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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS,  
CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL  
RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT**

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

**Addendum**

**SUMMARY OF CASES TRANSMITTED TO GOVERNMENTS  
AND REPLIES RECEIVED\*\***

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\* Late submission.

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

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## **Introduction**

1. This report contains a comprehensive account of communications sent to Governments between 16 March 2008 and 15 March 2009, along with replies received between 1 May 2008 and 30 April 2009. It also contains 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 on 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.

## **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 on 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 3 above).

**D. “Character of replies received”**

11. See section I, paragraph 5 above.

### Annex

Country	Communications sent <sup>1</sup>	Government responses received	Number and category of individuals concerned <sup>2</sup>	Alleged violations of the right to life upon which the Special Rapporteur intervened	Character of replies received
Bangladesh	2 (2 AL)	2 (2 AL)	2 males	Deaths in custody (2)	Receipts acknowledged (2)
Bolivia	1 (1 AL)	1 (1 AL)	Unknown	Impunity (1)	Largely satisfactory response (1)
Brazil	2 (2 AL)	1 (1 AL)	3 males (1 HRD)	Attacks or killings (1) Attacks or killings/Impunity (1)	Largely satisfactory response (1) No response (1)
Cameroon	1 (1 AL)	1 (1 AL)	139 persons	Excessive force/Impunity (1)	Receipt acknowledged (1)
Chad	1 (1 AL)	0	72 persons (4 members of security forces)	Excessive force (1)	No response (1)
China	5 (3 UA, 2 AL)	4 (3 UA, 1 AL)	13 males 7 females Unknown	Death penalty safeguards (2) Deaths in custody (1) Excessive force (2)	Cooperative but incomplete response (2) No response (recent communication) (1) Translation awaited (2)
Colombia	6 (5 UA, 1 AL)	4 (3 UA, 1 AL)	22 males 2 females 19 persons	Death threats (2) Attacks or killings/Excessive force (1) Attacks or killings (2) Attacks or killings/Death threats/Impunity (1)	Largely satisfactory response (2) Cooperative but incomplete response (1) Receipt acknowledged (1) No response (1 recent communication) (2)
Democratic People's Republic of Korea	1 (1 AL)	0	2 males 13 females	Death penalty safeguards (1)	No response (1)

<sup>1</sup> UA = Urgent Appeal; AL = Allegation Letter.

<sup>2</sup> HRD = Human Rights Defender.

Country	Communications sent <sup>1</sup>	Government responses received	Number and category of individuals concerned <sup>2</sup>	Alleged violations of the right to life upon which the Special Rapporteur intervened	Character of replies received
Democratic Republic of the Congo	1 (1 AL)	0	12 males	Death in custody (1)	No response (recent communication) (1)
Egypt	2 (2 AL)	0	8 males 4 females (2 minors) 9 persons	Deaths in custody (1) Excessive force (1)	No response (1 recent communication) (2)
Equatorial Guinea	1 (1 AL)	0	1 male	Death in custody (1)	No response (1)
Guatemala	4 (2 UA, 2 AL)	2 (1 UA, 1 AL)	10 males (HRD) 1 female (HRD)	Death threats (1) Attacks or killings/Death threats (1) Attacks or killings (2)	Cooperative but incomplete response (2) No response (2)
Guyana	1 (1 AL)	0	3 males	Deaths in custody (1)	No response (1)
Honduras	4 (4 AL) <sup>3</sup>	2 (2 AL)	3 males (2 HRD) 5 females (1 HRD)	Attacks or killings (4)	Largely satisfactory response (2) No response (2)
India	8 (1 UA, 7 AL) <sup>4</sup>	1 (1 AL)	44 males (3 minors, 2 pastors) 5 females (1 nun) At least 67 persons (37 demonstrators)	Death in custody (1) Excessive force (2) Attacks or killings (3) Excessive force/Impunity (1) Attacks or killings/Death in custody (1)	Largely satisfactory response (1) No response (7)

<sup>3</sup> One allegation letter was sent in a prior year, but the Government responded in the current year.

<sup>4</sup> One allegation letter was sent in a prior year, but the Government responded in the current year.

Country	Communications sent <sup>1</sup>	Government responses received	Number and category of individuals concerned <sup>2</sup>	Alleged violations of the right to life upon which the Special Rapporteur intervened	Character of replies received
Indonesia	6 (4 UA, 2 AL) <sup>5</sup>	4 (4 UA, 2 AL) <sup>6</sup>	10 males (1 HRD) 1 female	Death penalty safeguards (5) Excessive force (1)	Largely satisfactory response (2) Cooperative but incomplete response (2)
Islamic Republic of Iran	17 (16 UA, 1 AL)	2 (2 UA)	34 males (26 minors, 1 journalist, 1 refugee) 20 females (1 minor)	Death penalty safeguards (16) Death in custody (1)	Cooperative but incomplete response (2) No response (2 recent communications) (15)
Iraq	3 (1 UA, 2 AL)	0	3 males 20 persons (religious minority)	Death penalty safeguards (1) Death in custody (1) Attacks or killings (1)	No response (1 recent communication) (3)
Israel	1 (1 AL)	1 (1 AL)	4 males Over 120 persons	Violation of the right to life in armed conflict/Excessive force (1)	Receipt acknowledged (1)
Japan	1 (1 UA)	1 (1 UA)	1 male	Death penalty safeguards (1)	Cooperative but incomplete response (1)
Kenya	2 (1 UA, 1 AL)	0	7 males (1 journalist; 6 HRD)	Attacks or killings/Death threats (1) Attacks or killings (1)	No response (recent communications) (2)
Kuwait	1 (1 UA)	0	1 male	Death penalty safeguards (1)	No response (1)
Madagascar	1 (1 AL)	0	28 persons (28 demonstrators)	Excessive force (1)	No response (recent communication) (1)

<sup>5</sup> One urgent appeal was sent in a prior year, but the Government responded in the current year.

<sup>6</sup> One response received concerned three urgent appeals, including one sent in a prior year.



Country	Communications sent <sup>1</sup>	Government responses received	Number and category of individuals concerned <sup>2</sup>	Alleged violations of the right to life upon which the Special Rapporteur intervened	Character of replies received
Mexico	3 (2 UA, 1 AL)	1 (1 UA)	5 males (3 HRD) 3 females	Excessive force (1) Attacks or killings (1) Attacks or killings/Death threats (1)	Largely satisfactory response (1) No response (1 recent communication) (2)
Mongolia	1 (1 AL)	1 (1 AL)	1 male	Death in custody (1)	Largely satisfactory response (1)
Mozambique	1 (1 AL)	0	18 persons (15 males; 3 demonstrators)	Impunity/Excessive force/ Death in custody (1)	No response (1)
Niger	1 (1 AL)	1 (1 AL)	78 persons (49 males; 2 minors; 2 foreign nationals)	Violations of right to life in armed conflict (1)	Cooperative but incomplete response (1)
Nigeria	2 (2 AL)	0	3 males (2 journalists, 1 protester)	Excessive force (2)	No response (2)
Pakistan	7 (3 UA, 4 AL) <sup>7</sup>	3 (1 UA, 2 AL)	7 males (1 minor; 4 journalists) 8 females (3 minors)	Death penalty safeguards (3) Attacks or killings (1) Impunity (3)	Largely satisfactory response (1) Cooperative but incomplete response (1) Receipt acknowledge (1) No response (4)
Papua New Guinea	2 (2 AL)	0	3 males (1 minor) 5 females At least 50 persons	Death penalty safeguards (1) Impunity (1)	No response (1 recent communication) (2)
Philippines	1 (1 UA)	0	3 males (1 priest; 2 HRD) 2 females (2 HRD)	Death threats (1)	No response (1)

<sup>7</sup> One allegation letter was sent in a prior year, but the Government responded in the current year.

Country	Communications sent <sup>1</sup>	Government responses received	Number and category of individuals concerned <sup>2</sup>	Alleged violations of the right to life upon which the Special Rapporteur intervened	Character of replies received
Russian Federation	4 (4 AL)	2 (2 AL)	6 males (2 journalists; 1 lawyer and HRD) 1 female (journalist)	Deaths in custody (1) Attacks or killings/Death threats (1) Attacks or killings (1) Attacks or killings/Impunity (1)	Largely satisfactory response (2) No response (2)
Saudi Arabia	10 (10 UA) <sup>8</sup>	2 (2 UA)	73 males (7 migrant workers; 3 minors; 59 foreign nationals) 7 persons (4 minors, 3 foreign nationals)	Death penalty safeguards (10)	Allegations rejected but without adequate substantiation (2) No response (8)
Somalia	1 (1 UA)	0	1 female (minor)	Death penalty safeguards (1)	No response (1)
Sri Lanka	5 (5 AL) <sup>9</sup>	6 (5 AL) <sup>10</sup>	8 males (1 journalist) Unknown	Death threats/Deaths in custody/Impunity (1) Deaths in custody (2) Attacks or killings (1) Violations of right to life in armed conflict (1)	Largely satisfactory response (5) Cooperative but incomplete response (1) No response (1)
Sudan	6 (4 UA, 2 AL)	0	61 males (3 minors) Unknown	Death penalty safeguards (4) Death in custody (1) Excessive force/Attacks or killings (1)	No response (1 recent communication) (6)

<sup>8</sup> One urgent appeal was sent in a prior year, but the Government responded in the current year.

<sup>9</sup> Two allegation letters were sent in a prior year, but the Government responded in the current year.

<sup>10</sup> In two cases, two responses were received for one allegation letter.

Country	Communications sent <sup>1</sup>	Government responses received	Number and category of individuals concerned <sup>2</sup>	Alleged violations of the right to life upon which the Special Rapporteur intervened	Character of replies received
Syrian Arab Republic	1 (1 AL)	0	At least 25 persons	Deaths in custody/Excessive force (1)	No response (1)
United States of America	5 (4 UA, 1 AL) <sup>11</sup>	3 (2 UA, 1 AL)	9 males (1 media worker; 5 foreign nationals)	Death penalty safeguards (4) Excessive force (1)	Largely satisfactory response (1) Cooperative but incomplete responses (2) No response (2)
Uzbekistan	1 (1 AL)	1 (1 AL)	3 males	Deaths in custody (1)	Largely satisfactory response (1)
Viet Nam	2 (2 AL)	2 (2 AL)	8 males (3 demonstrators; 2 indigenous)	Deaths in custody/Attacks or killings/Impunity (1) Attacks or killings/Impunity (1)	Largely satisfactory response (1) Cooperative but incomplete response (1)
Yemen	3 (2 UA, 1 AL)	0	3 males (1 soldier)	Death penalty safeguards (3)	No response (1 recent communication) (3)
Zimbabwe	2 (2 UA)	1 (1 UA)	60 males (2 minors) 10 females Unknown	Death threats/Attacks or killings/Impunity (1) Attacks or killings (1)	Allegations rejected but without adequate substantiation (1) No response (1)

<sup>11</sup> The allegation letter was sent in a prior year, but the Government responded in the current year.

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## **Bangladesh: Death in custody of Kamal Uddin**

**Violation alleged:** Death in custody

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

**Character of reply:** Receipt acknowledged

### **Observations of the Special Rapporteur**

The Special Rapporteur looks forward to receiving a substantive response concerning the death in custody of Kamal Uddin. The Special Rapporteur would note, however, that the Government has already taken longer than the customary 90 days to respond.

**Allegation letter dated 26 May 2008**, sent with the Special Rapporteur on the question of torture

In this connection, we would like to bring to your Government's attention information we have received in relation to Mr **Kamal Uddin**, age 28, resident of North Birinchi under Ward No. 5 of Feni Pouroshobha.

According to the allegations received:

On 20 January 2008 Bangladesh Rifles (BDR) soldiers burst into the house of Mr Kamal Uddin while he had dinner with guests including Mr Abul Khayer, his wife and their 3 year old son. The BDR soldiers took Mr Kamal Uddin and Mr Abul Khayer to the courtyard. They asked Mr Kamal Uddin where the heroin was kept and began to kick, punch and beat him with iron rods while they forced Mr Abul Khayer to lie down, kicked him on his thighs with boots and hit his cheeks with rifle butts. Some BDR officers then proceeded to search the house. They also called a magistrate, who joined the operation. The BDR beat Mr Kamal Uddin severely for two and half hours and, when he screamed, put a shawl in his mouth to silence him. Moreover, a BDR soldier forced him to drink a putty powder solution. At approximately 2.30 a.m. on 21 January 2008, Mr Kamal Uddin, Mr Abdul Khayer, his wife and child were taken to the police station.

At 7 a.m. of that same day the family of Mr Kamal Uddin was informed that he and Mr Abul Khayer had been transferred to Sadar hospital, while Mr Khayer's wife and son were kept in police custody. At the hospital they found Mr Kamal Uddin's body lying on the floor of Ward No. 4 with signs of beatings on the back, chest, lower abdomen, hands and feet along with deep wounds made with iron rods on the right thigh where the skin was scraped. He also had wounds on his hands. After completion of the death certificate, police took Mr Kamal Uddin's body to his house for the burial ceremony. The burial was carried out in the presence of the police.

According to the authorities, when the BDR personnel tried to arrest Mr Kamal Uddin, he tried to run away and injured himself by running into a tree. Furthermore they indicated



that he died because he had drunk too much alcohol. However, the magistrate who was present during parts of the operation stated that Mr Kamal Uddin was slapped in order to make him talk.

On 28 January 2008, a petition (number 26/2008, filed under sections 302/34 of the Penal Code concerning the death in custody) was submitted to the Court of Chief Judicial Magistrate of Feni, following which Mr Kamal Uddin's wife was asked to withdraw the case and to find a compromise with the accused, which she reportedly refused. The Chief Judicial Magistrate recorded the evidence given by five witnesses and ordered the Officer-in-Charge of Feni Model Police Station, Mr Kamrul Hasan to file a First Information Report (FIR) and investigate the case.

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 this case. Article 7 of the International Covenant on Civil and Political Rights provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life.

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

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

In order to overcome the presumption of State responsibility for a death in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 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". These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We urge your Excellency's Government to conduct the inquiry into the circumstances surrounding the death of Mr. Uddin expeditiously, impartially and transparently, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate Mr. Uddin's family.

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 on any developments in the investigation of the case. If it has been inconclusive, please explain why.
3. Please provide the full details of any prosecutions which have been undertaken against the BDR officers allegedly responsible for Mr. Uddin's death. Have penal, disciplinary or administrative sanctions been imposed on them?
4. Please indicate whether compensation has been paid to the family of Mr. Uddin.

#### **Reply from the Government of Bangladesh dated 27 May 2008**

The Permanent Mission of the People's Republic of Bangladesh to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR) and has the honour to acknowledge receipt of the communication No. AL G/SO 214 (53-21) G/SO 214 (33-24) BGD 5/2008 dated 26 May 2008 jointly addressed by the (1) Special Rapporteur on the question of torture; and (2) Special Rapporteur on extrajudicial, summary or arbitrary executions concerning alleged arrest/torture to M. Kamal Uddin and Mr. Abul Khayer of Feni Pourashaba which ultimately led to death of Kamal Uddin.

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 and forwarded to the concerned authorities in Bangladesh for necessary inquiry and actions.

The Permanent Mission of the People's Republic of Bangladesh avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

## **Bangladesh: Death in custody of Moshiul Alam Sentu**

**Violation alleged:** Death in custody

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

**Character of reply:** Receipt acknowledged

### **Observations of the Special Rapporteur**

The Special Rapporteur looks forward to receiving a substantive response concerning the death in custody of Moshiul Alam Sentu. The SR would note, however, that the Government has already taken longer than the customary 90 days to respond.

### **Allegation letter dated 23 September 2008**

In this connection, I would like to bring to your Government's attention information I have received concerning the death of **Mr. Md. Moshiul Alam Sentu**, a representative of the Bangladesh Nationalist Party, in Barisal.

According to information received:

Mr. Md. Moshiul Alam Sentu, aged 34, was vice-president of the Central Committee of the Jatiyatabadi Chhatra Dal (student wing of the Bangladesh Nationalist Party) and president of the Barisal Metropolitan Unit of the same party. He was killed in the night from 15 to 16 July 2008 after having been arrested by a Rapid Action Battalion (RAB) team.

A written statement issued after Mr. Sentu's death by the Commanding Officer of RAB-8 in Barisal stated that Mr. Sentu was a "notorious criminal". It asserted that an RAB-8 team located in Dhaka learned from an undisclosed source about Mr. Sentu's presence between the Palashi and Katabon areas of Dhaka. The RAB team succeeded to apprehend Mr. Sentu at around 7 p.m. on 15 July 2008 notwithstanding his attempts to elude arrest. Interrogation revealed that Mr. Sentu kept large amounts of ammunition and explosives in various parts of Barisal. The RAB team decided to drive to Barisal with Mr. Sentu in order to find the ammunition caches. On 16 July at 4:15 a.m., when the RAB team arrived at Bilbobari of Kashipur in Barisal, Mr. Sentu's associates opened fire on the RAB minibus in order to free Mr. Sentu. An exchange of fire ensued which lasted for about 12 minutes. The RAB officers cordoned off the whole area and at dawn found Mr. Sentu's body in the area of the shootout along with the ammunition of his associates. The windows of the RAB microbus were broken and two officers were injured in the incident.

On 16 July 2008 at 8 a.m., Magistrate Mr. Mahbul Karim prepared an inquest report on the body of Mr. Sentu. A sub-inspector of the Kotowali Police Station of Barisal informed the inquiry that Mr. Sentu's dead body was found lying on its back in a rice paddy field. The body had one bullet inside the left thigh and two bullets in the chest that exited through the back. No blood was found at the scene. Doctors of the Forensic Medicine

Department of the Sher-e-Bangla Medical College Hospital of Barisal conducted a post-mortem. Dr. Habibur Rahman, an Assistant Professor at the Forensic Medicine Department of Sher-e-Bangla Medical College, said that while conducting the post-mortem he found a bullet in the left thigh and two bullets in the chest that exited the back. He made no further comments on the death of Mr. Sentu. His body was handed over to the family at 12 noon on 16 July 2008.

Other sources, however, provide detailed information contradicting the account of the Commanding Officer of RAB-8 in Barisal. According to these sources, Mr. Sentu's family had heard about plans to kill Mr. Sentu in a fake "shootout" already in June 2008. Two persons (whose names are on record with the Special Rapporteur) assisted Mr. Sentu's mother, Mrs. Chaina Momtaz Begum, to set up a meeting with a major of the RAB-8 in Barisal (his name is on record with the Special Rapporteur as well). On 19 or 20 June 2008, Mrs. Chaina paid the RAB-8 major BDT 300,000 (corresponding to USD 4,460) as a bribe in exchange for assurances that the RAB would not kill her son.

On 15 July 2008 Mr. Sentu and party colleagues had taken part in a dawn to dusk "hunger strike" protest in the Dhaka University campus. After the protest, Mr. Sentu and five other leaders of different party units decided to go to eat outside the university. About 7 p.m., after hiring three rickshaws, Mr. Sentu and his five companions came to the Nilkhet intersection in front of the Sir A.F. Rahman Hall of the university. A white microbus bearing the sticker of RAB-3 (Rapid Action Battalion) came from behind and signaled them to stop. As the rickshaws stopped, RAB personnel fired one round of into the air. Mr. Sentu jumped from the rickshaw and tried to escape. The RAB officers then shot Mr. Sentu in his left leg and managed to apprehend him, blindfolded him with a towel, tied his hands, took him into their vehicle and left.

One of Mr. Sentu's companions called Mr. Sentu's mother, Ms. Chaina, by mobile phone. Mrs. Chaina immediately called the office of the RAB-8 in Barisal. The RAB-8 major she had previously been in contact with confirmed the arrest of Mr. Sentu. The following morning (16 July 2008), around 6 a.m., Mrs. Chaina again called the major on his mobile phone. He told her that Mr. Sentu would be brought to Barisal, but assured her that nothing would happen to him. He requested Mrs. Chaina to come to the RAB-8 office at 9 a.m. that same day. At about 6:30 a.m., however, Mrs. Chaina heard that her son had been killed in a "crossfire" in the Bilbobari area of Kashipur of Barisal early in the morning.

Moreover, several witnesses have provided information contradicting the assertion that there was a shootout in the Bilbobari area of Kashipur of Barisal in the early morning hours of 16 July 2008. A resident of the area saw three RAB vehicles arriving at around 4 a.m. on that morning. About 15 members of the RAB got out of the vehicles and walked around the road, which had a paddy field on one side and a canal on the other. The RAB officers then blocked the road and fired about three blank shots into the air. They began to continually open and close the doors of their vehicles. Then the RAB officers carried something (which subsequently turned out to be Mr. Sentu's body) out of the vehicle and put it in the paddy field. After a few minutes there were more gunshots. Later on, RAB

members brought ammunition from their vehicles and scattered them on the ground. Another witness asserts that she witnessed the RAB members firing blank shots from their guns at about 4 a.m. None of the neighbors heard any noise that could be related to an ambush and a shootout, but only blank gunshots.

Several witnesses who saw the rice paddy where Mr. Sentu's body was found state that there was no damage to the field suggesting that there had been a fight between two groups. They also state that there was no blood around Mr. Sentu's body, only two towels. One witness with long experience in the military asserts that Mr. Sentu had received two bullets in the chest from very close range and a bullet in the left leg shot from a few feet away. Other witnesses allege that there was serious bruising about the neck and the right arm of the deceased.

At about 2:30 p.m. on 16 July 2008, a large number of RAB and police accompanied by a Commissioner of the Barisal City Corporation brought the mortal remains of Mr. Sentu to his home. The RAB and police observed the burial, leaving the family home only at 5 p.m. Their presence was perceived as intended to threaten and intimidate relatives and neighbors in order to prevent discussion of the incident.

While I do not wish to prejudge the accuracy of these reports, I would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights ("ICCPR") provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved (see, e.g., Principles 4 and 9 of the UN Basic Principles on the Use of Firearms by Law Enforcement Officials).

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

In the light of the above principles, and particularly of the heightened level of diligence required from States in protecting the right to life of an individual in custody, I would like to recall previous communications between your Excellency's Government and this mandate. I refer to my allegation letter concerning 27 specific cases (A/HRC/4/20/Add.1, pages 37-49), my allegation letter of 30 October 2006 in the case of Abul Hawladar and Md. Shamim, and my communication of 12 January 2007, drawing your Government's attention to reports that the "RAB is [...] responsible for the deaths of 367 people between June 2004 (when it was first created) and October 2006". Many of the deaths in connection with RAB operations which I have brought to your Government's attention reportedly resulted from the exact scenario which the Commanding Officer of RAB-8 in Barisal describes in the case of the death of Mr. Sentu (see, e.g., your Government's reply dated 22 February 2007 to my communication dated 30 October 2006 in the case of Abul Hawladar and Md. Shamim). A "notorious criminal" or suspect was apprehended and asked to guide the police to a location where firearms were hidden, whereupon his accomplices opened fire on the police, ultimately leading to the suspects' death in the crossfire. Based on the information thus far received - and particularly in the light of the detailed allegations received in the present case - I continue to find this pattern in which suspects are routinely reported to have died in a "crossfire" indicative of extrajudicial executions.

I would therefore again 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, and to hold accountable, disciplinarily and criminally, those who fail to comply with these Principles and thereby violate the right to life.

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

1. Are the facts alleged in the summary of the cases accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of any criminal investigation or other inquiries which may have been carried out in relation to the killing of Mr Sentu. Please explain the measures taken to ensure that any investigation is impartial and independent, as well as the measures taken to ensure that witnesses and family members of the victim are not intimidated. Please provide the full details of any prosecutions which have been undertaken. If no inquiries have taken place or if they have been inconclusive please explain why.
3. In its above mentioned communication dated 22 February 2007 your Government stresses that "should members of the RAB be found to have indulged in illegal activity, appropriate action is taken. There are several examples of punishment or legal proceedings against them for illegal activities". I would appreciate receiving more information on these examples.

4. I would like to reiterate my request (A/HRC/8/3/Add.1, page 40) to your Excellency's Government as to why the practice of making suspects accompany police on follow-up raids has not been discontinued if it provides the explanation for hundreds of deaths.

#### **Reply from the Government of Bangladesh dated 6 October 2008**

The Permanent Mission of the People's Republic of Bangladesh to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR) and has the honour to acknowledge receipt of the latter's communications No. AL G/SO 214 (33-24) BGD 7/2008 dated 23 September 2008 addressed by the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning alleged death of Mr. Md Moshuiul Alam Sentu, a representative of the Bangladesh Nationalist Party in the district of Barisal.

The Permanent Mission has the honour to assure that the contents of the communication have been duly noted and forwarded to the concerned authorities in Bangladesh for necessary inquiry and actions.

#### **Bolivia: Implementación de la Ley sobre Resarcimiento Excepcional a Víctimas de la Violencia Política en Periodos de Gobiernos Inconstitucionales**

**Violación alegada:** Impunidad, compensación y los derechos de las víctimas

**Persona objeto del llamamiento:** Numero desconocido de personas

**Carácter de la respuesta:** Respuesta en gran parte satisfactoria

#### **Observaciones del Relator Especial**

El Relator Especial agradece al Gobierno de Bolivia por la información que ha proporcionado relativa a la implementación de la Ley sobre Resarcimiento Excepcional a Víctimas de la Violencia Política en Periodos de Gobiernos Inconstitucionales El Relator Especial preguntará que se le mantega informando del progreso de la implementación.

**Carta de alegación del 3 de julio de 2008,** mandado con el Relator Especial sobre la tortura

En este contexto, quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación a la cuestión de compensación a las víctimas de tortura y otras violaciones de los derechos humanos.

En marzo de 2004, el Gobierno de su Excelencia aprobó la Ley 2640 sobre Resarcimiento Excepcional a Víctimas de la Violencia Política en Periodos de Gobiernos Inconstitucionales ("la Ley"), por medio de la cual se compensaría a víctimas directas y sus familiares, en caso de fallecimiento de la víctima, por hechos ocurridos entre 1964 y 1982. Los hechos resarcibles son la muerte, desaparición forzada, tortura, detención arbitraria, exilio, lesiones y persecución. La Ley creó también la Comisión Nacional para el Resarcimiento a Víctimas de la Violencia

Política (“CONREVIP”), la cual comenzó a trabajar en mayo de 2007 y es presidida por el Ministerio de Justicia. Sin embargo, la CONREVIP no cuenta con el apoyo institucional ni con los suficientes recursos económicos para poder ocuparse de la calificación de todos los expedientes, lo que restringe su trabajo. De las 7.911 solicitudes presentadas, 6.221 han sido depuradas y podrían ser procedentes. No obstante, con fecha de 25 de marzo, solamente 80 personas habían sido notificadas, siendo ellas familiares de las víctimas de muerte y desaparición forzada. De cualquier forma, los plazos establecidos para emitir resoluciones y ejecutar el resarcimiento vencieron a finales de 2007. A la fecha, no se ha procedido a los pagos u otros beneficios establecidos en la Ley.

Uno de los principales obstáculos para el resarcimiento de las víctimas es que, de acuerdo con la Ley, el Estado sólo dispone del 20% del monto total requerido para el pago del resarcimiento, por lo que el 80% deberá ser cubierto por donaciones del sector privado o extranjero y de organismos internacionales.

En este sentido, quisiéramos llamar la atención del Gobierno de su Excelencia sobre el artículo 14 de la Convención contra la Tortura, el cual afirma que los Estados parte tienen la obligación de garantizar que las víctimas de tortura obtengan una reparación, así como una indemnización justa y adecuada. Me gustaría también reiterarle que el párrafo 6 de la Resolución 2005/39 de la Comisión de Derechos Humanos “destaca que la legislación nacional debe garantizar que las víctimas de la tortura o de otros tratos o penas crueles, inhumanos o degradantes obtengan reparación y reciban una indemnización justa y adecuada, así como servicios de rehabilitación médico social apropiados y, a este respecto, alienta la creación de centros de rehabilitación para las víctimas de la tortura.”

En su informe al Consejo de Derechos Humanos A/HRC/4/33, el Relator Especial señala que la Convención contra la Tortura fija una serie de obligaciones encaminadas a castigar a los autores, prevenir la tortura y prestar asistencia a las víctimas de actos de tortura. El artículo 14 específicamente reconoce el derecho de la víctima de un acto de tortura a la reparación y debe ser interpretado teniendo en cuenta los principios y directrices básicos sobre el derecho de las víctimas de violaciones manifiestas de las normas internacionales de derechos humanos y de violaciones graves del derecho internacional humanitario a interponer recursos y obtener reparaciones.

En el caso *Guridi c. España*, el Comité contra la Tortura, determinó que, pese al pago, se había producido una violación del artículo 14, al considerar que la reparación debía cubrir todos los daños ocasionados a la víctima, en particular la restitución, la indemnización y la rehabilitación de la víctima, así como medidas para garantizar la no repetición de las violaciones, teniendo siempre en cuenta las circunstancias de cada caso.

Los Estados se comprometen a establecer instituciones adecuadas (instituciones principalmente judiciales, por ejemplo, de índole penal, civil, constitucional, o tribunales especiales de derechos humanos y también instituciones nacionales de derechos humanos y organismos de rehabilitación para los casos de tortura) que permitan obtener reparación a las víctimas de la tortura.



Quisiéramos hacer referencia al Pacto Internacional de Derechos Civiles y Políticos, cuyo artículo 2.3 garantiza el derecho a la protección y recurso efectivos contra todo acto de discriminación, incluidos bajo el artículo 6 que afirma que “b) La autoridad competente, judicial, administrativa o legislativa, o cualquiera otra autoridad competente prevista por el sistema legal del Estado, decidirá sobre los derechos de toda persona que interponga tal recurso, y desarrollará las posibilidades de recurso judicial.”

Asimismo, quisiéramos llamar la atención del Gobierno de su Excelencia sobre los Principios relativos a una eficaz prevención e investigación de las ejecuciones extrajudiciales, arbitrarias o sumarias, resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social. En particular, el principio 20 establece que las familias y las personas que estén a cargo de las víctimas de ejecuciones extrajudiciales, arbitrarias o sumarias tendrán derecho a recibir, dentro de un plazo razonable, una compensación justa y suficiente. En caso de que sus investigaciones apoyen o sugieren la exactitud de las alegaciones mencionadas más arriba, quisiera instar a su Gobierno que adopte todas las medidas necesarias para el resarcimiento a las víctimas de tortura o ejecuciones.

Es nuestra responsabilidad de acuerdo con los mandatos que nos ha entregado el Consejo de Derechos Humanos, y esta 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?
2. ¿Fue presentada alguna queja?

### **Respuesta del Gobierno de Bolivia de fecha 8 de septiembre de 2008**

El gobierno proporciono la información siguiente:

#### **(a) Conformación de la CONREVIP**

En primera instancia la Comisión Nacional para el Resarcimiento a Víctimas de Violencia en su artículo 12 establece la composición de la CONREVIP que está confirmado por un representante del Ministerio de Hacienda, dos representantes de las Comisiones de Derechos Humanos del Poder Legislativo, un representante de la conferencia Episcopal de Bolivia y un representante de la Central Obrera de Bolivia, quienes pronunciarán resolución expresa y motivada, acordada mediante el voto de por lo menos dos tercios de sus miembros, conforme lo establece el artículo 19 de la Ley No. 2640. Asimismo el art. 12 inc. I) del Decreto Supremo Nro. 28015 establece que las sesiones serán validas con la mayoría de sus miembros y adoptaran sus decisiones con la mayoría de los miembros presentes en cada sesión. En este sentido el funcionamiento y las decisiones de la CONREVIP no sólo depende del Ministerio de Justicia.

**(b) Avance del Trabajo de la CONREVIP**

En este marco legal, la CONREVIP en cumplimiento de la Ley N° 2640 y de su Decreto Reglamentario N° 28015, inicio el procedimiento administrativo, recién a partir del 1 de marzo de 2005, con la recepción de solicitudes provisionales de eventuales beneficiarios del resarcimiento excepcional posteriormente en fecha 22 de noviembre de 2005: prosiguió con la recepción de solicitudes definitivas además de la prueba correspondiente, habiendo registrado un total de 6727 solicitudes, posteriormente en fecha 05 de Diciembre de 2005 se promulgó la Ley 3275, por la que se abre un nuevo plaza para el registro de solicitudes que abarca del 12 de enero al 7 de abril de 2006, por lo que adicionalmente se recibieron 1236 solicitudes sumando un total de 7563 solicitudes.

Asimismo de 7963 solicitudes, se depuraron 1860 solicitudes por doble registro, falta de declaración jurada y falta de presentación de documentos, quedando registrados oficialmente 6221 solicitudes. (Este trabajo se realizó desde enero del 2007 hasta noviembre 2007).

La clasificación finalizada de los expedientes por Hechos Resarcibles corresponde al siguiente detalle: Desaparición Forzada; 63 solicitudes, Muerte: 233 solicitudes, Exilio: 1451 solicitudes, Detención: 3521 solicitudes, Persecución: 816 solicitudes, Tortura: 17 solicitudes, lesiones; 120 solicitudes, siendo un total de 6221 expedientes en total.

Esta clasificación por los hechos resarcibles de persecución, detención y exilio, son múltiples es decir que en cada solicitud existe mas de un hecho resarcible solicitado.

Se delega mediante Resolución Ministerial 026108, de fecha 05 de marzo del presente a diferentes reparticiones del Ministerio de Justicia a nivel nacional la facultad de notificar con las Resoluciones a las víctimas solicitantes.

A partir del 5 de noviembre la Comisión Nacional tiene 60 días hábiles para emitir resoluciones expresas y motivadas para cada caso. (Hasta el 30 de enero de 2008), se emitieron aproximadamente el 20% de Resoluciones expresas y motivadas de los diferentes hechos resarcibles. Se han recibido 152 solicitudes de reconsideración de los diferentes hechos resarcibles.

En cuanto a los hechos resarcibles de Desaparición Forzada se han notificado en primera instancia 44 Resoluciones, de Muerte se han notificado 139 Resoluciones, Persecución Política Sindical 64 Resoluciones y 79 con resolución de reconsideración de los distintos hechos resarcibles, este hecho es producto a que los solicitantes no se han apersonado a las oficinas de CONREVIP o a las delegaciones en el interior del país para notificarse.

El Ministerio de Justicia ha realizado todas las acciones necesarias tendientes al cumplimiento de la ley 2640, pese a que no se ha cumplido, con el 100% del trabajo el mismo se debe a la falta de mayor cantidad de recursos humanos en el equipo de apoyo técnico y a la imposibilidad del trabajo a tiempo completo de la mayoría de los miembros que conforman la CCNREVIP, pese a ello se sigue adelante con este trabajo para lo cual se ha tomado medidas internas tendientes a la agilización del proceso de calificación.

Se debe aclarar que el resarcimiento económico se hará efectivo una vez emitida las Resoluciones finales que determine si es procedente la solicitud de resarcimiento excepcional, elaborándose un Decreto Supremo que determine la lista oficial de beneficiarios y el monto que recibirán las víctimas, hecho que es valorado en consideración al grado de violencia política sufrida por la víctima, los hechos resarcibles solicitados y las agravantes si fuera el caso, por lo que se requiere agotar todas las vías administrativas (Resolución de primera instancia y reconsideración) para establecer la lista oficial de los beneficiarios y el monto individual de resarcimiento.

Asimismo se debe ser enfático que la Ley 2640 en su disposición transitoria segunda establece que la CQNREVIP se extinguirá de pleno derecho concluida que sea su labor para la que fue creada.

**(c) Acciones del Ministerio de Justicia para conseguir financiamiento del 80%**

En cumplimiento de lo establecido por el art. 16 de la Ley 2640, se ha elaborado un proyecto para gestionar financiamiento que garantice el 80% del pago a los beneficiarios de la Ley, asimismo desde el mes de agosto del 2006 se ha gestionado la Cooperación Internacional, las instituciones a las que se ha solicitado el financiamiento son: Alto Comisionada de las Naciones Unidas para los Derechos Humanos en Bolivia, Cooperación Alemana GTZ, Banco Interamericano de Desarrollo, USAID. Unión Europea, Banco Mundial, Embajada de Canadá, Embajada de Venezuela y también se ha solicitado la consecución del financiamiento para el proyecto a través del Viceministerio de Inversión Pública y Financiamiento Externo, institución encargada de establecer los convenios internacionales de cooperación, se debe señalar al respecto que el BANCO INTERAMERICANO DE DESARROLLO, USAID, UNION EUROPEA y el Viceministerio de Inversión Pública y Financiamiento Externo han desestimado la cooperación para este rubro y el resto de los organismos de cooperación no han remitido cartas de respuesta a lo solicitado, La última versión de este proyecto ha sido modificada y se encuentra en la Mesa de Negociaciones ante el Viceministerio de Inversión Pública y Financiamiento Externo (VIPFE), a objeto de insistir en la gestión del financiamiento de la cooperación externa.

**(d) Conclusiones**

En este sentido de acuerdo a lo manifestado por el Ministerio de Justicia se tiene que habría realizado todas las acciones necesarias para la culminación del trabajo, pero factores como la falta de una mayor cantidad de recursos humanos y el trabajo a medio tiempo de la mayoría de los miembros de la Comisión, no se ha podido culminar el proceso de calificación de los expedientes, por lo que el Ministerio de Justicia se ha reunido con los 5 miembros de la Comisión para agilizar el trabajo de calificación y revisión de los expedientes.

Por otra parte el ministerio de Justicia ha informado que viene gestionando el apoyo necesario de instituciones nacionales e internacionales para lograr el financiamiento del 80% de recursos faltantes para el resarcimiento económico a las víctimas de violencia política.

En este marco el Ministerio de Justicia informa que una de las gestiones que estaría realizando es con la oficina del Alto Comisionado para los Derechos Humanos para contar con mayor cantidad de Recursos Humanos en el equipo técnico de apoyo a la CON REVIP, con la finalidad de concluir la calificación de los diversos hechos resarcibles a la brevedad posible.

En relación a, si se ha presentado alguna queja sobre el resarcimiento a las víctimas de violencia política, el Ministerio de Justicia informa que al presente se tiene una denuncia interpuesta ante la Fiscalía General de la República por Jorge Aguilar Anrez y Nerhedine Nassif Renjjife Torriani, por la presunta comisión de los delitos de incumplimiento de deberes, desobediencia a la autoridad y uso indebido del 20% destinado por la Ley 2840, denuncia falsa y temeraria que ha sido respondida ante la Fiscalía General, remitiendo la información correspondiente y la certificación presupuestaria del 20% de recursos que se encuentra inscrito en el Ministerio de Hacienda y que se adjunta para fines consiguientes.

Es cuanto se tiene a bien informar, para fines consiguientes.

### **Brazil: Killing of human rights defender Manoel Mattos**

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

**Subject(s) of appeal:** 1 male (HRD)

**Character of reply:** Largely satisfactory response

### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of Brazil regarding the killing of Manoel Mattos and regarding the Government's efforts to identify, investigate and prosecute "death squad" members. The Special Rapporteur looks forward to receiving the report of the investigation into Mr. Mattos' death, including any investigation conducted at the federal level of the Government. The Special Rapporteur also looks forward to receiving information about the prosecution of each alleged perpetrator and about any sentences imposed.

**Allegation letter dated 30 January 2009**, sent with the Special Rapporteur on the promotion and protection of freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the killing of Mr. **Manoel Mattos**, vice-president of the workers' party in the state of Pernambuco and member of the local bar association's human rights commission. Mr. Manoel Mattos was the subject of a communication sent by the then Special Representative of the Secretary-General on the situation of human rights defenders on 1 December 2006. No response from the Government of Your Excellency has been received.

According to the information received:

On 24 January 2009, Mr. Manoel Mattos was reportedly shot dead at his home by two unidentified men. Mr. Mattos was the subject of repeated death threats following his testimony at a federal parliamentary enquiry into death squads in the north-east of Brazil, revealing how these armed groups operated in the border area between the states of Pernambuco and Paraíba. He notably produced a document, in collaboration with the prosecutor's office, in which he exposed over alleged 100 homicides by member of local death squads. Mr. Mattos also delivered a testimony to Ms. Asma Jahangir, the then UN Special Rapporteur on Summary, Arbitrary and Extra-Judicial executions during her visit to Brazil in 2003.

It is reported that despite the repeated threats, the protection provided by the federal police to Mr Santos was withdrawn, reportedly because it was deemed to be no longer necessary.

Grave concern is expressed that the killing of Mr. Manoel Mattos may be linked to his non-violent activities in defense of human rights.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer Your Excellency's Government to the fundamental principles applicable under international law to this case. The International Covenant on Civil and Political Rights ("ICCPR") provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.) In Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), the Human Rights Council reiterates that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions as stated in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions". In particular, we would like to refer your Excellency's Government to principles 4 which obliges Governments to guarantee effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would like also to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration on Human Rights Defenders:

- Article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- Article 12 paras. 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged on behalf of Mr. Mattos?
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 will be undertaken. Will penal sanctions be imposed on the alleged perpetrators?

5. Please indicate the reason(s) why the police protection was removed despite the repeated death threats against Mr. Mattos. Will this decision be the object of an inquiry and if so will those deemed to be responsible be held accountable?

**Reply from the Government of Brazil dated 7 April 2009**

I refer to the document n.34 dated 02 February 2009, which forwards correspondence from the UN Special Rapporteur on Extra judicial, Summary and Arbitrary Executions, Philip Alston, of the Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression, Frank La Rue, and of the Special Rapporteur on the situation of the Human Rights Defenders, Margaret Sekaggya, requesting information concerning the killing of Manoel de Mattos. Our Secretariat contacted the Federal Police and the Secretariat for Public Security and Social Defense of the State of Paraíba. As per the information received; please find below the answers to the questions made by the Special Rapporteurs:

2. The answer to the first question - on the accuracy of the facts denounced - is partially affirmative. Manoel Mattos was receiving death threats because of the denouncing and the investigation that he was conducting regarding a death squad, composed of policemen operational in the cities of Itambé and Pedras de Fogo, on the border between the States of Pernambuco and Paraíba. This attorney, then, counted on the protection of the Federal Police until March 31, 2004, when the service was suspended due to disagreements between him and the policemen who were protecting him. These policemen alleged that Matzos had disobeyed the protection rules established by the relevant protection scheme.

3. The decision to suspend the protection afforded to Mr. Manos was a result of administrative procedures established by the Federal Police. Therefore, the statement that the protection was suspended because it was deemed unnecessary is not accurate. This fact also gives an answer to the fifth question proposed. Furthermore, worthy mentioning that, since 2006, when the Human Rights Defenders' Protection Program was implemented in the State of Pernambuco, the mentioned defender has never requested his inclusion in this program.

