March 2005, in its paragraph 1, stresses that "States must ensure that any measure to combat terrorism complies with their obligation under international law, in particular international human right, refugee and humanitarian law", the latter to the extent it is indeed applicable.

Without in any way wishing to pre-judge the accuracy of the information received, we would be grateful for a reply to the following questions. (These questions repeat the unanswered questions in letter of the Special Rapporteur on extrajudicial, summary or arbitrary executions of 26 August 2005):

1. Are the reports according to which the target of the missile strike against Damadola was Ayman al-Zawahri accurate? On what basis was it decided to kill, rather than capture, Ayman al-Zawahri (considering also the reported presence of US military aircraft in the area during the three days preceding the attack)? On what basis was it decided to kill, rather than capture, Hamza Rabia?

2. Did the Government of Pakistan agree to the killing of Ayman al-Zawahri? Did the Government of Pakistan agree to the killing of Hamza Rabia?

3. What rules of international law does your Excellency's Government consider to govern these incidents? If your Excellency's Government considers the incidents to have been governed by humanitarian law, please clarify which treaty instruments or customary norms are considered to apply.

4. What procedural safeguards, if any, were employed to ensure that these killings complied with international law?

5. Does your Excellency's Government intend to provide compensation to the families of the civilians killed in these air strikes? If so, what steps have been taken in this direction?

United States of America: Killing of Ten Persons in Balad, Iraq

Violation alleged: Deaths due attacks or killings by the military

Subject(s) of appeal: 8 females (4 juveniles); 2 males (2 juveniles) (foreign nationals)

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 he has been given by the General Assembly and the Commission on Human Rights.

Letter of allegation dated 27 March 2006

I would like to draw the attention of your Government to information I have received regarding a raid conducted by the Multinational Forces (MNF) on 15 March 2006 in the house of Faiz Harrat Al-Majma'ee, a farmer living in the outskirts of Al-Iss Haqi District in Balad (Salah-El-Din Governorate).

I have received various reports indicating that at least 10 persons, namely Mr. **Faiz Hratt Khalaf**, (aged 28), his wife **Sumay'ya Abdul Razzaq Khuther** (aged 24), their three children **Hawra'a** (aged 5) **Aisha** (aged 3) and **Husam** (5 months old), Faiz's mother Ms. **Turkiya Majeed Ali** (aged 74), **Faiz's sister** (name unknown), Faiz's nieces **Asma'a Yousif Ma'arouf**

(aged 5 years old), and **Usama Yousif Ma'arouf** (aged 3 years), and a visiting relative Ms. **Iqtisad Hameed Mehdi** (aged 23) were killed during the raid.

According to the information received, American troops approached Mr. Faiz's home in the early hours of 15 March 2006. It would appear that when the MNF approached the house, shots were fired from it and a confrontation ensued for some 25 minutes. The MNF troops entered the house, handcuffed all residents and executed all of them. After the initial MNF intervention, a US air raid ensued that destroyed the house.

Iraqi TV stations broadcast from the scene and showed bodies of the victims (i.e. five children and four women) in the morgue of Tikrit. Autopsies carries out at the Tikrit Hospital's morgue revealed that all corpses were shot in the head and handcuffed.

I am aware that the MNF confirmed that an air raid took place that day in Balad and that it caused an unconfirmed number of casualties. The US military attacked the house to capture members of Mr. Faiz Harrat Al-Majma'ee's family on the basis that they were allegedly involved in the killing of two MNF soldiers who were killed between 6 to 11 March 2006 in the Al Haweeja area. The US military was further reported in the media as stating that MNF troops attacked the house in question to capture "a foreign fighter facilitator for the Al Qaeda in Iraq network". Other reports indicate that over the past five months, there have been a significant number of lethal incidents in which the MNF is alleged to have used excessive force to respond to perceived threats either at checkpoints or by using air bombing in civilian areas.

In drawing the attention of your Excellency's Government to this information and seeking clarification thereof, I am fully aware of the stance taken by your Government in correspondence with me regarding the mandate's competence regarding killings that are said to have occurred within the context of an armed conflict (I refer to your Government's letters dated 22 April 2003 and 8 April 2004). As explained in my report to the 61st Commission on Human Rights, as well as in letters to your Excellency's Government of 26 August 2005 and 7 March 2006, however, not only the relevant formulation of the mandate but also the General Assembly in its resolutions and the now longstanding practice of the independent experts successively holding the mandate since its creation in 1982 make it clear that questions of humanitarian law fall squarely within the Special Rapporteur's mandate (See E/CN.4/2005/7, at par. 45).

I would also recall that the Human Rights Committee has held that a State party can be held responsible for violations of rights under the Covenant where the violations are perpetrated by authorized agents of the State on foreign territory, "whether with the acquiescence of the Government of [the foreign State] or in opposition to it". (See Lopez v. Uruguay, communication No.52/1979, CCPR/C/OP/1 at 88 (1984), paras. 12.1-12.3.)

Finally, I wish to remind you that UN GA Resolution 59/191 of 10 March 2005, in its paragraph 1, stresses that "States must ensure that any measure to combat terrorism complies with their obligation under international law, in particular international human right, refugee and humanitarian law".

Without in any way wishing to pre-judge the accuracy of the information received, I would be grateful for a reply to the following questions:

1. Are the facts alleged in the above summary of the case accurate? On what basis was it decided to kill, rather than capture, members of Mr. Faiz Harrat Al-Majma'ee's family.

2. What rules of international law does your Excellency's Government consider to govern these incidents? If your Excellency's Government considers the incidents to have been governed by humanitarian law, please clarify which treaty instruments or customary norms are considered to apply.

3. What procedural safeguards, if any, were employed to ensure that these killings complied with international law?

4. Does your Excellency's Government intend to provide compensation to Mr. Faiz Harrat Al-Majma'ee's relatives.

United States of America: Impunity for Killing of Abed Hamed Mowhoush

Violation alleged: Impunity

Subject(s) of appeal: 1 male (foreign national)

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 he has been given by the General Assembly and the Commission on Human Rights.

Letter of allegation dated 22 August 2006

I am writing about the case of Chief Warrant Officer Lewis E. Welshofer Jr., who, according to the information I have received, was found guilty of negligent homicide and negligent dereliction of duty by a jury of six-officers on 21 January 2006 in Colorado. The jury acquitted Chief Welshofer of murder and assault charges. On 24 January 2006, it imposed a sentence that comprised a fine of US$6,000, confinement to his base and place of worship for two months, and a letter of reprimand.