4. In response to the second and the third questions, the investigation on this killing is being conducted by the Civil Police of Paraíba, where the homicide took place, with the cooperation of the Federal Police and the Prosecutor's Office. The inquiry number 002.2009.000127-8 was established before the Paraíba's State Court of Justice, which is carried out under confidentiality (secret of justice). Worthy underscoring that the Human Rights Defense Council of the Pernambuco State has filed a request of federalization of the investigation to the Attorney-General of the Republic. It is then incumbent to the Attorney General of Republic to submit a request, before the Superior Court of Justice (STJ) the competence, from the Paraíba's state Court of Justice to the Federal counterpart.

5. Concerning the perpetrators - object of the forth question - the main involved in the crime have already been identified and criminally charged. Four of them are under arrest and one of them is under an arrest warrant issued. Finally, it is worth informing on the efforts that have been made in order to promote more integration between the Federal Police and the State Secretariats for Security and Social Defense of Paraíba and Pernambuco, in order to identify all the members of the "death squad". In this regard, it is possible to mention the results of the

investigations in the area conducted by the Federal Police: “Operação Alcaides?”, which repressed, among other crimes, the involvement of political leaders in the region of Aguas Belas with the hired killing; “Operação Aveloz”, which has curbed the activity of the death squads in the city of Caruaru; and the “Operação Exodus”; which has dismantled the action of armed militias involving civil and military policemen in robbery and murdering in the city of Olinda.

**Brazil: Criminalization of the *Movimento dos Trabalhadores Rurais Sem Terra***

**Violation alleged:** Deaths due to 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; Impunity

**Subject(s) of appeal:** 2 males

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Allegation letter dated 28 August 2008**, sent with the Special Rapporteur on the promotion and protection of freedom of opinion and expression and the Special Rapporteur 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 the **criminalization of the *Movimento dos Trabalhadores Rurais Sem Terra*** (MST - Landless Workers Social Movement), a non-governmental organization dedicated to the defense of land rights for peasant workers in Brazil, as well as concerning the killing of another MST leader, **Eli Dallemole**. Mandate holders have sent nine previous communications to your Government regarding members of the MST since 2005. While we welcome the response from your Government on 9 January 2007 regarding a communication sent on 11 October 2006, we are concerned that no other responses have been received, especially given that five of the nine communications sent have been in relation to killings of MST members in the last two years.

According to information received:

On 25 June 2007, the Superior Council of the Public Prosecutor’s Office of the State Rio Grande do Sul opened administrative procedures into the activities of the MST. On 3 December 2007, the Superior Council of the Public Prosecutor’s Office unanimously approved a report which expressed the intention to dissolve the MST and to declare it illegal; to suspend marches and other mass demonstrations of the MST; to investigate organized crime, as well as the use of public funds and official aid in criminal and administrative spheres, among MST leaders and members; to work towards the closure of MST settlements near Coqueiros Farm and settlements being used as bases to invade private properties; to conduct electoral investigations in areas where there are MST settlements and cancel electoral cards if any irregularity is observed.



A complaint was also filed against MST leaders of settlements near Coqueiros Farm in the municipality of Coqueiros do Sul by the Federal General Attorney's Office. The complaint was based on the arguments of a landowner in Coqueiros do Sul regarding the Homeland Security Law. It accused the MST of wanting to change the Rule of Law and undo public order, and of having ties with guerrilla groups such as the Fuerzas Armadas Revolucionarias de Colombia (FARC). However, in 2007, a Federal Police investigation found that there were no ties between the MST and FARC or any other guerrilla groups. Moreover the Homeland Security Law was passed during the military dictatorship in Brazil, met subsequent amendments and criminalizes prodemocracy behavior such as forming anti-dictatorship associations, and advertising change of the existing political order.

This year, hundreds of people have been ill-treated in police searches forcefully evicted from MST settlements. The most recent eviction took place on 29 July 2008 when 43 families were relocated to a potentially dangerous area.

The legal actions against the MST continue to be paralleled by killings of MST leaders perpetrated by gunmen suspected to be linked to associations of landholders. On 30 March 2008, around 7.30 p.m., masked men entered the home of Eli Dallemole, a leader of the MST in Paraná, at the Assentamento Libertaçao Camponesa) in Ortigueira in Paraná State, and killed him in front of his wife and children. This murder had been preceded by repeated threats during the last two years and a previous assassination attempt. A man known as "Zezinho" has been arrested on suspicion of being one of the gunmen. Zezinho is the commander of an armed group financed by large landowners.

On 21 October 2007, an armed militia had killed another MST leader, Valmir Mota de Oliveira, in Santa Tereza do Oeste, Paraná State (see our communication to your Government of 26 October 2007 which regrettably remains without a reply as of today).

Concern is expressed that the legal action taken against the MST may be related to its activities in the defense of the rights of the landless rural workers. We are also concerned, that such legal action against MST increases the vulnerability of its leaders and members to armed violence, including assassinations by hired gunmen.

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

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

- Article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- Article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.
- Article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We should also 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 MST leaders and membership, 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 provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

We would further like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests". In her 2004 report (A/59/401), the then Special Representative of the Secretary-General on the situation of human rights defenders made a number of recommendations on good practices on NGOs regulations. We would particularly encourage your Excellency's Government to implement the following recommendations of paragraph 82 of the report:

"(s) Dissolution. Actions by the Government against NGOs must be proportionate and subject to appeal and judicial review. Administrative irregularities or non-essential changes in the specifics of an organization should never be considered as sufficient grounds for closing down an organization".

Regarding the killing of Eli Dallemole, we would like to bring to your attention the Government's duty to thoroughly, promptly and impartially investigate suspected cases of extrajudicial execution, and to prosecute and punish all violations of the right to life. As reiterated by the Human Rights Council in resolution 8/3 on "The Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), 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 Committee (see 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 6 of the International Covenant on Civil and Political Rights.

With respect to the prior death threats against Eli Dallemole, and the continuing death threats to other members of the MST leadership, we would like to bring to your attention that Article 6(1) of the ICCPR requires States to provide effective protection to those whose lives are in danger. As expressed in Principle 4 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, this requires that individuals in danger of such executions, including those who receive death threats, be guaranteed effective protection through judicial or other means. We urge your government to immediately take all necessary steps, as required under international law, to protect the right to life of the members and leaders of the MST.

We urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide information on how the right to due process as established in international norms and standards was respected in the Superior Council of the Public Prosecutor's Office's findings regarding the MST.
3. Please provide details on the protective measures in place to ensure the physical and psychological security of all members of the MST.
4. Please provide information on the investigations and criminal proceedings regarding the murders of Eli Dallemole and Valmir Mota de Oliveira.

## **Cameroun: Mort de 139 personnes au cours de manifestations, en février 2008**

**Violation alléguée:** Usage excessif de la force par des forces de sécurité; Impunité

**Objet de l'appel:** 139 personnes

**Caractère de la réponse:** Accusé de réception

### **Observations du Rapporteur Spécial**

Le Rapporteur Spécial espère recevoir une réponse substantielle au sujet du décès de 139 personnes au cours de manifestations qui ont eu lieu entre le 25 et le 29 Février 2008.

**Lettre d'allégation envoyée le 13 mars 2009**, conjointement avec le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression

A cet égard, nous souhaiterions attirer l'attention de votre Gouvernement sur les affrontements qui ont opposés les forces de police camerounaises à des manifestants, entre le 25 et le 29 février 2008. Selon les informations que nous avons reçues, 139 personnes auraient perdues la vie au cours de ces manifestations. Un projet de modification constitutionnel, conjugué à la hausse des prix des carburants et des denrées alimentaires, aurait poussé une partie de la population à manifester. Au total, 31 villes auraient été touchées par ces manifestations.

Selon les informations reçues:

L'armée et des forces spéciales d'intervention ont été appelées en renfort de la police afin de conduire certaines opérations de maintien de l'ordre. Ceux-ci ont utilisés des armes telles que des camions lance eau, du gaz lacrymogène et des grenades assourdissantes. Plusieurs intervenants possédaient également des matraques, des boucliers et des armes à feu. Certains témoignages font état de l'utilisation de pistolets et de mitrailleuses légères, positionnées sur des pick-up, notamment dans la région de Bonabéri et de Kumba. Ces armes ont été régulièrement utilisées à l'encontre de manifestants. Plusieurs individus ont été tués par des forces de sécurité, sans sommations préalables et de manière indiscriminée.

Le 25 février 2008, **un décès par balle** est survenu au cours d'un affrontement entre des gendarmes et certains manifestants à Douala. Après que des gaz lacrymogènes furent lancés sur des manifestants qui brûlaient des pneus, une femme gendarme a été désarmée par la foule et brièvement séquestrée. Lorsque des renforts sont arrivés, les forces de l'ordre ont tiré à balle réelle sur la foule, bien qu'ils aient eu les mains en l'air et qu'ils aient déjà relâché la gendarme.

Une **vingtaine de personnes** ont perdu la vie lors d'une marche pacifique regroupant des milliers de jeunes, qui avait pour objectif la rencontre du gouverneur de la province du Littoral, le 27 février 2008. Après avoir été « escortés » par le sous-préfet de l'arrondissement de Daouala IV e jusqu'au pont du Wouri, les forces de l'ordre ont attaqué les manifestants. Des gaz lacrymogènes furent lancés dans la foule, aidés par des hélicoptères déployés pour cette occasion. Des balles réelles ont également été tirées par des membres des forces de l'ordre. Certains manifestants ont été arrêtés, d'autres se sont jetés à l'eau afin d'éviter les gaz, les balles et les piétinements. Plusieurs se sont noyés

faute de savoir nager. Les jeunes arrêtés furent victimes de mauvais traitement; les soldats leur ont marché dessus et les ont frappés avec les pieds et divers instruments, tel que crosses, matraques.

Le 27 février 2008, **cinq jeunes** ont tués par balles à Bafoussam, par des forces de l'ordre. Ceux-ci ont répondu à des jets de pierres lancés par les victimes. Le même jour, à Kumba, alors qu'aucune manifestation n'avait lieu, des militaires ont ouvert le feu sur des personnes marchant en groupe de plus de trois, ce qui a causé la mort de trois individus.

Des militaires et des éléments du Groupement spécial d'intervention, patrouillant le secteur du quartier de Ndogpassi 3, à Douala, auraient tirés indistinctement sur plusieurs individus le 27 février 2008, avant d'atteindre mortellement deux personnes.

Les causes de décès de certaines victimes des affrontements auraient été dissimulées. Peu de certificats de genre de mort, qui permettent d'obtenir un certificat de décès, ont pu être obtenus par les familles des victimes. Certains documents seraient également erronés et présenteraient les causes de décès comme de simples traumatismes.

Sans vouloir à ce stade nous prononcer sur les faits qui nous ont été soumis, nous souhaiterions 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.

Nous aimerions 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.

Nous voudrions également rappeler au Gouvernement de votre Excellence l'applicabilité dans de telles situations des Principes de base sur le recours à la force et l'utilisation des armes à feu par les responsables de l'application des lois, résolution 1989/65 du 24 mai 1989 du Conseil économique et social. Ceux-ci 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 délimitant 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. Nous souhaiterions 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.

Par ailleurs nous prions votre Gouvernement de diligenter une enquête sur les morts qui ont eu lieu entre le 25 et le 29 février 2008, au cours des affrontements entre les forces de police camerounaises et les manifestants, et de traduire les responsables en justice s'il est déterminé que les forces de sécurité ont eu recours à un usage excessif de la force, 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. Je souhaiterais également rappeler à votre Gouvernement que ces principes incluent le devoir d'effectuer une autopsie adéquate, impartiale et indépendante, afin de déterminer les causes de décès des victimes potentielles. La famille du défunt a également le droit d'être avisée de la cause du décès révélée par l'enquête.

Nous souhaiterions également appeler le Gouvernement de votre Excellence à prendre toutes les mesures nécessaires pour s'assurer que le droit de réunion pacifique tel qu'énoncé à l'article 21 du Pacte International sur les droits civils et politiques, qui prévoit que "Le droit de réunion pacifique est reconnu. L'exercice de ce droit ne peut faire l'objet que des seules restrictions imposées conformément à la loi et qui sont nécessaires dans une société démocratique, dans l'intérêt de la sécurité nationale, de la sûreté publique, de l'ordre public ou pour protéger la santé ou la moralité publiques, ou les droits et les libertés d'autrui", soit respecté.

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

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts? Si tel n'est pas le cas, quelles enquêtes ont été menées pour conclure à leur réfutation ?
2. Quelles sont les branches des forces de sécurité impliquées au cours de ces événements? Quels ordres ou instructions avaient-elles reçus, notamment quant à l'usage de la force.
3. Veuillez fournir toute information, et éventuellement tout résultat des enquêtes menées, investigations judiciaires et autres menées en relation avec les faits. Si de telles enquêtes n'ont pas été menées, veuillez expliquer pourquoi ?
4. Si les allégations sont avérées, veuillez fournir toute information sur les poursuites et procédures engagées contre les auteurs ou responsable de la violence.

### **Réponse du gouvernement camerounais du 30 mars 2009**

J'ai l'honneur d'accuser bonne réception de votre correspondance visée en marge qui a aussitôt été transmise aux Autorités Camerounaises compétentes pour suite à donner.

**China: Violence during demonstrations in the Tibet Autonomous Region  
and surrounding areas**

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

**Subject(s) of appeal:** Unknown number of persons

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of China with respect to the events of March 2008. However, the Special Rapporteur notes that the Government still has not provided detailed information about the deaths of the 18 persons referred to in the Government's response.

Specifically, the Special Rapporteur looks forward to receiving information on the investigations of each of those deaths, including the role, if any, of police and security forces, and the measures police and security forces took to avoid the loss of life. He would also appreciate receiving a copy of the report by the Aba police, published by the national police, regarding the Aba police officers' firing of weapons and injury of rioters on 16 March 2008. The Special Rapporteur would also request information from the Government about any independent investigation into the events of 16 March 2008. Finally, the Special Rapporteur looks forward to receiving reports of the investigations that were still in progress at the time of the Government's response.

**Urgent appeal dated 20 March 2008**, sent with the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the question of torture and the Special Rapporteur on the situation of human rights defenders

In this connection, we would like to bring to your Government's attention information we have received with regard to **reports of violence during demonstrations in the Tibet Autonomous Region and surrounding areas in China, killings of an unconfirmed number of people and arrests of hundreds of demonstrators.**

According to allegations received:

On 10 March 2008, demonstrations led by monks were organised demanding greater freedom of religion and the release of monks detained since October 2007. It is reported that 300 monks from Drepung Monastery, near Lhasa, proceeded with a peaceful march towards the Potala Palace when they were stopped by the police. It is believed that around **60 monks** suspected to be the leaders of the protest were arrested by the Public Security Bureau (PSB).

Sixteen people, including 15 visiting students monks in Sera Monastery, identified as **Lobsang**, aged 15, **Lobsang Thukjey**, aged 19, **Tsultrim Palden**, aged 20, **Lobsher**, aged 20, **Phurdan**, aged 22, **Thubdron**, aged 24, **Lodroe**, aged 30, and

**Lobsang Ngodrub**, aged 29, from Onpo Monastery, Sichuan Province; **Zoepa**, aged 30, from Mangye Monastery; **Trulku Tenpa Rigsang**, aged 26, **Gelek Pel**, aged 32, and **Samten**, aged 17 from Lungkar Monastery, Qinghai Province; **Pema Karwang**, aged 30 and **Thubwang**, aged 30, from Darthang Monastery; and **Tsegyam**, aged 22, from Kashi Monastery led a march on Barkhor Street in Lhasa, distributing pamphlets and raising Tibetan flags. It is reported that they were arrested by the People's Armed Police. Additional contingents of armed forces were then stationed in the area, and the police blocked roads and encircled Drepung and Sera monasteries around Lhasa to prevent further protests from taking place.

On the same day, about 350 people, including 137 monks from Lhutsang Monastery in the Tibetan area of Amdo in Mangra County, organised a protest in front of the Mangra County Assembly Hall where a government-sponsored show was taking place. The protest was stopped by the People's Armed Police. A number of arrests took place during the disruption of the protest, but no information on the whereabouts of the arrested monks has been received.

Reports indicate that on 11 March, 500 to 600 monks from the Sera Monastery called for the release of the monks arrested the day before and began a march towards Lhasa, but were met on the way by approximately 2,000 armed police. The crowd was reportedly dispersed with tear-gas. A number of monks were detained and then released.

On 11 March, the police surrounded and sealed off Ditsa Monastery in Hualong County in Qinghai Province after the monks held a protest.

On 14 March, violent incidents were reported in Lhasa as tension escalated between hundreds of demonstrators and police forces. Gunfire was heard in the streets, and shops and cars were set on fire. Allegations that a significant number of Tibetans and Han and Hui Chinese have been killed during the demonstrations have been received. Monks from Ganden and Reting monasteries joined the demonstrations, and the two monasteries were later sealed off by police. A number of monks from Sera Monastery started a hunger strike to protest against the sealing off of monasteries and the detention of monks.

Reports indicate that, in particular since 14 March, the wave of demonstrations by monks and lay people has spread in the whole Tibet Autonomous Region and in neighbouring provinces. These demonstrations have reportedly sometimes been violently repressed, in many cases leading to arrests of demonstrators. Allegations were received that since 14 March, the People's Liberation Army has been patrolling the streets of Lhasa.

On 15 March, shooting was reported inside the compound of Tashi Lhunpo Monastery in Shigatse, and at least 40 lay people demonstrating around the monastery were arrested. The next day, monks trying to escape the Kirti Monastery in Amdo in the Sichuan Province, which had been sealed off by the military, have allegedly been shot at; tear-gas was reportedly used on the demonstrators supporting the monks outside the monastery, and many demonstrators were severely beaten by the police. The police is then alleged to have shot into the crowd, killing and injuring a considerable but unconfirmed number of people.



On 17 March, students of Marthang Nationality Middle School in Hongyuan xian County, Aba Prefecture, Sichuan Province, aged between 14 and 20, started a protest inside the school. PSB officials blocked the entrance and beat the students while they were trying to come out of the school. Approximately 40 students are said to have been arrested. Around 700 students then staged a demonstration outside the Hongyuan xian County PSB office to protest against the detention of fellow students.

Since 10 March, it is reported that raids in the homes of people formerly imprisoned for their political opinions have taken place. Since 15 March, house-to-house searches are allegedly being carried out in Lhasa, with CDs and printed material being confiscated, and people being taken in custody. It is reported that on 15 March, at least 600 people had been arrested in Lhasa, either as a result of a house search or during demonstrations. Three hundred additional people were reportedly arrested on 16 March.

Reports indicate that on 13 March, the Lhasa Foreign Bureau Office has issued a warning to non-governmental organisations that any information given to foreigners regarding the protests could result in strict legal action against the concerned individuals and organisations, including the closing down of the latter.

On 17 March the authorities deported approximately 15 journalists from at least six Hong Kong television, radio and print organisations, accusing them of “illegal reporting” and of illegally shooting films of People’s Liberation Army soldiers. The journalists were escorted to the airport and put on a plane to Chengdu in Sichuan Province, and the police is alleged to have looked into the journalists computers and video footages. The authorities allegedly refused to grant permits to allow foreign journalists to travel to the Tibet Autonomous Region as from 12 March, and are reported to have ordered them out of the Tibetan parts of Gansu and Qinghai provinces on 16 March, the police reportedly saying that it was for their safety. Further reports indicate that within the country, video-sharing websites as well as news websites are inaccessible and that international news broadcasts are being cut when showing reports of the events in the Tibet Autonomous Region and surrounding areas in China.

On 15 March, the Tibet Autonomous Region High People’s Court, Tibet Autonomous Region High People’s Procuratorate, and Tibet Autonomous Region Public Security Department issued a notice, asking that:

“1. Those who on their own volition submit themselves to police or judicial offices prior to midnight on 17 March shall be punished lightly or dealt mitigated punishment; those who surrender themselves and report on other criminal elements will be performing meritorious acts and may escape punishment. Criminal elements who do not submit themselves in time shall be punished severely according to law.

2. Those who harbour or hide criminal elements shall be punished severely according to law upon completion of investigations.

3. Those citizens who actively report and expose the criminal behaviour of criminal elements shall receive personal protection, and granted commendations and awards.”

According to the latest information received, demonstrations continue to take place, both in the Tibet Autonomous Region and neighbouring provinces, despite the official notice.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

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

We should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the case of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this connection we would like to refer Your Excellency’s Government to the fundamental principle set forth in 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 note the relevance in such situations of the UN Basic Principles on the Use of Force and Firearms by Law Officials. Principle 4 provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, Principle 5 provides that, “Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”

We would also like to draw your Government’s attention to paragraph 1 of Resolution 2005/39 of the Commission on Human Rights which, “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

We would like to 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 call your Excellency's Government's attention to the principle enunciated in Article 19 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 of 1996, whereby any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists or representatives of intergovernmental or non-governmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists or representatives of such organizations from areas that are experiencing violence or armed conflict except where their presence poses a clear risk to the safety of others.

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 to the attention of your Excellency's Government the following provisions of the Declaration:

- Article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- Article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

- 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.

The Special Rapporteur on extrajudicial, summary or arbitrary executions would also like to reiterate his longstanding request for an invitation to visit China, including Tibet.

We urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your 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 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 summary of the case accurate?
2. Please provide detailed information as to the number of people killed, and explain the circumstances in which each killing occurred. In particular, please detail whether there were any killings by police or security forces. If there were, please explain whether the use of lethal force was justified in accordance with the UN Basic Principles on the Use of Force and Firearms by Law Officials, and what investigations have been carried out to make this determination.
3. Please indicate the legal basis of the arrest and detention of the afore-mentioned persons, and how these measures are compatible with international norms and standards as contained, inter alia, in the Universal Declaration of Human Rights and the Declaration on Human Rights Defenders.
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?

#### **Reply from the Government of China dated 21 May 2008**

Receipt is hereby acknowledged of the letter addressed jointly by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders

(UA G/SO 214 (67-14) G/SO 214 (56-20) G/SO 214 (107-6) G/SO 214 (33-24) G/SO 214 (53-21) CHN 9/2008) and the letter addressed jointly by the Independent expert on minority issues, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture, the Special Representative of the Secretary-General on the situation of human rights defenders and the [Vice-Chairperson of the] Working Group on Arbitrary Detention (UA G/SO 218/2 G/SO 214 (67-14) G/SO 214 (56-20) G/SO 214 (107-6) Minorities (2005-1) G/SO 214 (33-24) G/SO 214 (53-21) CHN 11/2008).

In March of this year there occurred in Lhasa and other places events that were incorrectly described as “peaceful demonstrations” but were actually serious acts of criminal violence involving beating, the destruction of property, looting and arson. Faced with such violent criminal acts, which seriously disrupted public order and did serious damage to human life, property and security, no responsible Government could simply sit back and not act. At present, the situation in the aforementioned areas has calmed down, and stability and public order have been restored. The judicial authorities of the Tibet Autonomous Region and the other areas in question are dealing with the criminal suspects severely, in accordance with judicial procedures. Those whose offences are lesser and who displayed a positive attitude, acknowledging their guilt, have been released. Those whose situations are more serious shall have their criminal responsibility investigated in accordance with the law.

The aforementioned serious violent criminal events were carefully plotted in advance and instigated by the Dalai clique. In their handling of the entire incident, the competent authorities of the Tibet Autonomous Region and other areas showed great restraint; they enforced the law in a civilized manner, and they enjoyed broad popular support. At the international level, however, some people have distorted the facts, creating untrue news stories and providing the United Nations special procedures with inaccurate information. Tibetan affairs are part of China’s internal affairs; nevertheless, in an effort to help the special procedures learn the truth about these events and to prevent the Dalai clique and anti-China elements from exploiting them, the competent authorities of the Chinese Government have thoroughly investigated the incidents described in the aforementioned letters and wish to make the following reply:

1. The truth about the violent criminal events

(a) In mid-March 2008, a series of serious violent criminal acts took place in the city of Lhasa, in China’s Tibet Autonomous Region. Starting on 10 March, a group of lawbreakers, acting without authorization, gathered illegally to create a disturbance; when police officers arrived to dissuade them, in accordance with the law, they clashed with them, cursing them and violently attacking the officers with clubs, rocks and knives. At approximately 11 a.m. on 14 March, some monks at the Ramoche Temple threw stones at the police officers on duty. Subsequently, a group of rioters began to gather in Barkhor Street, shouting separatist slogans and wantonly beating, smashing and looting. The situation quickly spread. The lawbreakers smashed and burned shops, primary and secondary schools, hospitals, banks, electrical and communications installations and news agencies along the main streets of Lhasa and set fire to cars, chased and beat pedestrians, and attacked stores, telecommunications and Internet outlets and Government offices. The rioters’ savage behaviour during these incidents resulted in the

slashing or burning to death of 18 innocent persons, including an infant less than 1 year old; 382 innocent persons were also injured, 58 of them seriously. The rioters set fire to over 300 sites, burning down 7 schools, 5 hospitals, more than 1,300 stores and 120 homes, causing extensive loss of human life and property, and occasioning a direct economic loss of 280 billion yuan renminbi. Public order in the affected area was severely disrupted.

All ethnic minorities in Tibet expressed their great indignation at and severe criticism of the violent criminal acts that took place in Lhasa. The Tibet Autonomous Region quickly organized the police and other relevant agencies to put out the fires, provide aid to the injured and reinforce the security provided to schools, hospitals, banks and Government offices. The Chinese Government and the Government of the Tibet Autonomous Region took these measures to protect law and order and social stability, and to safeguard the human rights of all ethnic groups in Tibet. In dealing with these violent criminal incidents and restoring law and public order in accordance with the law, the competent Chinese and Tibetan Government authorities exercised the utmost restraint. While enforcing the law they consistently acted in a lawful and civilized manner; they did not carry or use any lethal or injurious weapons. The People's Liberation Army was not involved in the efforts to quell these violent criminal incidents.

(b) At 11 a.m. on 16 March 2008, more than 300 monks in Aba, Sichuan Province, assaulted and beat police officers, handing out inflammatory flyers and shouting separatist slogans; they threw rocks and homemade Molotov cocktails at the police and went on a rampage of smashing and burning. At 3 p.m., a group of monks joined with other rioters to once again strike Government facilities, schools and police stations, engaging in smashing, looting and burning. That day rioters burned down 24 stores and 2 police stations and set fire to 81 police and civilian vehicles. Some 200 innocent bystanders, Government workers and police officers were injured.

Seeking to restore law and order, the local Government immediately took steps to bring the situation under control and protect life, property and fundamental human rights. During these incidents, law enforcement was carried out in a civilized manner by the local police, who consistently displayed a high degree of restraint; even though they had shields to protect themselves during the rioters' brutal attacks, scores of police officers were injured from blows and burns, one critically. The Chinese People's Liberation Army did not take part in the response to these incidents.

## 2. Questions regarding the use of lethal or injurious weapons

In their efforts to deal with the violent criminal acts in the Tibet Autonomous Region in accordance with the law and to restore law and order, the local Government authorities exercised maximum restraint: law enforcement was consistently carried out in a lawful and civilized manner, and no lethal or injurious weapons were carried or used. For this very reason, there were only 242 casualties among law enforcement personnel, including 23 seriously injured and 1 dead.

On 16 March, in the Tibetan Autonomous Prefecture of Aba, Sichuan Province, rioters broke into the Aba Township police station and stabbed the police officers. When the rioters stole police firearms from a safe, the police fired warning shots, in accordance with the law, to no effect. They were thus compelled to open fire in self-defence, striking and injuring four

rioters, who managed to escape with their co-conspirators in the confusion. Immediately afterwards, the officers involved in the incident, acting pursuant to regulations, submitted a report to their superiors, which the national police promptly published. The firing of weapons in self-defence by the Aba police was fully consistent with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

3. Alleged control of reporting by the media

During the violent criminal acts in Lhasa, when public order was severely disrupted and rioters were wilfully beating, burning and killing innocent persons, it was not safe for foreign reporters in Lhasa to cover the events. Reporters for the British publication *The Economist* and other foreign publications who were at the scene did provide coverage of the events. After the situation calmed down, the Chinese Government immediately organized a series of inspection tours to Tibet for representatives of 19 foreign media and delegations of foreign diplomats based in China. The Chinese media, including the Tibetan regional media, all reported on the events.

4. The legal basis for the arrest and detention of monks and nuns

In the wake of the destructive events in Lhasa, the competent authorities of China and the Tibet Autonomous Region arrested a number of major criminal suspects who had participated in the events and had been involved in their organization and plotting. Among these were a number of monks and nuns.

International human rights instruments, including the Universal Declaration of Human Rights (art. 29, para. 2), stipulate that “[i]n the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”. During the aforementioned incidents the rioters showed absolutely no respect for the rights and freedoms of innocent persons but wilfully disrupted public order and harmed the welfare of others. The Chinese and Tibetan Regional Governments consider that the lawful measures taken were fully consistent with the relevant provisions of international human rights instruments.

China is a country governed by the rule of law. Everyone is equal before the law, and anyone who violates the law shall be liable to punishment in accordance with the law, with no distinction made for citizens on account of their religious beliefs. During the violent criminal acts that were perpetrated in Lhasa and other locations, a small number of monks and nuns took part in unauthorized demonstrations; in the course of these demonstrations they engaged in violent activities that led to the death of scores of persons and the injuring of hundreds more; they burned and destroyed public property, including numerous homes and schools, they advocated separatism, they harmed the State and they jeopardized public safety, seriously violating the Law of the People’s Republic of China on Assemblies, Processions and Demonstrations and the Criminal Law of the People’s Republic of China. The treatment shown by China’s law enforcement and judicial authorities will differ depending on the nature of the criminal offence: where the offence is serious, the offender’s criminal responsibility will be ascertained; where the offence is minor, the offender will be provided with education and released. This work is already under way.

5. Investigations, prosecutions and trials

In the wake of the violent criminal events that transpired in Lhasa, the law enforcement and judicial authorities of China and the Tibet Autonomous Region conducted investigations and inquiries in accordance with the law.

On 29 April 2008, the Lhasa Municipal Intermediate People's Court held an open trial of some of the persons accused of participating in the "events of 14 March". The court found 30 accused persons (Pasang et al.) guilty of the crimes of arson, looting, instigating fights and troublemaking, assembling a group to attack a State organ, disrupting public service and theft. The defendants Pasang, Sonam Tsering and Tsering were sentenced to life imprisonment. The defendants Jigme, Kalsang Bagdro, Karma Dawa, Dorje, Migmar, Ngawang Choeyang and Bagdro were given sentences of fixed-term imprisonment of 15 years and more. The defendants Yargyal, Choephel Tashi, Dorje Dargye, Ngawang, Kalsang Tsering, Migmar, Sonam Tsering, Kelsang Samten, Tseten, Palsang Tashi, Lhagpa Tsering Chewa (Sr.), Lobsang Tashi, Lhagpa Tsering, Darchen, Thubten Gyatso, Tashi Gyatso, Kalsang Dondrub, Tenzin Gyaltzen, Kalsang Nyima and Yeshe were given sentences of fixed-term imprisonment ranging from 3 to 14 years.

The court informed the accused that if they refused to accept these judgements they could file an appeal with the Lhasa Municipal Intermediate People's Court or with the Tibet Autonomous Region Supreme People's Court within 10 days of the date of service of the judgement.

China's Criminal Procedure Law stipulates that People's Courts may or should appoint a defence counsel in cases where the defendant has not appointed counsel, the case is of great social significance, the defendant is totally without financial resources or the court considers that the prosecution arguments and evidence submitted may affect the proper determination of the severity of the sentence. Accordingly, the Lhasa Municipal Intermediate People's Court appointed defence attorneys for the 30 defendants. The defence arguments presented by these lawyers were given full value during the trial proceedings, and the mitigating circumstances that they cited in respect of the defendants, which were verified through investigation, were all accepted by the court.

China's Criminal Procedure Law stipulates that all citizens who are members of ethnic minorities have the right to use their own spoken and written language in an appeal. Of the 14 open hearings held in the Lhasa Municipal Intermediate People's Court, the proceedings were fully conducted in the Tibetan language in 9, while in the remaining 5 cases, the defendants were provided with Tibetan-Chinese interpretation.

It has been explained that the costs associated with the defence lawyers and interpreters provided for the defendants were entirely borne by the Tibet Autonomous Region Legal Aid Centre.

On the day of the hearings, more than 300 Lhasa residents, students and monks representing all ethnic minorities and all groups within society attended the trials.



The judicial authorities of the Tibet Autonomous Region and other localities intend to continue their efforts to deal in accordance with the law with the criminal suspects who participated in these violent criminal acts.

6. Related cases

Owing to time constraints and the incomplete nature of the information contained in the aforementioned letters, as well as the fact that the investigations being conducted by the Chinese authorities concerned are still in progress, China will continue to transmit to the relevant bodies information regarding the outcome of these investigations.

The Chinese Government respectfully requests that the foregoing be reproduced in its entirety in the relevant documents of the United Nations.

**China: Killings, injuries and arrests of protestors in Gan Zi Xian,  
Sichuan Province**

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

**Subject(s) of appeal:** Unknown number of persons

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur**

The Special Rapporteur notes the information provided by the Government of China with respect to the events of March 2008. However, the response does not address the alleged use of lethal force by security forces and the death of 8 protestors in Zithang Township in Gan Zi Xian, Sichuan Province, on 3 April 2008. The Special Rapporteur remains concerned about the circumstances of these deaths and looks forward to receiving from the Government detailed information about the exact number of people killed, the circumstances of the deaths and the outcome of any investigation into those deaths.

**Urgent appeal dated 9 April 2008**, sent with the Independent Expert on minority issues, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture, the Special Rapporteur on the situation of human rights defenders and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention

In this connection, we would like to draw the attention of your Government to information we have received in relation to reports of **killings, injuries and arrests of protestors in Gan Zi Xian, Sichuan Province**, and the **arrests of over 570 Tibetan monks, including children, in Aba Xian and in Ruanggui/Zoige Xian the Tibetan Autonomous Region**.

A communication with regard to reports of violence during demonstrations, killings of an unconfirmed number of people and arrests of hundreds of demonstrators in the Tibetan Autonomous Region and surrounding areas in China was issued by the Special Rapporteur on

extrajudicial, summary or arbitrary executions, Special Rapporteur on freedom of religion or belief, 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 on 20 March 2008.

According to recent information received:

On 3 April 2008, at least eight protestors were killed and several injured when security forces opened fire during a peaceful protest in Zithang Township in Gan Zi Xian, Sichuan Province, calling for the release of two monks previously arrested. Several protestors were also arrested.

On 28 and 29 March 2008, over 570 Tibetan monks, including some children, were arrested following raids by security forces of the Chinese People's Armed Police and the Public Security Bureau on monasteries in Aba Xian and in Ruanggui/Zoige Xian in the Tibetan Autonomous Region. Arrests were made of those suspected of participating in protests and those suspected of communicating with the exiled Tibetan communities.

Serious concerns are expressed over the aforementioned arrests and detention of, and the excessive use of force against, the above-mentioned persons, including reportedly peaceful protestors. Further concerns are expressed that independent observers and foreign journalists have been restricted from accessing regions in which protests have taken place and that limitations have been imposed on the media, including Internet websites, to prohibit the dissemination of information throughout China concerning the events in the Tibetan Autonomous Region and abroad.

Without in any way implying any determination on the facts of the case, we would like to refer Your Excellency's Government to the fundamental principle set forth in 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 note the relevance in such situations of the UN Basic Principles on the Use of Force and Firearms by Law Officials. Principle 4 provides that, "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." Furthermore, Principle 5 provides that, "Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment."

Furthermore, without expressing at this stage an opinion on the facts of the case and on whether the detention of the above-mentioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights.

We would also like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the above cases. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would further like to draw your Government's attention to paragraph 1 of Resolution 2005/39 of the Commission on Human Rights which, "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights which provides 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 would further like to appeal to your Excellency's Government to take all necessary measures to guarantee the right to peaceful assembly enshrined in Article 20 of the Universal Declaration of Human Rights, which provides that "Everyone has the right to freedom of peaceful assembly and association".

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

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

- Article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- Article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- Article 9 para. 1 which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
- 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 addition, we would like to refer to the 2006 report to the General Assembly (A/61/312) of the Special Representative of the Secretary-General on the situation of human rights defenders and in particular to paragraph 98 which states that “in conformity with article 15 of the Declaration on Human Rights Defenders, the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. The Special Representative also advises all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials”.

With regard to the role of media and human rights defender in monitoring demonstrations, we would like to refer to the 2007 report to the General Assembly of the Special Representative of the Secretary-General on the situation of human rights defenders (A/62/225, paras. 91 and 93) that underline how “monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. [...] The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly. [...] Journalists as well have an important role to play in providing independent coverage of demonstrations and protests. [...] The media must therefore have access to assemblies and the policing operations mounted to facilitate them”.

Finally, your Excellency's Government is equally reminded of the provisions of the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

In the event that your investigations support or suggest the above allegations to be correct, 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 is ensured. We also request that your Government adopt effective measures to prevent the recurrence of these acts.

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

Moreover, it is our responsibility under the mandates provided to us by the Commission on Human Rights 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, when relevant to the case under consideration:

1. Are the facts alleged in the above summary accurate?
2. Please provided detailed information as to the exact number of people killed, and explain the circumstances in which each killing occurred. In particular, please detail whether the police or security forces were involved in the killings. If they were, please explain whether the use of lethal force was justified in accordance with the UN Basic Principles on the Use of Force and Firearms by Law Officials, and what investigations have been carried out to make this determination.
3. Please indicate the legal basis of the aforementioned arrest and detention of the persons concerned, and how these measures are compatible with international norms and standards, including the rights to freedom of expression and assembly, as contained, inter alia, in the Universal Declaration of Human Rights and the Declaration on Human Rights Defenders.
4. Please provide the details, and where available the results, of any investigations, medical examination and judicial or other inquiries carried out in relation to these events. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

**Reply from the Government of China dated 21 May 2008**

Receipt is hereby acknowledged of the letter addressed jointly by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the promotion and protection of the right to freedom of

opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders (UA G/SO 214 (67-14) G/SO 214 (56-20) G/SO 214 (107-6) G/SO 214 (33-24) G/SO 214 (53 21) CHN 9/2008) and the letter addressed jointly by the Independent expert on minority issues, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture, the Special Representative of the Secretary-General on the situation of human rights defenders and the [Vice-Chairperson of the] Working Group on Arbitrary Detention (UA G/SO 218/2 G/SO 214 (67-14) G/SO 214 (56-20) G/SO 214 (107-6) Minorities (2005-1) G/SO 214 (33-24) G/SO 214 (53-21) CHN 11/2008).

In March of this year there occurred in Lhasa and other places events that were incorrectly described as “peaceful demonstrations” but were actually serious acts of criminal violence involving beating, the destruction of property, looting and arson. Faced with such violent criminal acts, which seriously disrupted public order and did serious damage to human life, property and security, no responsible Government could simply sit back and not act. At present, the situation in the aforementioned areas has calmed down, and stability and public order have been restored. The judicial authorities of the Tibet Autonomous Region and the other areas in question are dealing with the criminal suspects severely, in accordance with judicial procedures. Those whose offences are lesser and who displayed a positive attitude, acknowledging their guilt, have been released. Those whose situations are more serious shall have their criminal responsibility investigated in accordance with the law.

The aforementioned serious violent criminal events were carefully plotted in advance and instigated by the Dalai clique. In their handling of the entire incident, the competent authorities of the Tibet Autonomous Region and other areas showed great restraint; they enforced the law in a civilized manner, and they enjoyed broad popular support. At the international level, however, some people have distorted the facts, creating untrue news stories and providing the United Nations special procedures with inaccurate information. Tibetan affairs are part of China’s internal affairs; nevertheless, in an effort to help the special procedures learn the truth about these events and to prevent the Dalai clique and anti-China elements from exploiting them, the competent authorities of the Chinese Government have thoroughly investigated the incidents described in the aforementioned letters and wish to make the following reply:

1. The truth about the violent criminal events

(a) In mid-March 2008, a series of serious violent criminal acts took place in the city of Lhasa, in China’s Tibet Autonomous Region. Starting on 10 March, a group of lawbreakers, acting without authorization, gathered illegally to create a disturbance; when police officers arrived to dissuade them, in accordance with the law, they clashed with them, cursing them and violently attacking the officers with clubs, rocks and knives. At approximately 11 a.m. on 14 March, some monks at the Ramoche Temple threw stones at the police officers on duty. Subsequently, a group of rioters began to gather in Barkhor Street, shouting separatist slogans and wantonly beating, smashing and looting. The situation quickly spread. The lawbreakers

smashed and burned shops, primary and secondary schools, hospitals, banks, electrical and communications installations and news agencies along the main streets of Lhasa and set fire to cars, chased and beat pedestrians, and attacked stores, telecommunications and Internet outlets and Government offices. The rioters' savage behaviour during these incidents resulted in the slashing or burning to death of 18 innocent persons, including an infant less than 1 year old; 382 innocent persons were also injured, 58 of them seriously. The rioters set fire to over 300 sites, burning down 7 schools, 5 hospitals, more than 1,300 stores and 120 homes, causing extensive loss of human life and property, and occasioning a direct economic loss of 280 billion yuan renminbi. Public order in the affected area was severely disrupted.

All ethnic minorities in Tibet expressed their great indignation at and severe criticism of the violent criminal acts that took place in Lhasa. The Tibet Autonomous Region quickly organized the police and other relevant agencies to put out the fires, provide aid to the injured and reinforce the security provided to schools, hospitals, banks and Government offices. The Chinese Government and the Government of the Tibet Autonomous Region took these measures to protect law and order and social stability, and to safeguard the human rights of all ethnic groups in Tibet. In dealing with these violent criminal incidents and restoring law and public order in accordance with the law, the competent Chinese and Tibetan Government authorities exercised the utmost restraint. While enforcing the law they consistently acted in a lawful and civilized manner; they did not carry or use any lethal or injurious weapons. The People's Liberation Army was not involved in the efforts to quell these violent criminal incidents.

(b) At 11 a.m. on 16 March 2008, more than 300 monks in Aba, Sichuan Province, assaulted and beat police officers, handing out inflammatory flyers and shouting separatist slogans; they threw rocks and homemade Molotov cocktails at the police and went on a rampage of smashing and burning. At 3 p.m., a group of monks joined with other rioters to once again strike Government facilities, schools and police stations, engaging in smashing, looting and burning. That day rioters burned down 24 stores and 2 police stations and set fire to 81 police and civilian vehicles. Some 200 innocent bystanders, Government workers and police officers were injured.

Seeking to restore law and order, the local Government immediately took steps to bring the situation under control and protect life, property and fundamental human rights. During these incidents, law enforcement was carried out in a civilized manner by the local police, who consistently displayed a high degree of restraint; even though they had shields to protect themselves during the rioters' brutal attacks, scores of police officers were injured from blows and burns, one critically. The Chinese People's Liberation Army did not take part in the response to these incidents.