The charges against Chief Welshofer related to the death of Major General Abed Hamed Mowhoush, an Iraqi general who had turned himself in to military authorities. During an interrogation on 23 November 2003 in Qaim, Iraq, Officer Welshofer forced Maj. Gen. Mowhoush head first into a sleeping bag and sat on his chest. The general, who was fifty-seven years old and weighed two hundred and fifty pounds, died shortly thereafter.

I bring the case to your attention for two reasons. First, I am deeply concerned that the sentence imposed on Chief Welshofer may not be proportionate to the gravity of the offence. Chief Welshofer has clearly been prosecuted and convicted. Nonetheless, I am concerned that his

sentence permits United States military personnel to operate with the expectation of a fair degree of impunity when employing life-threatening interrogation techniques. The maximum sentence that Chief Welshofer faced for the offence of negligent homicide was three years imprisonment. The sentence handed down falls so short of the maximum that it would appear to send the message that Chief Welshofer's crime was not a serious one.

The second issue of concern to me is the military's apparent failure to comprehensively investigate either (i) systemic breakdowns that may have contributed to Maj. Gen. Mowhoush's death or (ii) the possibility that Officer Welshofer's superior officers may have implicitly or expressly sanctioned the interrogation techniques that ultimately proved fatal.

According to the information received, at his trial, Chief Welshofer reportedly testified that he was not adequately trained to conduct interrogations in Iraq prior to his deployment and that he received little guidance about how to conduct interrogations once there. He testified that months before Maj. Gen. Mowhoush's death he had received a memorandum from a senior officer, which said that senior personnel "wanted the gloves to come off" in interrogations and sought "an interrogation techniques wish list" from interrogators. Chief Welshofer also testified that he had received prior approval from Lt. Gen. Ricardo S. Sanchez before escalating the interrogation methods used with Maj. Gen. Mowhoush. The interrogation of this prisoner seems to have been considered of great importance because of his high-ranking position under the previous regime and also because he was thought to be a central figure in the Iraqi insurgency. In the face of this evidence, the failure to investigate the possible responsibility of higher-ranking officials in the death of Maj. Gen. Mowhoush may send an additional message of impunity.

As you are aware, human rights law requires States to effectively investigate, prosecute, and punish individuals responsible for arbitrary deprivations of life (see the International Covenant on Civil and Political Rights, Arts. 2 and 6(1)). Inasmuch as the right to life is non-derogable, these obligations do not cease to apply during armed conflict (see ICCPR, Art. 4). The requirements of the Geneva Conventions are also relevant, because Maj. Gen. Mowhoush was either a prisoner of war or a person detained on suspicion of activities hostile to the security of an occupying power. Under the Geneva Conventions, States must "take measures necessary for the suppression of all acts contrary to [their] provisions" (see Geneva III, Art. 129; Geneva IV, Art. 146). Among other measures, this obligation entails the imposition of "effective penal sanctions" for grave breaches, including "willful killing", "torture or inhuman treatment", and "willfully causing great suffering or serious injury to body or health" (see Geneva III, Arts. 129, 130; Geneva IV, Arts. 146, 147). As discussed above, there is reason to doubt that the penal sanctions imposed on Chief Welshofer will be effective in preventing future violations of these international obligations.

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

(i) Are the facts alleged in the above summary of the case accurate?

(ii) Please provide the text of any final judgment of the court martial in the case of Chief Welshofer.

(iii) Please provide transcripts of the proceedings in Chief Welshofer's case.

(iv) Please provide information regarding further investigations that the United States Government might be carrying out in relation to this matter.

Uzbekistan: Death Sentence of Ismatillo Abasov

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

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

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

Urgent appeal dated 23 January 2006

We would like to bring to the attention of your Excellency's Government the situation of Mr. **Ismatillo Abasov**, who appears to be at risk of imminent execution.

According to the information received, Mr. Ismatillo Abasov was sentenced to death by the Tashkent City court on 31 January 2005 for "premeditated, aggravated murder". Mr. Abasov has exhausted all judicial remedies. Reportedly, his conviction and sentence are based on confessions extorted under torture or other forms of ill-treatment.

Mr. Abasov has submitted a communication to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political rights (ICCPR). The Committee has requested your Excellency's Government not to execute Mr. Abasov while his case is under consideration by the Committee.

While we are fully aware of the serious nature of the crime Mr. Abasov has been found guilty of, we respectfully remind your Excellency's that "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights admits no exception admits" (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the cases at issue, these guarantees include the right not to be compelled to confess guilt.

We also recall that Commission on Human rights resolution 2005/39 urges States to ensure that any statement, which is established to have been made as a result of torture, shall not be invoked in any proceedings. This principle is an essential aspect of the right to physical and mental integrity set forth, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Mr. Abasov are respected. Considering the irremediable nature of capital punishment, this can only mean suspension of the death sentence against Mr. Abasov until the allegation of torture have been thoroughly investigated and all doubts in this respect dispelled. Finally, international law requires that the accountability of any person guilty of subjecting Mr. Abasov to torture is ensured.

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

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

2. Please provide the details, and where available the results, of any investigation, medical examinations and judicial or other inquiries carried out in relation to the allegations that Ismatillo Abasov was subjected to torture while in pre-trial detention. If no inquiries have taken place or if they have been inconclusive, please explain why.

3. Please provide the full details of any prosecutions which have been undertaken with regard to the alleged torture of Ismatillo Abasov. Have penal, disciplinary or administrative sanctions been imposed on the perpetrators?

Uzbekistan: Deaths of Three Men in Osh, Kyrgyzstan

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

Subject(s) of appeal: 3 males (foreign nationals)

Character of reply: No response

Observations of the Special Rapporteur

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

Letter of allegation dated 1 September 2006 sent with the Special Rapporteur on Human Rights and counter terrorism and Special Rapporteur on freedom of religion or belief

We would first like to assure you that we are conscious of the fact that States' obligation to protect and promote human rights requires them to take effective measures to combat terrorism. Further, we would like to underline that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law. We view our mandates as Special Rapporteurs as a device to support and advise States in protecting and promoting human rights and fundamental freedoms while countering terrorism.