## 2. Questions regarding the use of lethal or injurious weapons

In their efforts to deal with the violent criminal acts in the Tibet Autonomous Region in accordance with the law and to restore law and order, the local Government authorities exercised maximum restraint: law enforcement was consistently carried out in a lawful and civilized manner, and no lethal or injurious weapons were carried or used. For this very reason, there were only 242 casualties among law enforcement personnel, including 23 seriously injured and 1 dead.

On 16 March, in the Tibetan Autonomous Prefecture of Aba, Sichuan Province, rioters broke into the Aba Township police station and stabbed the police officers. When the rioters stole police firearms from a safe, the police fired warning shots, in accordance with the law, to no effect. They were thus compelled to open fire in self-defence, striking and injuring four rioters, who managed to escape with their co-conspirators in the confusion. Immediately afterwards, the officers involved in the incident, acting pursuant to regulations, submitted a report to their superiors, which the national police promptly published. The firing of weapons in self-defence by the Aba police was fully consistent with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

3. Alleged control of reporting by the media

During the violent criminal acts in Lhasa, when public order was severely disrupted and rioters were wilfully beating, burning and killing innocent persons, it was not safe for foreign reporters in Lhasa to cover the events. Reporters for the British publication *The Economist* and other foreign publications who were at the scene did provide coverage of the events. After the situation calmed down, the Chinese Government immediately organized a series of inspection tours to Tibet for representatives of 19 foreign media and delegations of foreign diplomats based in China. The Chinese media, including the Tibetan regional media, all reported on the events.

4. The legal basis for the arrest and detention of monks and nuns

In the wake of the destructive events in Lhasa, the competent authorities of China and the Tibet Autonomous Region arrested a number of major criminal suspects who had participated in the events and had been involved in their organization and plotting. Among these were a number of monks and nuns.

International human rights instruments, including the Universal Declaration of Human Rights (art. 29, para. 2), stipulate that “[i]n the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”. During the aforementioned incidents the rioters showed absolutely no respect for the rights and freedoms of innocent persons but wilfully disrupted public order and harmed the welfare of others. The Chinese and Tibetan Regional Governments consider that the lawful measures taken were fully consistent with the relevant provisions of international human rights instruments.

China is a country governed by the rule of law. Everyone is equal before the law, and anyone who violates the law shall be liable to punishment in accordance with the law, with no distinction made for citizens on account of their religious beliefs. During the violent criminal acts that were perpetrated in Lhasa and other locations, a small number of monks and nuns took part in unauthorized demonstrations; in the course of these demonstrations they engaged in violent activities that led to the death of scores of persons and the injuring of hundreds more; they burned and destroyed public property, including numerous homes and schools, they advocated separatism, they harmed the State and they jeopardized public safety, seriously violating the Law of the People’s Republic of China on Assemblies, Processions and



Demonstrations and the Criminal Law of the People's Republic of China. The treatment shown by China's law enforcement and judicial authorities will differ depending on the nature of the criminal offence: where the offence is serious, the offender's criminal responsibility will be ascertained; where the offence is minor, the offender will be provided with education and released. This work is already under way.

#### 5. Investigations, prosecutions and trials

In the wake of the violent criminal events that transpired in Lhasa, the law enforcement and judicial authorities of China and the Tibet Autonomous Region conducted investigations and inquiries in accordance with the law.

On 29 April 2008, the Lhasa Municipal Intermediate People's Court held an open trial of some of the persons accused of participating in the "events of 14 March". The court found 30 accused persons (Pasang et al.) guilty of the crimes of arson, looting, instigating fights and troublemaking, assembling a group to attack a State organ, disrupting public service and theft. The defendants Pasang, Sonam Tsering and Tsering were sentenced to life imprisonment. The defendants Jigme, Kalsang Bagdro, Karma Dawa, Dorje, Migmar, Ngawang Choeyang and Bagdro were given sentences of fixed-term imprisonment of 15 years and more. The defendants Yargyal, Choephel Tashi, Dorje Dargye, Ngawang, Kalsang Tsering, Migmar, Sonam Tsering, Kelsang Samten, Tseten, Palsang Tashi, Lhagpa Tsering Chewa (Sr.), Lobsang Tashi, Lhagpa Tsering, Darchen, Thubten Gyatso, Tashi Gyatso, Kalsang Dondrub, Tenzin Gyaltzen, Kalsang Nyima and Yeshe were given sentences of fixed-term imprisonment ranging from 3 to 14 years.

The court informed the accused that if they refused to accept these judgements they could file an appeal with the Lhasa Municipal Intermediate People's Court or with the Tibet Autonomous Region Supreme People's Court within 10 days of the date of service of the judgement.

China's Criminal Procedure Law stipulates that People's Courts may or should appoint a defence counsel in cases where the defendant has not appointed counsel, the case is of great social significance, the defendant is totally without financial resources or the court considers that the prosecution arguments and evidence submitted may affect the proper determination of the severity of the sentence. Accordingly, the Lhasa Municipal Intermediate People's Court appointed defence attorneys for the 30 defendants. The defence arguments presented by these lawyers were given full value during the trial proceedings, and the mitigating circumstances that they cited in respect of the defendants, which were verified through investigation, were all accepted by the court.

China's Criminal Procedure Law stipulates that all citizens who are members of ethnic minorities have the right to use their own spoken and written language in an appeal. Of the 14 open hearings held in the Lhasa Municipal Intermediate People's Court, the proceedings were fully conducted in the Tibetan language in 9, while in the remaining 5 cases, the defendants were provided with Tibetan-Chinese interpretation.

It has been explained that the costs associated with the defence lawyers and interpreters provided for the defendants were entirely borne by the Tibet Autonomous Region Legal Aid Centre.

On the day of the hearings, more than 300 Lhasa residents, students and monks representing all ethnic minorities and all groups within society attended the trials.

The judicial authorities of the Tibet Autonomous Region and other localities intend to continue their efforts to deal in accordance with the law with the criminal suspects who participated in these violent criminal acts.

6. Related cases

Owing to time constraints and the incomplete nature of the information contained in the aforementioned letters, as well as the fact that the investigations being conducted by the Chinese authorities concerned are still in progress, China will continue to transmit to the relevant bodies information regarding the outcome of these investigations.

The Chinese Government respectfully requests that the foregoing be reproduced in its entirety in the relevant documents of the United Nations.

**China: Public execution of three men in Yengishahar, Xinjiang Province**

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

**Subject(s) of appeal:** 3 males

**Character of reply:** UN translation awaited for response of the Government of China of 30 September 2008

**Allegation letter dated 30 July 2008,** sent with the Special Rapporteur on the question of torture and the Special Rapporteur on the promotion and protection of human rights while countering terrorism

We would like to draw the attention of your Government to reports we have received regarding **the public execution of three men in Yengishahar, Xinjiang Province**, on 19 July 2008. They had been found guilty of being members of the East Turkistan Islamic Movement (ETIM), an organization classified as terrorist by your Excellency's Government.

According to the information received:

In January 2007, security forces arrested a group of 17 Uighur men, members of the East Turkistan Islamic Movement (ETIM), in Akto county, Xinjiang Province. The names of two of the men were **Mukhtar Setiwaldi** and **Abduweli Imin**. The men were

subsequently charged with separatist activities, organizing and leading a terrorist organization, and the illegal production of explosives. At a trial held in November 2007 they were found guilty.

Mukhtar Setiwaldi, Abduweli Imin and two or three other members of the group received death sentences, while the others were sentenced to terms of imprisonment. Some reports indicate that two of the defendants were executed immediately after the trial.

On 9 July 2008, the local government authorities brought thousands of students and workers to a public square in Yengishahar. Three men were brought before the crowd, death sentences were read out (indicating that the men were among those arrested in Akto in January 2007) and then the three men were executed by a firing squad. Some reports maintain that Mukhtar Setiwaldi and Abduweli Imin were among those executed on 9 July 2008, while others state that they had already been executed in November 2007.

We fully recognize your Government's right and duty to forcefully combat heinous acts of terrorism. Indeed, the very recent explosion of two buses in Kunming which reportedly killed two persons and might have been the result of a terrorist attack, reminded us (if at all necessary) of the urgency with which your Government needs to combat terrorist activities and protect the population. We recall, however, 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".

While many elements of the fate of the men arrested in Akto in January 2007 and put to trial as members of the ETIM in November 2007 remain to be clarified, the reports we have received concur in indicating that three of them were executed in front of a crowd assembled for the purpose in Yengishahar on 9 July 2008.

In this respect, we would like to recall that the Human Rights Committee has observed that carrying out executions before the public is a practice that is "incompatible with human dignity", and the Special Rapporteur on extrajudicial, summary or arbitrary executions observed that "[t]here is no legitimate interest served [...] by making executions public spectacles, and this is itself a most inhuman form of punishment." (E/CN.4/2006/53/Add.3, para. 43).

According to our information, public executions are also prohibited by Article 212 of the Criminal Procedure Law of the People's Republic of China. The Supreme Court, too, has to our knowledge stated that public parading and other actions that humiliate the person being executed are forbidden. Your Excellency's Government has informed the Special Rapporteur on extrajudicial, summary or arbitrary executions that, "on 24 July 1986 and again on 1 June 1988, the ministries responsible for law, the People's Procuratorates, public security and justice jointly issued a circular strictly forbidding the public display of condemned persons, and the pertinent authorities have since then treated this issue with the utmost gravity. In recent years, the phenomenon has thus been effectively prohibited".

Turning from the execution to the circumstances under which the death penalty was imposed, we would recall that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner.

In this respect, we would further respectfully remind your Excellency's Government that in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial admits of no exception. Relevant to the case at hand, these guarantees include the right to have one's conviction and sentence reviewed by a higher court. It is our understanding that Chinese law now enshrines this guarantee, specifically providing that all death sentences have to be considered and confirmed by the Supreme Court. In the present case, reports do not clarify whether the three men executed on 9 July 2008 were able to exercise this right.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the names of the (four or five) persons sentenced to death in the case involving Mukhtar Setiwaldi and Abduweli Imin. When were the death sentences imposed? When were Mukhtar Setiwaldi and Abduweli Imin and the co-defendants sentenced to death informed of the sentences, when were they publicly pronounced?
3. What proceedings took place between the trial in November 2007 and the execution on 9 July 2008? Did the Supreme Court confirm the death sentences imposed? If so, on what date?
4. Were Mukhtar Setiwaldi and Abduweli Imin and their co-defendants assisted by lawyers at all stages of the proceedings, including during the trial and thereafter, until the day of the execution?
5. Have the other defendants sentenced to death in the November 2007 trial of ETIM members already been executed? If so, when? Is it accurate that two men were executed immediately after the trial in November 2007?
6. Please indicate what measures your Excellency's Government has taken or intends to take with regard to the apparent violation in this case of the prohibition of public executions.
7. Please provide the exact wording of the provisions that form the legal basis for the arrest, detention, conviction and sentencing of the aforementioned persons. In particular, please explain how the notion of terrorism appears in the provisions in question, how it is defined and on what factual grounds all or some of the persons mentioned were considered to fall under the provisions in question.

**China: Death sentence of Wo Weihan**

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

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

**Character of reply:** UN translation awaited for response of the Government of China of 17 February 2009

**Urgent appeal dated 24 November 2008**, sent with the Special Rapporteur on the question of torture

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

According to the allegations received:

Mr. **Wo Weihan** may be at imminent risk of execution. He was sentenced to death in May 2007 for spying following a closed trial in Beijing. His appeal was rejected on 29 February 2008.

Mr. Weihan had been detained in Beijing on 19 January 2005, but was not formally arrested until 5 May. Mr. Weihan, who reportedly had not had any health problems prior to his detention, suffered a brain hemorrhage in a detention centre on 6 February 2005, following which he was allowed to recuperate at home for six weeks. In March 2005, he was taken to Beijing Municipal Bo Ren Hospital (a prison hospital) where he has been held since.

Reports indicate that Mr. Weihan was held incommunicado during the first ten months of his detention and only then allowed regular meetings with his lawyers. It is further alleged that he confessed to the charges while in detention.

Concern has been expressed that Wo Weihan may have confessed to the spying charges under torture, in the absence of a lawyer.

While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to this case under international law.

With regard to the charges of spying, we would like to remind your Excellency's Government that although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death

sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). According to the information we have received, the offences for which Wo Weihan is facing the death penalty did not result in loss of life.

We would further remind your Excellency's Government that in capital punishment cases there is an obligation to provide criminal defendants with "a fair and public hearing before an independent and impartial tribunal" (Article 10 of the Universal Declaration on Human Rights). Relevant to the case at hand, the right to a fair trial includes the right to be assisted by legal counsel at all stages of proceedings, the right to a public hearing and the right not to be compelled to confess guilt.

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

Only full respect for stringent due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which violates human rights standards. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights under international law of Wo Weihan are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not carried out unless all of the concerns raised are convincingly dispelled.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide details regarding the trial of Wo Weihan: which provisions of criminal law was he found guilty of having violated; when did he obtain the assistance of a legal counsel; was his trial open to the public?
3. Please provide a list of the offences punishable by death under the laws the People's Republic of China.

### **China: Deaths of Falun Gong practitioners**

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

**Subject(s) of appeal:** 7 females; 9 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.

**Allegation letter dated 13 March 2009**, sent with the Special Rapporteur on the question of torture and the Special Rapporteur on freedom of religion or belief

We would like to bring to your Government's attention information we have received regarding the cases of **16 deaths of Falun Gong practitioners due to injuries allegedly sustained in custody** in China. While the circumstances under which the deaths occurred differ, all the victims were Falun Gong practitioners and they all died under the supervision of law enforcement officers or soon after their release from custody. Concern is expressed that the arrests and deaths of these individuals were solely connected with their activities as Falun Gong practitioners. In the Annex of this letter, we have reproduced detailed information on each of the 16 cases.

While we do not wish to prejudge the accuracy of these reports, we would like to refer you Government to the relevant principles of international law. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council as recently as at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions".

The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, [...], to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions". These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which China is a Party.

In addition to the above, we would like to appeal to your Government to ensure the right to freedom of religion or belief in accordance with the principles set forth in the 1981 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.

We also would like to recall that in its resolution 63/181, the General Assembly “urges States to step up their efforts to protect and promote freedom of thought, conscience, religion or belief and to this end [...] to ensure that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account and to bring to justice all perpetrators of violations of these rights”.

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

1. Are the facts alleged in the case summaries in the Annex accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to each of the cases mentioned in the Annex.
3. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanders, for the killings mentioned in the Annex.
4. Please provide the details of any compensation payments made to the families or dependants, if any, of the victims in the cases mentioned in the Annex.

### **Annex**

Ms **Hu Yanrong**, from Xiaoyushulin Village, Beilu Township, Lingyuan City, Liaoning Province

On 1 August 2007 around 10 p.m., police officers blocked the entrance of the home of a Falun Gong practitioner, where some 40 persons including Hu Yanrong were present. About midnight, a dozen police officers arrested those practitioners trapped in the house. They beat the practitioners with electric batons and two-inch long metal rods and forced them into police vehicles. The police claimed that Hu Yanrong tried to jump out of a police car. She sustained severe injuries and fell into a coma after being taken to the Lingyuan Prison Hospital. Her head was swollen, her eyes, nose and mouth were bruised, the area between her temples and eyes was coloured in dark purple. There were traces of blood on her face. Doctors at Lingyuan Prison hospital performed two brain surgeries, but Ms. Hu died at 2 a.m. on 5 August 2007.



Mr. **Huang Fajun**, resident of Acheng District, Harbin City, Heilongjiang Province

On 24 July 2007, policemen from the Sougfengshan Town Police Station arrested Mr. Huang and beat him until both of his feet broke. The police detained him in the Acheng District First Detention Centre. He went on a hunger strike to protest the detention and was force-fed. He developed open sores, and his hands and feet were swollen and showed deep scars caused by shackles and cuffs. On 2 November 2007, the police notified his family that he was dying and that they could visit him at the Archeng District Traditional Medicine Hospital. He was allowed to return home on 4 November 2007, where he died at around 8 p.m. on 6 November 2007.

Mr. **Xiong Zhengming**

On 15 March 2007, police officers took Xiong Zhengming to the Wanyuan City First Detention Center, indicating that they had detected that Mr. Xiong visited overseas websites. Following eight months of detention, the police sentenced Mr. Xiong to one year of forced labour. Later, he was transferred to the Wanyuan City Second Detention Center. On 3 December 2007, he was informed of a second transfer to a forced labour camp outside the town. He refused to go, but was taken away at around 9 a.m. on 4 December 2007. On 5 December 2007, Mr. Xiong's family was notified that he had committed suicide while on his way to the Sichuan Province Xinhua Forced Labor Camp, by jumping out of the vehicle. Mr. Xiong's father was forced to sign the paper authorizing his body to be cremated immediately. He was also asked not to leak any information to the public; otherwise, his other two sons would lose their jobs. According to information received, the authorities gave inconsistent accounts of the cause of death, saying that he committed suicide in one instance and that he died in a traffic accident in other instances.

Mr. **Bai Heguo**, lived in Xiguangshan Village, Liutiao Town in Dengta City, Liaoning Province

Bai Heguo was taken into custody on 9 June 2002 by police officers from Tongerpu District Police Department, for practicing Falun Gong. He was sentenced to 11 years in prison and was held in Liaoning Province Huazi Prison. He was secretly transferred to the Nanganling Prison in Dalian city at the end of December 2007. On 5 January 2008, at 3 p.m., the prison administration notified Mr. Bai's family that he had died. His body was covered in bruises and he had a bump on his head and a cut in his tongue. His leg was broken and his testicles had been crushed. Authorities hurriedly cremated the body. The Nanganling prison authorities claimed that Mr. Bai had committed suicide.

Ms. **Zong Xiuxia**, lived in the Fangzi District in Weifang City, Shandong Province

In February 2008, Zong Xiuxia was taken to the Guangwen Police Station in Kuiwen District, at around 11.30 a.m., after she had discussed issues relating to Falun Gong at a supermarket. Police said that they took Ms. Zong to the Weifang City People's Hospital for a physical check-up at around 1 p.m., where she died at 3 p.m. The family was told that she died from jumping out of the elevator in the hospital.

Mr. **Yu Zhou**, a well-known singer from Beijing

Yu Zhou was arrested in Tongzhou District, Beijing, on 26 January 2008, along with his wife, Xu Na. The police stopped their vehicle when they were on their way home, arrested them and took them directly to the Tongzhou District Detention Centre. On 6 February 2008 Yu Zhou died at the Qinghe District Emergency Centre. The police claimed that this was a result of him going on hunger strike although he had diabetes. However, other sources indicate that he had been healthy and had never been suffering from diabetes. When the family requested to see the body and to have an autopsy performed, the authorities refused and threatened them.

Ms. **Gu Jianmin**, lived in Pudong New District, Shanghai

Gu Jianmin was arrested on 1 March 2008, by officers from the Yangjing Police Station in Pudong New District, Shanghai. Her husband was called and told to go to the Pudong New District Police Department and to the Neighbourhood Administration to do some medical parole paper work. When he arrived at the hospital, he saw that his wife's eyes were protruding, her pupils were enlarged, and that she was bleeding from the mouth. No one treated her although more than thirty agents of the 610 Office were present. She died on 13 March 2008.

Mr. **Gu Qun**

Gu Qun was arrested and taken to the Tianjin Street Police Station, for distributing Falun Gong materials, on 16 March 2008. On the following day, he was transferred to the Yaojia Detention Center. To protest his detention, he went on a hunger strike, but was forced-fed. On 7 April 2008, the detention centre took him to the Dalian City Third People's Hospital. The doctor there said he was in need of treatment, but the detention staff indicated that he would be taken to the Police hospital. However, they returned him to the detention centre. At 9 a.m. on 8 April 2008, he was taken to the hospital once again, but died on the way.

Mr. **Fan Dezhen**, lived in Huludao City, Liaoning Province

On 25 February 2008, Fan Dezhen was arrested with eleven other Falun Gong practitioners, by the Suizhong Country Domestic Security Division Leader. He died at around 7 a.m. on 20 April 2008, in the Suizhong Country Detention Centre. Officers notified his family after 4 p.m., indicating that, if they wanted to see the body, they had to do so on that same evening, because on the following day, an autopsy and cremation would be performed.

Mr. **Liu Quan**, lived in Benxi City, Liaoning Province

On 4 May 2008, the Nan'guanling Prison Administration in Dalian City called Mr. Liu Quan's family to inform them that Liu Quan had died at 2 a.m. due to a heart attack. His face was yellow, the flesh around his eyes and lips was purple, there were large purple bruises on his back, and his nose was filled with cotton balls. No autopsy was carried out and the authorities refused to authorize the transfer of Liu's body to Benxi City, where he had lived.

Mr. **Wu Xinming**, a resident of Xuanwu Town, Hanyin County, in Shaanxi Province

Wu Xinming was arrested on 15 June 2006 after talking about Falun Gong to people in the countryside. The police sent him to Zaozihe Forced Labor Camp. There, the guards tied him with a rope. When he went on a hunger strike to protest the detention, the guards force-fed him with a highly concentrated salt solution, chilli powder, water and even laundry detergent. They also tied up his body, and whipped him with wire, resulting in his whole body being covered with bruises. He was returned home on 25 June 2008 after he began coughing up and vomiting blood. He died on the following day, 26 June 2008.

Ms **Chen Yumei**, resident of Shenyang City, Liaoning Province

On the evening of 3 July 2008, officers from the Chang'an Police Station in Dadong District, Shenyang City, arrested Chen Yumei on Pangjiang Street. During the arrest, they beat and kicked her. Her family was asked to identify her in the ambulance, at around 9 p.m. of the same day, before she was taken to #463 Military Hospital. Having detected bleeding in her skull, the doctor had to perform an operation, for which the family paid. Her arms and legs were covered in bruises, and there were deep scratches on her body. Doctors said the marks were caused by beating or dragging. She died at around 8.30 p.m. on 4 July 2008.

Mr. **Zhong Zhenfu**, lived in Zhongjia Village, Changle Town, Pingdu City, Shandong Province

On 4 May 2008, Zhong Zhenfu was arrested at his house at around 6 p.m., as officers from the Pingdu City 610 Office and the City Police Department stormed into houses rented by Falun Gong practitioners in Pingdu City. The police confiscated some of their possessions and interrogated them at the police station. When they refused to reveal any information, the officers poured boiling water over their necks and bodies. Three days later, they were taken to Pingdu City Detention Centre. Guards put shackles on Zhong Zhenfu and whipped him about the head with metal wires. He was detained in a metal cage with the shackles still on, and the guards ordered other inmates to ill-treat him. The latter tried to force him to curse the founder of Falun Gong. When he refused, they beat him for over an hour. He was sent to the hospital and released on medical parole, after having been forced to pay over 100,000 Yuan in medical expenses. He died on 20 July 2008.

Ms. **Yang Jingfen**, a resident of Panjin City, Liaoning Province

At approximately 7:30 a.m. on 18 August 2008, six police officers from the Xinglongtai District State Security Division entered the apartment of Ms. Yang Jingfen, aged 59, and her husband to arrest her and search the apartment on the ground that she practiced Falun Gong. At around 9 a.m., her husband had to run an errand and left Ms. Yang alone with the police officers. When he returned at around 9:30 a.m. he found Ms. Yang's lifeless body in front of their apartment building. The police officers claimed that she had jumped out of a window of her sixth floor apartment to commit suicide.

Ms. **Sun Aimei**, resident of Xinhua Village, Zhucheng City, Shandong Province

Sun Aimei, aged about 60, was sentenced to detention at the Wangcun Women's Forced Labour Camp on 28 March 2008, three days after being arrested for distributing literature about

the persecution of Falun Gong. At the end of 2008, her family was informed that she had suffered a stroke and had undergone surgery. They were not, however, allowed to see her. On 1 February 2009, Ms. Sun's family was told to go to Wangcun Women's Forced Labour Camp to collect her ashes.

Ms. **Hou Lihua**, resident of Dongan District, Mudanjiang City, Heilongjiang Province

Hou Lihua was arrested at her workplace on 17 November 2008 and taken to the Mudanjiang City State Security unit. According to witnesses, she was beaten and otherwise ill-treated while in custody there. She was released in December 2008 but died on 14 February 2009 due to the injuries sustained in custody.

**Colombia: Asesinato de Jesús Heberto Caballero Ariza y amenazas en contra de miembros de la sociedad civil**

**Violación alegada:** Muerte a consecuencia de ataque o ejecución por fuerzas de seguridad o por grupos paramilitares, Impunidad y amenazas de muerte

**Persona objeto del llamamiento:** 1 hombre, 19 personas

**Carácter de la respuesta:** Acuse de recibo

**Observaciones del Relator Especial**

El Relator Especial agradecería que se le mantenga informando del progreso de las investigaciones por el Gobierno con relación a la muerte del Sr. Jesús Heberto Caballero Ariza.

**Llamamiento urgente del 23 de mayo de 2008**, mandado con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Relatora Especial sobre la situación de los defensores de los derechos humanos

Acusamos recibo de la respuesta rápida del gobierno colombiano al comunicado de prensa del 30 de abril de 2008. Reconocemos la cooperación del Gobierno en este respecto y notamos con agrado el diálogo constructivo entre ambas partes para abordar las problemáticas de los derechos humanos en Colombia, y esperamos que dicho diálogo continúe en el futuro.

En el marco de esta cooperación que esperamos será fructífera para mejorar el respeto de los derechos humanos, quisiéramos señalar a la atención urgente del Gobierno informaciones que seguimos recibiendo sobre violaciones y ataques en contra de los defensores de derechos humanos.

En este contexto, señalamos la información recibida en relación con el asesinato del Sr. **Jesús Heberto Caballero Ariza**, cuyo cadáver se encontró el pasado 17 de abril, al parecer con señales de tortura. El difunto defensor de los derechos humanos era fiscal suplente del *Sindicato Nacional del Servicio Nacional de Aprendizaje (SINDESENA)*, seccional Atlántico e instructor de Ética y Derechos Humanos del *Centro agropecuario CAISA*. Asimismo, se ha recibido información relacionada con la presunta desaparición forzada del Sr. **Guillermo Rivera Fúquene**, Presidente del *Sindicato de Servidores Públicos de Bogotá (SINSRVPUB)*, ocurrida el pasado 22 de abril.

Además se han recibido informaciones sobre amenazas en contra de la Sra. **Ana María Sánchez**, el Sr. **Gustavo Gallón Giraldo** y la Sra. **Claudia Julieta Duque**. La Sra. Sánchez es asistente del Sr. Giraldo, Director de la Comisión Colombiana de Juristas. La Sra. Duque es periodista autónoma y colaboradora de la organización de derechos humanos Equipo Nizkor.

De acuerdo con las informaciones recibidas:

El 1 de mayo de 2008, la Sra. Sánchez habría recibido un correo electrónico firmado por el grupo paramilitar, las Águilas Negras. El correo habría sido de carácter amenazante y antisemita, afirmando que se limpiarían ‘las calles de la basura comunista, judía y antinatural’. Por otra parte, la periodista Claudia Julieta Duque habría tomado la decisión de renunciar a los escoltas otorgadas a ella por el Estado en diciembre de 2003 como medida de protección, tras informarse de que éstos le hicieron falsas imputaciones a la susodicha en sus informes al Departamento Administrativo de Seguridad.

También se ha recibido información en relación con amenazas ocurridas en las últimas semanas por varios miembros de organizaciones no gubernamentales y movimientos de la sociedad civil colombiana incluyendo:

Los Sres. **José Humberto Torres**, **Nicolás Castro** y **Príncipe Gabriel González**, así como las Sras **Carolina Rubio** y **María Cedeño**; miembros de la *Fundación Comité de Solidaridad con los Presos Políticos* (FCSPP). El Sr. **Jesús Tovar**, miembro de la *Central Unitaria de Trabajadores* (CUT) en el departamento de Atlántico. El Sr. **Javier Correa**, miembro del *Sindicato Nacional de Trabajadores de la Industria de Alimentos* (SINALTRAINAL). La Sra. **María Cardona**, miembro del *Comité Permanente de Derechos Humanos* (CPDH) y la Sra. **Martha Cecilia Díaz** y Sr. **Nicanor Arciniegas**, presidente y miembro respectivamente de la *Asociación Santandereana de Servidores Públicos* (ASTDEMP), y miembros de otras organizaciones de derechos humanos y sindicatos en los departamentos de Santander y Atlántico.

El Sr. José Humberto Torres Díaz fue objeto de un llamamiento urgente, emitido el 19 de octubre de 2006, por la Representante Especial del Secretario-General para los defensores de los derechos humanos y el Relator Especial sobre la independencia de magistrados y abogados. El Sr. Jesús Tovar fue objeto de un llamamiento urgente, emitido el 26 de mayo de 2005 por la Representante Especial del Secretario-General para los defensores de los derechos humanos y el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión. El Sr. Javier Correa fue objeto de llamamientos urgentes, emitidos por la Representante Especial del Secretario-General para los defensores de los derechos humanos el 11 y 22 de octubre de 2007 y, conjuntamente con el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, el 22 de febrero de 2008. La Sra. Duque fue el objeto de un llamamiento urgente conjunto enviado por la Representante Especial del Secretario-General para los defensores de los derechos humanos y el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión el 23 de septiembre de 2004.

De acuerdo con los informaciones recibidas: el 22 de abril, los miembros de la *Central Unitaria de Trabajadores* (CUT) en el departamento de Santander, en el nordeste de Colombia, habrían recibido una amenaza de muerte por escrito del grupo paramilitar ‘Nueva Generación de Águilas Negras de Santander’. La amenaza, con fecha del 18 de abril, advertía contra la celebración de marchas o manifestaciones con ocasión del Día Internacional del Trabajo, 1 de mayo; “hay dispuesto un destacamento de hombres quienes cumplirán nuestras ordenes y harán limpieza de todos ustedes serviles de la guerrilla”. La comunicación habría nombrado a 17 miembros de sindicatos y organizaciones de derechos humanos a los que declaraba “objetivo militar” y entre los que se encontraban algunos de los susodichos.

El 23 de abril, los Sres. José Humberto Torres y Jesús Tovar habrían recibido por correo electrónico una amenaza de muerte firmada las ‘Águilas Negras al Rearme’. La amenaza, con fecha del 21 de abril, habría acusado a los dos hombres de ser guerrilleros, advirtiéndole a José Humberto Torres ‘que se cuide, donde lo veamos lo damos’. Además, habría advertido a los miembros de otros sindicatos y organizaciones de derechos humanos de que guardaran silencio, señalando que María Cedeño y Nicolás Castro estaban siendo vigiladas.

Quisiéramos señalar a su atención declaraciones hechas en contra del Sr. Iván Cepeda Castro, dirigente de la Fundación Manuel Cepeda Vargas, representante del Movimiento Nacional de Víctimas de Crímenes del Estado y columnista con el semanario *El Espectador*. El susodicho fue objeto de un llamamiento urgente, emitido el 12 de diciembre de 2006 por la Representante Especial del Secretario-General para los defensores de los derechos humanos.

Valoramos el respaldo y reconocimiento del importante papel de los defensores de derechos humanos en Colombia expresado en la respuesta del Gobierno al reciente comunicado de prensa y reconocemos los esfuerzos por parte del Estado colombiano para mejorar la seguridad de los defensores. No obstante, quisiéramos manifestar nuestra preocupación en relación con declaraciones como aquellas hechas el pasado 6 de mayo en Montería y en la Cátedra Colombia en Bogotá por el Presidente de Colombia respecto a algunos defensores de derechos humanos, en particular al Sr. Iván Cepeda Castro. Según se informa, el Presidente Uribe habría declarado que personas como el susodicho se arroparían en la protección de las víctimas, la cual ‘les sirve para instigar la violación de los derechos humanos en contra de las personas que no comparten sus ideas’ y para ‘salir a amenazar,...calumniar, ... acusar falazmente’.

A nuestro juicio, estas declaraciones, sumadas a otras hechas en los últimos meses por representantes del gobierno colombiano, podrían resultar sumamente perjudiciales, dado que, actualmente en Colombia muchos defensores de derechos humanos se enfrentan a intimidación y amenazas como aquellas resumidas más arriba. Se expresa profunda preocupación por la integridad física y psicológica de todos aquellos individuos que se encuentran amenazados debido a su trabajo legítimo en defensa de los derechos humanos.

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

Además, quisiéramos referirnos a los artículos siguientes:

- el artículo 6, apartados b) y c), estipula que toda persona tiene derecho, individualmente y con otras, conforme a lo dispuesto en los instrumentos de derechos humanos y otros instrumentos internacionales aplicables, a publicar, impartir o difundir libremente a terceros opiniones, informaciones y conocimientos relativos a todos los derechos humanos y las libertades fundamentales y a estudiar y debatir si esos derechos y libertades fundamentales se observan, tanto en la ley como en la práctica, y a formarse y mantener una opinión al respecto, así como a señalar a la atención del público esas cuestiones por conducto de esos medios y de otros medios adecuados.
- el artículo 12, párrafos 2 y 3, estipula que el Estado garantizará la protección, por las autoridades competentes, de toda persona, individual o colectivamente, frente a toda violencia, amenaza, represalia, discriminación, negativa de hecho o de derecho, presión o cualquier otra acción arbitraria resultante del ejercicio legítimo de los derechos mencionados en la presente Declaración. A este respecto, toda persona tiene derecho, individual o colectivamente, a una protección eficaz de las leyes nacionales al reaccionar u oponerse, por medios pacíficos, a actividades y actos, con inclusión de las omisiones, imputables a los Estados que causen violaciones de los derechos humanos y las libertades fundamentales, así como a actos de violencia perpetrados por grupos o particulares que afecten el disfrute de los derechos humanos y las libertades fundamentales.

En este contexto, 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.

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. Los Principios relativos a una eficaz prevención e

investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social. En particular, 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.

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

Quisiéramos instar a Su Gobierno a que adopte todas las medidas necesarias para proteger los derechos y las libertades de las personas mencionadas e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que tome las medidas 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 han sido otorgados por la Comisión de Derechos Humanos y prorrogados por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a nuestra atención. En este sentido, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes, siempre y cuando sean aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Fueron presentada quejas?
3. Por favor proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con los casos aquí resumidos. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
4. Por favor citan ejemplos recientes de declaraciones de funcionarios de alto cargo que respaldan el apoyo político firme e innegable a los defensores de derechos humanos demostrado por las palabras del Vicepresidente de la República de septiembre de 2007.



5. Por favor, proporcione información sobre las medidas adoptadas para asegurar las personas mencionadas arriba cuya integridad física y psicológica está a riesgo en consecuencias de las amenazas sufridas.

### **Respuesta del Gobierno de Colombia del 5 de junio de 2008**

In this occasion, in the spirit of dialogue and cooperation that characterizes our work with your Office and with the special procedures, the Colombian Government would like to convey through you to the mandate holders the attached document related to general measures adopted to address some of the issues raised in the Appeal.

A detailed response with specific information on the cases included in the appeal is being prepared by the Ministry of Foreign Affairs in coordination with the relevant State institutions and will be sent in due course.

The document reflects some of the points expressed by the Colombian delegation at the interactive dialogue held in the Human Rights Council with the Special Rapporteur on Extrajudicial, Summary or Arbitrary executions, Mr. Philip Alston. It is also intended to complement the information already provided to the above mentioned mandate holders, as well as to the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Leonardo Despuy in the communication MPC 498 of May 5<sup>th</sup>, 2008.

### **Colombia: Muerte de Guillermo Rivera Fúquene**

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

**Persona objeto del llamamiento:** 1 hombre

**Carácter de la respuesta:** Respuesta cooperativa pero incompleta

### **Observaciones del Relator Especial**

El Relator Especial aprecia la información proporcionada por el Gobierno de Colombia relativa a la muerte del Sr. Guillermo Rivera Fúquene. El Relator Especial agradecería que se le mantenga informando del progreso de las investigaciones por el Gobierno con relación a la muerte del Sr. Guillermo Rivera Fúquene.

**Carta de alegación del 18 de agosto de 2008**, mandado con el Relator Especial sobre la tortura, el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Relatora Especial sobre la situación de los defensores de los derechos humanos

Quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación con el Sr **Guillermo Rivera Fúquene**, anterior Presidente del *Sindicato de Servidores Públicos de Bogotá (SINSRVPUB)*. La presunta desaparición forzada del Sr Guillermo Rivera Fúquene fue mencionada en un llamamiento urgente enviado por la Relatora Especial sobre la situación de los defensores de derechos humanos, el Relator Especial sobre la promoción y la protección del derecho a la libertad de opinión y de expresión, y el Relator Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias el 23 de mayo de 2008.

Recibimos la respuesta de su Gobierno el 5 de junio de 2008, que contiene información sobre las medidas adoptadas por su Gobierno para poner fin a la impunidad, pero no menciona el caso del Sr Guillermo Rivera Fúquene. Desde entonces hemos recibido más información sobre este caso.

Según las nuevas informaciones recibidas:

El 22 de abril de 2008, aproximadamente a las 6.30 a.m., el Sr Guillermo Rivera Fúquene habría sido detenido por una patrulla de la Policía Nacional. El 24 de abril se habría encontrado un cadáver, sin documentos de identidad y con signos de tortura, en un botadero de escombros. El 15 de julio de 2008, habrían enterrado este cadáver como persona sin identificación conocida (NN). Sin embargo, en una exhumación posterior ordenada por la Fiscal 49 de Ibagué, se habría identificado el cuerpo como el del Sr Guillermo Rivera Fúquene. Se habrían descubierto signos de ahorcamiento, golpes en la cara y contusiones en varias partes del cuerpo. Se afirma también que 32 sindicalistas habrían sido asesinados durante 2008 en Colombia.

Se expresa preocupación que el asesinato del Sr Guillermo Rivera Fúquene podría estar directamente relacionado con sus actividades legítimas en defensa de los derechos humanos en Colombia. También se expresa preocupación que este asesinato, de ser confirmado, se enmarque en un contexto de gran peligro para los sindicalistas en Colombia.

Asimismo, quisiéramos llamar la atención del Gobierno de su Excelencia sobre las siguientes normas y principios que son particularmente significativos con respecto a la denuncia mencionada precedentemente. Los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social. En particular, 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.

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

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, 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.

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

Además, quisiéramos referirnos a los artículos siguientes:

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

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

Es nuestra responsabilidad de acuerdo con los mandatos que nos ha entregado el Consejo de los 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 presentadas?
2. Por favor, proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con el caso. Si las investigaciones judiciales y diligencias no han tenido lugar o no han sido concluidas, le rogamos que explique el por qué.

## **Respuesta del Gobierno de Colombia del 22 de agosto de 2008**

El Gobierno Nacional, a través del Ministro del Interior y de Justicia, Fabio Valencia Cossio; los presidentes de la Central Unión de Trabajadores (CUT), Tarcisio Mora y Confederación de Trabajadores de Colombia (CTC) Apecides Alviz y el Secretario general de la Confederación General del Trabajo (FGT), Julio Roberto Gómez, la Fiscalía General, el DAS y la Policía Nacional se permiten informar a la opinión pública:

1. Lamentan profundamente el crimen que le quitó la vida al líder sindical Guillermo Rivera Fúquene. Rechazan los ataques de que han sido víctimas los sindicalistas y expresan el repudio a todo acto que pueda restringirla libertad de asociación sindical.
2. Exhortan a los organismos investigadores y judiciales a continuar obrando con el mayor rigor y celeridad para obtener resultados pronto de las investigaciones de los recientes crímenes contra líderes sindicales. Para el efecto, se reforzará el grupo de fiscales para combatir las bandas criminales y en especial los casos de crímenes contra sindicalistas.
3. Manifiestan que se incrementará la prevención como mecanismo para evitar la comisión de nuevos crímenes contra sindicalistas, cualquiera sea la naturaleza o su origen.
4. El Gobierno Nacional reafirma que su política es promover y hacer respetar la libertad de asociación y al efecto adelantará una campaña por todos los medios de comunicación, defendiendo este derecho establecido en la Constitución Nacional y ratificado en los convenios con la OIT.
5. Se convocará una reunión de empresarios, dirigentes sindicales y Gobierno para establecer un mecanismo conjunto que evite el constreñimiento a la libertad sindical y tomar medidas para castigar a los infractores de este derecho.
6. Habrá un inventario real de los casos de ataques contra sindicalistas, para que las autoridades judiciales determinen sus verdaderos móviles.
7. Se hará más eficaz el mecanismo de alerta temprana y se reforzará el protocolo de prevención para identificar los casos críticos.
8. Los comandantes de Policía Departamentales están obligados a rendir informes mensuales al DAS, la Fiscalía, el Gobierno y los dirigentes sindicales sobre la situación de riesgo y protección de los sindicalistas en sus jurisdicciones.
9. El doctor Rafael Bustamante Pérez, Director de Derechos Humanos del Ministerio del Interior y de Justicia, mantendrá contacto permanente con los máximos dirigentes de las confederaciones sindicales para efectos de perfeccionar cada vez más los mecanismos de protección de los sindicalistas.

10. Se creará el mecanismo de la Red Virtual para los sindicalistas, para atender alertas en tiempo real, tal como opera el mismo sistema para los alcaldes y concejales.
11. El Gobierno Nacional ofrece recompensas por informaciones que conduzcan a la captura de los condenados por crímenes contra sindicalistas y que no han sido capturados.

**Colombia: Amenazas contra varios sindicatos y organizaciones  
no gubernamentales y sus miembros**

**Violación alegada:** Amenazas de muerte

**Persona objeto del llamamiento:** 17 personas (16 hombres, 1 mujer)

**Carácter de la respuesta:** No se recibió ninguna 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 17 de octubre de 2008**, mandado con la Relatora Especial sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión

Quisiéramos señalar a la atención urgente de su Gobierno la información que hemos recibido en relación con las amenazas contra varios sindicatos y organizaciones no gubernamentales y sus miembros. Varios titulares de mandatos han enviado comunicaciones a su Gobierno respecto a estas organizaciones.

De acuerdo con las informaciones recibidas:

El 16 de septiembre de 2008, un mensaje firmado por el grupo paramilitar *Comando Carlos Castaño Vive (CCV)* fue enviado al correo electrónico de la Asamblea Permanente de la Sociedad Civil por la Paz y al *Movimiento Nacional de Víctimas (MOVICE)*. Dicho mensaje contendría amenazas contra miembros de la *Central Unitaria de Trabajadores (CUT)*, en particular contra su Secretario General, el Sr. **Domingo Tovar Arrieta**; el *Sindicato de Trabajadores de la Salud (ANTHOC)*; la *Federación Nacional de Cooperativas Agrarias (FENACOA)*; la *Corporación Reiniciar*, la *Asociación para la Promoción Social Alternativa Minga*; la *Asociación Solidaria Andas*, y la *Corporación Colectivo de Abogados “José Alvear Restrepo”*; la *Fundación Comité de Solidaridad con los Presos Políticos (FSCSPP)*; y la *Unión Sindical Obrera de la Industria del Petróleo (USO)*, en particular contra el Sr. **Rodolfo Vecino Acevedo**, miembro de la *Junta Nacional de la USO*, el Sr. **Hernando Hernández**, el antiguo Presidente de la USO, los Sres. **Nelson Berrio** y **Rafael Cabarcas**, antiguos líderes sindicales de la USO, y el Sr. **Lenin Fernández**, dirigente juvenil del *Departamento del Cesar*. El mensaje se habría referido al Sr. Lenin Fernández como “sentenciado a muerte”. Estas organizaciones habrían recibido amenazas de muerte durante años.