We would like to draw your Excellency's Government's attention to the case of Mr. **Mohammadrafiq Kamoluddin,** imam of a mosque in the city of Kara-Suu, Mr. **Ayubkhodja Shahobidinov** and Mr. **Fathullo Rahimov**. According to the allegations we have received:

> On 6 August 2006, the above-mentioned individuals were killed in the city of Osh, Kyrgyzstan as the result of an alleged counter terrorism operation, led by the National Security Service of Kyrgyzstan, in cooperation with the security forces of Uzbekistan. It has been reported that these individuals were suspected members of the Islamic Movement of Uzbekistan and were planning to carry out a terrorist attack on the territory of the State of Uzbekistan. Other reports highlight that it was not alleged that Mr. Mohammadrafiq Kamoluddin was a member of the Islamic Movement of Uzbekistan or that he was involved in the commission of terrorist acts.

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency to seek clarification of these facts and circumstances. We wish to remind you that while Governments have a responsibility to protect their own citizens and those of other States against the excesses of non-State actors or other entities General Assembly resolution 59/191, in its paragraph 1, stresses that: "States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law", as does Security Council resolution 1456 (2003) in its paragraph 6. In this respect, I wish to stress my concern that empowering Governments to identify and kill "known terrorists" places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative has been exhausted. (See the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the 61st Commission on Human Rights, E/CN.4/2005/7, at par. 41).

We would also like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration on Human Rights as well as of the International Covenant on Civil and Political Rights.

Since we are expected to report to the Human Rights Council on all cases brought to our attention, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate? In particular, does your Government acknowledge that these killings were the result of a counter-terrorism

operation carried out by your security forces in conjunction with those of Kyrgyzstan on 6 August 2006?

2. On what basis was it decided to kill, rather than capture, these three individuals? What rules of international law does your Excellency's Government consider to govern these incidents?

3. Does your Excellency's Government intend to provide compensation to the families of the three individuals killed in this operation? If so, what steps have been taken in this direction?

4. Please indicate what the legal basis for qualifying an individual or an entity as "terrorist" under the law of Uzbekistan is. Please also indicate what the consequences are of such qualification. In this specific instance, what evidence did your Excellency's government have at its disposal to determine that these individuals were in fact alleged terrorists? Were these individuals aware that this determination had been made?

5. Lastly, please indicate what evidence your Excellency's government had at its disposal to determine that these individuals were to carry out terrorist crimes and which terrorist crimes these were.

We remain at your disposal with regard to any questions or requests for any assessment that your Excellency's Government would wish to seek, in the form of written comments, hearings before parliamentary or other bodies or through a Special Rapporteur's country visit.

Bolivarian Republic of Venezuela: Amenazas de Muerte contra Tres Jóvenes en Caracas

Violación alegada: Amenazas de muerte

Persona objeta del llamamiento: 3 hombres (2 menores)

Carácter de la respuesta: No respuesta

Observaciones del Relator Especial

El Relator Especial lamenta que el Gobierno de la República Bolivariana de Venezuela no haya cooperado con el mandato otorgado al Relator Especial por la Asamblea General y la Comisión de Derechos Humanos.

Llamamiento urgente del 1 de septiembre de 2006

Quisiera llamar la atención de su Gobierno sobre la información que he recibido en relación con los actos de intimidación y las amenazas de muerte en contra de los jóvenes **Edison Steveen Gámez Cabrera** (18 años), **José Manuel Silva Díaz** (14 años), y **Eduardo Antonio Moro** (17 años), por parte de un funcionario de la Policía de Circulación de Miranda y de otro funcionario uniformado de la policía Metropolitana, en el barrio La Cruz, de la ciudad de Caracas, Venezuela.

Según la información recibida, el 17 de julio de 2006, **Edison Steveen Gámez Cabrera** se encontraba en frente del negocio y residencia de la Sra. Eglé Díaz, ubicado en el barrio La Cruz, cuando un funcionario de la Policía de Circulación de Miranda, que vestía de civil y se desplazaba en una moto de placa Nº 4-18, lo habría amenazado con arrestarlo por haber presuntamente robado unos zapatos y una pelota que se encontraban en su casa. **José Manuel Silva Díaz**, hijo de la Sra. Eglé Díaz, se habría acercado al escuchar las amenazas. En ese momento, el funcionario de la policía se habría dirigido a José Manuel y a **Eduardo Antonio Moro,** otro joven que se encontraba allí, diciéndoles que a ellos también los iba a desaparecer y a ajusticiar.

Desde entonces, este funcionario de la Policía de Circulación de Miranda, que reside también en el barrio La Cruz, habría continuado amenazando de muerte a estos jóvenes, así como preguntado a los vecinos sobre los lugares que los jóvenes frecuentan y lo horarios en los que suelen salir. Según nuestras fuentes, este funcionario también pasaría frente al negocio y residencia de Sra. Eglé Díaz, junto a otro funcionario uniformado de la policía Metropolitana, y señalaría la casa con gestos amenazantes.

De acuerdo con la información recibida, el 27 de julio del 2004, la Sra. Eglé Díaz denunció este hecho ante la oficina de Atención a la Víctima del Ministerio Público, pero el funcionario público a cargo habría manifestado que el Ministerio Público no tenía competencia para recibir denuncias sobre amenazas a la seguridad personal. Igualmente, se habrían realizado denuncias ante la división de asuntos internos de la Policía de Circulación de Miranda y de la Policía Metropolitana, no obstante ninguna investigación habría sido iniciada.

Frente a estas alegaciones, expreso mi temor por la seguridad de las personas anteriormente mencionadas, e insto al Gobierno de su Excelencia a tomar de inmediato las medidas necesarias para garantizar la seguridad e integridad física y psicológica de José Manuel Silva Díaz, Steeven Gómez Cabrera y Eduardo Antonio Moro. A este respecto, llamo la atención de su Gobierno sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y en el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos garantizan a todo individuo el derecho a la vida y a la seguridad de su persona y disponen que este derecho sea protegido por la ley y que nadie sea arbitrariamente privado de su vida.

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

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

1. ¿Son exactos los hechos referidos?

2. Si fueron presentadas quejas o denuncias, ¿cuales han sido las respuestas a las mismas y las acciones referidas en las respuestas?

3. Por favor, proporcione los detalles así como los resultados de las últimas diligencias judiciales o de otro tipo, realizadas en relación a este caso. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables?

4. Indicar las acciones adoptadas para garantizar la seguridad de José Manuel Silva Díaz, Steeven Gómez Cabrera y Eduardo Antonio Moro.

Bolivarian Republic of Venezuela: Amenazas de muerte contra Nelson Bocarando

Violación alegada: Amenazas de muerte y temor por la seguridad

Persona objeta del llamamiento: Un hombre, periodista

Carácter de la respuesta: No respuesta

Observaciones del Relator Especial

El Relator Especial aprecia la información proporcionada por el Gobierno de la República Bolivariana de Venezuela en respuesta a su comunicación anterior relativa a las amenazas en contra de Nelson Bocarando. Sin embargo, lamenta que el Gobierno no haya proporcionado los resultados de las investigaciones sobre dichas amenazas.

Carta de seguimiento del 17 de octubre de 2006 relativa a una carta mandada el 22 de octubre de 2004

Me gustaría llamar la atención de su Excelencia sobre nuestro intercambio de correspondencia (consignado en mi último informe al Consejo de Derechos Humanos E/CN.4/2006/53/Add.1 p. 294-295) con relación a las amenazas de muerte que habría recibido el periodista **Nelson Bocarando**. En su respuesta del 1 de marzo de 2005, el Gobierno de su Excelencia me informó que el Fiscal Sexagésimo Octavo de la Circunscripción Judicial de Área Metropolitana de Caracas, había ordenado iniciar una investigación con relación al caso del Sr. Bocarando. En esta misma ocasión se me informó que luego de haber recolectado información y entrevistado a los testigos y a la víctima, el proceso se encontraba en fase preparatoria.

En este contexto, y como lo señalé en las observaciones que hice sobre este caso en mi informe, le agradecería al Gobierno de su Excelencia que me proporcione información sobre el resultado de las investigaciones con relación a este caso. Igualmente, agradecería recibir información reciente sobre la evolución del proceso que se encontraba en fase preparatoria. A este respecto, agradecería que se me indicara si han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables, y si se adoptaron medidas para garantizar la seguridad del Sr. Nelson Bocarando.

Bolivarian Republic of Venezuela: Amenazas de muerte contra la familia de Hernández Mota

Violación alegada: Amenazas de muerte y temor por la seguridad

Persona objeta del llamamiento: 1 mujer, 2 hombres

Carácter de la respuesta: No respuesta

Observaciones del Relator Especial

El Relator Especial aprecia que el Gobierno de la República Bolivariana de Venezuela, en una de sus comunicaciones anteriores, haya asegurado que los tribunales ordenaron medidas de protección. Sin embargo, considerando que no se han puesto en práctica dichas medidas, el Relator Especial solicita información reciente relativa a su cumplimiento. El Relator Especial lamenta que el Gobierno no haya proporcionado dicha información.

Carta de seguimiento del 17 de octubre de 2006 relativa a una carta mandada el 31 de mayo de 2005

Me gustaría llamar la atención de su Excelencia sobre nuestro intercambio de correspondencia (consignado en mi último informe al Consejo de Derechos Humanos E/CN.4/2006/53/Add.1 p. 299-301) con relación a las amenazas de muerte y los actos de intimidación en contra de Carmen Alicia Mota Hernández, Roberto Carlos Hernández Mota y Carlos Arturo Hernandez Mota. En su respuesta del 3 de Noviembre de 2005, el Gobierno de su Excelencia me informó que el Juzgado segundo en función de control del circuito judicial penal del Estado Guárico, había otorgado medidas de protección a favor de las personas arriba mencionadas. Sin embargo, en esta misma carta, se me informó que las medidas de protección decretadas por este órgano jurisdiccional aun no habían sido implementadas.

En este contexto, y como lo señalé en las observaciones que hice sobre este caso en mi informe, le agradecería al Gobierno de su Excelencia que me proporcione información reciente con relación al cumplimiento de las medidas de protección referidas en su respuesta. Igualmente, agradecería que se me proporcione información reciente con relación al proceso penal que se lleva a cabo con ocasión del homicidio del Sr. Carlos Arturo Hernandez Ortega (esposo y padre de las personas arriba mencionadas), así como del cumplimiento de las decisiones que se deriven del mismo.

Viet Nam: Death Sentence of Nguyen Thi Quynh Van

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

Subject(s) of appeal: 1 female

Character of reply: Largely satisfactory response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Viet Nam and welcomes the information that Nguyen Thi Quynh Van will not face the death penalty.

Urgent appeal dated 30 October 2006

I would like to draw the attention of your Government to information I have received regarding Ms. **Nguyen Thi Quynh Van**, who reportedly could face the death penalty if she is found guilty of "losing state resources through economic mismanagement", a crime which I understand carries the death penalty in Vietnam.

According to the information received, Ms. Nguyen Thi Quynh Van is a former deputy head of trade finance at the Industrial and Commercial Bank of Vietnam, known as Incombank. Authorities maintain that she lost US$5.4 million in speculative currency trades made with three foreign banks that do business in Vietnam. The State and Incombank also claim that Ms. Van was not authorized to undertake foreign-exchange transactions and that her conduct represents mismanagement of funds. The Police reportedly charged her with "losing state resources through economic mismanagement", a crime that carries the death penalty in Vietnam.

I understand that 11 high-ranking officials and business people were sentenced to death for economic crimes by Vietnamese courts in the last three years. The last known execution was reportedly carried out in March 2006 on Mr. Phung Long That, head of the Customs Department's anti-smuggling office, who was found guilty of accepting bribes and smuggling.

If the information I have received is accurate, there would be grounds for serious concern and compelling grounds to challenge Ms Nguyen Thi Quynh Van's death sentence as being incompatible with the international obligations of Vietnam. In this connection, I would like to bring your Excellency's attention to article 6 of the International Covenant on Civil and Political Rights that states that "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious of crimes (…)". In this regard the UN Human Rights Commission has repeatedly stated that economic crimes do not fall within the "most serious crimes". In its resolution 2005/59 on the question of the death penalty adopted on 20 April 2005 at its 61st session, the Commission called on states "To ensure that the notion of "most serious crimes" (…) is not imposed for non-violent acts such as financial crimes".

I have been informed that in February 2006 the Ministry of Public Security proposed a reduction in the number of offences punishable by the death penalty. The proposal, which has been

submitted to the central judicial reform commission for consideration, reportedly recommends that economic crimes such as fraud and embezzlement, smuggling, counterfeiting and bribery should no longer be capital offences. I would like to express my very strong support for this initiative and remind your Excellency's Government that all efforts to fight against economic crimes should be undertaken within the framework of recognized international human rights standards.

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 Ms. Nguyen Thi Quynh Van, in accordance with its obligations under international law.

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

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

2. Please provide a detailed description of the crimes with which Ms. Nguyen Thi Quynh Van has been charged.

3. Please provide a description of the process that will be followed in the trial of Ms. Nguyen Thi Quynh Van, so as to enable me to assess whether the proceedings comply with international standards relating the imposition of capital punishment.