El 18 de septiembre de 2008, un email fue enviado a los correos electrónicos de *ANTHOC* y *de la Federación Agraria (FENSUAGRO)*, organizaciones afiliadas a la CUT, firmado por Ernesto Báez, Amigos de Uribe por Colombia. El mensaje se habría referido a la CUT una “cuna de terroristas”, profiriendo amenazas contra esta organización, contra la USO, y contra los Sres. **Angel Salas, Juan Mendoza, Miguel Bobadilla, Eberto Díaz, Luis Sandoval, Omar Hernández, Viviana Ortiz, Albeiro Betancourt, Álvaro Londoño, Yesid Camacho y Gilberto Martínez**, todos líderes sindicales y defensores de los derechos humanos. El mismo día, la USO habría recibido por correo electrónico amenazas de muerte firmadas por el grupo paramilitar Águilas Carlos Castaño Vive (CCV). Las amenazas habrían sugerido que existen vínculos entre la USO y el brazo político de la guerrilla del Ejército de Liberación Nacional (ELN), diciendo “nosotros les recordamos las sentencias de muerte a los guerrilleros” y “todos caerán poco a poco como se lo merecen por guerrilleros”. El email habría amenazado a los Sres. Rodolfo Vecino Acevedo, Rafael Cabarcas, Nelson Berrio y Hernando Hernández en particular.

La situación de la USO resulta particularmente preocupante porque la organización habría recibido también varias coronas de condolencia, refiriéndose al Sr. Rodolfo Vecino Acevedo. Una habría llegado a la oficina de la USO en Barrancabermeja en 2007, y otras dos habrían llegado a la sede en Cartagena el 9 de septiembre de 2008. También dos servicios funerarios habrían llamado a la sede en Cartagena porque tenían más coronas para enviar, supuestamente a petición de una mujer no identificada.

Se expresa preocupación que las amenazas contra estas organizaciones, líderes sindicales y defensores de los derechos humanos podrían estar vinculadas con sus actividades legítimas en la defensa de los derechos humanos. Se expresa gran preocupación por la integridad física y psicológica de los miembros de dichas organizaciones. Estos incidentes se enmarcan en un contexto de gran vulnerabilidad para los defensores de los derechos humanos en Colombia.

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

Además, quisiéramos referirnos a los artículos siguientes:

- el artículo 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.

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

Desearíamos hacer un llamamiento al Gobierno de su Excelencia para que adopte las medidas necesarias para el respeto del derecho de asociación de acuerdo con los principios enunciados en el artículo 22 del Pacto Internacional de los Derechos Civiles y Políticos: “Toda persona tiene derecho a asociarse libremente con otras, incluso el derecho a fundar sindicatos y afiliarse a ellos para la protección de sus intereses”.

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.

Asimismo, quisiéramos llamar la atención del Gobierno de su Excelencia 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 que son especialmente significativos con respecto a las denuncias mencionadas precedentemente. En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte. 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.

Quisiéramos instar a su Gobierno a que adopte todas las medidas necesarias para proteger los derechos y las libertades de las personas mencionadas e investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas. Quisiéramos asimismo instarle a que tome las medidas 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 me nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a nuestra atención. En este sentido, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes, siempre y cuando sean aplicables al caso en cuestión:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. ¿Fue presentada alguna queja?
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? Si no se han realizado diligencias judiciales y administrativas respecto al caso, le rogamos que explique por qué.
4. Por favor proporcione información detallada sobre las medidas concretas de protección adoptadas para asegurar la integridad física y psicológica de los líderes sindicales y los defensores de los derechos humanos mencionados arriba, así como la de los demás miembros de sus organizaciones.

**Colombia: Muerte de Mariano Dizú, Jesus Antonio Neme y Elver Idito y amenazas en contra de los pueblos indígenas**

**Violación alegada:** Muerte a consecuencia de ataque o ejecución por fuerzas de seguridad o por grupos paramilitares, Uso excesivo de la fuerza

**Persona objeto 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 Colombia relativa a la muerte de los señores Mariano Morano Dizú, Jesus Antonio Neme y Elver Idito. El Relator Especial agradecería que se le mantenga informando del progreso de las investigaciones adelantadas por la Fiscalía.



**Llamamiento urgente del 29 de octubre de 2008**, mandado con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas

En este sentido, quisiéramos llamar la atención de Su Gobierno sobre la información que hemos recibido en relación con la muerte de los señores **Mariano Morano Dizú**, Presidente de la Junta de Acción Comunal de La Palma, en Pitayó, **Jesus Antonio Neme** y **Elver Idito**, así como sobre **las amenazas y violencia en contra de los pueblos indígenas durante la última semana**.

Según la información recibida:

Con ocasión de la conmemoración del 12 de octubre, como recuerdo de los 516 años del desembarco español en el continente americano, la Organización Nacional Indígena de Colombia (ONIC) organizó “la Minga de Resistencia Indígena y Popular”, que tenía como actividad central la movilización pacífica de pueblos indígenas en los Departamentos del Cauca, Huila, Valle, Chocó, Caldas, Risaralda, Atlántico, Guajira, Cesar, Córdoba, Sucre, Arauca, Meta y Norte de Santander. Indígenas Nasa, Kokonukos, Yanacona, Guambianos, Embera, Eperara Siapidara, Wounaan, Barí, Kankuamos, Mokaná, Wiwa, Arhuacos, Senú, Sikuanis, Piapocos, Salibas y U’wa participaron en las movilizaciones.

Las movilizaciones tenían como fin protestar contra el Tratado de Libre Comercio (TLC) firmado con los Estados Unidos y la aprobación del Estatuto de Desarrollo Rural (ley 1152 de 2007), exigir al Gobierno la adopción de la Declaración de las Naciones Unidas sobre los Pueblos Indígenas y el cumplimiento con los acuerdos suscritos por el Gobierno Nacional en materia de derechos de tierra de los indígenas, y protestar por los asesinatos de indígenas en los 15 días que precedieron la movilización.

En los Departamentos del Cauca y del Valle, el Escuadrón Móvil Antidisturbios (ESMAD), el Ejército Nacional y civiles armados con fusiles, gases lacrimógenos, tanquetas y helicópteros se enfrentaron a las personas que participaban en las movilizaciones. El 14 de octubre de 2008, miembros de la Fuerza Pública habrían abierto fuego en contra de los aproximadamente 15.000 a 20.000 indígenas reunidos en el Resguardo de la María Piendamó, Departamento del Cauca, y contra los indígenas reunidos en el Departamento del Valle. Mariano Morano Dizu fue herido con arma de fuego en el cráneo y falleció luego de ser trasladado a Popayán. Además, más de cien indígenas fueron heridos, al menos 16 con arma de fuego, y docenas más se encuentran desaparecidos. El 21 de octubre de 2008, miembros de la Fuerza Pública habrían abierto fuego en contra de las aproximadamente 500 personas reunidos sobre la vía Panamericana en Villarica. Jesus Antonio Neme y Elver Idito resultaron muertos y cinco otros manifestantes fueron heridos.

En el departamento de Huila, se limitó el derecho a la libre circulación de 750 indígenas que se dirigían a Neiva. Se ordenó a estas personas que bajaran de los camiones en los que eran transportadas por efectivos del Ejército Nacional y la Policía Nacional,

quienes con el pretexto de verificar la identidad de los manifestantes, les pidieron su identificación y retuvieron tanto los vehículos como las provisiones y alimentos que llevaban.

Durante la movilización, varios indígenas han sido amenazados de muerte por grupos paramilitares. Se alega que un Fiscal ha impedido el ingreso de autoridades indígenas para identificar a otras víctimas en el municipio del Corinto (Cauca) y examinar los cadáveres y posibles causas de su muerte.

Según la información recibida, para justificar la violencia, se usa el falso pretexto de que las comunidades indígenas son controladas e infiltradas por miembros de las FARC, ignorando así sus reclamos legítimos.

En este contexto, 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 los derechos 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 básicos sobre el empleo de la fuerza y de armas de fuego por los funcionarios encargados de hacer cumplir la ley, adoptados por el Octavo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, La Habana, 27 de agosto a 7 de septiembre de 1990. Establecen que los funcionarios encargados de hacer cumplir la ley, en el desempeño de sus funciones, utilizarán en la medida de lo posible medios no violentos y delimitan el empleo de la fuerza a determinados casos excepcionales, incluidos los de defensa propia o de otras personas en caso de peligro inminente de muerte o lesiones graves. La fuerza empleada debe ser proporcional a la gravedad del delito y al objeto legítimo que se persiga. Los daños y lesiones deben ser reducidos al mínimo. El empleo de la fuerza está permitido solamente cuando otros medios resulten ineficaces. El empleo arbitrario o abusivo de la fuerza por parte de los funcionarios encargados de hacer cumplir la ley debe ser castigado como delito en la legislación nacional.
- 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 9 a 19 obligan a los Gobiernos a proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias; a publicar en un informe las conclusiones de estas investigaciones; y a 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 sido otorgado por la Comisión de Derechos Humanos y prorrogados por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a nuestra atención. En este sentido, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas? Por favor, proporcione cualquier información adicional que considere pertinente.
2. Por favor indique todas las acciones emprendidas para proteger los derechos y las libertades de las personas afectadas y para evitar que se repitan hechos similares.
3. Por favor proporcione información detallada sobre las investigaciones iniciadas en relación con el caso. Si éstas no hubieran tenido lugar o no hubieran sido concluidas, le ruego que explique el porqué.
4. Con respeto al supuesto homicidio del Sr. Mariano Morano Dizu por parte de agentes de la fuerza pública, por favor: (a) aclare cuáles son las normas que regulan el empleo de fuerza por parte de las fuerzas de seguridad, en el contexto de una manifestación; (b) indique de manera detallada las investigaciones que han sido o serán conducidas sobre el supuesto homicidio arriba mencionado; (c) indique si los miembros de las fuerzas de seguridad han sido acusados o procesados por muerte de civiles; (d) explique qué procesos existen o serán iniciados para investigar de manera exhaustivo e independiente el supuesto homicidio del Sr. Mariano Morano Dizu por agentes de la fuerza pública.

### **Respuesta del Gobierno de Colombia del 5 de enero del 2009**

La respuesta del Gobierno da descripciones detalladas sobre las manifestaciones en Cauca y Villarica. Sobre las alegaciones de uso excesivo de la fuerza por las fuerzas de seguridad, de las muertes de los Sres. Mariano Morano Dizú y Jesús Antonio Neme y Elver Idito, el Gobierno informo:

#### *Contexto*

En el marco de la referida movilización, organizada por el Consejo Regional Indígena del Cauca (CRC), la que contó con la participación de cerca de 5000 indígenas de la región, se presentaron acciones tendientes a bloquear la Carretera Panamericana en diferentes puntos, mediante el uso de árboles, piedras y vehículos, ocasionándoles a éstos daños en las llantas, y en otros casos procediendo a su incineración. El Bloqueo de la carretera también originó daños a la vía, al medio ambiente y a las redes de servicios públicos.

Es de resaltar que la Vía Panamericana es una arteria troncal muy importante para la economía de Colombia. ...

Ante la situación descrita, la Policía Nacional, a través del Escuadrón Móvil Antidisturbios (ESMAD), acudió a los sitios bloqueados por los manifestantes, con el fin de garantizar el restablecimiento de la normalidad.

*En relación con el presunto uso desproporcionado de la fuerza del ESMAD de la Fuerza Pública contra los manifestantes indígenas al intentar reabrir el paso en la carretera Panamericana, el 14 de octubre de 2008*

- La Policía Nacional indicó que dispuso de 750 hombres del ESMAD para dispersar a los manifestantes, **sin acudir a acciones violentas**, atendiendo los protocolos establecidos para estos casos y teniendo siempre presentes *los Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de hacer cumplir la Ley*.
- En ese sentido, cabe señalar que la intervención policial inicialmente desplegó el personal del ESMAD, en atención a su función de asegurar el normal y pacífico desarrollo de las protestas autorizadas; pero en vista del grado de violencia ejercido por los manifestantes, se procedió con el empleo de bastones de mando, agua y gases lacrimógenos para dispersar la manifestación tornada violenta.
- En desarrollo de la movilización los manifestantes utilizaron explosivos de fabricación casera, tales como “papas explosivas,” bombas molotov, así como piedras, palos y machetes; electos que ocasionaron heridas a 45 uniformados, entre ellos, al intendente *Aldívar Giraldo Galeano*, quien presentó mutilaciones en los miembros superiores al manipular un paquete explosivo dejado presuntamente por los manifestantes durante el desbloqueo de la vía Panamericana.
- Con referencia a la afirmación que “*miembros de la Fuerza Pública habría abierto fuego en contra de aproximadamente 15000 y 20000 indígenas.*” Al respecto, es de indicar, que tal como fue reconocido por el Gobierno Nacional a la opinión pública, el hecho se presentó tan solo por un (1) miembro de la Policía Nacional, quien no hace parte del ESMAD.
- Ante la gravedad del hecho, la Oficina de Control Interno Disciplinario del Departamento de Policía del Cauca abrió indagaciones preliminares y la apertura de investigación disciplinaria contra dicho miembro de la Policía Nacional y sus dos superiores.

*En relación con la presunta muerte de indígenas mientras se procedía con el desbloqueo de la vía Panamericana - Taurino Ramos Valencia y Jesús Antonio Neme*

- El Estado indicó que ha tenido conocimiento de la muerte de un (1) indígena con ocasión del desbloqueo de la Vía Panamericana durante los días 10 al 14 de octubre, que responde al nombre de *Taurino Ramos Valencia*, hecho por el que se adelanta investigación penal en la Fiscalía Seccional de Piendamó.
- No obstante, En relación con la muerte del indígena *Jesús Antonio Neme*, actualmente se adelanta investigación penal, la cual cursa en la Fiscalía 001 Especializada de Santander de Quilichao, y que se encuentra en etapa de indagación preliminar. Asimismo, la Procuraduría general de la Nación, en uso del poder preferente avocó conocimiento de la Indagación Preliminar Disciplinaria que se adelantaba en la Oficina de Control Interno Disciplinario del Departamento de Policía de Cauca.

- Respecto de la muerte de *Elver Ipia Ibito*, a la fecha se adelanta investigación penal en la Fiscalía001 Especializada de Santander de Quilichao, que se encuentra en etapa de indagación preliminar.

*En relación con la existencia de 100 indígenas heridos y docenas de indígenas desaparecidos*

- Respecto de los indígenas que resultaron heridos en desarrollo del desbloqueo de la vía Panamericana, la Gobernación del Cauca informó con base en el listado reportado por el servicio de urgencias de Piendamó Cauca, diecinueve (19) Indígenas resultaron heridos.
- Por estos hechos, actualmente se adelanta investigación penal con fundamento en las cincuenta y un (51) denuncias presentadas por lesiones personales formuladas por parte de miembros de comunidades indígenas. La referida investigación se adelanta en la Fiscalía Local de Piendamó, Cauca.

*En relación con las presuntas situaciones de violencia y uso desproporcionado de la fuerza por parte de las autoridades contra los indígenas en el departamento de Huila*

...

La Policía Nacional resaltó que el único incidente presentado en desarrollo de esta movilización indígena fue un accidente de tránsito a la altura del municipio de Campolagre, donde debido al exceso de velocidad e imprudencia de los conductores, chocaron varios vehículos con un saldo de dos indígenas heridos.

*En relación con las acciones emprendidas para proteger los derechos y las libertades de las personas afectadas y para evitar que se repitan hechos similares*

La Policía Nacional, a través del Departamento de Policía del Cauca, profirió la Orden de servicios denominada “*Movilización Indígena y campesina conmemoración día de la raza en el departamento del Cauca,*” estableciendo las medidas a adoptar por parte de los miembros de esa Institución antes, durante y después de la movilización indígena, las cuales se enmarcan bajo el respeto a las disposiciones constitucionales y legales. De igual manera, se adelantaron una serie de reuniones con los fines de:

- Abordar la problemática de los hechos registrados en la Vía Panamericana
- Abordar la problemática que ha generado la movilización y permanentes bloqueos sobre la Vía Panamericana
- Entablar un diálogo con los marchantes de la Minga de Resistencia Indígena

Asimismo, el 2 de noviembre de 2008, el Presidente de la República sostuvo una reunión de más de seis (6) horas con los voceros de las comunidades indígenas para encontrar caminos en aras de ir resolviendo los problemas. Los resultados de la reunión fueron la proposición de instalar una mesa permanente de diálogo para seguir discutiendo los temas planteados por las

comunidades indígenas al Gobierno Nacional así como la proposición de una investigación de las denuncias sobre presuntos desbordamientos de la Fuerza Pública. El último se complementó con la solicitud oficial al defensor del Pueblo para que en su calidad de autoridad independiente, dé el respectivo trámite a las denuncias sobre presuntas violaciones de derechos humanos.

El 22 de noviembre de 2008, varios Ministros del Gobierno sostuvieron un diálogo con las comunidades indígenas que resultó en la confirmación de una comisión mixta por diez Viceministros y diez representantes de la Minga con el objetivo de atender las preocupaciones de los indígenas.

*En relación con el supuesto homicidio del Sr. Mariano Morano Dizú por parte de agentes de la fuerza policiales y las investigaciones que han sido o serán conducidas sobre el supuesto homicidio arriba mencionado*

El estado de Colombia reiteró que la fuerza utilizada por parte del ESMAD en desarrollo de las manifestaciones de la *Minga Indígena* atendido a las circunstancias y al grado de violencia ejercido por los manifestantes.

El Estado colombiano aclaró que la persona que resultó muerta en el marco de las manifestaciones de la *Minga Indígena*, fue identificada como Taurino Ramos Valencia, y no Mariano Dizú.

Al respecto, la Fiscalía General de la Nación indicó que el indígena Taurino Ramos Valencia resultó herido en el sitio de los hechos y fue trasladado a la ciudad de Popayán, con muerte cerebral. Es pertinente precisar que el informe emitido por el Instituto Nacional de Medicina Legal y Ciencias Forenses determinó que la muerte se produjo por heridas con esquirlas de explosivos y no arma de fuego. Por este hecho se adelanta una investigación en la Fiscalía seccional de Piendamó.

El Gobierno señaló que, si bien las comunidades indígenas manifestaron que la necropsia realizada al cuerpo del indígena *Taurino Ramón Valencia* habría sido cambiada, la Fiscalía General de la Nación informó a esta Dirección que la Directora Seccional de Fiscalía de Popayán, una vez tuvo conocimiento de los hechos, se desplazó hasta Medicina Legal para verificar que los funcionarios atendieran este caso con la mejor disposición y con todo el compromiso.

#### *Acciones disciplinarias*

El Procurador General de la Nación dispuso una comisión especial integrada por asesores en derechos humanos adscritos a su Despacho, para que asumieran las investigaciones a que hubiera lugar respecto de los hechos ocurridos en desarrollo de las movilizaciones indígenas, que presuntamente pueden constituirse como faltas disciplinarias.

Asimismo, el Procurador General de la Nación avocó el conocimiento de las indagaciones preliminares disciplinarias que estaban siendo adelantadas por la oficina de Control Interno Disciplinario del Departamento de Policía del Cauca, en contra miembros del ESMAD por los hechos relacionados con la muerte del indígena *Taurino Ramos Valencia*.

Por auto del 13 de noviembre del 2008 se decretó la apertura formal de investigación disciplinaria en contra de cinco (5) miembros de la Policía Nacional, en su mayoría integrantes del ESMAD.

### **Colombia: Asesinato de Edwin Legarda**

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

**Persona objeto del llamamiento:** 1 hombre

**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 relativa a la muerte del Sr. Legarda. El Relator Especial agradecería que se le mantenga informando del progreso de las investigaciones adelantadas por la Fiscalía.

**Llamamiento urgente del 29 de diciembre de 2008**, mandado con la Relatora Especial sobre la situación de los defensores de los derechos humanos, el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido en relación con el asesinato del Sr. **Edwin Legarda**, esposo de la Sra. Aida Quilcué Vivas, Consejera Mayor del *Consejo Regional Indígena del Cauca (CRIC)*. La Sra. Aida Quilcué Vivas también ha tenido un papel importante en la Minga Nacional de Resistencia Indígena y Popular, una jornada de unidad comunitaria, social y popular convocada por la *Organización Nacional Indígena de Colombia (ONIC)* para defender la vida y los derechos territoriales, políticos, ambientales y alimentarios de las poblaciones indígenas. En octubre de 2008, las autoridades colombianas, incluyendo al Presidente, supuestamente justificaron la represión de esta Minga por parte de las Fuerzas Armadas de Colombia.

De acuerdo con las informaciones recibidas:

El 16 de diciembre de 2008, a primeras horas de la mañana, entre las localidades de Inzá y Totoró, Departamento de Cauca, soldados del Batallón “José Hilario López” de la tercera división del Ejército habrían llevado a cabo un ataque armado contra el Sr. Edwin Legarda. La víctima conducía una camioneta de la Consejería del CRIC con vidrios semipolarizados que se había asignado a su esposa, la Sra. Aida Quilcué Vivas. En total 17 balas, disparadas desde varios ángulos, habrían llegado al vehículo. El Sr. Edwin Legarda se habría muerto unas horas después en un hospital.

Al momento del ataque el Sr. Edwin Legarda se dirigía a recoger a la Sra. Aida Quilcué Vivas, quien regresaba de Ginebra, Suiza, donde había asistido como representante del CRIC y delegada de la Organización Indígena de Colombia (ONIC) al Examen Periódico

Universal (EPU) de Colombia en las Naciones Unidas. Ante el EPU la Sra. Aida Quilcué Vivas habría denunciado las violaciones de derechos humanos de las cuales los pueblos indígenas son víctima, incluyendo supuestas ejecuciones extrajudiciales por parte de las fuerzas de seguridad.

Se expresa preocupación de que el asesinato del Sr. Edwin Legarda podría estar vinculado con las actividades de la Sra. Aida Quilcué Vivas en la defensa de los derechos humanos, en particular los derechos indígenas. Considerando que el vehículo conducido por el Sr. Edwin Legarda tenía vidrios semipolarizados y no se podía comprobar quién lo conducía, se teme que el ataque podría haber sido dirigido contra la Sra. Aida Quilcué Vivas. Así se expresa gran preocupación por la integridad física y psicológica de la Sra. Aida Quilcué Vivas. Estos hechos, de ser confirmados, se enmarcan en un contexto de gran vulnerabilidad de los defensores de los pueblos indígenas en Colombia.

Sin implicar, de antemano, una conclusión sobre los hechos, llamamos 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.

Quisiéramos también 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, 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.

Asimismo nos gustaría llamar la atención del Gobierno de Su Excelencia sobre la Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas, aprobada por la Asamblea General el 13 de septiembre de 2007. El artículo 2 de la Declaración establece que “[l]os pueblos y las personas indígenas son libres e iguales a todos los demás pueblos y personas y tienen derecho a no ser objeto de ninguna discriminación en el ejercicio de sus derechos que esté fundada, en particular, en su origen o identidad indígena”. El artículo 15 dispone que: “1. Los pueblos indígenas tienen derecho a la dignidad y diversidad de sus culturas, tradiciones, historias y aspiraciones, que deberán quedar debidamente reflejadas en la educación y la información pública. 2. Los Estados adoptarán medidas eficaces, en consulta y cooperación con los pueblos indígenas interesados, para combatir los prejuicios y eliminar la discriminación y promover la tolerancia, la comprensión y las buenas relaciones entre los pueblos indígenas y todos los demás sectores de la sociedad”.

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



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

Además, quisiéramos referirnos a los artículos siguientes:

- el artículo 6, apartados b) y c), estipula que toda persona tiene derecho, individualmente y con otras, conforme a lo dispuesto en los instrumentos de derechos humanos y otros instrumentos internacionales aplicables, a publicar, impartir o difundir libremente a terceros opiniones, informaciones y conocimientos relativos a todos los derechos humanos y las libertades fundamentales y a estudiar y debatir si esos derechos y libertades fundamentales se observan, tanto en la ley como en la práctica, y a formarse y mantener una opinión al respecto, así como a señalar a la atención del público esas cuestiones por conducto de esos medios y de otros medios adecuados.
- el artículo 12, párrafos 2 y 3, estipula que el Estado garantizará la protección, por las autoridades competentes, de toda persona, individual o colectivamente, frente a toda violencia, amenaza, represalia, discriminación, negativa de hecho o de derecho, presión o cualquier otra acción arbitraria resultante del ejercicio legítimo de los derechos mencionados en la presente Declaración. A este respecto, toda persona tiene derecho, individual o colectivamente, a una protección eficaz de las leyes nacionales al reaccionar u oponerse, por medios pacíficos, a actividades y actos, con inclusión de las omisiones, imputables a los Estados que causen violaciones de los derechos humanos y las libertades fundamentales, así como a actos de violencia perpetrados por grupos o particulares que afecten el disfrute de los derechos humanos y las libertades fundamentales.

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

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

Teniendo en cuenta la urgencia del caso, agradeceríamos recibir del Gobierno de su Excelencia una respuesta sobre las acciones emprendidas para proteger los derechos de la Sra. Aida Quilcué Vivas y de investigar los actos mortales de violencia contra su esposo.

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

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

2. ¿Fue presentada alguna queja?

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 de las violaciones de los derechos humanos? Si no se han realizado diligencias judiciales y administrativas respecto al caso, le rogamos que explique por qué.

4. Por favor proporcione información detallada sobre las medidas de protección adoptadas para asegurar la integridad física y psicológica de la Sra. Aida Quilcué Vivas y de los miembros de su familia.

### **Respuesta del Gobierno de Colombia del 17 de marzo del 2009**

El Estado de Colombia repudió el homicidio del Sr. Edwin Legarda, ex esposo de la líder indígena del Consejo Regional Indígena del Cauca (CRIC), Aida Quilcué. Desde el primer momento en que se tuvo conocimiento de la noticia, el Estado, desde su más alta nivel condenó los presuntos hechos y conminó a las autoridades competentes, a adelantar las investigaciones a que hubiere lugar.

En este sentido, el señor Presidente de la República de Colombia, Dr. Álvaro Uribe Vélez en declaración de 17 de diciembre de 2008 señaló lo siguiente:

“Compatriotas, expreso nuestro sentido dolor y nuestras más profundas condolencias a la señora Aida Quilcué, Consejera Mayor del Consejo Regional Indígena del Cauca (Cric), a toda su familia, al Cric y a toda la comunidad indígena, por la muerte del esposo de la compatriota Aida, José Edwin Legarda.

Durante seis años y cuatro meses de Gobierno, hemos impulsado una política de Seguridad Democrática para defender a todos los colombianos. Esa política ha estimulado el pluralismo, esa política de Seguridad Democrática ha protegido a aquellos que defienden las tesis del Gobierno y a los críticos del Gobierno.

La oposición en Colombia ha estado rodeada de garantías, de garantías no retóricas, de garantías eficaces. Seis años, cuatro meses, de una dura oposición con plenas garantías; sustentan nuestras afirmaciones.

En la mañana, conocidos estos luctuosos hechos, que nos duelen por el dolor de su familia, por el dolor del Cric del Cauca, que nos duelen por la Seguridad Democrática, que nos duelen como colombianos, después de conocidos estos luctuosos hechos, el Ministro de la Defensa y mi persona acordamos que se pediría una investigación a la Procuraduría, a la Fiscalía y también al delegado de la Alta Comisionada para Derechos Humanos, que preside la Delegación en Colombia, y que el Gobierno se sujeta totalmente a las comunicaciones de esa investigación.

Las autoridades competentes están adelantando con celeridad y diligencia las investigaciones penales y disciplinarias tendientes a esclarecer los hechos y establecer sus responsables. Asimismo, las autoridades competentes han fortalecido la protección de la señora Aida Quilqué y su familia, en aras de garantizar plenamente su vida e integridad personal.

Así como tenemos que tener la mayor objetividad, pedir las más imparciales investigaciones, también estamos obligados a no proceder injustamente contra integrantes de nuestro Ejército. Nosotros tenemos que guardar un gran equilibrio en lo que es la protección del Ejército, de sus integrantes, y lo que es la protección de la verdad. Esperamos que sean estas autoridades investigativas, quienes finalmente nos digan sobre la verdad de los hechos. El Cric ha tenido mucha discrepancia con este Gobierno, y esas discrepancias se han manejado en un plano de debate constructivo, de debate público. Incluso, en el Consejo Comunitario del pasado sábado, justamente programado para ser realizado en Inzá, municipio caucano de esta región de las comunidades indígenas, expresamos toda nuestra voluntad de poder adelantar un análisis con calidez y con patriotismo de toda la problemática, y buscar dar soluciones.

Después de una reunión pública que tuvimos en “La María” hace algunos domingos, el Gobierno, con la coordinación del señor Ministro del Interior y de Justicia, se reunió durante más de doce horas con la minga organizada por estas comunidades indígenas. Para nosotros, el debate es un debate de ideas, es un debate de franqueza, es un debate de garantías plenas a todas las partes, es un debate democrático.

De otro lado, mediante un comunicado del 17 de diciembre de 2008, el Ministerio de Defensa lamentó la muerte del señor Legarda, e informó a la opinión pública lo siguiente:

1. Se estableció que tropas del batallón José Hilario López pertenecientes a la III división del Ejército Nacional dispararon al automóvil que conducía el señor Legarda, sin que hasta el momento haya suficiente claridad sobre como ocurrieron los hechos.
2. Es prioridad para el Ministerio de Defensa establecer a la mayor brevedad las circunstancias en que ocurrieron los hechos en donde murió el Señor Legarda y para ellos ya se tomaron medidas.

3. Se le solicitó a la Fiscalía General de la Nación y la Procuraduría enviar una comisión especial al área para que adelante las investigaciones necesarias en materia penal y disciplinaria, y se les ofreció todo el apoyo que puedan necesitar.
4. Se ordenó el desplazamiento del Comandante de la III División, General Justo Eliseo Peña, a la zona, e igualmente del Inspector General de las fuerzas Militares, para que encabece una comisión interna independiente que verifique los hechos.
5. El Ministerio se puso en contacto con la Oficina de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos con el fin de garantizar el acceso necesario para que realice una investigación. Esta Oficina ya envió una comisión al área.
6. El Ministerio de Defensa mantendrá informada a la opinión pública en la medida en que las investigaciones arrojen resultados y claridad sobre lo ocurrido, y reitera su política de transparencia con relación a las acciones de todos los integrantes de la Fuerza Pública.”

El Gobierno de Colombia está plenamente convencido que el respeto y la garantía de los Derechos Humanos son la única herramienta para lograr los fines del Estado y en este sentido, cualquier violación a estas normas y principios debe ser sancionada a la luz de la legislación nacional y los Tratados y Convenios Internacionales debidamente ratificados por el país.

Colombia es un Estado Social de Derecho sujeto al imperio de la ley. Tal como se encuentra reflejado en los comunicados del Presidente de la República y del Ministerio de Defensa Nacional, las acciones adelantadas por la Fiscalía y la Procuraduría General de la Nación, el Ministerio del Interior y de Justicia y el Ministerio de Defensa, tienen como objetivo primordial esclarecer los hechos y sancionar los responsables; brindar protección efectiva a la familia del señor Legarda y revisar procedimientos Internos al Interior de las Fuerzas Armadas para evitar que hechos similares se repitan.

#### *Investigación adelantada por la Fiscalía General de la Nación*

La Fiscal General de la Nación informó que una vez conocidos los hechos, una Comisión del Cuerpo Técnico de Investigación (CTI) de la ciudad de Popayán, capital del departamento del Cauca, se desplazó al sitio donde ocurrieron los mismos con el propósito de recolectar la evidencia física correspondiente. Una vez allí, se observó que el sitio no se encontraba protegido, que había personas de la guardia indígena y curiosos del sector, motivos por el cual se procedió a acordonar el sitio.

El 17 de diciembre de 2008 la Fiscalía 41 Delegada ante la Unidad de Derechos Humanos y DIH asumió la investigación por la muerte del señor Legarda, la cual actualmente en etapa de indagación.

En desarrollo de esta investigación, el 16 de diciembre de 2008, se allegó el informe ejecutivo por parte de la Seccional de Policía Judicial (SIJIN) de Popayán, entre las cuales se adjuntaron más de 40 pruebas documentales, entre las cuales se encuentran diversos estudios técnicos y entrevistas.

El 22 de diciembre de 2008, en el municipio de Totoró (departamento de Cauca), se realizó la audiencia preliminar en la cual se solicitó la autorización para la práctica de una prueba. Asimismo, se elaboró el programa metodológico y se emitió orden a la Policía Judicial. De igual forma, se allegaron varios documentos obtenidos por la Procuraduría Provincial de Popayán, así como el informe pericial de necropsia del señor Legarda y una diligencia de inspección judicial.

El 26 de diciembre de 2008, se allegó la documentación obtenida en la oficina de personal del Batallón “José Hilario López” y en la Sección de Operaciones de la misma guarnición militar. Además se realizaron varias entrevistas.

El 5, 21 y 29 de enero del 2009, se allegaron informes del investigador de campo.

El 27 de enero de 2009, se recibió un Informe del laboratorio de toxicología. El 2 de febrero de 2009, se allegó informe del investigador de campo.

De otra parte, la Fiscalía General de la Nación informó mediante comunicación de 23 de diciembre de 2008 que el Juzgado 54 de Instrucción Penal Militar solicitó al Fiscal de conocimiento, remitir el expediente de la citada Investigación en atención a que dichos hechos debían ser juzgados a la luz del Código Penal Militar. No obstante, el 6 de febrero de 2009 se recibió oficio de la Dirección Ejecutiva de la Justicia Penal Militar donde informan que la petición hecha por la fiscalía de conocimiento, solicitando a su vez el envío de las diligencias que por estos hechos se adelantan en el referido Juzgado de Instrucción Penal Militar, fue enviada a ese despacho judicial para que, de acuerdo con los principios de autonomía e independencia, decidiera al respecto.

#### *Investigación adelantada por la Procuraduría General de la Nación*

Por su lado, la Procuraduría Provincial de Popayán, una vez tuvo conocimiento de los presuntos hechos relacionados con la muerte del señor Legarda, abrió indagación preliminar. El 17 de diciembre de 2008, la Procuraduría Provincial de Popayán adelantó una visita especial a las instalaciones del Batallón “José Hilario López” de esta ciudad. Asimismo, se envió comunicación dirigida al Comandante del mencionado Batallón con el objeto de solicitar copia de la orden de operaciones. Adicionalmente, los días 18 y 19 de diciembre de 2008, se recibieron las versiones libres de los treinta y cuatro (34) soldados que al parecer, habrían participado en los hechos que presuntamente ocasionaron la muerte al señor Legarda.

Posteriormente, en enero de 2009 la Procuraduría Provincial de Popayán solicitó al Comando de Policía del departamento de Cauca, copia del acta de inspección al cadáver del señor Legarda. El día 2 de febrero de 2009, la Procuraduría Provincial de Popayán recibió la declaración bajo la gravedad de juramento de la persona que se encontraba con la presunta víctima el día de los hechos, y de la señora Aida Quilqué.

El Despacho de la Procuraduría Provincial de Popayán informa que, a la fecha, se encuentra a la espera de la información solicitada al Batallón de Infantería “José Hilario López”, así como de recibir otros testimonios que serían necesarios para adelantar la investigación disciplinaria.

*Medidas de protección material adoptadas e implementadas*

La Dirección de Derechos Humanos del Ministerio del Interior y de Justicia informó sobre las siguientes medidas de protección material adoptadas e implementadas a favor de la señora Aida Quilqué y su hija.

El esquema de protección de la señora Aida Quilqué esta compuesto por:

- un vehiculo blindado;
- dos unidades de escolta pertenecientes a la guardia indígena;
- dos medios de comunicación y un Avantel asignados a las dos unidades de escolta;
- un celular y un Avantel asignados a la señora Aida Quilqué.

El esquema de protección de la hija de la señora Aida Quilqué está conformado por:

- un vehiculo blindado;
- un escolta perteneciente a la guardia indígena;
- un Avantel asignados al escolta;
- un Avantel asignado a la hija de la señora Aida Quilqué.

*Otras acciones adelantadas*

El Ministerio de Defensa informó que el 19 de enero de 2009, en las instalaciones de la Presidencia de la República, en una reunión que contó con la asistencia del señor Ministro de Defensa Nacional, el Comandante de la Fuerzas Militares y representantes de las Naciones Unidas en Colombia, se expuso el caso de la lamentable muerte de Edwin Legarda. Con base en las conclusiones adoptadas en dicha reunión, se determinó fortalecer y reafirmar las siguientes acciones:

1. Revisar la doctrina respecto a la disciplina del fuego, toda vez que en este caso se presume que el accionar de la tropa el día de los hechos no se ajustó a las reglas de encuentro ni a la Directiva 300-28 de 2007, proferida por el Comando General de las Fuerzas Militares.
2. Continuar con la difusión a todos los niveles de la institución castrense el cumplimiento de la obligación legal de “primer respondiente” y “preservación de la escena de los hechos”.

3. Fortalecer el proceso de transmisión a todos los niveles, de los criterios y procedimientos establecidos para la instalación de retenes y dispositivos militares sobre vías principales y alternas.
4. Impartir Instrucciones para que, a través de los centros de Instrucción y entrenamiento se refuercen las respectivas capacitaciones en aras de cumplir con el anterior compromiso institucional.

En lo atinente a la indemnización de la familia del señor Legarda, el Ministerio de Defensa informó que existe la plena disposición para proceder a iniciar las tramites pertinentes para estos efectos, dentro de los límites legales y constitucionales, y siempre que se cuente con la voluntad manifiesta de los familiares de la presunta víctima.

### *Conclusiones*

1. Se reitera el repudio enfático del Estado colombiano por los hechos que produjeron la muerte del señor Legarda.
2. El Estado tiene un gran interés en que los hechos que rodearon la muerte del señor Legarda sean esclarecidos lo más pronto posible.
3. Las autoridades judiciales se encuentran adelantando las investigaciones pertinentes, con total independencia y transparencia.
4. El Gobierno de Colombia respalda y respeta las decisiones judiciales y disciplinarias que resulten de estas investigaciones.
5. El Estado brinda todas las medidas materiales de protección a la señora Aida Quilqué, ex esposa de la víctima, para garantizar su derecho a la vida y a la integridad personal.
6. El Gobierno revisará los procedimientos de las Fuerzas Militares, con el propósito de mejorar su Implementación y evitar que estos lamentables hechos vuelvan a ocurrir.

El Estado también proporcionó un anejo de información general sobre el caso.

### **Colombia: Amenazas en contra de Lina Paola Malagón Díaz**

**Violación alegada:** Amenazas de muerte

**Persona objeto del llamamiento:** 1 mujer

**Carácter de la respuesta:** No se recibió ninguna respuesta (comunicación reciente)

### **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 9 de marzo de 2009**, mandado con el Relator Especial sobre la independencia de magistrados y abogados y el Relatora Especial sobre la situación de los defensores de los derechos humanos

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia sobre la información que hemos recibido en relación con las amenazas contra la Sra. **Lina Paola Malagón Díaz**, abogada de la *Comisión Colombiana de Juristas (CCJ)* y otro miembro de la CCJ. La Sra. Lina Paola Malagón Díaz adelanta actividades sobre la impunidad en casos de violaciones cometidas contra las y los sindicalistas en Colombia. El trabajo de la CCJ está orientado a contribuir al desarrollo del derecho internacional de los derechos humanos y del derecho internacional humanitario de conformidad con los propósitos y principios de la Carta de las Naciones Unidas, y a la plena vigencia del Estado social y democrático de derecho en Colombia. La CCJ ya fue objeto de una comunicación de la Relatora Especial sobre la situación de los defensores de derechos humanos, quien envió una carta el 3 de septiembre de 2008 referente a la intimidación sufrida por tres de sus miembros en el curso de su trabajo.

Según la información recibida:

El 2 de marzo de 2009, a las 12h21, habría sido recibido un fax en el que se declara como objetivo militar a la Sra. Lina Paola Malagón Díaz, abogada de la Comisión Colombiana de Juristas. En el texto de la amenaza, también se habría mencionado a otro miembro de la CCJ, quien habría debido salir del país a finales de 2008, por haber sido víctima de persecución y amenazas por parte del mismo grupo paramilitar, que se autodenomina "*Bloque Capital de las Águilas Negras AUC*".

En febrero de 2009, Sra. Lina Paola Malagón Díaz realizó un informe sobre la impunidad existente en los crímenes que se cometen en Colombia contra las y los sindicalistas por sus actividades de defensa de los derechos laborales. Este informe habría sido un insumo importante para la audiencia que se llevó a cabo el 12 de febrero de 2009 en el Congreso estadounidense, que fue convocada por el representante George Miller, Presidente de la Comisión de Educación y Trabajo de la Cámara de Representantes de Estados Unidos, y cuyo propósito fue examinar la situación de los derechos de los trabajadores en Colombia y la violencia antisindical.

El trabajo realizado por la CCJ para dicha audiencia se habría coordinado con el Director de la Escuela Nacional Sindical (ENS) el Sr. José Luciano Sanín Vásquez, quien habría participado en el espacio convocado por el Representante a la Cámara de los Estados Unidos George Miller. Esta participación habría generado la reacción del Presidente de la República Álvaro Uribe Vélez, quien habría señalado a los participantes en la reunión como personas que distorsionan la verdad, motivadas por "el odio político".

Se teme que la amenaza en contra de la Sra. Lina Paola Malagón Díaz y la CCJ esté relacionada con el trabajo de la CCJ de proteger los derechos sindicales.



Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos 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.
- 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.

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

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

Los Relatores Especiales quisieran recordar al Gobierno de su Excelencia la importancia que tiene para la protección de los defensores de derechos humanos el reconocimiento de la legitimidad de la labor realizada por ellos, así como la firme condena de las amenazas en su contra.