Response of the Government of Viet Nam dated 8 January 2007

Ms. Nguyen Thi Quynh Van is a former Deputy Head of Trade Finance of the Hai Phong Industrial and Commercial Bank (Incombank). Ms. Van was born on 23/03/1970 in Ha Tay Province. Her permanent residence is in Nghia Tan Commune, Cau Giay District, Hanoi Capital. Her current résidence is in An Bien Commune, Le Chan District, Hai Phong City.

On 03/03/2006, the Police Agency for Investigation made an introduction of. instance against a criminal case occurred at the Hai Phong Incombank, and also made at the same time an introduction of instance against the arrestee, Ms. Nguyen Thi Quynh Van on charge of "intentionally breaching State Regulations on economic management, causing serious consequences" (Article 165 of the 1999 Penal Code). Later, on 20/4/2006, the Police Agency for Investigation .issued another décision supplementing the previous one, adding one more crime: "making corrupt use of. position and power while executing public services" (Article 281 of the 1999 Penal code), and at the same, this additional crime was also charged against Ms. Nguyen Thi Quynh Van.

Currently, this case is under investigation process, and Ms. Nguyen Thi Quynh Van is provisionally detained in line with provisions of the 1999 Penal Code. The investigation, provisional detention are strictly carried out in accordance with rules of procedures stipulated by laws. In accordance with the provisions of the 1999 Penal Code of the Socialist Republic of Viet

Nam, the two above-mentioned crimes have to face with the maximum punishment framework of 20 and 15 years of imprisonment, respectively.

Thorefore, the alleged information about crimes caused by, and level of punishment against Ms. Nguyen Thi Quynh Van as summarised in the above-mentioned Communication. are not factual.

Yemen: Death Sentences of Ismail Lutef Huraish and Ali Mussara'a Muhammad Huraish

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

Subject(s) of appeal: 2 males

Character of reply: UN translation awaited for response of the Government of Yemen dated 12 June 2006

Urgent appeal dated 8 December 2005

I would like to draw the attention of Your Excellency's Government to information I have received concerning the situation of Mr. **Ismail Lutef Huraish**, a 47-year-old deaf man and his cousin Mr. **Ali Mussara'a Muhammad Huraish**, aged 37, who are reportedly at risk of imminent execution. They were sentenced to death in 2000 for a murder committed in 1998. The Supreme Court of Yemen upheld their death sentences in January 2004. I understand that President ´Ali ´Abdullah Saleh, who has the power to grant them clemency, is currently considering their sentences. Concerns have been expressed that the two men were sentenced to death following trials that may have fallen short of international fair trial standards.

According to the information I have received, at no time during the judicial process did the authorities provide access to sign-language interpretation for Ismail Lutef Huraish, preventing him from giving his own account of his alleged involvement in the murder. It appears that he was convicted solely on the basis of statements made by Ali Mussara'a Muhammad Huraish during police interrogation and during their trial, which allegedly implicated both men in the murder. Detailed information about the circumstances in which Ali Mussara'a Muhammad Huraish's confessions were obtained has not been made available to me.

I would like to remind Your Excellency that the death penalty must be regarded as an extreme exception to the fundamental right to life and must as such be interpreted in the most restrictive manner. Accordingly, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences.

The Commission on Human Rights has consistently requested me and my predecessors as Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of all standards relating to the imposition of capital punishment.

The alleged failure of the authorities to provide the means for Ismail Lutef Huraish to communicate is in violation of norms applicable at both domestic and international level. Indeed

it violates Article 337 of the Yemeni penal code, which states that deaf defendants must have access to sign-language interpretation, and Article 14 (3) of the *ICCPR*, which states that defendants have the right to be informed of the charges against them and to have proceedings conducted in a language which they understand. This would appear to include finding the appropriate language or method to inform people with a hearing or speech disability of the charges and proceedings against them.

While I am fully aware of the serious nature of the crime these two men have been found guilty of, I would respectfully remind Your Excellency that "in capital punishment cases, the obligations of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the *International Covenant on Civil and Political Rights* admits of no exception". (*Little v. Jamaica*, communication no. 283/1988, Views of Human rights Committee of 19 November 1991, para. 10). Relevant to the cases at issue, these guarantees include the right to be informed promptly and in detail in a language which the accused individual understands of the nature and cause of the charge against him, the right not to be compelled to confess guilt and the right to adequate time and facilities for the preparation of one's defence.

Without in any way pre-judging the accuracy of the information I have received, I would respectfully request Your Excellency's Government to provide me with:

a) the details of the trial proceedings of Ismail Lutef Huraish and Ali Mussara'a Muhammad Huraish, including the specific charges against them, with a view to establishing whether the proceedings complied with international standards relating to the imposition of capital punishment;

b) information as to whether they were given the right to formal representation by a lawyer and whether Ismail Lutef Huraish was given access to sign-language interpretation;

c) details of the circumstances in which Ali Mussara'a Muhammad Huraish's confessions were obtained.

In view of the urgency of the matter, I would appreciate a response on these matters before any irreversible steps are taken in relation to the fate of Ismail Lutef Huraish and Ali Mussara'a Muhammad Huraish.

Response of the Government of Yemen dated 12 June 2006 (translation awaited of the annex to the reply below)

The Government forwarded the response of the Ministry of Justice to an urgent appeal sent by the Special Rapporteur on 8 December 2005 regarding the death sentence against Ismail Lutef Huraish and Ali Mussara'a Muhammed Huraish.

"The reply formulated by the Ministry of Justice indicates that the proceddings taken against the above-mentioned accused persons were legal and that the proofs of all the courts confirmed that they have committed murder.
Furthermore, the reply indicates that the two accused have been represented by a lawyer and that the statements of the deaf accused person have been translated by those of the second one, for

the deaf accused person does not speak any language including that of deaf peoples and can be understood only by his family members and relatives".

Yemen: Execution of Fuad' Ali Mohsen al-Shahari

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

Subject(s) of appeal: 1 male

Character of reply: Cooperative but incomplete response

Observations of the Special Rapporteur

The Special Rapporteur appreciates the response provided by the Government of Yemen. However, the SR regrets that this response does not include any information regarding the review of the trial conducted by the Office of the Attorney General and in no way clarifies whether the trial proceedings fully complied with international standards relating to the imposition of capital punishment.

Urgent appeal sent on 10 October 2005, reproduced from E/CN.4/2006/53/Add.1, pp 306-307

Urgent appeal sent concerning Fuad' Ali Mohsen al-Shahari, aged about 45, who appeared to be at risk of imminent execution if his death sentence, which had already been upheld by the Supreme Court in March 2004, was ratified by the President.

Your Excellency will recall that the principal purpose of the above correspondence was to raise concerns in view of information received that Fuad' Ali Mohsen al- Shahari's trial failed to meet international fair trials standards. As mentioned in the letter, he was for instance allegedly convicted on bases of a confession which was said to have been extracted under torture while he was held incommunicado for one month. Four versions of his confessions were reportedly included in the charge sheets and forensic evidence was contradictory. It was further reported that he had not been represented by lawyers throughout the legal proceedings against him, that defense witnesses were not allowed to testify and that certain pieces of evidence had been disregarded. It was also alleged that a personal dispute between himself and the Prosecutor could have compromised the Prosecutor's impartiality. Finally, it was reported that the death sentence against him had been confirmed by the Commercial Division of the Supreme Court instead of the Criminal Division.

I have recently been informed that, on 6 September 2005, the President has ratified Fuad' Ali Mohsen al-Shahari's death sentence, which means that he could be executed at any time. It is reported that, in August 2004, the President had actually ordered the Office of the Attorney General to review his case. While the details of this review are not known, it is my understanding that, afterwards, the Head of the Supreme Court advised the Office of the Attorney General that there had been no procedural flaws during Fuad al-Shahari's trial.

Although capital punishment is not prohibited under international law, it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Therefore, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences.

Since I have received no response to my previous communication concerning this situation, I would respectfully request the Government of your Excellency to provide me with the details of the above-mentioned review of the case of Fuad' Ali Mohsen al-Shahari' by the Office of the Attorney General with a view to determine if the trial proceedings fully complied with international standards relating to the imposition of capital punishment.

In view of the urgency of the matter, I would appreciate a response on these matters before any irreversible steps are taken in relation to the fate of Fuad' Ali Mohsen al- Shahari'.

Response of the Government of Yemen dated 6 February 2006 to an urgent appeal dated 10 October 2005 (see E/CN.4/2006/53/Add.1, p. 306)

The Government of Yemen responded to an urgent appeal sent by the Special Rapporteur on 10 October 2005 regarding the case of Fuad Ali Mohesen al-Shahari. According to the Government, he was executed on 29 November 2005 for killing Mohamed Mohamed al-Amiri. According to the Government, in 1996, Mr. Al-Shahari was convicted by the Court of First Instance of the governorate of Ta'izz of the revenge killing of Mohamed Mohamed Ahmead al-Amiri. The Ta'izz Appeal Court confirmed the sentence in 1997. The Supreme Court sent the case back to the Appeal Court in 2000. The Criminal Divison of the Ta'izz Appeal Court handed down a death sentence against Mr. Al-Shahari in 2002. He appealed the sentence and the case file (No.246) was sent to the Supreme Court on 14 december 2002. The Supreme Court upheld the death sentences delivered by the Ta'izz Court of First instance and Appeal Court. The sentence was ratified by the Higher Judicial Council and was carried out on 29 November 2005. It is important to note that, in accordance with the principles of justice, Yemeni law regards the judiciary as an independent authority, in the proceedings and decisions of which there can be no interference.

Yemen: Death Sentence of Fatima Hussein al-Badi

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

Subject(s) of appeal: 1 female

Character of reply: Allegations rejected but without adequate substantiation

Observations of the Special Rapporteur

The Special Rapporteur appreciates the information provided by the Government of Yemen. However, the Special Rapporteur regrets that the Government's response consists of conclusory denials that do not appear to reflect a thorough investigation of whether confessions were extracted with torture or of whether legal representation was provided in fact as well as law.

Urgent appeal dated 20 December 2005 sent with the Special Rapporteur on the question of torture

We would like to bring to your Excellency's attention the situation of Ms. **Fatima Hussein al-Badi** who could face imminent execution if the President of Yemen rejects a final appeal asking for her death sentence to be commuted on the basis that her trial was unfair.

According to the information received, Fatima Hussein al-Badi and her brother Abdullah Hussein al-Badi were arrested on 13 July 2000 for the murder of her husband, Hamoud Ali al-Jalal. They were sentenced to death on 17 February 2001 following a trial that may have fallen short of international fair trial standards. Fatima Hussein al-Badi's has maintained her innocence in the murder of her husband since her arrest: she was reportedly tortured by police in detention, but refused to "confess". We have further been informed that her brother denied that he and his sister were involved in the murder, but later "confessed" to police after he was assured that his "confession" would lead to Fatima's release. During the trial, they reportedly had no legal representation, and were forced to be quiet whenever they tried to speak in court. Both Fatima and her brother took their case to the Court of Appeal, which upheld the sentence against them on 12 August 2002. They then appealed to the Supreme Court, which upheld the decision.

President 'Ali 'Abdullah Saleh then ratified the two death sentences. On 2 May 2005, Abdullah Hussein al-Badi was executed for his alleged role in the murder. In October, Fatima Hussein al-Badi lodged a special personal appeal with the President, asking him to commute her sentence on the basis that her trial was unfair. The President is believed to be considering the appeal. If he rejects it, Fatima Hussein al-Badi could be executed within a few weeks

Although the death penalty is not prohibited under international law, we would like to remind your Excellency's Government that "in capital punishment cases, the obligations of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the (ICCPR) admits no exception" (Little v. Jamaica, communication no. 283/1998, Views of the Human Rights Committee of 19 November 1991, para.10). Relevant to the cases at issue, these guarantees include the right not to be compelled to confess guilt and the right to prepare one's defence.

We also recall that Commission on Human rights resolution 2005/39 urges States to ensure that any statement, which is established to have been made as a result of torture, shall not be invoked in any proceedings. This principle is an essential aspect of the right to physical and mental integrity set forth, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Protection of all Persons from being subjected to Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

In view of the urgency of the matter, we urge your Excellency's Government to suspend the capital punishment against Fatima Hussein al-Badi until the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled. Besides, I also remind your Excellency's Government that international law requires that the accountability of any person guilty of subjecting Fatima Hussein al-Badi to torture is ensured.

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

1. Are the fact in the above summary of the case accurate?

2. Please provide the details, and where available the results of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegations that Fatima Hussein al-Badi was subjected to torture while in pre-trial detention. If no inquiries have taken place or if they have been inconclusive please explain why.