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

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

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

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

**Democratic People's Republic of Korea: Killing of 15 persons on a bridge located in Joowon-gu, Onsung County in North Hamgyung Province**

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

**Subject(s) of appeal:** 13 females; 2 males

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Allegation letter dated 20 March 2008**, sent with the Special Rapporteur on torture, the Special Rapporteur on the right to food and the Special Rapporteur on situation of human rights in the Democratic People's Republic of Korea

In this connection, we would like to draw the attention of your Government to information we have received regarding the alleged public execution of 13 women and 2 men on a bridge located in Joowon-gu, Onsung County in North Hamgyung Province on 20 February 2008.

According to information received, the authorities of the Democratic People's Republic of Korea had previously advised members of all public institutions, public enterprises, and neighborhood units to attend the execution. The people who were executed were reportedly accused of planning to cross over to a neighbouring country to receive economic assistance with the help of their relatives living abroad. Others were accused of helping people to cross or of providing coyote services to those who wanted to cross over.

It has been alleged that this execution was designed to dissuade people from crossing illegally. There have furthermore been reports that the sentences for illegally crossing to the neighbouring country have increased since 1 March 2007, from a prison term of maximum 3 years to 5-7 years.

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. Although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. The Commission on Human Rights requested the Special Rapporteur on the situation of human rights in the DPRK to investigate and report on the situation of human rights in the DPRK and on the Government's compliance with its obligations under international rights instruments. The monitoring of the implementation of all standards relating to the imposition of the capital punishment include, in particular, the following:

(1) The “sentence of death may be imposed only for the most serious crimes” (Article 6(2) ICCPR), it being understood that their scope should not go beyond intentional crimes with lethal or other 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 1984). Under international human rights law, the crimes for which those individuals were reportedly executed cannot be considered among the “most serious crimes” for which the death penalty may be imposed. Furthermore, were the death sentences to be carried out in these cases, this would be on the basis of a law itself in violation of article 12(2) ICCPR which provides the right of anyone to leave his or her country.

(2) “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); these guarantees include the right to have access to a defense counsel of one’s own choosing, or if the person does not have legal assistance to have a defense counsel assigned to him, and the right to be tried publicly.

(3) “Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.” (Article 6(4) ICCPR).

We would further like to refer your Excellency’s Government to Article 12 (2) of the International Covenant on Civil and Political Rights (ICCPR), to which your Government is a party, which states that “everyone shall be free to leave any country, including his own.

Moreover, we consider that public executions constitute degrading punishment in violation of Article 7 of the ICCPR, which contains the absolute prohibition of torture and ill-treatment.

We would also like to refer your Excellency’s Government to the Article 11 (1) of the International Covenant on Economic, Social and Cultural Rights, to which your Government is also a party, which recognizes “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”.

Stressing again that we do not make any determination on the facts and circumstances of these allegations, it is my responsibility under the mandate provided to us by the Human Rights Council, and reinforced by the appropriate resolutions of the General Assembly 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:

1. Are the facts alleged accurate?
2. Please provide information on the 15 persons mentioned in the summary.
3. For which offences does the law currently provide for the imposition of the death penalty?

4. Which courts can impose the death sentence? What appeals and extraordinary remedies are available to a person sentenced to death?

5. Please provide a complete list of the persons currently in detention under a death sentence, with the dates of their sentence, the offences of which they were found guilty, and the remedies exhausted by them as well as those still available to them.

6. Please provide clarification on the alleged increase in sentencing for persons who have left the DPRK without an exit visa.

### **République Démocratique du Congo: Mort de 12 détenus à Kinshasa**

**Violation alléguée:** Mort en détention à la suite de négligence

**Objet de l'appel:** 12 hommes

**Caractère de la réponse:** Pas de réponse (communication récente)

#### **Observations du Rapporteur Spécial**

Le Rapporteur Spécial espère recevoir une réponse concernant ces allégations.

#### **Lettre d'allégation envoyée le 13 mars 2009**

Dans ce contexte, je souhaiterais attirer l'attention du Gouvernement de votre Excellence sur des informations que j'ai reçues concernant le décès en détention de douze personnes à la prison du Centre pénitentiaire et de rééducation de Kinshasa (CPRK) ainsi qu'au SANAT.

Selon les informations reçues:

**Messrs. Kalenga Mwambyi, Lutumba Nkelolo, Ngoyi Makambo, Ntumba Tshilombo, Kalondji Ntumba, Kalue Mbaya, Mboma Mabamza, Nsumbu Lumbu, Pola Tongombe Tonton, Bitolo Bobo, Pipulu Jean et Masa Daniel** seraient morts sous la supervision d'agents de la fonction publique.

Ils auraient été privés de nourriture, parfois pendant plusieurs jours, puisque les rations allouées aux prisons ne suffiraient pas pour nourrir la population carcérale, surpeuplée.

Les conditions hygiéniques précaires auxquelles sont soumis les détenus seraient également la cause de l'apparition de plusieurs maladies, telles que la tuberculose et le paludisme. La privation de soins de santé, qui seraient dû à l'abandon ou la négligence d'agents de l'État, aurait également eu pour effet d'exacerbé le phénomène.

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.

Concernant les informations reçues, je voudrais également attirer l'attention de votre Gouvernement sur le droit international des droits de l'homme qui établit une présomption irréfragable de responsabilité de l'Etat pour les violations du droit à la vie et le droit à l'intégrité physique et morale, survenus dans les cas de détention (voir aussi le récent rapport du Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires à l'Assemblée générale, A/61/311, paragraphe 49 à 54). La raison de cette présomption a été énoncée par le Comité des droits de l'homme dans l'affaire *Dermit Barbato c. Uruguay* (communication no. 84/1981 du 21/10/1982, paragraphe 9.2). La conclusion du Comité des droits de l'homme se lisait comme suit:

« Le Comité ne peut se prononcer de façon définitive sur la question de savoir si Hugo Dermit s'est suicidé, s'il a été poussé au suicide ou s'il a été tué par des tiers pendant sa détention, mais il est obligé de conclure qu'en tout état de cause, les autorités uruguayennes sont responsables, soit par action, soit par omission, de n'avoir pas pris les mesures voulues pour protéger la vie de l'intéressé, comme le paragraphe 1 de l'article 6 du Pacte leur en fait l'obligation. »

Je prie votre Gouvernement de prendre toutes les mesures nécessaires pour diligenter des enquêtes sur les violations perpétrées. Nous prions également votre Gouvernement d'adopter toutes les mesures nécessaires pour prévenir la répétition des faits mentionnés.

Il est de ma responsabilité, en vertu du mandat qui m'a été confié par le Conseil des droits de l'homme de solliciter votre coopération pour tirer au clair les cas qui ont été portés à mon attention. Etant dans l'obligation de faire rapport de ces cas au Conseil des Droits de l'Homme, je serais 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. Veuillez fournir toute information, et éventuellement tout résultat des enquêtes menées, examens médicaux, investigations judiciaires et autres menées en relation avec les faits.
3. Si les allégations sont avérées, veuillez fournir toute information sur les poursuites, procédures engagées ou mesures disciplinaires adoptées à l'encontre responsables.
4. Veuillez indiquer les mesures que votre Gouvernement prend ou entend prendre afin de garantir un plus grand accès à la nourriture et aux soins de santé pour les détenus.

### **Egypt: Killings by Egyptian border guards**

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

**Subject(s) of appeal:** 17 persons (4 males; 4 females (2 minors))

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

**Allegation letter dated 16 September 2008**, sent with the Special Rapporteur on the human rights of migrants

In this connection, we would like to bring to your Government's attention information we have received in relation to reports of the use of lethal force by Egyptian border guards against migrants, asylum seekers and refugees from other African countries trying to cross the border between Egypt and Israel without authorization.

According to the information received:

On 22 July 2007, just after midnight, **Hajja Abbas Haroun**, a pregnant Sudanese woman aged 28, was trying to cross the border near Rafah together with her husband and her two year old daughter as part of a group of Darfurians. They were shot at by Egyptian border guards. **Hajja Abbas Haroun** was hit at the head and died immediately. On 16 February 2008, **Mervat Mer Hatover**, an Erytorean citizen aged 37, was shot at by Egyptian security forces as she was trying to cross a barbed wire border fence near El Kuntillah on the Sinai Peninsula together with her two child daughters. A bullet hit her in her head and killed her. On 19 February 2008, Egyptian border security forces purportedly shot and killed **Ermeniry Khasheef**, a Sudanese citizen aged 50, as he was trying to cross the border near Rafah. Another Sudanese man, **Adam Mohamed Othman** (aged 23), was killed in the same area on 10 March 2008. On 28 June 2008, Egyptian border guards allegedly killed **a seven-year-old Sudanese girl and a man** as they were trying to cross the border near Rafah. **Overall 17 persons were shot dead** by Egyptian border guards to prevent them from crossing the border since the beginning of the year 2008. Tens more were injured and taken to hospital with serious bullet injuries to the chest, back, thighs or legs.

The reports we have received indicate that the refugees, asylum seekers and migrants arrive near the border fence separating Egypt from Israel at night in small groups aided by local smugglers. They run towards the barbed wire fence and try to either climb over it or cut through it. The Egyptian border security reportedly usually first order them to stop and fire warning shots in the air. However, as the above alleged deadly shootings indicate, those who do not stop may be killed or seriously injured by shots to their head or body.

While we do not wish to prejudge the accuracy of these reports, we would like to refer your Government to the principles of international law governing the use of force when policing rallies and protests. The International Covenant on Civil and Political Rights (“ICCPR”), to which Egypt is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

In particular, Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. As expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials (“Basic Principles”), this requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Further, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Basic Principles, Principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9).

We would also like to bring to your Government’s attention that your Government has a duty to investigate, prosecute, and punish all violations of the right to life. The investigation of such cases “shall be thorough, prompt and impartial. ... The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death.” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (“Prevention and Investigation Principles”). Principle 17 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (“Prevention and Investigation Principles”) provides that “[a] written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law.”

It is our responsibility under the mandate provided to us 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 allegations in the above summary of the events accurate? If not so, please share all information and documents proving their inaccuracy.
2. What are the instructions to the border security forces with regard to the use of force to stop unlawful border crossings? How do these instructions take into account the right to life and the international standards regarding the use of firearms outlined above?
3. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to the above-mentioned cases.



4. 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 for the lethal or excessive use of force against persons trying to cross the border.

5. Please state whether any compensation was, or is intended to be, provided to the families of persons allegedly killed by Egyptian border guards.

### **Egypt: Death in custody of seven men**

**Violation alleged:** Deaths in custody

**Subject(s) of appeal:** 4 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.

**Allegation letter dated 12 March 2009**, sent with the Special Rapporteur on the question of torture

We would like to bring to the attention of your Excellency's Government information we have received concerning the recent death in custody of Mr. **Abdessadek Zaharane Chahine**, aged 54, as well as the alleged failure to exhaustively clarify the circumstances of three further cases of death in custody: Messrs. **Ahmed Hassane Fouad**, aged 35, resident in Alexandria, **Mohamed Neboua Abdelhafid**, aged 24, and **Nasser Sadek Djadallah Georges**, aged 45, in Egypt.

According to information received:

M. Abdessadek Zahrane Chahine was arrested on 5 February 2009, at his daughter's wedding, in Tanta. The officers beat him in front of several witnesses. They hit him with a stick, in addition to kicking and punching him. He then lost consciousness and was taken to the hospital where the doctor certified his death. The authorities claim that an autopsy has been performed, but no information has been communicated to the family.

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 cases. Article 7 of the International Covenant on Civil and Political Rights provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life.

When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies in State custody,

there is a presumption of State responsibility. In this respect, we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2):

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

In order to overcome the presumption of State responsibility for a death in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the 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”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In the light of the obligations to carry out a thorough, prompt and impartial investigation of all cases of death in custody, to hold those responsible accountable and to compensate the family of the victim, we would like to draw your attention to three other cases in which, approximately two years after the incident, these obligations are alleged not to have been satisfied. According to the information received:

On 5 November 2006, M. Ahmed Hassane Fouad was arrested by the police of Mina Al Bassal and was taken to their detention centre, where he was held incommunicado and repeatedly ill-treated. As a result, signs of torture were apparent on his face. A few days later, his family was told that he had committed suicide by hanging. The family requested that the public prosecutor carry out an autopsy and an investigation. However, they received no answer to their request.

Mohamed Neboua Abdelhafid was arrested on 10 July 2007, in front of his residence in Giza. Police officers took him to the police station of Wassim, where he was ill-treated. A few days after his arrest, his family was informed that he had committed suicide by throwing himself off the fourth floor of the building. Mr. Neboua Abdelhafid’s family seized the public prosecutor of the case, but he did not order an autopsy or inquiry.

Nasser Sadek Djadallah Georges died on the morning of 7 August 2007, at around 5 a.m., after refusing to pay “taxes” to a corrupt police officer. The police had come into his home, tied him to his bed while beating, kicking and punching him. Subsequently, they threw him out of a window, as testified by several witnesses. He died a few minutes later. The police officers claimed that he committed suicide. No inquiry has been ordered by the public prosecutor.

It is our responsibility under the mandates provided to us by the Human Rights Council 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? If not so, please share all information and documents proving their inaccuracy.
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 the custodial deaths of Messrs. M. Abdessadek Zaharane Chahine, M. Ahmed Hassane Fouad, Mohamed Neboua Abdelhafid and Nasser Sadek Djadallah Georges. 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, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanders, for the deaths in custody Messrs. M. Abdessadek Zaharane Chahine, M. Ahmed Hassane Fouad, Mohamed Neboua Abdelhafid and Nasser Sadek Djadallah Georges.
4. Please indicate whether compensation has been paid to the families of Messrs. M. Abdessadek Zaharane Chahine, M. Ahmed Hassane Fouad, Mohamed Neboua Abdelhafid and Nasser Sadek Djadallah Georges.

### **Guinea Ecuatorial: Muerte de Sr. Saturnino Ncogo Mbomyo**

**Violación alegada:** Muertes en detención

**Persona objeto del llamamiento:** 1 hombre

**Carácter de la respuesta:** No se recibió ninguna respuesta

### **Observaciones del Relator Especial**

El Relator Especial lamenta que el Gobierno de Guinea Ecuatorial 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 23 de abril de 2008**, conjuntamente con el Relator Especial sobre la tortura

En este contexto, quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación con el Sr. **Saturnino Ncogo Mbomyo**, en hechos ocurridos en la ciudad de Malabo.

Según las informaciones recibidas:

El 12 de marzo de 2008, miembros de la Policía se presentaron en el domicilio del Sr. Saturnino Ncogo Mbomyo, de nacionalidad guineana, de unos 45 años de edad, ubicado en el barrio Semu de la mencionada ciudad de Malabo, acusándolo de ocultar “cosas” en su domicilio. Según las denuncias, el interesado no reconoció que ocultara nada en su casa y por ello los policías procedieron a arrestarlo y a llevárselo a la Comisaría. Allí lo interrogaron y le hicieron firmar una autorización de registro de su domicilio, dónde más tarde regresaron acompañados de varias autoridades para proceder a un registro legal de la casa.

Los policías habrían encontrado en el cielorraso (techo) de la vivienda del Sr. Saturnino Ncogo Mbomyo un paquete de droga conocida con el nombre de “Banga” (planta alucinógena local que se fuma) y un millón de Francos guineanos CFA (unos 1.525 €). Además, habrían descubierto una zona irregular en un rincón de su habitación, en cuyo suelo, al ser demolido con picos y mazas, habían armas bien conservadas en envoltorios que hubieran permitido su mantenimiento por mucho tiempo. Se ha dicho que la policía habría encontrado tres fusiles de asalto tipo “Cetme”, un fusil con mira telescópica y una pistola provista de silenciador, así como abundante munición.

De acuerdo con las informaciones, mientras llevaban detenido al Sr. Saturnino Ncogo Mbomyo empezaría a exigirle los nombres de sus cómplices, además su casa y sus negocios habrían sido precintados, y su mujer e hijos echados a la calle. Durante la tarde del mismo día se desencadenaría una serie de arrestos y detenciones cuyo número exacto de detenidos se desconocería, pero que según fuentes fidedignas podrían oscilar en torno a la decena, incluyendo el Sr. Juan Micha, alias Opalon, quien luego fue liberado el 15 de marzo, y el Sr. Gerardo Angüe, alias Batería. También se encontraría detenido un señor de nombre Jesús cuyo apellido no se ha informado, alias Tite, quien tendría relaciones familiares directas con altos cargos del gobierno. Además se ha informado que otras personas estarían bajo órdenes de busca y captura.

Al día siguiente, el 13 de marzo de 2008, la familia del Sr. Saturnino Ncogo Mbomyo habría sido informada de su fallecimiento y su cuerpo habría sido discretamente entregado a la familia el 16 de marzo, procediendo a ser enterrado el mismo día. Se ha informado que la versión que dieron las autoridades fue que el Sr. Saturnino Ncogo Mbomyo se había suicidado, sin embargo muy pocas personas, incluyendo su abogado, habrían podido ver el cadáver y se habría denunciado que algunas de ellas habrían manifestado la existencia de una herida en la sien (hueso temporal de la cabeza) del Sr. Ncogo Mbomyo. Se ha informado que hasta la redacción de este comunicado, las autoridades seguirían sin pronunciarse oficial y públicamente sobre lo ocurrido con el Sr. Saturnino Ncogo Mbomyo.

Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos garantizan a todo individuo los derechos 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. Además, según los artículos 2 y 10, los Estados se comprometen a respetar y a garantizar el derecho de toda persona privada de libertad a ser tratada humanamente y con el respeto debido a la dignidad inherente al ser humano.

Asimismo, quisiéramos llamar la atención del Gobierno de su Excelencia 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 que son particularmente significativos con respecto a las denuncias mencionadas precedentemente. En particular, los principios 9 a 19 obligan a los Gobiernos a proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias, incluyendo una autopsia adecuada; a publicar en un informe las conclusiones de estas investigaciones; y a velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones en cualquier territorio bajo su jurisdicción.

Quisiéramos también hacer un llamamiento a Su Excelencia para buscar una clarificación de los hechos para asegurar que el derecho a la integridad física y mental de estas personas sean protegidos, de conformidad, entre otros a la Declaración Universal de los Derechos Humanos, el Pacto Internacional de Derechos Civiles y Políticos, la Declaración sobre la Protección de todas las Personas contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes y la Convención contra la Tortura.

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

Es nuestra responsabilidad de acuerdo con los mandatos 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 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 la víctima o sus familiares obtuvieron algún tipo de compensación a modo de indemnización.

**Guatemala: Asesinato de Miguel Ángel Ramírez Enríquez y amenazas de otro tres sindicalistas**

**Violación alegada:** Muerte a consecuencia de ataque o asesinato; Amenazas de muerte

**Persona objeto del llamamiento:** 4 hombres (defensores de los derechos humanos)

**Carácter de la respuesta:** Respuesta cooperativa pero incompleta

**Observaciones del Relator Especial**

El Relator Especial agradece al Gobierno de Guatemala por la información que ha proporcionado relativa a la muerte de Miguel Ángel Ramírez Enríquez y las amenazas en contra de Germán Aguilar Brego, Alberto López Pérez y Víctor Manuel Gómez. El Relator Especial preguntará que se le mantenga informando del progreso de las investigaciones mencionadas en la respuesta del Gobierno.

**Llamamiento urgente del 20 de marzo de 2008**, mandato con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario-General sobre la situación de los defensores de los derechos humanos

En este contexto, quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación con el asesinato del Sr. **Miguel Ángel Ramírez Enríquez**, uno de los fundadores de SITRABANSUR (Sindicato de Trabajadores Bananeros del Sur), que habría sido asesinado en el pueblo de El Semillero, departamento de Escuintla, a unos 150 kilómetros de la Ciudad de Guatemala. Quiero también expresar mi preocupación en relación con las amenazas en contra de otros sindicalistas de SITRABANSUR. El sindicato SITRABANSUR fue creado por trabajadores del sector bananero en julio de 2007 para negociar un convenio colectivo.

Según los informes, los propietarios de la plantación no pagarían el salario mínimo, ni tampoco la seguridad social y otras contribuciones.

El 20 de noviembre de 2007, todos los miembros fundadores del sindicato, incluidos sus dirigentes y sus familias, habrían sido despedidos de sus empleos y desalojados de sus casas, al parecer a consecuencia de sus actividades sindicales. Los Sres. **Germán Aguilar Brego, Alberto López Pérez y Víctor Manuel Gómez** habrían denunciado que, el día anterior, habían recibido una amenaza de muerte de un miembro del cuerpo directivo de la plantación bananera. Los Sres. Aguilar Brego, López Pérez y Gómez fueron objetos de un llamamiento urgente enviado por la Representante Especial del Secretario General para los defensores de los derechos humanos el 30 de noviembre de 2007.

El 2 de marzo de 2008, dos hombres armados y con el rostro cubierto por pasamontañas habrían estado acechando cerca de la casa del Sr. Ramírez Enríquez. Cuando éste regresó a su casa, habrían abierto fuego contra él. El Sr. Ramírez Enríquez habría entrado corriendo en la casa y habría tratado de escapar por la puerta trasera. Uno de los hombres lo habría seguido, mientras el otro habría rodeado la casa para interceptarlo y lo habría arrojado al suelo. El Sr. Ramírez Enríquez habría tratado de huir, pero le dispararon por la espalda. Luego le habrían disparado varias veces más, mientras yacía herido en el suelo. Habría muerto unas dos horas después en el hospital. Los informes iniciales indican que su cadáver presentaba cuatro heridas de bala y al menos una de arma blanca.

Los familiares del Sr. Ramírez Enríquez habrían declarado que, unos 15 días antes de ser asesinado, habría dicho que los gestores de la plantación le habían ofrecido dinero para que dimitiera de su cargo en SITRABANSUR. También habría dicho que había recibido amenazas de muerte telefónicas.

Otros miembros del Comité Ejecutivo de SITRABANSUR habrían sufrido intimidación. El 29 de febrero, el Sr. Víctor Manuel Gómez Mendoza habría informado que unos hombres no identificados habían preguntado a su vecino por su paradero. El 3 de marzo, el Sr. Alberto López Pérez habría afirmado que unos hombres no identificados habían estado vigilando su casa. Durante la noche del 8 de marzo, unos intrusos habrían entrado en su casa, pero el Sr. López Pérez y su familia habrían logrado escapar.

Se teme que el asesinato del Sr. Ramírez Enríquez y las amenazas contra los sindicalistas de SITRABANSUR estén relacionados con su labor en defensa de los derechos humanos, en particular los derechos de los trabajadores del sector bananero. Estos hechos, de ser confirmados, se enmarcan en el cuadro de gran inseguridad y riesgo que constaté durante mi reciente visita a Guatemala en febrero de 2008. En mi comunicado de prensa, señalé que “entre los grupos más afectados se cuentan los defensores que trabajan en los derechos económicos, sociales y culturales” y que “otros sectores de la comunidad de defensores sufren ataques específicos a su ámbito de trabajo, entre otros, los sindicalistas”.

Sin implicar, de antemano, una conclusión sobre los hechos, deseamos llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración Universal de Derechos Humanos y el Pacto Internacional de Derechos Civiles y Políticos. Los artículos 3 y 6 de estos instrumentos 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 también llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración de Naciones Unidas sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos y en particular los artículos 1 y 2. Éstos establecen, respectivamente, que toda persona tiene derecho, individual o colectivamente, a promover y procurar la protección y realización de los derechos humanos y las libertades fundamentales en los planos nacional e internacional y que es la responsabilidad primordial y el deber de todos los Estados de proteger, promover y hacer efectivos todos los derechos humanos, adoptando las medidas necesarias para crear las condiciones sociales, económicas, políticas y de otra índole, así como las garantías jurídicas requeridas para que toda persona sometida a su jurisdicción, individual o colectivamente, pueda disfrutar en la práctica todos esos derechos y libertades.

Además, quisiéramos referirnos al artículo 12, párrafos 2 y 3, que estipula que el Estado garantizará la protección, por las autoridades competentes, de toda persona, individual o colectivamente, frente a toda violencia, amenaza, represalia, discriminación, negativa de hecho o de derecho, presión o cualquier otra acción arbitraria resultante del ejercicio legítimo de los derechos mencionados en la presente Declaración.

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

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

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



1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor, 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 hubieran tenido lugar o no hubieran sido concluidas, le rogamos que explique el porqué.
3. Por favor, proporcione información sobre las medidas adoptadas para garantizar la seguridad de los sindicalistas amenazados y de sus familias.

### **Respuesta del Gobierno de Guatemala del 1 de julio 2008**

El Gobierno proporciono la información siguiente:

- Respecto a la pregunta número 1 sobre si *¿Son exactos los hechos a los que se refieren las alegaciones presentadas?*, el Ministerio de Gobernación indicó en su informe que la Unidad de Delitos Contra Activistas de Derechos Humanos, de la División de Investigación Criminal estableció que el señor Miguel Ángel Ramírez Enríquez falleció el 2 de marzo de 2008 Municipio de Tiquisate, Departamento de Escuintla.
- Respecto a la pregunta número 2 en la que solicita *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 hubieran tenido lugar o no hubieran sido concluidas, le rogamos que explique el porqué.* La Fiscalía General del Ministerio Público indicó en su informe que dentro de la investigación se había realizado una serie de diligencias, entre ellas: se ofició a la Dirección de Investigaciones Criminalísticas del Ministerio Público, Ministerio de Gobernación, Frutera Internacional Sociedad Anónima, Declaraciones Testimoniales y otros informes de registros públicos.
- Por su parte el Ministerio de Gobernación indicó en su informe que de acuerdo a las investigaciones realizadas por elementos de la Unidad de Delitos Contra Activistas de Derechos Humanos de la División de Investigación Criminal, estableció que el señor Ramírez Enríquez fue miembro del SITRABANSUR, pero que nunca ocupó ningún cargo en el mismo, indicando además que el señor Ramírez Enríquez se retiró del SITRABANSUR en el mes de noviembre de 2007, al ser despedido de la Finca María Olga.
- Asimismo por medio de declaraciones de testigos entrevistados en conexión con la investigación, el Ministerio de Gobernación estableció que el señor Ramírez Enríquez interpuso una denuncia ante el Ministerio Publico, Expediente Número MP062/2007/1782, en la cual manifestaba haberse afiliado al SITRABANSUR por engaño. El señor Ramírez Enríquez no sabía leer ni escribir y en la denuncia expresó que había sido engañado por los miembros del sindicato y que el documento de afiliación que había firmado, lo hizo porque le indicaron que era un documento para un proyecto de vivienda. Asimismo, el señor Ramírez Enríquez, de acuerdo declaraciones de entrevistados en el curso de la investigación, había expresado temor hacia los miembros del SITRABANSUR.

- El informe del perito patólogo forense, estableció como causa de muerte del señor Ramírez Enríquez un *shock neurogénico, secundario a trauma de cráneo grado IV*. Asimismo, el cuerpo presentaba heridas producidas por arma blanca y proyectil de arma de fuego.
- Respecto a la cuestión número 3 en la que se solicita: *Por favor, proporcione información sobre las medidas adoptadas para garantizar la seguridad de los sindicalistas amenazados y de sus familias*, la Fiscalía General del Ministerio Público indicó en su informe que se solicitó a la Policía Nacional Civil (PNC) designar personal para la seguridad de los miembros del Comité Ejecutivo del SITRABANSUR. Asimismo, el Ministerio de Gobernación informó que se giraron órdenes para que el Distrito Sur de la PNC adoptara las medidas de seguridad necesarias.

### **Guatemala: Asesinatos de tres defensores de los derechos humanos**

**Violación alegada:** Muerte a consecuencia de ataque o asesinato

**Persona objeto del llamamiento:** 3 hombres (defensores de los derechos humanos)

**Carácter de la respuesta:** No se recibió ninguna 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 20 de agosto de 2008**, mandato con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Relatora Especial sobre la situación de los defensores de los derechos humanos

En este contexto, quisiéramos señalar a la atención urgente de su Gobierno la información que hemos recibido en relación con los Sres. **Eliazar Hernández, Mario Gámez y Juan Navarro**, y 15 otros miembros de la Asociación Cristiana de Jóvenes de Guatemala (ACJ) en la municipalidad de Amatitlán. La ACJ está afiliada a la *World Alliance of YMCAs* (Alianza Mundial de los YMCA) y se dedica a la formación de jóvenes en liderazgo, voluntariado y participación ciudadana. Los Sres. Eliazar Hernández, Mario Gámez y Juan Navarro eran voluntarios con la ACJ y trabajaban con jóvenes para evitar que ingresasen en pandillas o que participaran en actividades que les colocaran en riesgo.

Según las informaciones recibidas:

El 10 de agosto de 2008, aproximadamente a las 21h00, los Sres. Eliazar Hernández, Mario Gámez y Juan Navarro habrían salido de la sede de la ACJ en Amatitlán después de una reunión sobre trabajo preparatorio para abrir un centro recreativo de arte, con dirección a la casa de Eliazar Hernández. Más tarde, esa misma noche, habrían recibido una llamada telefónica, después de la cual habrían salido diciendo que iban a volver

pronto. El 11 de agosto de 2008, se habrían encontrado sus cadáveres en la finca El Llano, en Palín, en el Kilómetro 38, Jurisdicción de San Vicente Pacaya, a aproximadamente 10 kilómetros de Amatitlán. Los voluntarios habrían sufrido cortes de machete, golpes severos y fueron ejecutados con un disparo en la cara y dos tiros de gracia dados en la parte de atrás de la cabeza.

Se alega que los asesinatos de los Sres. Eliazar Hernández, Mario Gámez y Juan Navarro podrían estar relacionados con sus actividades para disuadir a los jóvenes de unirse a las pandillas. Estos asesinatos se enmarcan en un contexto de gran vulnerabilidad de los defensores de los derechos humanos en Guatemala. Por eso se expresa gran preocupación por la integridad física y psicológica de los 15 otros miembros de la ACJ en Amatitlán.

Sin implicar, de antemano, una conclusión sobre los hechos, quisiéramos llamar la atención del Gobierno de su Excelencia sobre las siguientes normas y principios que son particularmente significativos con respecto a la denuncia mencionada precedentemente. Los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social. En particular, 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. 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, quisiéramos expresar nuestra preocupación en relación con la información recibida que, al día siguiente de la muerte de los voluntarios de la ACJ, en algunos medios de comunicación habrían aparecido acusaciones de que los muertos eran delincuentes. Esas acusaciones se basarían en declaraciones de miembros de la Comisaría de Palín, entre ellos el Subcomisario Sr. Leonel García, reforzadas por declaraciones del Subdirector de la Policía Nacional Civil, Sr. Henry López, afirmando que las víctimas eran “roba motos”, y de la posible sucesión de hechos de un ajuste de cuentas ocurrida en la mencionada carretera donde fueron encontrados los cuerpos.

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

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

El derecho a formar asociaciones para la promoción de los derechos humanos, como la ACJ, es un aspecto especialmente importante del derecho de asociación enunciado en el artículo 22 del Pacto Internacional de los Derechos Civiles y Políticos: “Toda persona tiene derecho a asociarse libremente con otras ...”. Rogamos que su Gobierno adopte las medidas necesarias para el pleno respeto de este derecho.

Además quisiéramos señalar a la atención de su Gobierno las preocupaciones expresadas en el informe del Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias durante su visita a Guatemala (A/HRC/4/20/Add.2, paras. 35 and 36):

“Las amenazas de muerte, el miedo a las ejecuciones extrajudiciales inminentes y los asesinatos de defensores de los derechos humanos son de una frecuencia alarmante. [...] Son pocos los ataques contra los defensores de los derechos humanos que son investigados y menos aún los casos que dan lugar a condenas, y el asesinato de defensores de los derechos humanos ha aumentado en gran parte debido a que no se ha investigado ni castigado a sus autores. Un gran número de asesinatos va precedido de amenazas de muerte o actos de intimidación que no son investigados. Una investigación eficaz de esas amenazas de muerte podría evitar nuevos asesinatos.”

Quisiéramos instar a su Gobierno a que adopte todas las medidas necesarias para proteger los derechos y las libertades de los otros miembros de la Asociación Cristiana de Jóvenes de Guatemala (ACJ) en la municipalidad de Amatitlán 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 han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a nuestra atención. En este sentido, estaríamos muy agradecidos de tener su cooperación y sus observaciones sobre los asuntos siguientes, siempre y cuando sean aplicables al caso en cuestión:

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

2. Por favor, proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con el caso. Si estas investigaciones y diligencias judiciales no han tenido lugar o no han sido concluidas, le rogamos que explique el por qué.

3. Por favor, proporcione información detallada sobre las medidas protectivas adoptadas para los demás miembros de la AJL en Amatitlán.

### **Guatemala: Asesinato de Antonio Morales Lopez**

**Violación alegada:** Muerte a consecuencia de ataque o asesinato

**Persona objeto del llamamiento:** 1 hombre (defensor de los derechos humanos)

**Carácter de la respuesta:** Respuesta cooperativa pero incompleta

### **Observaciones del Relator Especial**

El Relator Especial agradece al Gobierno de Guatemala por la información que ha proporcionado relativa a la muerte de Antonio Morales Lopez. El Relator Especial preguntará que se le mantenga informando del progreso de las investigaciones mencionadas en la respuesta del Gobierno.

**Carta de alegación del 1 de septiembre de 2008**, mandado con la Relatora Especial sobre la situación de los defensores de los derechos humanos

En este contexto, quisiéramos señalar a la atención urgente de Su Gobierno la información que he recibido en relación con el Sr **Antonio Morales Lopez**, integrante del *Comité de Unidad Campesina (CUC)*, y defensor de los derechos de los indígenas a recursos naturales en la comunidad de Tixel, y a resistir los proyectos mineros a cielo abierto en el Departamento de Huehuetenango.

De acuerdo con las informaciones recibidas:

El 7 de agosto de 2008, varios desconocidos habrían atacado al Sr Antonio Morales López. Le habrían matado a tiros, causándole cuatro heridas en el tórax y en el brazo derecho. Antes de su asesinato, el Sr Antonio Morales López se habría quejado que grupos armados en la región le habían amenazado.

Se expresa preocupación que el asesinato del Sr Antonio Morales López podría estar relacionado con sus actividades legítimas para defender los derechos de los pueblos indígenas en Guatemala. Se teme que este incidente se enmarca en un contexto de gran vulnerabilidad de los defensores de los derechos de los pueblos indígenas, en particular los que se oponen a las empresas mineras, en Guatemala.

Sin implicar, de antemano, una conclusión sobre los hechos, quisiéramos llamar la atención del Gobierno de su Excelencia 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) que son particularmente significativos con respecto a la denuncia mencionada precedentemente. 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. 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 también llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración de Naciones Unidas sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos y en particular los artículos 1 y 2. Éstos establecen, respectivamente, que toda persona tiene derecho, individual o colectivamente, a promover y procurar la protección y realización de los derechos humanos y las libertades fundamentales en los planos nacional e internacional y que 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, quisiera referirme 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.

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

Es nuestra responsabilidad de acuerdo con los mandatos 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:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. 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? Si no se han realizado diligencias judiciales y administrativas respecto al caso, le rogamos que explique el porqué.

### **Respuesta del Gobierno de Guatemala del 20 de octubre de 2008**

El Gobierno de Guatemala proporciono la información siguiente:

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

El Estado de Guatemala informa que el caso se encuentra en fase de investigación por parte del Ministerio Público para esclarecer los hechos denunciados por el Comité de Unidad Campesina (CUC)

#### ***2. Proporcione información detallada sobre las investigaciones y diligencias judiciales realizadas en relación con el caso. Si estas no han tenido lugar o no han sido concluidas?***

Esta Comisión Presidencial solicitó información al Ministerio Público en relación a las investigaciones realizadas hasta la presente fecha, por lo que informó lo siguiente:

- (i) El Juez de Paz del municipio de Colotenango les informó que ya se había realizado el acta de rigor, por lo que el Ministerio Público no internito en el procesamiento de la escena del crimen;
- (ii) Se solicitó información sobre la muerte del señor Morales a la Dirección de Investigación Criminal (DINC) de la Policía Nacional Civil, con sede en el departamento de Quetzaltenango;
- (iii) Se tomó declaración a los agentes de la Policía Nacional Civil, quienes manifestaron que no les consta nada del hecho. Asimismo, manifestaron que no se remitió el cadáver del señor Antonio Morales al Instituto Nacional de ciencias forenses (INACIF), para la necropsia de ley debido a que los familiares y vecinos se opusieron a su traslado y no fue posible recabar evidencias por la aglomeración de personas en el lugar;
- (iv) Se citó al padre del señor Morales con el objeto de tomarle declaración en relación con el asesinato de su hijo. Hasta el momento no se ha presentado a declarar;
- (v) Debido a que el padre se opuso ala diligencia de trasladar el cadáver al INACIF, el Juez de Paz del Municipio de Colotenango se lo entregó y no se pudo tomar ninguna muestra para pruebas científica, se coordinará para realizar la exhumación del señor Morales con el objeto de realizar las pruebas correspondientes.

## **Guatemala: Intentos de asesinatos de tres defensores de derechos humanos**

**Violación alegada:** Amenazas de muerte

**Persona objeto del llamamiento:** 2 hombres y 1 mujer (defensores de los derechos humanos)

**Carácter de la respuesta:** No se recibió ninguna 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.

**Carta de alegación del 23 de septiembre de 2008**, mandado con la Relatora Especial sobre la situación de los defensores de los derechos humanos

En este contexto, quisiéramos señalar a la atención urgente de su Gobierno la información que hemos recibido en relación con los intentos de asesinato del Sr. **Yuri Melini**, Director del *Centro de Acción Legal-Ambiental y Social de Guatemala (CALAS)*, del Sr. **Carlos Albacete Rosales** y de la Sra. **Piedad Espinosa Albacete** de la organización medioambiental Trópico Verde. CALAS trabaja para defender los derechos medioambientales y los derechos de los defensores de dichos derechos.

De acuerdo con las informaciones recibidas:

El 4 de septiembre de 2008, entre las 7h20 y las 7h30, el Sr. Yuri Melini habría descendido de su vehículo para dirigirse a la casa de un familiar. Dos vehículos, uno de los cuales sería un sedán celeste viejo, habrían estado esperándole. Un desconocido en uno de los vehículos llamó al Sr. Yuri Melini. Al atraerle la atención, el desconocido disparó cuatro veces al Sr. Yuri Melini. Un tiro le habría dado al abdomen, otro a la rodilla derecha y otro al fémur izquierdo. El mismo día del ataque contra el Sr. Yuri Melini, 50 otros defensores de los derechos medioambientales en Guatemala habrían recibido amenazas.

En un incidente parecido, el 10 de enero de 2007, el Sr. Carlos Albacete Rosales y la Sra. Piedad Espinosa Albacete de la organización medioambiental, Trópico Verde habrían sido víctimas de disparos, resultando ilesas.

Entendemos que el Gobierno de Guatemala ha condenado los intentos de asesinato y ha demostrado su apoyo al trabajo de CALAS en un comunicado de prensa, y que la policía y la oficina fiscal han iniciado investigaciones respecto a los incidentes. Sin embargo, estos hechos se han enmarcado en un contexto de gran vulnerabilidad para los defensores de los derechos medioambientales en Guatemala. Se expresa preocupación que el intento de asesinato del Sr. Yuri Melini, así como los del Sr. Carlos Albacete Rosales y de la Sra. Piedad Espinosa Albacete, podría estar relacionado con sus actividades para defender los derechos medioambientales. Se expresa gran preocupación por la integridad física y psicológica del Sr. Yuri Melini y los demás defensores de los derechos medioambientales en Guatemala.



Sin implicar, de antemano, una conclusión sobre los hechos, quisiéramos llamar la atención del Gobierno de su Excelencia 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). En particular, el principio 4 obliga a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria. 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 además llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración de Naciones Unidas sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos y en particular los artículos 1 y 2. Éstos establecen, respectivamente, que toda persona tiene derecho, individual o colectivamente, a promover y procurar la protección y realización de los derechos humanos y las libertades fundamentales en los planos nacional e internacional y que es la responsabilidad primordial y el deber de todos los Estados de proteger, promover y hacer efectivos todos los derechos humanos, adoptando las medidas necesarias para crear las condiciones sociales, económicas, políticas y de otra índole, así como las garantías jurídicas requeridas para que toda persona sometida a su jurisdicción, individual o colectivamente, pueda disfrutar en la práctica todos esos derechos y libertades.

Asimismo, 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.

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

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

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

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

2. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas en el caso del intento de asesinato del Sr. Yuri Melini. ¿Han sido adoptadas sanciones de carácter penal o disciplinario contra los presuntos culpables? Si no se han realizado diligencias judiciales y administrativas respecto al caso, le rogamos que explique por qué.

3. Por favor proporcione información actualizada sobre la investigación del supuesto intento de asesinato del Sr. Carlos Albacete Rosales y la Sra. Piedad Espinosa Albacete de la organización medioambiental Trópico Verde, y todas las persecuciones emprendidas en este caso.

4. Por favor proporcione información detallada sobre las medidas adoptadas para asegurar la integridad física y psicológica del Sr. Yuri Melini y los demás defensores de los derechos medioambientales en Guatemala.

**Guyana: Death in custody of Ramesh ‘Kenny’ Sawh, Edwin Niles and Rocky Anthony Brunoanish**

**Violation alleged:** Deaths in custody

**Subject(s) of appeal:** 3 males

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Allegation letter dated 24 September 2008**, 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 three cases of death in custody in Guyana.

According to the allegations received:

On 17 January 2008, **Ramesh ‘Kenny’ Sawh** (aged 19) was arrested and taken to Enmore police station in East Coast Demerara, allegedly on charges of stealing a car battery. He died in the police jail on the same day. The police never informed his family as to how he

had died, but allegedly told others that he committed suicide in the police jail by hanging himself by his jersey. A witness has reported that also on 17 January 2008, he heard someone screaming and asking for the beating to stop at Enmore police station. At the mortuary in Georgetown, members of the Sawh family were initially not allowed to see the body of the dead young man, but only his face. Allegedly, there were no markings around the neck, but instead he had swollen lips and, as the family could see later, bruises on his body. In April 2008, after repeated pleas from the Sawh family and several letters by an attorney retained by the family, the Police Complaints Authority launched an investigation into the death of Ramesh 'Kenny' Sawh.

Mr. Sawh had previously been repeatedly held at that police station without being officially charged and been ill-treated by police officers. On one occasion, during interrogation police officers placed a plastic bag over his head and beat him. On another, they soaked his head in water and continued beating him with a broom head.