3. Please provide the full details of any prosecutions which have been undertaken with regard to the alleged torture of Fatima Hussein al-Badi. Have penal, disciplinary or administrative sanctions been imposed on the perpetrators?

4. Please provide information as to whether Fatima Hussein al-Badi was given the right to formal representation by a lawyer.

Response of the Government of Yemen dated 1 June 2006

The Ministry of Human Rights responded to a communication sent by the Special Rapporteur on the question of torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions about Yemeni national Fatima Hussein al-Badi, on 20 December 2005. According to the Government,

The above-mentioned woman and her brother Abdullah Hussein al-Badi murdered her innocent husband, Hamud Ali Jalal. Evidence of guilt was provided at trial and by the defendant herself, who confessed to the murder.

The trial was conducted in accordance with the law, as explained hereunder.

The initial verdict was delivered on 17 December 2001 and the defendant lodged an appeal. After reviewing the procedures followed by the court of first instance and finding nothing amiss, the appeal court issued a ruling, on 12 August 2002, upholding the initial verdict. The case was referred to the Supreme Court, which in turn approved the appeal court ruling sentencing this woman to death. The Supreme Court ruling was issued on 5 August 2004. This information is contained in the reply from the Prosecutor-General.

The Government should also like to draw attention to the following:

This woman was not subjected to any form of mental or physical torture. A lawyer was appointed to present her defence from the very first stage of proceedings until the Supreme Court delivered its ruling.

The Yemeni judiciary takes every care to comply with, and abide by, the norms of international law. Yemeni law guarantees defendants the full right to a defence during every stage of judicial proceedings.

Yemen: Death Sentence of Adil Muhammad Saif al-Ma'amari

Violation alleged: Non-respect of international standards relating to the imposition of the death penalty

Subject(s) of appeal: 1 male (juvenile offender)

Character of reply: 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 Commission on Human Rights.

Urgent appeal dated 8 March 2006 sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding **Adil Muhammad Saif al-Ma'amari** who has reportedly been sentenced to death for a murder committed when he was 16 years old. According to the information we have received, Adil Saif al-Ma'amari was arrested on 27 July 2001. He was tortured at a police station and confessed to the murder of his relative during an argument. During his trial at a lower Court in the city of al Rwana, the defendant immediately protested that he was under 18. On the orders of a judge he was examined by a doctor, who confirmed that he had not yet passed his 17th birthday. Nevertheless, the court decided to sentence him to death on 19 October 2002. The sentence has reportedly been upheld by the Taiz Court of Appeal on 23 May 2005 and the Supreme Court on 27 February 2006.

Mr. Adil Saif al-Ma'amari's sentence is with President Ali ´Abdullah Saleh who has the power to ratify or commute the death penalty; the young man is said to be at imminent risk of execution.

In view of the urgency of the matter and the irreversibility of the punishment, we respectfully request your Excellency's Government to suspend the execution of Mr. Adil Saif al-Ma'amari as it would be incompatible with the international obligations of Yemen under various instruments which we have been mandated to bring to the attention of Governments. The right to life of persons below eighteen years of age and the obligation of States to guarantee the enjoyment of this right to the maximum extent possible are both specifically expressed in article 6 of the Convention of the Rights of the Child. More explicitly, article 37 (a) provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, article 6 (5) of the International Covenant on Civil and Political Rights provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

We also respectfully remind your Excellency that "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 (of the International Covenant on Civil and Political Rights) admits of no exception (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the cases at issue, these guarantees include the right not to be compelled to confess guilt and the right to adequate time and facilities for the preparation of one's defence.

We also recall that Commission on Human Rights resolution 2005/39 urges States to ensure that any statement, which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made. This principle is an essential aspect of the right to physical and mental integrity set forth, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We urge your Excellency's Government to take all necessary measures to guarantee that the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled. Moreover, international law requires that the accountability of any person guilty of subjecting Mr. Adil Saif al-Ma'amari to torture is ensured.

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

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

2. Please provide the details and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegations that Adil Saif al-Ma'amari was subjected to torture while in pre-trial detention. If no inquiries have taken place or if they have been inconclusive please explain why.

3. Please provide the full details of any prosecutions which have been undertaken with regard to the above mentioned alleged torture. Have penal, disciplinary or administrative sanctions been imposed on the perpetrators?

Yemen: Death Sentence of Amina Ali Abdulatif

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

Subject(s) of appeal: 1 female (juvenile offender)

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur welcomed the commitment conveyed by the Government of Yemen in earlier communication to reconsider the death sentence of Amina Ali Abdulatif, but he regrets that he has not been informed of the outcome of that reconsideration.

Follow-up letter dated 17 October 2006 (to an urgent appeal sent on 29 April 2005)

I would like to draw your Excellency's attention to our correspondence, (reflected in my report to the Commission on Human Rights E/CN.4/2006/53/Add.1 p. 303-305), relating to the death sentence of juvenile offender **Amina Ali Abdulatif**.

As indicated in my report, I welcome the decision of your Excellency's Government to reconsider the case of Amina Ali Abdulatif in light of Yemen's treaty commitments not to execute persons for crimes committed when under the age of 18. As further indicated in my observations, I would be grateful if your Government could provide me with information on the outcome of your Government's reconsideration.

Palestinian Authority: Killing of Civilians in the Gaza Strip and Israel

Violation alleged: Impunity; Deaths due to attacks or killings by paramilitary groups or private forces

Subject(s) of appeal: General

Character of reply: No response (recent communication)

Observations of the Special Rapporteur

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

Urgent appeal sent on 30 November 2006

I am writing to your Excellency's Government to express my concern about recent incidents of killing of civilians in the Gaza strip and neighboring Israel. I am also writing to the Government of Israel and a copy of that letter is enclosed herewith.

According to reports received, following the killing of 18 civilians in Beit Hanoun on 8 November 2006, several senior representatives of the Hamas party, the party leading the government and with a majority in the legislature, made statements which have been widely interpreted as advocating the resumption of suicide attacks against the civilian population of Israel.

On 23 November 2006, near the town of Beit Lahiya in the Gaza Strip, Ms. Fatima Omar Mahmud al-Najar, a woman aged around 60 years, reportedly detonated an explosive belt she was wearing when Israeli soldiers who had become suspicious about her conduct threw a stun grenade at her. Reports indicate that this attack was claimed by Hamas and that she was subsequently shown on television in a so-called martyr's video, wearing a bright green Hamas bandanna.