**Edwin Niles** (aged 34) was serving a three year sentence for possession of marijuana in Camp Street prison in Georgetown. Approximately on 4 June 2008, during a routine search following a day of labour at an army base (Camp Ayanganna), the prison guards found ammunition in the pockets of Mr. Niles pants. He was beaten by the prison guards after the ammunition was discovered. The police subsequently took him to a Georgetown hospital; his (common law) wife was not allowed to visit him there. On 13 June 2008, Edwin Niles succumbed to his injuries in hospital. The autopsy revealed that he died as a result of a blood clot in the lungs. Photographs taken during the post mortem examination showed that he had sustained extensive burns on his shoulders, back and buttocks. He also had a broken arm when he was brought to hospital. An investigation by the police pointed to four officers who could have been involved in the death of Edwin Niles. On 17 or 18 September 2008, the Director of Public Prosecutions recommended that two Assistant Superintendents of the Georgetown Prisons be charged with manslaughter for the killing of Edwin Niles. The two Assistant Superintendents have been released on bail.

In a case that remains open after seven years, **Rocky Anthony Brunoanish** (aged 29) was taken into police custody on 6 June 2001 by two officers of the Guyana Police Force (their names are on record with the Rapporteurs). On 9 June 2001, Mr. Brunoanish informed a visitor at the Aurora Police Station jail that he was being beaten by police. He died that very same day at the Aurora Police Station. On 10 June 2001, an autopsy performed on Mr. Brunoanish determined that the cause of death was cerebral haemorrhaging caused by a blunt trauma to the head. More than three years later, on 20 July 2004, the matter was reported to the Ombudsman, the Honourable Justice S.Y. Mohamed. No investigation has yet taken place in order to clarify the circumstances of Mr. Brunoanish's death.

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 this case. Article 7 of the International Covenant on Civil and Political Rights provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies as a consequence of injuries

sustained while in State custody, there is a presumption of State responsibility. In this respect - and particularly with regard to the case of Ramesh 'Kenny' Sawh -, we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2):

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

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council as recently as at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions".

The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions". These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We urge your Government to complete the inquiries into the circumstances surrounding the deaths of Ramesh 'Kenny' Sawh, Edwin Niles and Rocky Anthony Brunoanish expeditiously, impartially and transparently, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate their families.

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

1. Are the facts alleged in the case summaries accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to each of the cases. Please explain the steps taken to ensure that these investigations comply with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

3. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanders, for the deaths in custody of Ramesh 'Kenny' Sawh, Edwin Niles and Rocky Anthony Brunoanish.
4. Please explain how internal and external police oversight and accountability mechanisms, including the Police Complaints Authority, operate in the case of a death in custody. Does your Excellency's Government envisage any reforms to internal police oversight and complaints mechanisms, to external police oversight and complaints mechanisms, or to the way criminal cases against police officers are prosecuted?
5. Please provide the details of any measures taken to ensure that complainants, witnesses and family members of the victims in these cases are not subject to any intimidation or retaliation, as provided in the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
6. Please provide the details of any compensation payments made to the families or dependants of any of the victims in the cases mentioned in the Annex.

### **Honduras: Asesinatos de Heraldo Zuñiga y Roger Ivan Cartagena**

**Violación alegada:** Muerte a consecuencia de ataque o asesinato

**Persona objeto del llamamiento:** 2 hombres (defensores de los derechos humanos)

**Carácter de la respuesta:** Respuesta en gran parte satisfactoria

#### **Observaciones del Relator Especial**

El Relator Especial agradece al Gobierno de Honduras por la información que ha proporcionado relativa a la muerte de Heraldo Zuñiga y de Roger Ivan Cartagena. El Relator Especial, preguntará que se le mantenga informando del progreso del proceso penal mencionado en la respuesta del Gobierno, pero nota que hace mas de dos años que empezó.

**Carta de alegación del 20 de febrero de 2007**, mandado 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 los asesinatos del Sr. **Heraldo Zuñiga** y Sr. **Roger Ivan Cartagena**, miembros del movimiento ambientalista de Olancho que tuvieron lugar el 20 de diciembre de 2006 en el departamento de Olancho. Se teme que estos asesinatos estén relacionados con sus actividades en defensa de los derechos humanos.

De acuerdo con la información recibida, el 20 de diciembre, el Sr. Heraldo Zuñiga y el Sr. Roger Ivan Cartagena fueron asesinatos por agentes de la policía nacional afuera de la oficina del Mayor de Guarizama, delante de varios residentes del barrio. Según los informe, días ante de

su muerte, el Sr. Heraldo Zúñiga había expresado preocupación por las amenazas de los madereros que explotan el bosque en el sector de Salamá. Se teme que la policía pueda estar involucrada con las compañías de maderero y que esté implementando una campaña de hostigamiento en contra de los ambientalistas en la región.

Se expresa temores de que los asesinatos del Sr. Heraldo Zuñiga y Sr. Roger Ivan Cartagena puedan estar relacionados con sus actividades en defensa de los derechos humanos, en particular su trabajo con el movimiento ambientalista de Olancho.

Sin implicar de antemano, una conclusión sobre los hechos, deseamos 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.

Quisiéramos instar a su Gobierno 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.

Deseamos luego llamar la atención de su 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 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.

Es nuestra responsabilidad de acuerdo con el mandato que nos ha entregado la Comisión de Derechos Humanos y prorrogado por el Consejo de los Derechos Humanos intentar conseguir clarificación sobre los hechos llevados a mi 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 los familiares obtuvieron algún tipo de compensación a modo de indemnización.

#### **Respuesta del Gobierno de Honduras del 7 de julio de 2008**

El Gobierno proporciono la información siguiente:

“Que la relación con el proceso de investigación sobre el caso, y que conforme a la información proporcionada tanto por la Secretaría de Seguridad como por el Ministerio Público, se asignó un equipo de investigadores pertenecientes al Departamento de Asuntos Internos de la Secretaría de Seguridad, quienes en el mes de diciembre de 2006 iniciaron las primeras indagatorias para esclarecimiento de los hechos, identificando como presuntos responsables de la muerte de los señores Roger Iván Murillo Cartagena y Heraldo Zuñiga, a miembros de la Policía que responden a los nombres de José Rolando Tejeda Padilla (Clase II), José Arcadio Gonzáles Lanza, Juan Talavera Zavala y Milton Omar Cáceres Rodríguez como responsables.

A inicios del mes de enero de 2007 se asignó un nuevo grupo de investigadores compuesto por Agentes asignados a la Fiscalía Especial Contra el Crimen Organizado y la Dirección de Lucha Contra el Narcotráfico quienes retomaron las investigaciones y tomaron declaraciones a diferentes testigos oculares como también de referencia; se realizaron exhumaciones, inspecciones al lugar de los hechos y remisión de indicios a los laboratorios de Ciencias Forenses para los correspondientes análisis, teniendo como resultado de tales perquirías la presentación de requerimiento fiscal.

El 25 de enero de 2007 el Ministerio Público a través de la Fiscalía Especial de Derechos Humanos, presentó requerimiento fiscal contra los señores José Rolando Tejeda Padilla (Clase II), José Arcadio Gonzáles Lanza, Juan Talavera Zavala y Milton Omar Cáceres Rodríguez, por suponerlos responsables a título de autores del delito de homicidio en

perjuicio de los ciudadanos Heraldo Zuñiga y Roger Iván Murillo Cartagena, los cuales fueron presentados por la Dirección General de la Policía Preventiva en cumplimiento a la orden de captura emitida por el Juzgado de Letras Seccional de Catacamas, Olancho, a los cuales se les tomó declaración de imputados y se les decretó la medida de prisión preventiva.

El día 5 de febrero de 2007 a las 5:00pm. El Juzgado de Letras Seccional de Catacamas, Olancho, celebró audiencia inicial en la que decretó auto de prisión por el delito de homicidio, y se les dictó medida cautelar de prisión preventiva, las que están cumpliendo en la sede Regional de la Dirección General de la Policía Preventiva de Juticalpa, Olancho.

### **Honduras: Asesinato de Irene Ramírez**

**Violación alegada:** Muerte a consecuencia de ataque o asesinato

**Persona objeto del llamamiento:** 1 mujer (defensora de los derechos humanos)

**Carácter de la respuesta:** Respuesta en gran parte satisfactoria

### **Observaciones del Relator Especial**

El Relator Especial agradece al Gobierno de Honduras por la información que ha proporcionado relativa a la muerte de Irene Ramírez. El Relator Especial, preguntará que se le mantenga informando del progreso de las investigaciones mencionadas en la respuesta del Gobierno.

**Carta de alegación del 20 de agosto de 2008**, mandado con la Relatora Especial sobre la situación de los defensores de los derechos humanos

En este contexto, quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación al asesinato del Sr **Irene Ramírez**, antiguo miembro de la Empresa Asociativa Campesina “14 de julio” del *Movimiento Campesino del Aguán*, y afiliado a la *Central Nacional de Trabajadores del Campo (CNTC)*.

Según las informaciones recibidas:

El 11 de junio de 2008, aproximadamente a las 10.30 p.m., el Sr Irene Ramírez habría sido asesinado en la ciudad de Trujillo, Colón. El día anterior el Sr Irene Ramírez habría afirmado públicamente, en Radio Católica de Trujillo, la necesidad de aplicación del Decreto 18-2008. Este decreto, que entró en vigor el 29 de abril de 2008, facilitaría la transferencia de terrenos que estaba en manos del antiguo Centro Regional de Entrenamiento Militar del ejército a las familias campesinas que habrían luchado por ella. Poco antes de su asesinato el Sr Irene Ramírez habría denunciado en una asamblea del Movimiento Campesino del Aguán que había recibido amenazas de muerte de terratenientes y de ganaderos de esa zona.



Se teme que el asesinato del Sr Irene Ramírez esté relacionado con sus actividades en la defensa de los derechos a la tierra. También se teme que este asesinato se enmargue entre varios asesinatos de defensores de los derechos humanos, sindicalistas y miembros de movimientos sociales en Honduras.

En este contexto, quisiéramos señalar a su atención las cartas de alegaciones ya enviadas en relación con los asesinatos de miembros de movimientos sociales. El 16 de junio de 2005, se envió una carta de alegaciones en relación con el asesinato del Sr. **Edickson Roberto Lemus**, coordinador de la Central Nacional de Trabajadores del Campo (CNTC); el 20 de febrero de 2007, se envió una carta de alegaciones sobre los asesinatos de los Sres. **Heraldo Zuñiga** y **Roger Ivan Cartagena**, miembros del movimiento ambientalista de Olancho, a manos de agentes de la policía; el 19 de abril de 2008, se envió una carta de alegaciones en relación con el asesinato del Sr **Luis Gustavo Galeano Romero**, coordinador del Programa de Auditoria Social del Comisionado Nacional de los Derechos Humanos de Honduras (CONADEH) en la ciudad de Tocoa, Departamento de Colón; el 19 de mayo de 2008, se envió una carta de alegaciones en relación con el asesinato del Sr. **José Iván Guardado**, ingeniero forestal y miembro del *Comité para la Defensa de los Derechos Humanos de Honduras (CODEH)*, en la Comunidad de Victoria, Departamento de Olancho; y el 23 de mayo de 2008, se envió una carta de alegaciones en relación con los asesinatos de la Sra **Rosa Altagracia Fuentes**, Secretaria General de la Confederación de Trabajadores de Honduras (CTH) y segunda Vicepresidenta de la Región Centroamericana de la Confederación Sindical de Trabajadores de las Américas (CSA), y de la Sra **Virginia García de Sánchez**, afiliada a la Unión de Mujeres Campesinas de Honduras (UMCAH).

Le agradecemos las respuestas de su Gobierno, fechadas 24 de junio de 2005, 16 de junio de 2008; 4 de julio de 2008; y 18 de julio de 2008 a las cartas de alegaciones de 16 de junio de 2005; 23 de mayo de 2008; 20 de febrero de 2007, y 19 de mayo 2008 respectivamente.

La primera de estas respuestas nos informó que se conocía la identidad del asesino del Sr Edickson Roberto Lemus, y que seguían las investigaciones para averiguar el motivo del asesinato y si existían autores intelectuales del crimen. Agradeceríamos más información respecto al progreso de este caso desde junio de 2005.

En el caso de las Sras Rosa Altagracia Fuentes y Virginia García de Sánchez, la respuesta de su Gobierno nos informó de las medidas adoptadas para investigar los asesinatos e informó que se iba a presentar un requerimiento fiscal contra los culpables una vez identificados. Dado que han pasado ya cuatro meses desde los asesinatos de abril de 2008, agradeceríamos más información sobre las investigaciones y la acción judicial tomada en relación con el caso. En particular, nos gustaría saber si se han identificado a los asesinos de las Sras. Rosa Altagracia Fuentes y Virginia García de Sánchez y exactamente qué acción se va a tomar en su contra una vez identificados.

La respuesta de su Gobierno respecto al caso del Sr José Iván Guardado indicó que las instituciones competentes continuaban con las investigaciones sobre el caso.

En el caso de los miembros del movimiento ambientalista de Olancho, la respuesta de su Gobierno comunicó que los agentes de policía responsables por el asesinato habían sido identificados y que, el 5 de febrero de 2007, el Juzgado Seccional de Letras de Catacamas Olancho decretó auto de prisión por el delito de homicidio y se les dictó medida cautelar de prisión preventiva. Sin embargo, dado que han pasado 18 meses desde febrero de 2007, agradeceríamos información más reciente respecto al caso. En particular nos gustaría conocer la situación de los agentes de la policía sospechosos del homicidio de los dos miembros del movimiento ambientalista.

Mientras que agradecemos recibir las respuestas ya enviadas por su Gobierno, y las acciones tomadas para investigar los asesinatos de defensores de derechos humanos, le rogamos que proporcione información más reciente sobre estos casos y que nos informe de si se ha investigado el asesinato del Sr. Luis Gustavo Galeano Romero.

En ese contexto, 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: Los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social. En particular, 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 también llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración de Naciones Unidas sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos y en particular los artículos 1 y 2. Éstos establecen, respectivamente, que toda persona tiene derecho, individual o colectivamente, a promover y procurar la protección y realización de los derechos humanos y las libertades fundamentales en los planos nacional e internacional y que es la responsabilidad primordial y el deber de todos los Estados de proteger, promover y hacer efectivos todos los derechos humanos, adoptando las medidas necesarias para crear las condiciones sociales, económicas, políticas y de otra índole, así como las garantías jurídicas requeridas para que toda persona sometida a su jurisdicción, individual o colectivamente, pueda disfrutar en la práctica todos esos derechos y libertades.

Además, quisiéramos referirnos a los artículos siguientes:

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

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

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

Es nuestra responsabilidad de acuerdo con los mandatos que nos han conferido el Consejo de Derechos Humanos y la Asamblea General, intentar conseguir clarificación sobre los hechos portados a nuestra atención. Es 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. Por favor, proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con el caso del Sr Irene Ramírez. ¿Han sido adoptadas sanciones de carácter disciplinario contra los presuntos culpables? Si las investigaciones y diligencias no han tenido lugar o no han sido concluidas, le rogamos que explique el por qué.
3. Por favor, proporcione información reciente sobre las investigaciones y la acción judicial tomada en los casos de Edickson Roberto Lemus, Heraldo Zuñiga y Roger Ivan Cartagena, Luis Gustavo Galeano Romero, José Iván Guardado, Rosa Altagracia Fuentes y Virginia García de Sánchez.

### **Respuesta del Gobierno de Honduras del 25 de agosto de 2008**

Honduras como suscriptor de tratados internacionales y su obligatoriedad a dar cumplimiento a los mismos, adecuando sa su normativa interna los mecanismos para la protección de sus ciudadanos, tiene a bien informar las investigaciones relazadas por ls instituciones competentes relacionadas con la muerte del señor Irene Rodríguez.

1. Efectivamente, el señor Irene Rodríguez fue asesinado el 11 de junio de 2008 en la ciudad de Trujillo Departamento de colon, inmediatamente deal tener conocimiento de este hecho las autoridades correspondientes han efectuado las acciones pertinentes.

2. Los avances y resultados sobre las circunstancias del asesinato del señor Irene Rodríguez, ha sido un trabajo coordinado por el Ministerio Público y la Dirección de Investigación Criminal dependiente de la Secretaría de Seguridad.

En fecha 9 de julio de 2008, el Ministerio Público presentó requerimiento Fiscal contra los señores Julio César Galán Rodríguez, Reynaldo Crespo y Cristofer Mauricio Medina Flores, como supuestos responsables del asesinato.

3. El día martes 15 de julio del presente año, se realizó en la ciudad de Trujillo la Audiencia inicial y en la cual se decretó Auto de Prisión y Medida Cautelar de Prisión Preventiva en contra de los imputados Julio César Galán Rodríguez, Reynaldo Crespo Guerrero y Cristofer Mauricio Medina Flores.
4. Que la investigación preparatoria apuntó a una supuesta autoría intelectual que refuerza la tesis del móvil político en el asesinato del señor Irene Rodríguez.

Agradeceré Trasladar dicha información al Organismo solicitante para los efectos pertinentes, y le reitero nuestra disposición de seguir transmitiendo información actualizada sobre los progresos del presente caso.

### **Honduras: Muerte de Guillermo Norales Herrera**

**Violación alegada:** Muerte a consecuencia de ataque o asesinato

**Persona objeto del llamamiento:** 1 hombre

**Carácter de la respuesta:** No se recibió ninguna respuesta

### **Observaciones del Relator Especial**

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

**Carta de alegación del 22 de enero de 2009**, mandado con el Relator Especial sobre el derecho a la alimentación

En este contexto, quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido sobre la muerte del Sr. **Guillermo Norales Herrera** en hechos ocurridos en frente al área protegida de Vida Silvestre, Cuero y Salado, en Cayos Cochinos.

De acuerdo con las informaciones que hemos recibido:

El 24 de septiembre de 2008, aproximadamente a las 9h30 de la noche, un grupo de 8 pescadores de la comunidad Garífuna de Triunfo de la Cruz fueron requeridos por miembros de la Fuerza Naval de Honduras, a cargo de la vigilancia del refugio de Vida Silvestre Cuero y Salado, mientras estaban faenando frente al área protegida.

Los militares se acercaron a la lancha de los pescadores, que tenía el motor apagado, controlaron su equipaje e interrogaron a los pescadores antes de ordenarles que les siguieran. Cuando uno de los pescadores, el Sr. Guillermo Norales Herrera, se dispuso a encender el motor de la lancha, los militares empezaron a disparar. Según los testimonios de los pescadores, hubo entre 20 y 25 disparos, uno de los cuales alcanzó al Sr. Norales Herrera, quien falleció de manera inmediata.

Los pescadores les pidieron ayuda pero los militares se retiraron, sin ofrecerles asistencia. El grupo de pescadores se quedó a la deriva, puesto que uno de los proyectiles había alcanzado el motor y lo había estropeado. A pesar de que llamaron desde alta mar por celular a la policía, no recibieron asistencia. Llegaron remando hasta la orilla de las playas de Triunfo de la Cruz, donde fueron remolcados por miembros de su comunidad.

Se expresa preocupación por el hecho de que la muerte del Sr. Norales Herrera pueda ser el resultado de un uso excesivo de la fuerza militar. Asimismo, se alega que la muerte del Sr. Herrera y otros hechos violentos ocurridos en Cayos Cochinos forman parte de una dinámica más amplia que surgió como consecuencia de la aplicación de los planes de manejo para esta zona y que han contribuido a generar inseguridad física y alimentaria.

Aunque la creación de áreas protegidas en la zona de Cayos Cochinos responda a necesidades medio ambientales importantes, se nos informa que esto ha contribuido a generar tensiones sobre el manejo de los recursos naturales que son vitales para el acceso a una alimentación adecuada y suficiente de las comunidades locales. Se alega que el plan de manejo del área marina protegida de Cayos Cochinos comprende una serie de regulaciones que disciplinan la extracción de recursos naturales y que limitan la pesca, aunque sea para el sustento de la familia. Estas limitaciones habrían afectado en particular a dos comunidades Garifunas de la isla de Chachahuate y de la isla Oriental. Se alega también que la zona de Cayos Cochinos, como toda la costa norte del país, ha padecido a manos de la flota pesquera industrial un saqueo sistemático de los recursos ictiológicos, afectando el acceso de los pescadores artesanales, en su mayoría garifunas, a una alimentación adecuada y suficiente, basada principalmente en los frutos de la pesca. Estos pescadores habrían visto disminuir sus capturas teniendo que viajar a mayores distancias de sus comunidades para lograr el sustento de sus familias.

Además el acceso a los recursos naturales de estas comunidades está vinculado con el régimen que disciplina el acceso a la tierra. a este respecto, parece que estas comunidades Garifunas no poseen todavía títulos de propiedad de la tierra y que estos asentamientos continúan siendo considerados temporales. Este problema convierte a las comunidades en vulnerables ante las demandas de tierra que vienen de empresarios o consorcios de empresarios que se apropian de esta tierra con fines lucrativos. La falta de títulos de propiedad de la tierra es un elemento que, parece, ha caracterizado una discriminación contra las comunidades Garifunas en todo el país. Por ejemplo, se nos informa que las comunidades se establecieron en Chachahuate y en la isla oriental porque, tras haber perdido su tierra, no pudieron encontrar otro trabajo en la parte continental del país.

Las informaciones recibidas indican que Cayos Cochinos ha experimentado un aumento importante del turismo y en particular del turismo científico. Aunque las comunidades Garifunas parecen ser favorables a la diversificación de las fuentes de sustento y de ingresos, alegan que ellos no han gozado todavía de los beneficios que esta actividad debería aportar, como por ejemplo la creación de nuevos puestos de trabajo y nuevas fuentes de sustento. En este respecto, las comunidades lamentan que los nuevos puestos de trabajo son preferentemente proporcionados a los forasteros.

Sin implicar, de antemano, una conclusión sobre los hechos, quisiéramos llamar la atención del Gobierno de Su Excelencia sobre las normas fundamentales enunciadas en la Declaración 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 los derechos 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, nos gustaría llamar la atención de su Gobierno sobre el Código de conducta para funcionarios encargados de hacer cumplir la ley, resolución 34/169 de 17 de diciembre de 1979 de la Asamblea General. En particular, el artículo 3 establece que los funcionarios encargados de hacer cumplir la ley podrán usar la fuerza sólo cuando sea estrictamente necesario y en la medida en que lo requiera el desempeño de sus tareas. En este mismo sentido, nos gustaría referirnos también a los Principios básicos sobre el empleo de la fuerza y de armas de fuego por los funcionarios encargados de hacer cumplir la ley, adoptados por el Octavo Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, La Habana, 27 de agosto a 7 de septiembre de 1990. Dichos principios establecen que los funcionarios encargados de hacer cumplir la ley, en el desempeño de sus funciones, utilizarán en la medida de lo posible medios no violentos y delimitarán el empleo de la fuerza a determinados casos excepcionales, incluidos los de defensa propia o de otras personas en caso de peligro inminente de muerte o lesiones graves.

Nos gustaría referirnos también a los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social. En particular, los principios 9 a 19 obligan a los Gobiernos a proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias; a publicar en un informe las conclusiones de estas investigaciones; y a 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, 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 Sr. Guillermo Norales Herrera, que se impongan las sanciones adecuadas al responsable o los responsables de dicha muerte, y que se otorgue compensación adecuada a la familia de la víctima.

Quisiéramos también hacer referencia al derecho a un nivel de vida adecuado que incluye el acceso a una alimentación adecuada que está reconocido, entre otros, en la Declaración

Universal sobre los Derechos Humanos y en el artículo 11 del Pacto Internacional de Derechos Económicos, Sociales y Culturales. Todos los Estados Partes tienen las obligaciones de respetar, proteger y realizar este derecho. En particular la obligación de respetar el acceso existente a una alimentación adecuada requiere que los Estados no adopten medidas de ningún tipo que tengan por resultado impedir ese acceso. Asimismo la obligación de proteger un nivel de vida adecuado requiere que los Estados Partes adopten medidas para velar por que las empresas o los particulares no priven a las personas del acceso a una alimentación adecuada.

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

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor, proporcione información detallada sobre las investigaciones iniciadas en relación con la muerte del Sr. Guillermo Norales Herrera. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el por qué.
3. Por favor, indique si alguna compensación fue otorgada a la familia de la víctima.
4. Por favor, proporcione información detallada sobre las medidas adoptadas para garantizar el acceso a una alimentación adecuada y suficiente a las comunidades de pescadores Garifunas; para regularizar la tenencia de la tierra para estas comunidades, y para garantizar la participación de miembros de estas comunidades en la determinación e implementación de los planes de manejo de las áreas protegidas y de los proyectos turísticos en la zona.

#### **Honduras: Asesinatos de cuatro personas transgénero**

**Violación alegada:** Muerte a consecuencia de ataque o asesinato

**Persona objeto del llamamiento:** 4 mujeres

**Carácter de la respuesta:** No se recibió ninguna respuesta

#### **Observaciones del Relator Especial**

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

**Carta de alegación del 23 de enero de 2009**, mandado con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, la Relatora Especial sobre la situación de los defensores de los derechos humanos y la Relatora Especial sobre la violencia contra la mujer, con inclusión de sus causas y consecuencias

En este contexto, quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación con el asesinato de la Sra. **Cynthia Nicole**, defensora líder de los

derechos de las personas transgénero en Honduras, los asesinatos de tres otras personas transgénero, la Sra. **Jazmín** (Pablo Rafael Zepeda), la Sra. **Bibi** (Alex Eduardo Vargas Medina) y la Sra. **Nohelia** (Carlos Alberto Rodríguez), y otros recientes actos de agresión contra personas transgénero en Honduras.

Según las informaciones recibidas:

En la madrugada del 9 de enero de 2009, tres hombres desconocidos efectuaron varios disparos contra la Sra. Nicole, activista por los derechos de las personas transgénero en Honduras, desde un automóvil azul en marcha en el Barrio Guaserique, Comayagua, una ciudad colindante a Tegucigalpa. La Sra. Nicole recibió tres disparos en el pecho y uno en la cabeza, y murió a causa de las heridas.

El 20 de diciembre de 2008, cuatro agentes del cuerpo de policía golpearon a una trabajadora sexual y activista transgénero dedicada a la difusión de campañas de prevención del VIH/SIDA en el distrito del Palmira, Tegucigalpa. Los agentes intentaron robarla pero cuando se resistió, le asaltaron. Los agentes entonces le rotaron la cabeza contra una ventana y ella recibió cortes numerosos en su cara. Los agentes dijeron que estaban arrestando a la señora por romper la ventana para entrar a una propiedad privada. La llevaron a un centro médico local para tratar sus heridas. Después de que les dijo a los agentes que tiene SIDA, le insultaron. Luego le amenazaron: “si hablas, te dejaremos muerta en el monte.” Se le liberó sin cargos el día siguiente.

El 17 de diciembre de 2008, un agresor desconocido mató la Sra. Nohelia (Carlos Alberto Rodríguez), una trabajadora sexual transgénero cuando le asestó catorce puñaladas.

El 21 de noviembre de 2008, otro agresor disparó a la señora Bibi (Alex Eduardo Vargas Medina), otra trabajadora sexual transgénero, mientras se encontraba trabajando en el Obelisco, parque ubicado en la zona céntrica de Comayagua.

El día 30 de octubre de 2008 un agresor, cuya identidad permanece desconocida, asesinó a la Sra. Jazmín (Pablo Rafael Zepeda), también trabajadora sexual transgénero.

Sin que de alguna manera constituya prejuizgamiento sobre los hechos o el fondo del asunto, expresamos una grave preocupación por el asesinato de las Sras. Cynthia Nicole, Nohelia, Bibi y Jazmín, y por la seguridad física y psicológica de los miembros de la comunidad transgénero en Honduras, en particular por los defensores de los derechos de las personas transgénero y de las trabajadoras sexuales transgénero.

Quisiéramos llamar la atención del Gobierno de su Excelencia 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. 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 también llamar la atención del Gobierno de su Excelencia a la Declaración de las Naciones Unidas sobre la Eliminación de la Violencia contra la Mujer. El Artículo 4 (c & d) de la Declaración afirma la responsabilidad de los Estados de proceder con la debida diligencia a fin de prevenir, investigar y, conforme a la legislación nacional, castigar todo acto de violencia contra la mujer, ya se trate de actos perpetrados por el Estado o por particulares.

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

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

Asimismo, en relación con el asesinato de la defensora de derechos humanos, Sra Cynthia Nicole, quisiéramos hacer referencia a las normas fundamentales enunciadas en la Declaración de Naciones Unidas sobre el derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos. El artículo 12, párrafos 2 y 3, estipula que el Estado garantizará la protección, por las autoridades competentes, de toda persona 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 Declaración. 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.

Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados 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 presentadas?
2. Por favor proporcione información detallada sobre las investigaciones iniciadas en relación con el caso. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
3. Por favor, proporcione información detallada sobre las diligencias judiciales y administrativas practicadas.
4. Por favor proporcione información detallada sobre las medidas protectoras adoptadas para proteger la seguridad física y psicológica de los/las defensores/as de la comunidad transgénero en Honduras y de sus miembros.

### **India: Death in custody of Rajendran**

**Violation alleged:** Death in custody owing to torture, neglect, or the use of force

**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 India. The Special Rapporteur looks forward to receiving from the Government information about the progress and outcome of the criminal proceedings which have been instigated against the two accused police constables.

**Allegation letter dated 19 December 2005**, sent with the Special Rapporteur on the question of torture

In this connection, 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, Kerala.

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.

#### **Response from the Government of India dated 19 January 2009**

The Permanent Mission of India would like to convey that the above mentioned allegation was examined by the Government of India and would like to inform that on April 6, 2005, Mr. Rajendran was taken into custody and brought to the Kollam Police Station where he sustained injuries during his detention. He was then taken to the District Hospital, Kollam where he was declared dead. An autopsy was later conducted and, the body handed over to the relatives of the deceased. A case was registered at the Kollam Police Station against the concerned police authorities and its investigation was authorized first to the District Superintendent of Police and then to the Crime Branch of the Central Investigation Department. Based upon the conclusions of the inquiry, the two accused police constables, Venugopal and jayakumar' were suspended,

arrested and produced before the judicial Magistrate Court, They were remanded - to Sub jail and later let out on bail. Other senior police officers, including Assistant Sub-Inspector Babu, were suspended from duty and disciplinary action was taken against them. Further, a financial assistance of Rs.1;00,000 (USD 2500 approx) was immediately granted to the mother of the deceased.

The Permanent Mission of India requests that the response of the Government of India may kindly be transmitted to the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture.

### **India: Killings by the Border Security Force**

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

**Subject(s) of appeal:** 4 males (1 minor)

**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 Human Rights Council.

### **Allegation letter dated 2 May 2008**

In this connection, I would like to bring to the attention of your Excellency's Government information I have received regarding the **killing of several civilians by the Border Security Force (BSF)** in West Bengal.

According to the information received:

Members of the BSF in West Bengal have on several occasions used excessive force on civilians, in some cases resulting in the death of the persons concerned. The violence has taken place in and around different districts and police stations in West Bengal. The BSF claims to have acted in self-defence, however several reports contradict this.

In particular, I would like to refer to the following cases which have been brought to my attention:

Mr. **Basudeb Mondal** was shot dead by BSF personnel of F Company, Battalion Number 90, Rajanagar Border Out Post Number 1 and 2, on 26 June 2007 in the Murshidabad district. He was reportedly trying to smuggle cows together with Mr. Satyen Mondal, a 17 year-old boy who was seriously injured by a gunshot from BSF. According to eye-witnesses, both victims were unarmed.

Mr. **Kalidas Ghosh**, 17 years old, was shot dead by a BSF constable in Battalion Number 126 of 'E' Company, Border Out Post Number 6, on 28 December 2007 in the

North 24 Parganas district. Kalidas Ghosh was reportedly playing at the playground of his school with a ball when the ball flew into the outpost of the BSF. A BSF constable chased the boy and ultimately shot him.

The same day the victim's uncle filed a complaint with Gaighata Police Station and a case under section 302 of the Indian Penal Code for murder was initiated. Following the filing of the complaint by the victim's uncle the BSF lodged a complaint for attempted murder and assault of a public servant. On 30 December 2007 four identified persons affiliated with or known to the BSF visited the house of the victim's family and offered them money as a way to settle the complaint.

Mr. **Basudeb Sarkar** was arrested on 31 December 2007 by BSF personnel in the North 24 Parganas district, presumably for his smuggling activities. He was shot and seriously wounded while trying to escape. He was sent to J.R Dhar hospital, Bongaon (instead of the nearby Sharapool hospital or Basirhat hospital), and declared dead the same day, however a post-mortem was only conducted two days later. The BSF stated that Basudeb Sarkar attacked a constable, who shot the former in self defence.

The BSF lodged a complaint against the deceased for attempted murder, theft and obstructing a public servant in discharging his duties. Basudeb Sarkar's wife lodged a complaint for murder. The responsible BSF constable was arrested but later released on bail. The charge sheet against him is still to be completed and the case has not been brought before a court.

Mr. **Bishnu Pada Roy** was killed on 10 December 2007 by a member of the BSF of Gaighata, on Ramnagar Road in the North 24 Parganas district. Bishnu Prada Roy left his house around 9 pm. Shortly after his wife heard a gun shot. He did not return home that night and the following morning his wife and brother in law were told that he had been killed by the BSF. An unnatural death case (No. 83) dated 11 December 2008 was initiated at Gaighata Police Station and a post-mortem was conducted by a surgeon from S. D. Hospital in Bongaon. The BSF lodged a counter complaint against the deceased for attempted murder of a member of the BSF. The brother of the deceased was threatened by the BSF not to lodge any complaint against them. The family received money from the BSF as compensation for the killing: Rs 50,000 for the victim's daughters and 60,000 for his wife.

Concern is expressed that the authorities have failed to carry out satisfactory investigations into the killings, bring those responsible to justice and provide remedies to the families of the victims.

While I do not wish to prejudge the accuracy of these allegations, I would like to refer Your Excellency's Government to Article 6 of the International Covenant on Civil and Political Rights (ICCPR) to which India is a party and 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.”

I would also note the relevance in these cases of the UN Basic Principles on the Use of Force and Firearms by Law Officials. Principle 4 provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, Principle 5 provides that, “Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.” Besides, Article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Finally, I would like to remind your Excellency’s Government of 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”. Also relevant for these cases is Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, according to which “Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation.”

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 the Human Rights Council, 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 of the cases accurate?
2. Has a complaint been lodged in the case of Basudeb Mondal and what action has been taken in response?
3. 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.
4. Please provide the full details of the prosecutions undertaken.

5. Please provide information on the measures taken to prevent any form of intimidation of victims or their families that would discourage them from filing a complaint with the competent authorities.
6. Please indicate whether compensation has been provided to the families of the victims.

**India: Killing of Serajul Mondol by the Border Security Force**

**Violation alleged:** Death due to the use of force by law enforcement officials

**Subject(s) of appeal:** 1 male (1 minor)

**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 Human Rights Council.

**Allegation letter dated 29 July 2008**, sent with the Special Rapporteur on the question of torture

In this connection, we would like to bring to your Government's attention information we have received in relation to **Serajul Mondol**, aged about-14 years, resident in Delhi, Muslim, son of Rezaul Mondol of Hariharpur, Bagdah, Police Station-Bagdah, District-North 24 Parganas, West Bengal.

According to the information received:

On 24 December 2007 Serajul Mondol had come from Delhi, where he lived, to Hariharpur to celebrate Eid Festival with his family. When he returned from a meeting with his mother across the border at around 11.45 pm, he was killed by Border Security Force officers near Madhupur Bridge, Police Station-Bagdah, District-North 24 Parganas.

Assistant Commandant of Border Security Force (BSF) of 37 BD, B.S.F., Sunil Yadav, explained the death of Serajul Mondol indicating that B.S.F jawans fired on a group of about five or six persons who crossed the border and did not obey their order to stop. However, while three deep penetrating injuries were noticed on Serajul Mondol's chest, no bullet injury was detected on the dead body.

The police of Bagdah Police Station launched an investigation into the unnatural death (case no 86/2007). However, according to Sub-Inspector Sadhan Kumar Ghosh of Bagdah Police Station, a criminal case was also initiated against the deceased victim, Serajul Mondal (Bagdah Police Station case no 303; General Diary Entry No. 1661/07 dated 25 December 2007 under sections 143/186/353/447/506/427 of the Indian Penal Code on the basis of the complaint lodged by the Assistant Commandant Mr. Sunil Yadav).

The case against Serajul Mondol is based on a complaint lodged by BSF and indicates that the body of the victim was recovered by the BSF on 24 December 2007 at about 11.45 p.m. and handed over to the police on 25 December 2007 at about 8.45 a.m., which clearly indicates that the body of the victim remained with the BSF for several hours. The complaint alleges that B.S.F. Jawan of 37 Battalion of C-Company constable, N.H. Boro (Constable no 05128115), when being attacked by four or five persons on the night of 24 December 2007, opened fire on them and later recovered a dead body from the place of the incident which was situated about 250 meters from the international border near Border Point No. 49/2/s. Later the unknown body was identified as the body of Serajul Mondol by local people. The complaint lodged by the BSF also alleges that on the night of the incident a wire cutter, 100 Bangladesh taka and a Daw (Sharp cutting weapon) were recovered from the place of incident. Serajul Mondol was described as aged 20 in the complaint whereas the father of the deceased victim disclosed his age as 14. The charges relating to offences like criminal trespass, preventing public officers from doing their duty and assaulting public officers, participating in an unlawful assembly, criminal intimidation etc.

The relatives of the deceased have not received a post-mortem report yet. Given that the body was with the BSF from about midnight until almost 9 a.m. and the type of injuries on the dead body, it is feared that Serajul Mondol died following ill-treatment in custody.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Serajul Mondol. 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 like to draw your Government's attention to Resolution 8/8 adopted on 18 June 2008 which urges States "to take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold persons, who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed" and "to ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress and are awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation [...]".

We urge your Government to take all necessary measures to guarantee that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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

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



2. Has a complaint been lodged?

3. Please provide the details, and where available the results, of any investigation, post-mortem examination, 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 Serajul Mondol.

### **India: Death of Langpoklakpam Bimolchandra**

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

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

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

#### **Allegation letter dated 6 August 2008**

I would like to draw the attention of your Government to reports I have received regarding the death of Mr. **Langpoklakpam Bimolchandra**, who was allegedly killed by a Manipur Police Commando on 4 July 2008.

According to the information received:

In the early morning hours of 4 July 2008, Mr. Bimolchandra, owner of a private rice mill and a resident of Haobam Marak Ngangom Leikai, Imphal West District, Manipur, was riding his scooter near his home. He was stopped at Haobam Marak Irom Leikai, near Mangi Dukan, by a team of Manipur Police Commando traveling in a vehicle bearing registration number 9150. Mr. Bimolchandra was asked to get inside the vehicle, while one of the officers drove away with the scooter. This incident was witnessed by several persons.

At 9.30 a.m. of the same day, Mr. Bimolchandra's family was informed that he had been killed by Police Commando members at Changangei, near Imphal Airport. His wife, Ms. Langpoklakpam Ongbi Rani Devi, tried to lodge a written report to the Officer-in-Charge at Singjamei Police Station, but the police officer refused to put his signature on the report, which is needed as his proof of acceptance. She then submitted a written report to the Superintendent of Police, Imphal West District, seeking to take up

legal action against the Manipur Police Commandos she accused of being responsible for killing her husband. On the following day, 5 July 2008, Ms. Devi also submitted a written application to the Director General of Police of Manipur.

Also on 4 July 2008, the Manipur Police issued a statement to the media. They reported that, having received information regarding the movement of armed underground anti-state activists operating in the Changangei area, a combined force of Imphal West District Police Commandos and personnel of the Maratha Light Infantry rushed to the area. There the security forces encountered three armed underground activists and a shoot-out ensued. According to the police statement, Mr. Bimolchandra and another suspect were killed on the spot. The police also stated that a hand grenade was recovered from the deceased.

On 6 July 2008, Mr. Bimolchandra's family received his mortal remains after an autopsy had been carried out.

While I do not wish to prejudge the accuracy of these reports, I would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights ("ICCPR") provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). Should Mr. Bimolchandra have been taken into custody by Manipur Police Commando at Haobam Marak Irom Leikai, near Mangi Dukan, as the reports I have received allege, there would be a rebuttable presumption of State responsibility for his death.

In any event, Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. As expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials ("Basic Principles"), this requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Further, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Basic Principles, Principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9).

I would also like to bring to your Government's attention that your Government has a duty to investigate, prosecute, and punish all violations of the right to life. To fulfill this legal obligation, governments must ensure that arbitrary or abusive use of force by law enforcement officials is punished as a criminal offence (Basic Principles, Principle 7). There must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions ("Prevention and Investigation Principles") provides guidelines for investigations, which includes conducting an adequate autopsy, and the collection and analysis of all physical and documentary evidence. Families of the deceased should be informed of information relevant to the investigation, and the findings of the investigation should be made public (Prevention and Investigation Principles, Principles 16 and 17).

In this respect, concern has been expressed that section 8 of the Armed Forces (Special Powers) Act, 1958 (AFSPA), which is applicable in Manipur, facilitates impunity by preventing any person from starting legal action against any members of the armed forces for anything done under the Act, or purported to be done under the Act, without permission of the Central Government. This would appear to be incompatible with the obligations of the Government under Article 2 (3) of the ICCPR to ensure the provision of an effective remedy in cases involving violations of human rights.

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

1. Are the facts alleged in the above summary accurate? Please refer to the status or results of any police, medical, or military investigation, or judicial or other inquiries carried out in relation to the alleged incident.
2. Please provide the details of any disciplinary measures imposed on, or criminal prosecutions against, members of the forces involved in the death of Mr. Bimolchandra.
3. Please explain whether, in this specific case, section 8 of the Armed Forces (Special Powers) Act, 1958 (AFSPA), has any impact on the ability of the victim's family or the public prosecution to take legal action against members of the forces involved in the death of Mr. Bimolchandra.
4. Please state whether any compensation was, or is intended to be, provided to Mr. Bimolchandra's family.

#### **India: Attacks on the Christian community in the Kandhamal District**

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

**Subject(s) of appeal:** At least 10 persons (2 pastors; 1 nun)

**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 Human Rights Council.

**Urgent appeal dated 29 August 2008,** sent with the Special Rapporteur on freedom of religion or belief

In this connection, we would like to draw the attention of your Government to information we have received regarding **attacks on the Christian community in the Kandhamal district** of the state of Orissa since 24 August 2008.

According to the allegations:

The context of violence has been triggered by the murder of Swami Lakhmananda Saraswati, a local leader of the Vishwa Hindu Parishad (VHP), as well as four other VHP members, who were shot dead on the night of the 23 August 2008. Before his death, Swami Lakhmananda Saraswati was reportedly active in opposing conversions away from Hinduism and negatively portraying the Christian minority. On 24 August 2008, the State VHP General Secretary Gouri Prasad Radh told the Hindustan Times that “this attack is the handiwork of Christians. There were four home guards at the ashram. Had the attackers been Maoists, they would have first attacked these cops. Swami was fighting the missionaries for four decades. We see a clear Christian conspiracy behind this attack”.

Although the Christian leadership condemned the killing of the VHP leader and his four associates, attacks on Christians and their places of worship, as well as Christian-run orphanages and businesses, began on 24 August 2008. The incidents have been focused on Kandhamal district, but other districts reported to have been affected include Angul, Bargarh, Baudh, Debagarh, Gajapati, Jajapur, Koraput, Rayagada, Sambalpur and Sundargarh. Many mobs reportedly carried out their attacks while chanting slogans in the Oriya language, translating as “Kill the Christians”. At least 10 people have been killed so far, and the violence is continuing, putting many others in danger.

Among the victims, a nun was burnt to death on 25 August 2008, after a mob set fire to an orphanage in at Phutpali in Bargarh district. 20 children, who were at the orphanage, managed to escape but a priest suffered serious burn injuries in the attack. Pastors were also murdered on 25 August 2008. They include Nayak Samuel, a Seventh Day Adventist pastor from Bakingia, and Nayak Akbar, a Pentecostal pastor from Mandakia.

Allegedly, the police delayed taking action and did not enough to protect the district population. Further, though the State Government announced on 25 August 2008 that a special team had been constituted to investigate the murder of the Hindu leader and his associates, this appeared to have had little effect on the violence.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to Your Excellency’s Government to ensure the right to freedom of religion or belief 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, to which India is a State Party. In addition, we would like to recall your Excellency’s Government that the Human Rights Council has, in its Resolution 6/37, urged States to “take all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence, with particular regard to religious minorities”.

In the press statement released by the Special Rapporteur on freedom of religion or belief at the end of her visit in India on 20 March 2008, she had already referred to the widespread violence in December 2007 targeting primarily Christian communities in the State of Orissa.

Furthermore, she had expressed concern about organized groups based on religious ideologies which had unleashed the fear of mob violence in many parts of the country and noted that law enforcement was often reluctant to take any action against individuals or groups that perpetuate violence in the name of religion or belief. This institutionalized impunity for those who exploit religion and impose their religious intolerance on others has made peaceful citizens, particularly the minorities, vulnerable and fearful.

In this respect, we would like to bring to your attention that Article 6(1) of the International Covenant on Civil and Political Rights requires States to provide effective protection to those whose lives are in danger. As expressed in Principle 4 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, this requires that individuals in danger of such executions be guaranteed effective protection. We urge your government to immediately take all necessary steps, as required under international law, to protect the right to life of the Christian communities in the State of Orissa.

Regarding the killings that already have taken place, we would like to bring to your attention the Government's duty to thoroughly, promptly and impartially investigate suspected cases of extrajudicial execution, and to prosecute and punish all violations of the right to life. As reiterated by the Human Rights Council in resolution 8/3 on "The Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), 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". We would submit that an exhaustive investigation into the alleged incidents described above must include investigation of allegations of police inaction or connivance in the face of the violence against the Christian communities in the State of Orissa.

In the event that your investigations support or suggest the above allegations to be correct, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of the Christian community in the State of Orissa 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.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by Your Excellency's Government in this matter, in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the 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 incidents accurate?
2. Has a complaint been lodged with regard to the incidents mentioned above?

3. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to the incidents mentioned above. We are interested in both inquiries, investigations and prosecutions regarding the perpetrators of the violence and in inquiries regarding allegations of police inaction or connivance in the face of the violence against the Christian communities in the State of Orissa. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please indicate which measures your Government has implemented to physically protect members of the Christian community in the affected Orissa districts against violent acts.

**India: Killings during demonstrations in Jammu and Kashmir**

**Violation alleged:** Deaths due to the use of force by law enforcement officials; Impunity

**Subject(s) of appeal:** 43 persons (29 males; 4 females; 37 demonstrators)

**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 Human Rights Council.

**Allegation letter dated 5 September 2008**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture

In this connection, we would like to bring to your Government's attention information we have received in relation to **allegedly excessive use of force by the security forces in confronting the ongoing demonstrations in Jammu and Kashmir**.

According to information received, since June 2008, protests have increased in Jammu and Kashmir. The demonstrations began after a state government decision on 26 May 2008, to transfer 100 acres of land to a Hindu trust (the Amarnath Shrine Board) to build temporary shelters during an annual Hindu pilgrimage. Once the decision became public knowledge in June, Muslim Kashmiris started protesting against the land transfer. The decision to transfer the land was revoked on 1 July 2008, fuelling counter protests from Hindu Kashmiris calling for the reinstatement of the transfer. During these demonstrations in Jammu, Hindu protesters reportedly obstructed traffic on the Jammu-Panthankot National Highway, the main land route to the Kashmir region. The blockades allegedly led to shortages in essential food and medical supplies in the Kashmir valley. Protesters chanted anti-Indian slogans, burned Indian flags and effigies of Indian leaders, blocked highways and attacked the security forces with sticks and stones.

On 11 August 2008, approximately 100,000 Kashmiris marched toward the Line of Control in protest. Police, military and paramilitary forces responded with bamboo rods, tear gas, rubber bullets and live ammunition, resulting in at least ten deaths of protestors (see attached Annex for details). At least another 17 protestors and one news cameraman

were shot by security forces the next day, on 12 August 2008 (see attached Annex). On 13 August 2008, the Government allegedly issued an order authorising state security forces to 'shoot on sight' in response to communal violence in the town of Kishtwar, Doda District. More protestors were shot by state forces in the following days (see attached Annex). On 24 August 2008, hundreds of protestors defied a Government imposed curfew and tried to march from Narbal to the Lal Chowk (Red Square) in Srinagar, where a rally was planned on the following day. The Central Reserve Police Force (CRPF) opened fire on the protestors, killing one person (see attached Annex). At least eight protestors were killed the following day, on 25 August 2008, and three on 27 August 2008 (see attached Annex). According to the allegations we have received, each of these 43 deaths was the result of excessive use of force by state security forces (see attached Annex for details of each incident).

At least 13 journalists were also reportedly beaten by CRPF officers in Srinagar, on 24 August, as they tried to reach their offices despite the curfew introduced earlier in the day. The journalists had passes issued on 11 August but police officers reportedly said they were no longer valid. The curfew also prevented the publication of regional newspapers on 25 August, and the authorities asked local TV stations not to broadcast reports liable to "excite" the population until further notice. TV executives and editors were reportedly summoned and told it would be preferable if they suspended news programmes and just broadcast entertainment. The government claimed that reports broadcast by certain stations violated the Cable Television Network (Regulation) Act 1995.

Concern is expressed that, while it appears that some of the aforementioned demonstrations may not have been entirely peaceful, the alleged use of excessive force by police personnel may seek to restrict the legitimate right to freedom of assembly. Further concern is expressed that the reported ban on media publications and broadcasting may represent an attempt to prevent independent reporting during the ongoing demonstrations in Jammu and Kashmir.

While we do not wish to prejudge the accuracy of these reports, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which provides that "[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

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

In this context, we would further like to refer your Government to the principles of international law governing the use of force when policing rallies and protests. The International Covenant on Civil and Political Rights (“ICCPR”), to which India is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

The Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 December 1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not in themselves binding law, provide an authoritative and convincing interpretation of the limits the prohibition of arbitrary deprivation of life places on the conduct of law enforcement forces facing allegedly violent crowds, namely by putting forward the twin safeguards of necessity and proportionality in the use of force.

In particular, Article 3 of the Code of Conduct for Law Enforcement Officials states: “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that law enforcement officials, in carrying out their duties, shall as far as possible apply non-violent means and shall only use force in exceptional cases including self-defence or defence of others against the imminent threat of death or serious injury. Such force must be proportional to these objectives, the seriousness of the crime and must minimize damage and injury. Force may only be used when less extreme means are insufficient (Principle 9). Of particular relevance in the present context are principles 12 to 14 which govern the policing of unlawful assemblies. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in Principle 9.

Principle 22 establishes that Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents where death or serious injury are caused by the use of firearms by law enforcement officials. This includes ensuring that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in such circumstances. Governments and law enforcement agencies shall promptly send a detailed report to the competent authorities responsible for administrative review and judicial control.

We should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the case of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.



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).

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

1. Are the facts alleged in the above summary of the case accurate?
2. What were the instructions given to the security forces before and during the demonstrations and other incidents mentioned above? How did the security forces ensure compliance with the requirements of necessity and proportionality? Is it accurate that, as alleged, on 13 August 2008, the Government issued an order authorising state security forces to 'shoot on sight' in response to communal violence in the town of Kishtwar, Doda District?
3. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to the above incidents (including those listed in the attached Annex). Please explain the steps taken to ensure that these investigations comply with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
4. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanders, for the alleged killings listed in the attached Annex.
5. Please state whether any compensation was, or is intended to be, provided to the families of persons killed by the security forces in the course of the incidents alleged here.
6. Please provide the details on how the actions undertaken by public officials regarding the aforementioned events are compatible with the international norms and standards of the right to freedom of opinion and expression and the related right to peaceful assembly and association as contained in the International Covenant on Civil and Political Rights.

## Annex 1

## LIST OF ALLEGED VICTIMS OF EXCESSIVE USE OF FORCE

	Name of alleged victim	Date of incident	Place of incident	Detail of allegation
1	Sheikh Abdul Aziz (All Parties Hurriyat Conference leader)	11 August 2008	Chehal village, Uri, Baramulla district, Kashmir Valley	The Central Reserve Police Force (CRPF) opened fire on a march of protestors, killing six.
2	Abdul Hameed Bhat (son of Dr Abdul Majeed Bhat from Kanlibagh, Baramulla)			
3	Bashir Ahmad Malla (from Khanpora)			
4	Manzoor Ahmed Akhoon (from Sheeri, Baramulla)			
5	Bilal Ahmad Hajam (son of Abdul Salam of Zaloor, Sopore) (victim died subsequently on 18 August 2008)			
6	Unnamed protestor (from Pulwama district)			
7	Tahir Nazir Lone (son of Nazir Ahmed Lone, from Thindam, Kreeri)	11 August 2008	Sangrama, Baramulla district, Kashmir Valley	Protestors attacked a CRPF bunker. Soldiers shot at them, killing the victim.
8	Hafizullah Baba (died subsequently, on 13 August 2008)	11 August 2008	Qamarwari, Srinagar, Kashmir Valley	The two victims were shot by Government forces.
9	Ashfaq Ahmed Keenu (son of Ghulam Mohammad Keenu, from Bilal Colony, Qamarwari)			
10	Faisal Ahmad Dar (died subsequently, on 13 August 2008)	11 August 2008	Bagh-e-Mehtab, Srinagar, Kashmir Valley	The victim was shot by the CRPF.
11	Adil Sheikh (18 years old)	12 August 2008	Lasjan, Srinagar district, Kashmir Valley	Government forces fired on protestors, killing four.
12	Imtiyaz Ahmad Bhat (19 years old) (son of Abdul Gani of Lasjan)			
13	Hasina Begum (female)			
14	Jabeena Begum (female)			
15	Imran Qayoom Wani (25 years old) (son of Abdul Qayoom)	12 August 2008	Bagh-e-Mehtab, near Srinagar, Kashmir Valley	Government forces shot and killed two protestors.
16	Javed Ahmed (news cameraman from 9TV)			
17	Mumtaz Ahmed Bhat (son of Mohammad Afzal of Aloosa Bandipora)	12 August 2008	Paribal, Bandipora district, Kashmir Valley	Troops of the Rashtriya Rifles fired on a procession of protestors, killing four.
18	Ali Muhammad Khanday (son of Ghulam Mohammad of Ashtango)			
19	Muhammad Shafiq Ganie			
20	Mehrajudin Ganie (son of Abdul Aziz of Gani Mohalla Aloosa)			
21	Muhammad Aslam Khan (from Kandiwara)	12 August 2008	Islamabad, Anantnag district, Kashmir Valley	State security forces fired on protestors, killing two.
22	Gulzar Ahmad (from Marhama Bijbehara)			

	Name of alleged victim	Date of incident	Place of incident	Detail of allegation
23	Javaid Ahmed (from Manasbal)	12 August 2008	Manasbal, Bandipora district, Kashmir Valley	CRPF fired on protestors, killing two.
24	Muhammad Subhan (from Manasbal)			
25	Muhammad Saleem Shah (son of Peer Muhammad Shah)	12 August 2008	Nai-Basti, Anantnag district, Kashmir Valley	CRPF fired on a march to the funeral prayers for Shiekh Abdul Aziz, killing two.
26	Unnamed deceased			
27	Showkat Ahmed Najar (from Marhama, Bijbehara)	12 August 2008	Bijbehara town, Anantnag district, Kashmir Valley	CRPF fired automatic weapons at protestors, killing one.
28	Muhammad Rafiq (son of Muhammad Ashraf of Zoonimar)	12 August 2008	Zoonimar, Srinagar district, Kashmir Valley	CPRF fired on a large group of protestors, killing one.
29	Tanveer Ahmad (son of Jan Mohmad of Safakadal)	14 August 2008	Safakadal area, Srinagar, Kashmir Valley	Victim was shot by CPRF.
30	Mushtaq Ahmad (son of Taj Ali or Mandi)	22 August 2008	Mandi area, Poonch district, Kashmir Valley	Protestors defied a curfew, and police fired on them, killing one and injuring 30.
31	Zahid Ahmad Bandy	24 August 2008	Budgam district, Kashmir Valley	Troops fired on protestors, killing one.
32	Ghulam Qadir Wakil	24 August 2008	Dal Lake area, Srinagar, Kashmir Valley	Victim shot by CRPF.
33	Muhammad Shafi Dar (son of Ghulam Nabi)	25 August 2008	Hajan, Bandipora district, Kashmir Valley	Government forces shot and killed four protestors.
34	Nassema (wife of Muhammad Ashraf)			
35	Shahid Ahmed Pahlu (son of Ali Muhammad Pahlu, of Saderkote Bala, Bandipora)			
36	Bashir Ahmed Baha (from Bahrabad)			
37	Fameehda (wife of Fayaz Ahmed)	25 August 2008	Chontipura, Handwara, Kupwara district, Kashmir Valley	Troops opened fire on protestors, killing one.
38	Showkat Ahmed Khanday (son of Muhammad Abdullah Khanday)	25 August 2008	Narbal Budgam district, Kashmir Valley	CRPF fired on unarmed protestors, killing one.
39	Basit Bashir	25 August 2008	Pulwama district, Kashmir Valley	Thousands of protestors defied the curfew and attempted to march to Srinagar. CRPF attempted to disperse the crowd with "lathi" (baton) and teargas. Protestors responded by throwing stones, and the troops opened fire, killing two.
40	Fayaz Ahmed Wani (son of Habibullah Wani of Pulwama)			

	Name of alleged victim	Date of incident	Place of incident	Detail of allegation
41	Hilal Ahmed Mir	27 August 2008	Budgam District, Kashmir Valley	Troops raided the home of Rafiq Ahmed and arrested him. Locals protested the arrest, in violation of curfew. Troops opened fire on the protestors, killing two.
42	Ghulam Nabi Wani			
43	Muhammad Yousef Banday	27 August 2008	Banday Mohalla, Handwara, Kupwara district, Kashmir Valley	Locals protested after troops assaulted "namazis" (people praying). Police and troops opened fire, killing one and injuring six.

### **India: Six cases of arbitrary killings and insufficient medical care in West Bengal**

**Violation alleged:** Attacks and killings by security forces of the State; Fear of death in custody due to neglect or life-threatening conditions of detention

**Subject(s) of appeal:** 6 males (1 minor)

**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 Human Rights Council.

**Allegation letter dated 16 September 2008**, sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to reports we have received regarding several cases of alleged arbitrary killings by members of the Border Security Forces (BSF) in West Bengal in the course of the past five months. The names of the alleged victims are **Mr. Neel Kumar Mondal, Mr. Dwijen Mondal, Mr. Mofijul Seikh, Mr. Sentu Mondal, and Mr. Shilajit Mondal**. We would also like to draw your Government's attention to the allegations we have received regarding the insufficient medical care another victim of BSF shooting, **Mr. Aftarul Hossain**, is receiving in custody. Summaries of the allegations received regarding these six cases are contained in the Annex to this communication.

While we do not wish to prejudge the accuracy of the reports summarized in the Annex, we would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights ("ICCPR"), to which India is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

When the State detains an individual, as was the case with Neel Kumar Mondal, Dwijen Mondal and Sentu Mondal, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions) into the causes and circumstances of death. This principle was reiterated by the Human Rights Council as recently as at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions".

Article 6 of the ICCPR also requires that force be used by law enforcement officials only when strictly necessary, and that the use of force must be in proportion to the legitimate objective to be achieved. As expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials ("Basic Principles"), this requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Further, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Basic Principles, Principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9).

Both in cases of death in custody and in cases of possibly excessive use of force by members of the police, armed forces, or other security forces, your Government has a duty to investigate, prosecute, and punish all violations of the right to life. The reports received allege that in some cases of killing by the BSF, the police refused to receive complaints by family members or neglected to carry out any significant investigative activity (we refer to the cases of Neel Kumar Mondal, Mojiful Seikh, and Sentu Mondal). Complaints filed by the BSF against their dead victims, on the contrary, are registered and possibly even investigated (see the cases of Neel Kumar Mondal and Mofijul Seikh). In the case of Dwijen Mondal, the police appeared to be willing to investigate the killing, but reportedly met with a refusal of the BSF to cooperate.

We would finally like to stress that families of the deceased should be informed about the investigation, and the findings of the investigation should be made public (Prevention and Investigation Principles, Principles 16 and 17). Moreover, the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time (Prevention and Investigation Principles, Principle 20). As extrajudicial executions are a most serious violation of criminal law and human rights law, such compensation must not be conditioned upon the family withdrawing its criminal complaint against the perpetrator.

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on the cases summarized in the Annex 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 accurate? Please refer to the status or results of any police, medical, or military investigation, or judicial or other inquiries carried out in relation to the alleged incident.

2. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against, members of the Border Security Forces involved, as perpetrators or responsible commanders, in the deaths of Neel Kumar Mondal, Dwijen Mondal, Mofijul Seikh, Sentu Mondal, and Shilajit Mondal.

3. Please state whether any compensation was, or is intended to be, provided to the families of Neel Kumar Mondal, Dwijen Mondal, Mofijul Seikh, Sentu Mondal, and Shilajit Mondal.

4. Please provide information on the current status of the criminal case against Md. Aptarul Hossain, on the measures taken to ensure that he is given adequate medical care, as well as on any investigations into the conduct of the Border Security Forces in his case, any disciplinary measures imposed on, and criminal prosecutions against them.

### **Annex**

#### **Neel Kumar Mondal, 15 April 2008**

On 15 April 2008 at about 4 a.m., Neel Kumar Mondal of Char Durgapur Village in Murshidabad District, West Bengal, a fisherman and laborer, was returning home after fishing from Ilsemarir damoud near the border between India and Bangladesh. Troops of BSF Battalion No.105, Company A patrolling in the area arrested him on the suspicion of smuggling. They then beat him with iron rods and boots. One of the BSF soldiers fired at Neel Kumar Mondal and hit him in the back. Neel Kumar Mondal died on the spot. The BSF soldiers tied his legs with a rope and dragged the body to their out-post. Neighbors and family members of Neel Kumar Mondal who had heard about the incident were not allowed by the BSF to see his body at the out-post.

At around 2 p.m. on the same day, the BSF delivered the corpse to Ranitala Police Station. On the basis of complaints filed by the BSF, the police registered case no.45/08 against Neel Kumar Mondal, charging him under Penal Code sections 186 (obstructing a public servant in the discharge of public functions), 188 (disobedience to an order duly promulgated by a public servant), 353 (assault or criminal force to deter a public servant from the discharge of his duty) and 307 (attempted murder). The police at Ranitala Police Station refused to take any complaint against the BSF from Neel Kumar Mondal's family.

On 16 April 2008, Ranitala Police Station delivered the body of Neel Kumar Mondal to Lalbagh Sub-Divisional Hospital in Murshidabad. The corpse was labeled as belonging to an "unidentified" man, although Neel Kumar Mondal's wife and family had identified the body at the Ranitala Police Station. The post mortem report of the Hospital referred to the case as an "unnatural death" case and recorded the deceased as an unidentified man. The family later on received the mortal remains of Neel Kumar Mondal from Ranitala Police Station.

### **Dwijen Mondal, 3 and 4 May 2008**

On 3 May 2008, Mr. Dwijen Mondal, son of Mr. Hridoy Mondal, and another man went to the river Padma in Murshidabad district. Members of the BSF from Bamnabad Camp, Battalion No.90, E Company, who were patrolling the river, apprehended Dwijen Mondal and took him to BSF Out-Post No.3, Point D.

The following morning, on 4 May 2008, Dwijen Mondal's family was informed of his detention. His eldest son and two other men went to the BSF Camp. Dwijen Mondal was badly injured and could not sit properly as his legs were tied with chains. As to the causes of his injuries, Dwijen Mondal told his eldest son and the two men that he had been hung from a tree. A witness to Dwijen Mondal's apprehension by the BSF the previous day alleges that he heard someone shouting orders in Hindi: "Shir me mar, shir me mar", which means "strike on the head". At the inquest (see below), it was noticed that there were black, swollen spots on the victim's body, particularly the throat and neck. There were some bruise marks on the legs and some prominent dark spots on the back of the victim. A police officer present at the inquest was of the opinion that these were boot marks, while further broader black marks on the chest of the victim were attributed to the handle of a rifle. On that same morning, in the presence of his son, Dwijen Mondal fell to the ground and died after drinking some water.

Around noon of 4 May 2008, police officers from Raninagar Police Station reached BSF Border Out-Post No.3. Their request to see the Entry Book of the Border Out-Post but was refused, and they did not receive answers to their questions from the BSF. Raninagar Police Station registered a case of unnatural death (Unnatural Death Case No.05/08). In the afternoon, inquest proceedings took place at Lalbagh Sub-Divisional Hospital. A relative of Dwijen Mondal was present. At 9.30 p.m. in the evening, a magistrate took the statements of family members. The family were not given copies of the First Information Report (FIR). The post-mortem was carried out on the 5 May 2008. The Disposal Order of Lalbagh Sub-Divisional Hospital does not mention the cause of death.

Also on the evening of 4 May all the BSF men stationed at Bamnabad BSF Camp were transferred and new BSF stationed at the camp. Senior BSF and police officers have been sending Dwijen Mondal's family 3,000 Indian Rupees (corresponding to 70 USD) and one sack of rice every month, and have pledged to give a job in the BSF to a son of the deceased. The victim's family have withdrawn their case against the BSF, allegedly under the influence of some local political leaders.

### **Mofijul Seikh, 1 June 2008**

Mofijul Seikh, son of Mr. Mojer Seikh, aged about 25 years, was a share-cropper of Mohangunj village in Murshidabad district. Mofijul Seikh died in the night from 1 to 2 June 2008 in the vicinity of Border Out-Post No. 2 and 3 of the Mohangunj BSF Camp. A bullet fired by a BSF soldier (whose name is on record with the Special Rapporteur) entered his body from the back and exited from the chest. He died on the spot. As to the circumstances in which Mofijul Seikh was lethally shot by the BSF, two differing reports were received.

According to one version, he was smuggling cattle from India into Pakistan and failed to stop when BSF soldiers appeared. The other version states that he was trying to prevent cattle smugglers from crossing his fields (to prevent damage to the crop) and was shot by BSF soldiers complicit with the cattle smugglers.

The BSF informed the police and on 2 June 2008 the body of the deceased was taken to Raninagar Police Station. During that morning the widow of Mofijul Seikh, Ms. Nargis Bewa, went to Raninagar Police Station to lodge a written complaint against the BSF for killing her husband. The officer in charge of the police station refused to accept the complaint. A few hours later, the BSF filed a case against the deceased with Raninagar Police Station (Case No. 118/08). A post mortem examination was carried out at Lalbagh Morgue.

### **Sentu Mondal, 17 June 2008**

Sentu Mondal, aged 19, son of Ershad Mondal, a resident of Chakmathura village in Murshidabad district, was apprehended by BSF soldiers on 17 June 2008 around 11 p.m. as he was trying to smuggle cattle across the Indian-Bangladeshi border. The BSF soldiers took Sentu Mondal to Out-Post No.1 of Udaynagar under Singhpara BSF Camp (BSF Battalion 90). There they beat him to death with their fists and rifle butts. Thereafter, BSF soldiers threw his body into the river Padma near Out-Post No.1. On 19 June 2008, at about 4 p.m. in the evening, the lifeless body of Sentu Mondal surfaced in the river Padma near Out-Post No. 1. Police from Jalangi Police Station came to the spot and sent the body of the victim for autopsy to Berhampore General Hospital (post mortem report no.562 dated 20 June 2008).

Jalangi Police Station registered the death of Sentu Mondal as an unnatural death case (Case no. 15/2008). Sentu Mondal's father alleges that the police have failed to take any action against the perpetrators.

### **Shilajit Mondal, 23 July 2008**

On 23 July 2008 around noon, Shilajit Mondal, the 15-year-old son of Mr. Golok Mondal from Rajanagar village, Murshidabad district was sitting in front of his family's mud hut by the road side. A constable of BSF Battalion no. 90 (whose name is on record with the Special Rapporteur) approached Shilajit Mondal and asked him in Hindi about the whereabouts of certain fertilizer smugglers operating in the area. Shilajit Mondal was unable to reply as he did not speak Hindi. The BSF constable grabbed him and began to beat him. Neighbors heard the cries and tried to intervene to protect Shilajit Mondal, but - in front of numerous eye witnesses - the BSF constable fired his gun at him. The bullet entered the victim through the left side of the chest and exited through his back. Shilajit Mondal was rushed to the district hospital, Berhampore New General Hospital, but died there at 3 p.m. before reaching the operating theatre.

The police at Raninagar police station registered both a case against the BSF filed by Shilajit Mondal's mother (Case No. 151/08) and a case against Shilajit filed by the Company



Commander of G-Company, BSF Battalion 90. On the following day, 24 July 2008, the post mortem was conducted in the morgue in Berhampore New General Hospital. The post mortem report recorded unnatural death (case no. 521/08).

The BSF constable who shot Shilajit Mondal continues to serve and has not been reprimanded for his actions.

**Mr. Md. Aptarul Hossain alias Aktarul Jamal, 15 February 2008**

Md. Aptarul Hossain alias Aktarul Jamal, son of Khalil Mondal, aged about 21, is a resident of Baronoberia Biswas Para village, North 24 Parganas district. He was shot in his leg by a BSF constable on 15 February 2008. According to the case filed by the BSF against him (Gaighata Police Station Case no. 54/08), Md. Aptarul Hossain was caught by the BSF as he and two other men were smuggling across the Indian-Bangladeshi border and was shot in the leg as he and his accomplices tried to attack the BSF constable.

According to two eye-witnesses (names on record with the Special Rapporteur), however, Md. Aptarul Hossain was approached by a BSF soldier as he was cleaning rice crops in the paddy fields near Out Post no.2. The BSF soldier asked Md. Aptarul Hossain whether his name was "Akbar". Md. Aptarul Hossain denied and gave his name. The BSF soldier did not believe him and suddenly fired a round from his rifle at the victim's left leg below the knee. It is also alleged that the documents filed by the BSF in connection with their complaint against Md. Aptarul Hossain (such as the reports concerning his arrest) contain such inconsistencies as to undermine the BSF version of the incident.

Md. Aptarul Hossain is currently detained on remand at Dum Dum Central Correctional Home. When he was produced before the Bongaon Court on 24 June 2008, his left leg had lost flexibility due to the insufficient medical treatment given to his wound, which was swelling and releasing fluid. On 8 July 2008, Md. Aptarul Hossain was again produced before the Bongaon Magistrate's Court. The wound was not covered by bandage but tied with an unhygienic piece of cloth. Md. Aptarul Hossain informed the court that the treatment of his injury was not going well, but was cut short by the Public Prosecutor. Also counsel acting for Md. Aptarul Hossain has repeatedly drawn the court's attention to the insufficiency of the medical treatment.

**India: Violence between the Bodo Tribal and the Muslim communities  
in the State of Assam**

**Violation alleged:** Deaths due to attacks or killings tolerated by the State

**Subject(s) of appeal:** More than 50 persons

**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 Human Rights Council.

**Allegation letter dated 29 October 2008**, sent with the Special Rapporteur on freedom of religion or belief, the Independent Expert on minority issues and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

In this connection, we would like to bring to your Government's attention information we have received concerning the **eruption of violence between the Bodo tribal and the Muslim communities in the Indian state of Assam**.

According to the information received:

The violence between members of the Muslim community and members of Bodo tribal groups in the Indian state of Assam started on Friday 3 October 2008. The incidents that sparked this wave of violence remain unclear, yet there have been long running tensions between the two communities.

Despite the large number of paramilitary officers deployed by the Government and the imposition of a curfew, mobs from both communities armed with machetes and knives fuelled violence between the two communities in the districts of Udalguri, Darrang and Baksa.

As a result of the communal violence, reportedly more than 50 people were killed, more than 500 houses were burnt and more than 80'000 people, both from the Bodo and the Muslim communities, have been forced to flee from their village and to seek shelter in camps set up by the Government.

To counteract the communal violence, the government of the Indian state of Assam has allegedly issued shoot on sight orders to the security forces in response to the clashes. Indeed, 25 of the more than 50 victims mentioned above were reportedly killed by police fire in Darrang and Udalguri districts.

In addition to the above, coordinated bombings killed 77 people and wounded more than 320 took place in the State of Assam on 30 October 2008. Prime Minister Dr. Manmohan Singh strongly condemned the blasts and said that the Government would take all possible steps to bring the perpetrators of terror attacks to justice. While responsibility still needs to be determined by the authorities, the Islamic Security Force-Indian Mujahideen reportedly claimed to have committed the bombings.

While we do not wish to prejudge the accuracy of these allegations, we would like to bring to your Government's attention Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, which provides that "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: [...] (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution".

We acknowledge that in the present case, security forces appear to have taken forceful action to protect themselves and civilians from the violence. With regard to the shoot on sight orders allegedly issued by the state government, however, we would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (“ICCPR”), to which India is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

The Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 December 1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide an authoritative and convincing interpretation of the limits the prohibition of arbitrary deprivation of life places on the conduct of law enforcement forces facing allegedly violent crowds, namely by putting forward the twin safeguards of necessity and proportionality in the use of force.

In particular, Article 3 of the Code of Conduct for Law Enforcement Officials states: “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that law enforcement officials, in carrying out their duties, shall as far as possible apply non-violent means and shall only use force in exceptional cases including self-defence or defence of others against the imminent threat of death or serious injury. Such force must be proportional to these objectives, the seriousness of the crime and must minimize damage and injury. Force may only be used when less extreme means are insufficient (Principle 9). Of particular relevance in the present context are principles 12 to 14 which govern the policing of unlawful assemblies. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in Principle 9.

Principle 22 establishes that Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents where death or serious injury are caused by the use of firearms by law enforcement officials. This includes ensuring that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in such circumstances. Governments and law enforcement agencies shall promptly send a detailed report to the competent authorities responsible for administrative review and judicial control.

We would also like to recall your Excellency’s Government that Human Rights Council resolution 6/37 urges States “to take all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence, with particular regard to religious minorities”.

As far as the inter-communal violence and the attacks of 30 October 2008 are concerned, in the event that your investigations support the above allegations, we urge your Government to take all necessary measures to ensure the accountability of persons responsible for the violence.

We also request that your Government adopts effective measures to prevent the aggravation of inter-communal tensions and to effectively protect individuals against further violence. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by Your Excellency's Government in this matter, in compliance with international human rights instruments.

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

1. Are the facts alleged in the above summary of the case accurate?
2. What orders were issued to the security forces engaged in stopping the violence?
3. Please provide information on any inquiries carried out into the use of lethal force by the police in accordance with Principle 22 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
4. Please provide the details and where available, the results, of any judicial investigation, or any criminal charges and other inquiries carried out in relation to the violence between members of the Muslim community and members of Bodo tribal groups in Darrang, Udalguri and Baksa districts of the Indian state of Assam.
5. What measures are being taken to provide humanitarian aid to the people affected by the inter-communal riots? What steps are being taken for the safe return to their homes of the people victimized by violence?

**Indonesia: Death sentences of Amrozi bin H. Nurhasyim,  
Ali Ghufron and Imam Samudera**

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

**Subject(s) of appeal:** 3 males

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the detailed and thoughtful response of the Government. He notes the explanation that, under domestic law, retroactive legislation of the type called into question may be adopted in the event of a compelling emergency. But the question here is whether this also comports with the applicable international law. The Government suggests that the exception provided for in Article 15(2) permits retroactive laws "in cases of extraordinary or heinous crimes such as, but not excluding, terrorism". Given the non-derogable status of the principle of non-retroactivity enunciated in Article 15 of the ICCPR it is difficult to conclude that this explanation would satisfy the requirements of international

law, unless it can be shown that a clearly defined crime of terrorism is part of “the general principles of law recognized by the community of nations”. The response of the Government does not seek to make this case, beyond emphasizing the heinous nature of the crime.

**Urgent appeal dated 3 May 2006**, sent with the Special Rapporteur on the promotion and protection of human rights while countering 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 “Perpu”), Perpu 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”. Perpu 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.

**Follow-up urgent appeal dated 22 July 2008**, sent with the Special Rapporteur on the promotion and protection of human rights while countering terrorism

We are writing to you in relation to information we have received regarding three men found guilty of involvement in the 12 October 2002 bombings on the island of Bali, which killed 202 people and injured a further 209: Mr. **Amrozi bin H. Nurhasyim**, Mr. **Ali Ghufron** alias **Mukhlas**, and Mr. **Imam Samudera**.

On 3 May 2006, we already wrote to your Excellency’s Government regarding these cases. In that communication, we “fully recognize[d] 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 recalled, however, that the fight against terrorism must be conducted

within the framework of international law and expressed the concern that “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 urged your Government not to proceed to their execution until all doubts in this respect have been dispelled. The executions, which appeared to be imminent in May 2006, were in fact put on hold at the time, but are reportedly imminent now.

According to information we have received, in January 2008 police and court officials informed Amrozi bin H. Nurhasyim, Ali Ghufron alias Mukhlas, and Imam Samudera that their renewed demands for a second judicial review had been rejected. The three men appealed against this decision, but on 17 July 2008, the Indonesian Supreme Court reportedly rejected this appeal and announced that they had exhausted their right of appeal, stating only one judicial review is permitted.

It would thus appear that the concerns we expressed in our communication of 3 May 2006, have not been addressed. As your Excellency will recall, our concerns were based on the apparently retroactive application of the law allowing the imposition of the death penalty against the three men. We wrote:

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”.

Unfortunately, no reply to our communication was received from your Excellency’s Government in the intervening two years. We therefore again urge your Government not to proceed to their execution until all doubts in respect of the concerns raised 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 is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would like to reiterate our queries raised in the communication of 3 May 2006 and would be grateful for your cooperation and your observations:

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.

### **Follow-up urgent appeal dated 17 October 2008**

I am writing to you in relation to recent information I have received regarding the reportedly imminent execution of three men found guilty of involvement in the 12 October 2002 bombings on the island of Bali, which killed 202 people and injured a further 209: Mr. **Amrozi bin H. Nurhasyim**, Mr. **Ali Ghufron** alias **Mukhlas**, and Mr. **Imam Samudera**. Reports indicate that your Government announced that it would release a statement on 24 October 2008, regarding the execution of the three men. These reports also indicate that it is not clear whether your Government intends to inform on 24 October 2008 that the execution of the three men took place, or to announce a future date concerning their execution.

In this respect, I would like to recall the two communications regarding this matter I addressed to your Government on 3 May 2006 and 22 July 2008, both jointly with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. In both letters, we drew your Government’s attention to serious concerns that the death sentence imposed on Amrozi bin H. Nurhasyim, Ali Ghufron alias Mukhlas, and Imam Samudera was based on a law enacted after the fact and applied retro-actively, in violation of your Government’s obligations under Articles 6(2) and 15 of the International Covenant on Civil and Political Rights. Regrettably, your Government has so far failed to reply to our communications.



I again urge your Government not to proceed with the execution of Amrozi bin H. Nurhasyim, Ali Ghufron alias Mukhlas, and Imam Samudera until all doubts in respect of the concerns raised have been dispelled.

On this occasion, I would also like to recall my communication of 31 July 2008, sent jointly with the Special Rapporteur on the question of torture. In that communication we brought to your Government's attention our concerns with regard to certain aspects of the use of the death penalty in Indonesia. Our concerns related specifically to: (i) respect for the requirement that the death penalty be imposed only for "the most serious crimes", and therefore not for narcotics-related offences, (ii) the disproportionate number of foreigners sentenced to death for narcotics-related offences, and (iii) the requirement that in capital punishment cases all fair trial guarantees are rigorously observed, particularly the right not to be compelled to confess guilt. As of today, this communication also has remained without a reply from your Government.

In view of the urgency of the matter, I would appreciate a response on the situation of Amrozi bin H. Nurhasyim, Ali Ghufron alias Mukhlas, and Imam Samudera. I would also appreciate a response to the questions posed in the communications of 22 and 31 July 2008, respectively. 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.

#### **Response from the Government of Indonesia dated 17 October 2008**

The Permanent Mission of the Republic of Indonesia has the honour of providing the following information concerning the questions relative to Mr. Amrozi bin H. Nurhasyim, Mr. Ali Ghufron alias Mukhlas, and Mr. Imam Samudera.

The three abovementioned men, Mr. Nurhasyim (a 44 year old former mechanic), Mr. Ghufron alias Mukhlas (aged 46, a native of Tengkulun, East Java) and Mr. Samudera (aged 36) were arrested, charged and convicted for their role in the bombing that took place on 12<sup>th</sup> of October 2002 on the island of Bali and which resulted in the death of 202 people, as well as injury to 209 other. Mr. Nurhasyim was found guilty of various charges which included, among others, the purchase of a Mitsubishi minivan and bomb-making chemicals which were used in the Bali bombings.

Following their much publicized trials, they were convicted as terrorists under the provisions of the Government Regulation on the Elimination of Terrorism and were sentenced to death by the Denpasar District Court in 2003. It is true that aforementioned Regulation (Perpu) was one of two presidential decrees passed in the aftermath of the bomb attacks. These two presidential decrees have since been turned into Law No. 15/2003, also known as the Law on Combating Criminal Acts of Terrorism. This law imposes a death penalty in specific instances for convictions that have been judged as falling under the legally established definition of "terrorist" acts.

It also allowed for those involved in the bombings in Bali to be tried retroactively as well as granting powers to security authorities to deter and eradicate acts of terrorism. The exact explanation for this decision is explained in greater detail below.

Following the bombing, the then incumbent President, Megawati Soekarnoputri issued two Government Regulations in Lieu of Law (Peraturan Pemerintah Pengganti Undang-Undang), namely Perpu No. 11/2002 on the Eradication of Criminal Acts of Terrorism, and Perpu No. 21/2002 on the Eradication of Criminal Acts of Terrorism in Relation to the Bomb Explosion Incident in Bali, on 12 October 2002.

It was argued by some quarters that these laws, especially Perpu No.1/2002 which was the revised version of an anti-terrorism Bill which was previously debated by the DPR (the Indonesian Parliament). In fact, Article 46 of this Bill allowed for its retrospective application as long as it is authorised by another, Perpu or law. The Perpu No. 2/2002 authorised this retrospective application in relation to the Bali bombing incident.

These Regulations were subsequently approved by Parliament in March 2003 and were then converted, as already mentioned above, into Law on Combating Criminal Acts of Terrorism, ie, Law No.15/2003. Subsequently, the retroactive application of the latter Law was challenged at the Constitutional Court level, which on 23 July 2004 had ruled that the retroactive application of the 2003 Law on Terrorism legislation violated Article 281(1) of the amended 1945 Constitution, and was as a result, unconstitutional.

In actual fact, according to the provisions of Article 22 of the 1945, Constitution, the President can in `the event of a compelling emergency”, issue with the delayed and subsequent consent of the DPR, a Perpu/government regulation in lieu of law which has the power to take precedence over the rule of law or the opinions of the Constitutional court.

In this case, the trials of the three men took place over the course of several years and finally, the judgment of the court was handed down on separate occasions between 7 August 2003 and 2 October 2003. The three men refused to appeal or seek clemency as is their legal right under Indonesian law. On 14th of April 2006, the Attorney General's office made it clear to them that this deliberate refusal to seek clemency meant that according to the norms of Indonesia law, they had exhausted all the legal remedies available to them and as a result, their execution-was-set-to-proceed.

It should also be clearly noted that the families of the convicted defendants can also request a presidential pardon or a judicial review. The Attorney General also confirmed that although the relatives were made aware of their legal right to seek these options on behalf of the accused, rather, they had chosen to respect the request of the detainees and had waived their right to seek a pardon.

Furthermore, it should not be forgotten that ‘the carnage and destructive loss of life caused by these men, who had so carefully and mercilessly plotted out and carried out this heinous act of terrorism led to unspeakable suffering and sorrow for the families and friends of the victims who today, survive them. Concurrently, innumerable are the Balinese who also lost their revenues, jobs and savings as a result and also almost totally destroyed what had once been a peaceful and beautiful tourist retreat.

On the issue of retroactivity, since this dreadful tragedy and during the trial of those arrested for their involvement, there have been some questions raised on the validity of the law that was applied to convict these individuals. To this, it should be understood that while some of the laws may have had some retroactive effect, it should more importantly be recalled that in principle, as well as in actual application, the use of retroactive laws is often subject to exceptions. In certain cases, including in international law, they may be applied in cases of extraordinary or heinous crimes such as, but not excluding, terrorism.

Indonesia wishes to recall to attention that as a signatory to the ICCPR which it ratified, does not believe that it is erroneous to apply to these terrorists, the provisions of its national law which imposes for such heinous crimes, the death penalty. Indeed, it should be recalled that according to Article 15 alinea 2 of the ICCPR, there would be no prejudice for: “the trial and punishment of any person for any acts or omission which at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations”. It is clear that because of the extraneous circumstances of the crimes committed, the government felt justified in applying a retroactive law which its Constitution legally allows it to impose.

The various arguments relative to this matter have been considered in great detail and contrasted against potentially contradictory provisions of national legislation while at the same time realizing that the interests of national security were of greater importance. Furthermore, the government’s decision was not taken lightly given both international pressure following the terrorist attacks and the ensuing sensitivity it engendered for the different parties. In fact, the death penalty in Indonesia is not imposed arbitrarily or inevitably for crimes of a very serious nature. It must therefore be clear that although the law, as is the case with the provisions of international law relative to this matter, does not prohibit the death penalty, it is still not a sentence that is automatically or irrevocably imposed for similar crimes of this nature. The circumstances for its imposition always require a deliberate series of procedures to have been respected and a particular set of legal remedies to have been extinguished for its application to be considered definitive.