According to further reports, on 15 November 2006, a 57-year old woman was killed and another man injured in Sderot after they were hit by shrapnel from a rocket fired from the Gaza Strip, which is at a ten kilometer distance from the town. Since Israeli settlers and troops withdrew from Gaza in September 2005, at least 1,100 rockets have reportedly been fired from Gaza, killing four Israeli civilians.

In connection with these statements and incidents, I would like to recall that international humanitarian law requires parties to an armed conflict to distinguish at all times between combatants and civilians, and to direct attacks only against combatants (Rules 1 and 7 of the Customary Rules of International Humanitarian Law identified by the International Committee of the Red Cross). Also launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14). Moreover, acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited (Rule 2).

In the light of these reports, I would like to learn the official position of your Excellency's Government with regard to both the firing of rockets at Israeli civilian settlements and with regard to bomb attacks against Israeli targets, both military and civilian, carried out by persons who do not identify themselves as combatants.

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

(i) Are the facts alleged above accurate?

(ii) Does your Excellency's Government consider that it is obliged under international law to seek to prevent the firing of rockets at Israeli civilian settlements and explosive attacks against Israeli targets carried out by persons who do not identify themselves as combatants?

(iii) If not so, I would be grateful for an explanation as to the grounds on which your Government does not consider that international law, including the above provisions, places such an obligation on it.

(iv) If your Excellency's Government does consider that it is under an obligation to prevent such attacks, please explain the steps taken to comply with this obligation.

I undertake to ensure that your Government's response to each of these questions is accurately reflected in the report I will submit to the Human Rights Council for its consideration. Please note that in order to include your Government's response in my next report to the Human Rights Council, I would need to receive it before 15 January 2007.

Liberation Tigers of Tamil Eelam (LTTE): Death Threats against Ratnajeevan Hoole

Violation alleged: Death threats and fear of imminent extrajudicial execution

Subject(s) of appeal: 1 male

Character of reply: No response

Observations of the Special Rapporteur

The Special Rapporteur regrets that the Liberation Tigers of Tamil Eelam (LTTE) has failed to cooperate with the mandate that he has been given by the General Assembly and the Commission on Human Rights.

Urgent Appeal sent on 13 April 2006

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Representative of the
Secretary-General on the situation of human rights defenders pursuant to Commission on Human Rights resolutions 2004/37 and 2003/64.

In this connection, we would like to draw your attention to information we have received regarding death threats against the Vice Chancellor of Jaffna University, Prof. **Ratnajeevan Hoole**, and his family. According to the information received:

> At the beginning of March 2006 Prof. Ratnajeevan Hoole, who is a Christian, was appointed Vice Chancellor of Jaffna University. Soon thereafter, posters appeared on the university campus, alleging that he was anti-Hindu, implying that he is also anti-Tamil.
>
> On 11 March 2006, shortly after his appointment as Vice Chancellor of Jaffna University, Prof. Ratnajeevan Hoole received several telephone calls from persons claiming to represent a group called the People's Uprising Force (Makkal Eluchip Padai). The callers warned Prof. Ratnajeevan Hoole that if he stepped onto the campus of Jaffna University he would return home “headless in a box”. On 12 March 2006, the leader of the Jaffna University Students’ Union (Yaal Palkalaikalaha Maanavar Ondriyam) threatened to assault him if he steps onto the campus.
>
> On the same day, 12 March 2006, the website “nitharsanam.com”, which is reported to be operated by the LTTE, posted a photo of Prof. Hoole captioned “Who is this fool” together with an article entitled “Army Spy Appointed VC [Vice Chancellor]”. The article referred to Professor Hoole’s alleged involvement in the 1990 publication of a book called The Broken Palmyra criticizing the LTTE's suppression of alternative voices within the Tamil community. On 18 March 2006, “nitharsanam.com” published a second article entitled “Who is this fool Part 2", which among other things accused Professor Hoole of being connected to the University Teachers for Human Rights (Jaffna) (UTHR-J), a civil society group documenting abuses by the LTTE.

On 22 March 2006, Prof. Hoole's daughter Anbini received an anonymous call with a threat to "kill her younger brother and chop him into pieces" if their father were to take up the Vice Chancellor post at the university. The family received further threatening calls from the People's Uprising Force.

In a letter dated 21 March 2006 Prof. Hoole raised his concerns about threats against him and his family with the Norwegian Embassy in Colombo and the Sri Lanka Monitoring Mission (SLMM). Since then he has received messages through members of parliament of the Tamil National Alliance, and others claiming to be from the LTTE, that he must resign from the post of Vice Chancellor.

Without prejudging the accuracy of the reports received, we urge the LTTE to publicly condemn the death threats and other intimidation against Prof. Ratnajeevan Hoole. We further urge the LTTE to ensure that Prof. Ratnajeevan Hoole and his family are not harmed. While we are not privy to detailed knowledge of the exact nature of the relationship between the LTTE and the so-called "People's Uprising Force", the publishers of the website nitharsanam.com, or the leadership of the Jaffna University Students' Union, we have no doubts that the LTTE exercises sufficient influence over them to make them desist from carrying out their threats and from further intimidation.

We would also like to recall that the LTTE has formally committed itself to international human rights standards, which prominently include the right not to be arbitrarily deprived of one's life and the right to freedom of opinion and expression. The Charter of the North East Secretariat on Human Rights states (Article 1) that "[all] persons deserve to be treated with … respect for their humanity" and reiterates that "[all] persons have the right to life" (Article 5.1). It also enshrines the "right to be free from incitement of discrimination, hatred or violence" (Article 1.5) and protects the "right to express … opinions and beliefs freely". In this connection, we would also like to refer the LTTE 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.

We would further like to recall that in Article 2.1 of the Ceasefire Agreement, the LTTE committed to "abstain from hostile acts against the civilian population" in accordance with international law.

We are gravely concerned that the alleged threats against Prof. Ratnajeevan Hoole and his family are aimed at preventing him from carrying out his work, which includes promoting the human right to freedom of opinion and expression within the Tamil community.

In the conclusions to the report on his visit to Sri Lanka (para. 84), the Special Rapporteur on extrajudicial, summary or arbitrary executions stated that "[t]he LTTE should unequivocally denounce and condemn any killing attributed to it for which it denies responsibility. Mere denials are neither adequate nor convincing." Similarly, the systematic creation of an atmosphere conducive to the killing of Prof. Ratnajeevan Hoole and his family by forces close to the LTTE,

calls for unequivocal denouncement and condemnation by the LTTE if it does not wish to be held responsible in the event that Prof. Ratnajeevan Hoole or his family were to be harmed.

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