In the case of the three above mentioned men, the crimes committed were indeed heinous, and the proof against them conclusive enough to exclude reasonable doubt , moreover, their deliberate failure to seek clemency or appeal - though they were clearly advised to do so by their legal counsel and the office of the Attorney General - indicates their unwillingness to utilize the legal resources at their disposal especially when informed of the relevance and the serious implications their consequent decisions would produce. It is therefore amiss to imply that derogations of this nature are not within the sovereign policy decisions of any nation that wishes to impose them as is clearly stipulated in the provisions of Article 6 (2) of the ICCPR.

The Government of Indonesia takes this opportunity to renew its commitment to the promotion and protection of human rights, while at the same time, believes it is no less significant to ensure the respect of the norms that govern exceptional situations that threaten national security.

**Indonesia: End of the informal moratorium on executions: six persons executed**

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

**Subject(s) of appeal:** 5 males; 1 female

**Character of reply:** Cooperative but incomplete response

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of Indonesia with respect to the executions of Iwuchukwu Okoye, Hansen Anthoni Nwolisa, Achmad Suradji, Tubagus Maulana Yusuf, and Nyonya Sumiarsih and her son Sugeng.

In relation to the broader issues raised the Special Rapporteur notes the detailed response provided by the Government. He acknowledges the decision by the Constitutional Court to uphold the death penalty for non-lethal drug-related crimes on the basis of the relevant provisions of the Indonesian Constitution, but notes that this decision is not consistent with the interpretations adopted by international human rights bodies on this issue. He regrets that the Government's reply failed to address the concern that the death penalty appears to be applied in a discriminatory manner in relation to non-nationals. The statement that "all are judged equally before the law" does not, of itself, provide a response to the apparently highly disproportionate statistics cited in the communication.

The Special Rapporteur also regrets that the Government has not addressed concerns about the alleged use of torture and other compulsion to extort confessions that might result in execution. He looks forward to receiving from the government information about any investigations into such allegations and reiterates that executions should be suspended until such investigations are complete and any doubt about the use of coercion to elicit confessions is eliminated.

The Special Rapporteur notes that the Government is not in a position to comment on pending cases referred to in the annex. However, he would appreciate receiving detailed information on these cases as soon as it is available.

**Allegation letter dated 31 July 2008**, sent with the Special Rapporteur on the question of torture

We are writing to your Excellency's Government in relation to reports we have received regarding the resumption of executions in Indonesia. It is our understanding that, bringing to an end an informal moratorium on executions which lasted since 2004, six persons were executed since 27 June 2008: on 27 June 2008, **Samuel Iwuchukwu Okoye** and **Hansen Anthoni Nwolisa**, two Nigerian citizens; on 10 July 2008, **Achmad Suradji**; on 18 July 2008, **Tubagus Maulana Yusuf**; and on the following day, **Nyonya Sumiarsih** and her son **Sugeng**. The first two had been found guilty of drug trafficking, the remaining four of multiple murders.

In this connection, we would like to recall that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner. Based on the reports we have received, including detailed information your Excellency's Government has submitted to the Special Rapporteur on the question of torture in November 2007, we would like to bring to your Government's attention our concerns in three regards: (i) respect for the requirement that the death penalty be imposed only for "the most serious crimes", (ii) the disproportionate number of foreigners sentenced to death for narcotics-related offences, and (iii) the requirement that in capital punishment cases all fair trial guarantees are rigorously observed.

*Most serious crime requirement*

Article 6(2) of the International Covenant on Civil and Political Rights, to which Indonesia is a party, provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes".

According to the information received, two of those recently executed had been found guilty of drug trafficking. Samuel Iwuchukwu Okoye and Hansen Anthoni Nwolisa, the two Nigerians who were executed by firing squad near Pasir Putih prison on 27 June 2008, had reportedly attempted to smuggle 7 kg of heroin into Indonesia.

More in general, according to detailed information provided by your Government to the Special Rapporteur on the question of torture in November 2007, there were (as of October 2007) 99 prisoners sentenced to death in Indonesia. Recent reports indicate that the number of prisoners on death row has since risen, possibly to 108 at present. Five had been sentenced to death on terrorism charges, 36 for murder and one on charges of robbery. The remaining 57 were sentenced to death on charges of illicit trafficking in narcotic drugs and psychotropic substances. On 26 June 2008 (the International Day against Drug Abuse and Trafficking), National Police Chief General Sutanto reportedly stated that the Government intends to speed up executions of persons sentenced to death for drug trafficking.

Illicit trafficking in narcotic drugs and psychotropic substances can certainly be considered a serious offence. Indeed, international treaties oblige Governments to criminalize international trafficking in illicit drugs and to cooperate in combating the trade. In interpreting Article 6 (2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As observed in a recent report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

To sum up, international law, specifically your Government's obligations under the Covenant, requires that capital punishment for drugs trafficking (and for robbery) be abolished and that death sentences already imposed for drug trafficking and robbery (Abdul Hasan,

sentenced to death in 2003) be commuted to prison terms. In this respect, we commend the recent decision of the Supreme Court of Indonesia to commute the death sentence in the cases of three Australian citizens convicted of drugs smuggling, Matthew Norman, Thanh Duc Tan Nguyen and Si Yi Chen.

*Disproportionate representation of foreigners among those sentenced to death*

According to the data your Government provided to the Special Rapporteur on the question of torture, while all the death row inmates convicted for non-drug related offences are Indonesian nationals, of the 57 awaiting execution on drugs trafficking charges 43 are foreigners. Half of these foreigners (21) are citizens of African countries. While it seems clear that foreigners play a significant role in smuggling drugs into Indonesia, the fact that four out of five prisoners awaiting execution on drugs trafficking charges are foreigners raises certain questions in terms of possible discrimination in relation to both criminal enforcement and sentencing in drug-related cases. It would be important to know if there are four times more foreigners than locals involved in the drug trade, if the police use the same approach in investigating and charging both locals and foreigners, and if the sentences handed down are equally harsh in relation to both foreigners and locals. In addition, foreigners in conflict with the law are particularly vulnerable and require special measures to ensure the fairness of the proceedings against them, including interpretation and consular assistance. These needs are protected by international law, in particular Article 14(3)(a) and (f) of the Covenant and the Vienna Convention on Consular Relations. We are concerned that in some cases these guarantees might not have been respected (see the cases of Zulfikar Ali and Indra Tamang in the Annex to this letter).

*Respect for fair trial guarantees*

We would also respectfully remind your Excellency's Government 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 Covenant admits of no exception. These guarantees include the right not to be compelled to confess guilt, the right to be assisted by a lawyer of one's own choosing and to have legal aid assigned where one is unable to defend himself or herself in serious offences. With regard to the latter, the Human Rights Committee has stated that "[i]n cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings." (General Comment No. 32, para. 38). The fair trial guarantees also include the right to be assisted by an interpreter, as mentioned above.

With regard to statements allegedly extorted by torture, we also recall that paragraph 6(c) of Human Rights Council resolution 8/8 of 2008 urges States "to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made". In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the International Covenant on Civil and Political Rights.

When the Special Rapporteur on the question of torture visited Pasir Putih prison on 20 November 2007, he interviewed a number of prisoners sentenced to death. As reflected in

Appendix I to his report on the visit to Indonesia (A/HRC/7/3/Add.7), many of these prisoners alleged prolonged detention in police custody, ill-treatment to extort confessions, judicial indifference to allegations of ill-treatment, and, in some cases, violations of the right to be assisted by legal counsel. Relevant parts of the Appendix to the report on the visit to Indonesia are reproduced as Annex to this communication. While we do not wish to prejudge the truthfulness and accuracy of the allegations made by the detainees, which have, to our knowledge, neither been corroborated nor refuted, they would - even if only partially true - raise serious concerns with respect to the fairness of the proceedings in which these persons were sentenced to death.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of all prisoners sentenced to death (as well as of persons currently charged with capital offences) are respected. With regard to those sentenced to death on charges of trafficking in narcotics or psychotropic substances or of robbery, this can only mean suspension of the execution and eventually commutation of the death sentence. It also means thorough investigation of all allegations of torture or other forms of compulsion to extort confessions and suspension of 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 to safeguard the rights of the persons sentenced to death, in compliance with your Government's international legal obligations.

Moreover, it is our responsibility under the mandates provided to us 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:

1. Are the facts alleged in the communication above and in the Annex accurate?
2. Please indicate any steps your Government intends to take or has taken to comply with article 6(2) of the International Covenant on Civil and Political Rights, to which Indonesia is a party, that the "sentence of death may be imposed only for the most serious crimes in accordance with the law".
3. Please indicate the basis upon which your Government considers that the imposition of the death penalty is not discriminatory in relation to foreigners in light of the fact that four out of five persons sentenced to death on drugs trafficking charges are said to be foreigners.
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to allegations by prisoners sentenced to death that confessions were extorted by torture or other forms of ill-treatment, that they were denied access to counsel, interpretation, or consular access. If no inquiries have taken place or if they have been inconclusive, please explain why.

**Annex**

**RELEVANT CASES INTERVIEWED BY THE SPECIAL RAPPORTEUR ON  
THE QUESTION OF TORTURE ON 20 NOVEMBER 2007 (A/HRC/7/3/ADD.7,  
APPENDIX 1)**

“99. **Nikolas Ganick** [or **Gardick**, according to the list provided by your Government], aged 63, Dutch citizen, was slapped by the police and threatened with being shot during interrogation. For six months he was in police custody ...”

...

101. **Angkiem Soei** [**Ang Kim Soe Al Kim Ho**, according to the list provided by your Government], aged 55, Dutch citizen, was arrested in 2002 in Jakarta and taken to a hotel, where he was blindfolded and beaten many times to force him to sign a confession. He was held in police custody for several months at POSTPOL Senopati ...”

102. **Hillary Chimezie**, aged 40, Nigerian citizen, was arrested on 29 August 2002 by police in Jakarta. He then spent four months at Polda before his case went on trial for the first time, after which he was returned to Polda and held there for another four months. During his time in police custody he was severely beaten with a hammer, as a result of which his leg was broken. He still has difficulties walking. He was also beaten on the chest. He did not receive any medical treatment. At one point his lawyer was beaten as well, after which he withdrew from the case. He then received a State-appointed lawyer. He has no complaints about the prison.

...

105. **Ekpeje Samuel** [**Ekpere Dike Ole Kamma al Smauel**, according to the list provided by your Government], Nigerian citizen, informed the Special Rapporteur that he is sentenced to death based on a confession made under torture.

...

108. **Adami Wilson**, aged 34, Nigerian citizen [or rather a citizen of Malawi according to the list provided by your Government] and Indonesian resident since 1991, was arrested in 2003 by officers of Polda Jakarta and charged under article 55 with drug related offences. During the interrogation, the officers blindfolded Mr. Wilson, put a gun into his mouth and threatened to kill him unless he confessed or paid the amount of 100 million IDR (about 10,600 \$US) for his release. Mr. Wilson eventually confessed and was sentenced to death in 2004. During the trial proceedings he informed the lawyer assigned to him about the ill-treatment he experienced. However, in his assessment the defence lawyer cooperated with the judge and the prosecutor in order to extract money from him. In 2005 Mr. Wilson tried to appeal the sentence. He did not receive any legal aid and the appeal was unsuccessful.

109. **Mr. Zulfiqaraw** [**Zulfikar Ali**, according to the list provided by your Government], aged 40, from Lahore, Pakistan, was arrested at Jakarta Airport in November 2004 on allegations of drug related offences. While he was abroad the police raided his apartment in Jakarta which he shared with a friend who possessed drugs. Despite the friend's confession and assurances that Mr. Zulfiqaraw was not involved in any drug related matter, the police took Mr. Zulfiqaraw from



the airport to a private house, where he was tortured for three days. He was frequently punched, kicked and threatened with being shot unless he would confess. Nobody knew his whereabouts. After three days his health deteriorated so much that he had to be taken to the police hospital, where he was treated for 17 days. Subsequently, he was transferred to Polda Jakarta where he spent two and a half months in official police custody. The prosecutor in charge, Mr. Hutagaol, offered to drop any charges for a payment of 400 million IDR (about 42,700 \$US). Mr. Zulfiqaraw perceived his ensuing trial as strikingly unfair and biased against him since he is a foreigner. No convincing evidence was presented; during the trial session his judge fell asleep. He did not receive any legal aid although he was not able to finance a lawyer; his embassy was wrongly informed and failed to support him. He was sentenced to death. ...

110. **Gurdip Singh [Gurdi Singh Aus Vishal**, according to the list provided by your Government], aged 38, from India, was sentenced to death in relation to the above-mentioned case. He was the flatmate of Mr. Zulfiqaraw and confirmed that Mr. Zulfiqaraw was not involved in any drug related matter; however, his statement was not taken into account during the trial proceedings.

111. **Mansyur Hamada** [his name does not appear on the list provided by your Government], aged 72, was arrested by officers of Polda Jakarta in January 2004 for possessing 100 grammes of heroin. He was offered to be freed for the payment of 25 million IDR (2,670 \$US) but did not have enough money. During his custody at Polda Jakarta he was beaten up for three days. His hands were cuffed behind his back and the officers beat him with their fists as well as with their shoes until he could not see any more. 40 days later, Mr. Hamada suffered a heart attack. In March 2004 Mr. Hamada was transferred to Cipinang prison, and in July 2004 he was sentenced to capital punishment. During the trial, Mr. Hamada stated that he was tortured; however, neither the judge nor the prosecutor took note of his allegations.

112. **Indra Tamang**, aged 27, from Nepal, was sentenced to death in 2001 for drug related offences. In 2002 he appealed unsuccessfully against the verdict. He perceived his trial as unfair since he did not speak Indonesian sufficiently well in order to understand the court documents and did not have a lawyer.

113. **Abdul Hafeez [Muhammad Abdul Hafeez**, according to the list provided by your Government], aged 37, from Pakistan, was arrested in 2001 and sentenced to death in 2002 for drug related offences. During police custody he was ill-treated. The prosecutor, Mr. Ferry-Silalaht, offered to free him for the payment of 300 million IDR (about 32,000 \$US), which he could not afford.”

### **Response of the Government of Indonesia dated 17 October 2008**

The Permanent Mission of the Republic of Indonesia presents its compliments to the Office of the United Nations High Commissioner for Human Rights and with reference to the note of the Special Rapporteur on extrajudicial, summary or arbitrary execution and the Special Rapporteur on the question of torture, under reference No. AL G/SO 214(33-24) G/SO 2,14(53-21) IDN 6/2008, dated 31 July 2008, has the honour of providing further clarifications on the case concerning the allegations of the execution of six individuals for various crimes in Indonesia.

With reference to the communication concerning the following six individuals namely; Samuel Iwuchukwu Okoye, Hansen Anthony Nwolisa, Achmed Suradji, Tubagus Maulana Yusuf, Nyonya Sumiarsih and her son, Sugeng, the Government of Indonesia has the following points to, make.

Indonesia went ahead with the judicial decision and executed the two. Nigerians, Samuel Iwuchukwu Okoye and Hansen Anthony Nwolisa on Thursday 26 June 2008, on the Nuskambangan Island of the Nirbaya region, which is an island off Central Java. They were convicted of drug trafficking charges over a year ago.

As regards Achmed Suradji, he was one of the convicted terrorists of the 2002 Bali bombing in Indonesia, while Tubagus Maulana Yusuf was convicted of murdering eight people in March 2007. He was executed on 18th July 2008 in Benten, North Java. In a separate judicial decision, Nyonya Sumiarsih and her son, Sugeng, were sentenced to death in 1989 for murder. Their last stage of appeal for presidential clemency was rejected in 2003.

As regards the individual cases:

Samuel Iwuchukwu Okoye and Hansen Anthony Nwolisa were arrested and charged with drug possession. In 2007, they were convicted of drug trafficking charges (for smuggling in 3.8 kg of heroin to Indonesia) and a death sentence was retained when their appeals at the various levels all failed to acquit them of the charges against them.

Achmad Suradji was sentenced to death in April 27, 1997 by the Lubuk Pakam district court in Deli Serdang, North Sumatra Province, for killing 42 women and girls in a series of ritual slayings. His appeals in higher courts and subsequent application for clemency were all rejected.

Tubagus Maulana Yusuf was convicted of murdering eight people in March 2007 and was sentenced to death. It is understood that he committed these murders under the deluded belief that this would enhance his powers of 'witchcraft. He subsequently made no appeals nor did he make any requests for clemency to the concerned authorities.

Nyonya Sumiarsih and her son, Sugeng, were sentenced to death in 1989 for the murder of a family of five in the city of Surabaya. Their last appeal for clemency was rejected in 2003.

At this juncture, it should be clearly understood that the Government of Indonesia has an independent judiciary which has been functioning effectively in Indonesia for several years. There are several strict stages which must first be respected before any execution may be carried out in Indonesia.

Contrary to any negative inferences in the letter, Indonesia wishes to recall to your attention that as a signatory to the ICCPR, which it has ratified, Indonesia does not take lightly the commitments it has undertaken. However, for heinous crimes committed and which have been, judicially adjudicated, certain provisions of the national law impose the death penalty. Furthermore, the provisions of national legislation are not discriminatory in relation to foreigners as all are judged equally before the law. Therefore, the fact that Indonesia is a signatory of the

ICCPR does not pre-empt any decisions the government may take as part of its sovereign and democratic legal process in deciding, within its borders and by applying its judicial norms, the applicable rule of law.

Once again, the death penalty in Indonesia is only imposed for crimes of a very serious nature. Moreover the law does not prohibit, the death penalty, it is still not, a sentence that is automatically or irrevocably imposed for similar crimes of this nature. As a democratic nation, Indonesia is committed to the fair and equitable application of the human rights norms.

Furthermore, it has been four years since the last person was executed in Indonesia, this clearly indicates it is not a decision that is taken lightly or without first fully applying the due process of law. In this connection and given that this issue has been subject to controversy in Indonesia as well, the government has reassessed its position on this issue and in 2007, the Constitutional Court upheld the death penalty for serious drug offenses.

In addition, it bears stating unequivocally that the names mentioned in the Annex of the communication remain within the jurisdiction of the judiciary. It is up to the court and the constitution to determine how the provisions of national legislation apply to the mentioned individuals. To this effect, the Government of Indonesia is not at liberty to comment on the decisions that will be taken on their cases at this point in time.

### **Indonesia: Killing of Opinus Tabuni**

**Violation alleged:** Death due to the use of force by law enforcement officials

**Subject(s) of appeal:** 1 male (HRD)

**Character of reply:** Largely satisfactory response

### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of Indonesia with respect to the death of Opinus Tabuni. The Special Rapporteur looks forward to receiving continued updates on the status of the investigation into Mr. Tabuni's death and information about any related criminal proceedings.

**Allegation letter dated 8 September 2008**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

In this connection, we would like to bring to your Government's attention information we have received in relation to reports of the killing of Mr. **Opinus Tabuni**, an activist of an indigenous peoples' organisation in West Papua, at a rally on 9 August 2008.

According to the information received:

On 9 August 2008, International Day of the World's Indigenous People, a peaceful rally took place through the town of Wamena, in the middle mountain region of West Papua.

A march concluded with an event staged near Santa Thomas school in Wamena. Police were stationed around the ground where the event took place. Army and intelligence services were present as well. Only the security forces were carrying guns.

In the course of the event the Morning Star flag, which is a symbol of the West Papua independence movement, was raised. Raising the Morning Star flag reportedly constitutes, under Indonesian law, the offence of subversion and carries a sentence of up to 20 years imprisonment.

At this point, the police started moving in on the demonstrators and started shooting. Mr. Opinus Tabuni, a leader of the Wamena branch of an indigenous peoples' organisation in West Papua, was hit by a bullet and died. An autopsy performed on Mr Tabuni at the hospital in Wamena on 10 August 2008 showed that a bullet travelled through his right side and through his heart. The bullet has been sent by the police to Makassar for further analysis.

Another Papuan man, who was not identified, was reportedly seriously injured by gunshot. This man has disappeared since then. A further man was reportedly beaten by police with rifle butts and has also disappeared. There are concerns that the two men could have been apprehended by the police and may be in police detention.

The Indonesian police are reportedly investigating the incident and have detained a number of witnesses.

While we do not wish to prejudge the accuracy of these reports, we would like to refer your Government to the principles of international law governing the use of force when policing rallies and protests. The International Covenant on Civil and Political Rights ("ICCPR"), to which Indonesia is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). In particular, Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. As expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials ("Basic Principles"), this requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Further, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Basic Principles, Principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9).

We would also like to bring to your Government's attention that your Government has a duty to investigate, prosecute, and punish all violations of the right to life. To fulfil this legal obligation, governments must ensure that arbitrary or abusive use of force by law enforcement officials is punished as a criminal offence (Basic Principles, Principle 7). There must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. Principle 18 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions ("Prevention and Investigation Principles")

provides that “Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice.”

With regard to witnesses and family members of victims, Principle 15 of the Prevention and Investigation Principles provides that complainants, witnesses, and their families shall be protected from violence and any other form of intimidation. Those potentially implicated in extra-legal 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. Families of the deceased should be informed about the investigation, and the findings of the investigation should be made public (Prevention and Investigation Principles, Principles 16 and 17). The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time (Prevention and Investigation Principles, Principle 20).

We are encouraged by the reports indicating that the Indonesian police are investigating the use of force at the rally in Wanema. We would ask your Excellency’s Government to keep us informed of the developments and outcomes of this investigation, as well as of disciplinary and criminal proceedings initiated against the perpetrators of extra-judicial executions.

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

In this context, we would also like to draw the attention of your Government to the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007, and in particular to article 2, which states that “Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular based on their indigenous origin or identity.”

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

Furthermore, we would like to bring to the attention of your Excellency's Government 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.

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

1. Are the allegations in the above summary of the events accurate? If not, please share all information and documents proving their inaccuracy.
2. Are there demonstrators arrested at the rally who continue to be in detention? Have the police received any information on alleged disappearances?
3. What were the instructions given to the security forces before and during the rally in Wanema? How did the security forces ensure compliance with the requirements of necessity and proportionality?
4. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to this case. Please explain the steps taken to ensure that these investigations comply with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
5. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanders, for the killing of Opinus Tabuni and other excessive use of force in connection with the rally on 9 August 2008 in Wanema.
6. Please provide the details of any measures taken to ensure that complainants, witnesses and family members of the victims are not subject to any intimidation or retaliation.
7. Please state whether any compensation was, or is intended to be, provided to the families of Opinus Tabuni and possible other victims.

#### **Response from the Government of Indonesia dated 23 October 2008**

The Permanent Mission of the Republic of Indonesia presents its compliments to the Office of the United Nations High Commissioner for Human Rights and with reference to the note of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

and Special Rapporteur on the situation of human rights defenders under reference No. AL G/SO 214(67-14) G/SO 214 (107-6) GS0214 (33-24) IDN 9/2008, dated 8 September 2008, has the honour of providing the following information on the case concerning the death of Mr. Opius Tabuni during the commemoration rally for the World's Indigenous People Day.

On Saturday, 9th August 2008, at 9 am, sympathizers to the Dewan Adat Papua / DAP (Papuan Custom Council) cause from the sub-district of VI Lapago Balliem marched from Sinakma Wouma, Pikhe and Wesaput Wamena. They brought with them traditional defense armaments such as arrows, spears and machetes. They yelled continuously "International Koteka Naire and Independence for Papua". Their march then continued onwards to the conference building on Yos Sudarso Street in the Wamena District of the Papua Province.

At 1.45 am, in the public square of Sinapuk which is located on Gatot Subroto Street, Wamena, sub-district of Jayawijaya, there was a commemoration of the "International Day of the World's Indigenous People". The rally was attended by approximately 10,000 sympathizers of the DAP group and they chose to celebrate the event by illegally raising the Morning Star flag, a separatist flag.

The sympathizers of this movement then marched together with the leaders of the DAP, Mr. Forkorus Yaboisembut, Mr. Thaha AI Hamid (Secretary-General of the DAFT), Yakomina Isir, Lemok Mabel (leader of the DAP in Jayawijaya) and Arson Jikwa (leader of the West Papua Indigenous Association). They then arrived at Sinapuk Wamena, which is a public square. They also brought with them the banner upon which was written; "We are the international indigenous society of Papua (United Nations, 13 September 2007, Number 14842)".

At 2.15 pm, the participants of the "International Day of the World's Indigenous People" carried the Morning Star flag side by side with the Indonesian flag, the UN flag and the SOS (emergency) flag on which was written also "Papuan are in danger".

Upon seeing the Morning Star flag raised, the county police of Jayawijaya, led by the head of the county police of Jayawijaya, tried to lower and confiscate the Morning Star flag. However, there was a strong opposition from the crowds. In order to calm the protestors down, the police officer(s) fired a warning shot in the air and this happened to strike the flag of the DAP sympathizers. Chaos ensued and within approximately 30 minutes, individuals in the crowds started using a gun, arrows, spears, and machetes.

At 3.30 pm, Mr. Forkorus Yaboisernbut (leader of the DAP), Mr. Thaha AI Hamid (Secretary-General of DAP), Mr. Lemok Mabel (leader of the DAP of Jayawijaya) and Mr. Yakomina Isir held a meeting with the head of the county police of Jayawijaya and Dandim 1702, and were informed that the individual(s) who raised the Morning Star Flag must be given up to the police officers and thereafter face legal prosecution.

At that moment, just as the crowds began to leave the area in order to return home, a man was found dead. He was identified as Mr. Opius Tabuni, 30 years old, who apparently lived in Pyramid village, Wamena. An investigation into the cause of his death commenced immediately.

At 4.45 pm, the DAP sympathizers carried the body of Mr. Opius Tabuni to the Honai (traditional house) of the DAP Lapago in Mapina. They requested an inquiry into the death of Mr. Opius Tabuni.

On Sunday, 10 August 2008, at about 2 pm until 6.58 pm the autopsy of the body Mr. Opius Tabuni was performed by Dr. Deri M. Sihombing, Dr. Edward, Dr. Ondolan and Dr. Roal. From the autopsy results, it was found that there was a bullet in his left heart: (more precisely, there was a wound on the right side caused by the bullet which had travelled through to the heart).

On Wednesday, 13 August 2008, at 9 am, at the Sinapuk Wamena public square, a team from the Indonesian Police Headquarters, consisting of the Deputy Commissioner Dr. Bagus, the Deputy Commissioner Dr. Agi and members of the Criminal Investigation (Reskrim) team of the county police of Jayawijaya investigated the third crime scene with regard to the raising of the Bintang Kejora Flag, and the incident which also led to the death of Mr; Opius Tabuni. At 4.30 pm another team from the Indonesian Police Headquarters led by the head of the forensics department of the Indonesian Police Criminal Investigation Body (Bareskrim), namely, Brigadier General Ruslan Reza, together with other members from similar teams from the regional police office in Papua and Jayawijaya carried out investigations on the fourth crime scene at the Sinapuk public square.

From these investigations, it was determined that the individuals responsible for the deterioration of the rally commemorating the International Day of the World's Indigenous People included the head of the DAP (Mr. Forkorus Yaboisembut) as well as several prominent members of the Presidium Dewan Papua (DPD).

It has also been discovered that the aforementioned rally was attended by several prominent figures from the contentious Papuan People's Congress of 2000 and this separatist group was ultimately found to be behind the creation of the Presidium Dewan Papua/PDP (Papua Presidium Council) and other civilian separatist movements in general.

The individuals who raised the Morning Star flag have since been identified as having the initials AW and AH. It was also found that these individuals originate from the Piramid village in the Assologaima district.

Since then, there have been several steps taken by the regional police of Papua to address this problem. These have included:

1. Conducting investigations into finding the perpetrators who shot Mr. Opius Tabuni.
2. Conducting interrogations of the 4 (four) witnesses from the civil society body, 31 (thirty-one) members of the county police of Jayawijaya who were on duty and who were supposed to provide security during the rally and 19 (nineteen) members of the county police of Jayawijaya who were armed during the rally.
3. The Papua regional police conducted "back-up" support from the county police of Jayawijaya and assisted the team of forensic experts from the Indonesian Police Headquarters and the Criminal Investigation Body (Bareskrim).



In this connection, we would like to recall here that the freedom of expression and the, freedom of association are guaranteed under the tenets of the Indonesian Constitution. In fact, there have been several laws which have been enacted to further strengthen the enjoyment of these rights in Indonesia, including, but not limited to, Article 28 of the 1945 Constitution. In addition, Article 28 J sub-paragraph (2) provides that “in exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society.”

Furthermore, it should also be recalled that these human rights freedoms are also subject to restrictions within international legislation notably when these rights impinge on territorial integrity and regional peace. Reading from Article 19 subparagraph (3) alinea (b) and Article 21 of the ICCPR, it clearly states that these freedoms are limited in instances which fall contrary to “... the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others”.

Furthermore, for the enjoyment of the freedom of expression and association, it is required to seek permission from the existing local government or authorities as regulated in Law No. 9 of 1998 on Freedom of Opinion in Public Sphere. Under the provisions of chapter 510 of the Criminal Code, permission must be sought and attained in advance from the law enforcement authorities in the region in order to hold such public events. This is so as to ensure that demonstrations are carried out in a safe and orderly manner with law officials present in case any problems arise.

In this case the DAP association is not registered nor is it listed in the Papua provincial register. There was also no registration or permission to hold the rally, nor - as is the norm - did they guarantee that their organisation would be responsible if any problems were to arise. The organisers illicitly insisted on holding the rally under other pretences, namely that of their traditional “burning of stones”.

The participants also brought along with them to the rally traditional armaments such as spears and machetes (with the argument that this was for the occasion of the indigenous day). Hence, one can imagine how difficult it was for the local police officers to control the masses, in particular when the police tried to lower down the separatist flag. Indeed, even if they had permits to hold a rally, it goes without saying that this is conditional on them not bringing along any separatist symbols since it is illegal to do so.

It is very regretful that the incident took the life of Mr. Tabuni. Indeed, the government does not take this incident lightly and thus, various investigations have since been conducted, including a series of internal affairs investigations into the police officers who were present at the scene of the rally.

Following thorough ballistics examination by the experts, it has been discovered that it was a bullet from a 9mm pistol which caused the death of Mr Tabuni. Upon comparison with the 47 weapons which were in possession of the police present at the time of the incident, it became evident that the bullets do not in fact match any from those belonging to the police.

As part of their ongoing investigation, the police are trying to find out who raised the flag and secondly, from this, discover who also fired the gun. They are still calling witnesses and investigating all leads pertaining to the case.

In this context, and by way of conclusion, Indonesian law clearly states that the raising of separatist symbols such as the Morning Star Flag is expressly prohibited by Article 6 of the Regulation PP 77/2007 and may be charged with Articles 106 and 107 and 110 of the Indonesian Criminal Code. Therefore, the raising of this flag during the said rally was considered as a blatant act of defiance against the established precepts of Indonesian law.

Nonetheless, the Government of Indonesia will be continuing its investigations into this incident and all the perpetrators will be dealt with in a fair manner and in accordance with the prescribed national judicial process. To this effect, it must be left for the judiciary to finalise the prosecution of any suspects in the murder of Mr. Tabuni.

### **Indonesia: Imminent execution of Ona Denis**

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

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

**Character of reply:** Largely satisfactory response

### **Observations of the Special Rapporteur**

The Special Rapporteur greatly appreciates the detailed and substantive response provided. He notes the various points made and would wish to address only two issues in this observation. The first relates to the apparently disproportionate number of foreigners sentenced to death for drug offences. In order to sustain the arguments put forth by the Government a detailed statistical analysis would be required. The Special Rapporteur would welcome the provision of such statistics. The second observation relates to the argument that drug offences satisfy the requirements of international law that the death penalty can only be imposed for “the most serious crimes”. According to the Constitutional Court, there is, “in Indonesian law, ... no substantive difference between, on the one hand, particularly serious narcotics crimes and on the other, genocide or crimes against humanity”. This may well be the case in domestic law, but it is not in accordance with the approach reflected in international law and applicable to Indonesia. In addition, the argument that drug offences pose ‘a danger of incalculable gravity’ and could undermine the ‘economic, cultural and political foundations of society’, could be, and has been, applied in relation to a wide range of different crimes in different countries. The objective of international law, as reflected in the “most serious crimes” requirement is to move beyond such subjective approaches and to establish a more uniform international approach. It is for that reason that international human rights bodies have consistently interpreted the provision as requiring the direct loss of life. If the law were to encompass forms of indirect loss of life, such as those implied in relation to drug offences, the category of crimes for which the death penalty could be applied would be vastly enlarged, thus defeating the meaning, as well as the intent of the drafters, of the “most serious crimes” provision.

### **Urgent appeal dated 19 December 2008**

I write to your Excellency's Government in relation to reports I have received regarding the allegedly imminent execution of a man of Nigerian origin convicted on drug trafficking charges, Mr. **Ona Denis**. I also would like to seize this opportunity to continue the dialogue with your Excellency's Government on the death penalty for drug trafficking offences and on the number of foreigners on death row for such offences in Indonesia. In this respect, I refer to the communication I sent to your Excellency's Government jointly with the Special Rapporteur on the question of torture on 31 July 2008 and to your Government's highly appreciated reply of 17 October 2008.

According to the information received, Ona Denis, who was born in Nigeria, travelled to Indonesia on a Malawian passport in 2001. He was apprehended, tried and convicted of smuggling 1kg of heroin into Indonesia. The trial court imposed a sentence of life imprisonment. Ona Denis appealed, and the High Court of Appeal sentenced him to death.

With regard to the imposition of the death penalty in drugs trafficking cases, your Excellency's Government's communication of 17 October 2008 argues that "the fact that Indonesia is a signatory of the [International Covenant on Civil and Political Rights (ICCPR)] does not pre-empt any decisions the government may take as part of its sovereign and democratic judicial process in deciding, within its borders and by applying its judicial norms, the applicable rule of law".

I respectfully submit that, as a matter of international law, by becoming a party to the ICCPR, Indonesia - as all other State parties - took the sovereign decision to subject its internal legal order to the principles and norms enshrined in that instrument. One of these norms is Article 6(2) of the ICCPR which provides that, "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes".

I recognize that Your Excellency's Government appears to accept this principle to some extent. The communication of 17 October 2008 stresses that "the death penalty in Indonesia is only imposed for crimes of a very serious nature". It adds that the Constitutional Court of Indonesia confirmed in 2007 that narcotics offences did fall into this category.

Illicit trafficking in narcotic drugs and psychotropic substances can certainly be considered a serious offence. The term "most serious crimes" in Article 6(2), however, has acquired an autonomous meaning through interpretation by United Nations bodies, particularly by the Human Rights Committee, the expert body appointed by the State Parties of the ICCPR to interpret the treaty and oversee its implementation. In interpreting Article 6(2) of the Covenant, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision gives the same result, i.e. that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

I respectfully reiterate that international law, specifically your Excellency's Government's obligations under the ICCPR, requires that capital punishment for drugs trafficking be abolished and that death sentences already imposed for drug trafficking be commuted to prison terms. On this basis, I specifically appeal to your Excellency's Government to ensure that Oba Denis is not executed.

With regard to the disproportionate representation of foreigners among those sentenced to death, including Mr. Ona Denis and the two Nigerian citizens executed on 27 June 2008, Samuel Iwuchukwu Okoye and Hansen Anthoni Nwolisa, your Excellency's Government writes in its communication of 17 October 2008 that:

the provisions of national legislation are not discriminatory in relation to foreigners as all are judged equally before the law.

In this respect, I would recall that there was no allegation in my communication of 31 July 2008, that the legislation regarding the death penalty discriminated against foreigners. The concern I raised on the basis of the statistical information available (i.e. four out of five prisoners awaiting execution on drugs trafficking charges are foreigners) is that the concrete application of the legislation, the way in which drug trafficking cases are prosecuted, appears to lead to the imposition of the death penalty primarily against foreigners.

As I wrote in my previous communication:

While it seems clear that foreigners play a significant role in smuggling drugs into Indonesia, the fact that four out of five prisoners awaiting execution on drugs trafficking charges are foreigners raises certain questions in terms of possible discrimination in relation to both criminal enforcement and sentencing in drug-related cases. It would be important to know if there are four times more foreigners than locals involved in the drug trade, if the police use the same approach in investigating and charging both locals and foreigners, and if the sentences handed down are equally harsh in relation to both foreigners and locals. In addition, foreigners in conflict with the law are particularly vulnerable and require special measures to ensure the fairness of the proceedings against them, including interpretation and consular assistance. These needs are protected by international law, in particular Article 14(3)(a) and (f) of the Covenant and the Vienna Convention on Consular Relations.

I would therefore like to renew the request for information in question no. 3 of my communication of 31 July 2008. Please indicate the basis upon which your Excellency's Government considers that the use of the death penalty for drug traffickers is not - in practice - discriminatory in relation to foreigners, considering that four out of five persons sentenced to death on drugs trafficking charges are said to be foreigners.

I undertake to ensure that your Excellency's Government's response with regard to the specific case of Mr. Ona Denis, as well as its response to the general question regarding the disproportionate number of foreigners sentenced to death on drug trafficking charges, are accurately reflected in the report I will submit to the Human Rights Council for its consideration.

## **Response from the Government of Indonesia dated 20 April 2009**

The Permanent Mission of the Republic of Indonesia presents its compliments to the Office of the United Nations High Commissioner for Human Rights and with reference to the note of the Special Rapporteur on extrajudicial, summary or arbitrary executions, under reference No. AL G/SO 214(33-24) IDN 14/2008 has the honour of providing the following information on the case concerning Ona Denis.

In 2001, Mr Ona Denis, a man of Nigerian origin travelled to Indonesia on a Malawian passport. He was detained after her was found to be travelling with one kilogram of heroin in his possession, He was arrested and tried in the national courts. He was thereafter convicted of smuggling illegal Class A drugs into Indonesia. As is commonly the case, this charge carries a serious penalty and Mr Denis was sentenced to life imprisonment by the trial court.

Since that time, he has appealed the courts decision but the High court upheld the verdict of the trial court and handed down a death sentence to Mr Denis. Failing to successfully repeal the decision of the judiciary, Mr Ona Denis, who remained in police custody, is bound to the sentence that was handed down by the court.

However, according to the national judicial procedure, any defendant may still submit an appeal for clemency to the President who may upon review decide to give a pardon to the accused (Law. No. 3 of 1950 and Law No. 22 of 2002 on Clemency). This is generally the final option in the appeals process in Indonesia. It is also only the President, upon request, who has the power to commute the sentence. Mr Ona Denis was accordingly informed of this right and it was reported that he appealed to the President for clemency.

His request was not granted. According to the Deputy-Attorney for General Crimes, as Mr Denis was unable to obtain presidential clemency, the judicial decision of the Appeals court would stand.

Mr Ona Denis is currently being held in a Nusakambangan jail in Cilacap, Central Java where he has remained after exhausting all channels of appeal. The decision concerning the date of execution will be determined by the Banten and Uouth Sumatra high prosecution offices.

At this juncture, it should be clearly noted that the court ruling is in accordance with the stipulations of Law No. 22 of 1997 on Narcotics and Law No. E of 1997 on Psychotropic substances, which clearly state that the importation, exportation, production, cultivation, storage, distribution and use of narcotics without strict control and supervision are considered as a crime, and against the prevailing laws and regulations of the country. As they are considered as acts that are harmful and can endanger human life, the community and the nation, strict norms apply to the supply and use of narcotics. In addition, Article 80 Paragraph (1) sub-paragraph (a) of the Narcotics Law, it reads, "Whosoever without any right or illegally, produces, processes, extracts, converts, prepares or provides Narcotics Category I shall be punished with a capital punishment..."

In recent years, the validity of the narcotics law and the penalty for its violation have been challenged and thoroughly discussed in the Constitutional Court in 2007 under case reference No. 2/PUU-V/2007. This case came before the court when two Indonesian citizens (Edith Yunita Sianturi and Rani Andriani) and two foreigners (Myuran Sukumaran and Andrew Chan) were charged with narcotics trafficking, and sought to petition for a judicial review of Law No. 22 of 1997 because they felt it was unconstitutional and violated their right to life.

As regards the argument that the death penalty violates the right to life, the Supreme Court judges argued that the articles of the Constitution are in specific circumstances subject to limitations. In effect, the Attorney General offered the clarification that Article 28 J sub-section (2) states that an individual's rights are subject to restrictions if they must protect the rights of others or more simply, "every person shall be subject to limitations stipulated by Law". In addition, the judges argued in their summation that in Indonesian law, there is no substantive difference between, on the one hand, particularly serious narcotics crimes and on the other, genocide or crimes against humanity. Each it was said, posed "a danger of incalculable gravity and could undermine the economic, cultural and political foundations of society".

Furthermore, reading from the principles established in Indonesian criminal law, this crime also falls within the scope of a capital offense and thus carries a death penalty. In Article 80 of Law No. 22 of 1997, it clearly states that it is against the law to produce, process, extract, convert and make available narcotics in Indonesia, while Article 82 applies a death penalty for those involved in the horrendous crime of drug smuggling.

In accordance with Article 6 of the ICCPR, drug trafficking is indeed considered as a "most serious crime" in Indonesia and thus justifies the imposition of the death penalty. From the principles clearly outlined in Article 6 paragraph (2) of the ICCPR, a State party which has not abolished the death penalty, may in fact impose it. This is subject only to the laws in force in the country as well as the laws applicable at the time of the commission of the crime. And on a more general note, the ICCPR does not in fact prohibit countries from applying and enforcing the death penalty should they choose to respect the dictates of their national norms.

Thus, while Indonesia has ratified the ICCPR through Law Number 12 of 2005, it should be noted that the provisions of the national law allows for the imposition of the death penalty in specific cases of serious or heinous crimes. Moreover, this principle is in accordance to Article 15 alinea 2 of the ICCPR.

In Indonesia, the death penalty is only applicable once all the legal avenues for reversal and a case review have been exhausted. This process in its entirety often takes several years. It is also only applied in special instances and not as an alternative penalty. The rigorous and strict application of the law as regards the death row, led to strong pressure by certain members of society on the government to expedite the execution procedure for those who were sentenced to death for drugs related offences. They felt this would act as a greater deterrent to potential drugs traffickers. It should be noted that between 1950 and 2009, only 5 people were executed for drugs related offences, namely, Ayodhya Prasad Chaubey, Saelow Prasert and Namsong Srilak (all in 2004) and Samuel Iwuchukwu Okoye, Hansen Anthony Nwolisa (all in 2008).

In spite of the pressure from certain quarters, the government has been consistent in its approach to all procedures that which must be carried out or exhausted before the execution is conducted. For example, in the case of Ayodya Prasad, Saelow Prasert and Namsong Srilak, it took ten years before the execution order was final. While in the case of Mr. Okoye and Mr Nwolisa, the legal procedure from the time of indictment until the execution took eight years (2001-2008).

On the allegation concerning a disproportionate representation of foreigners among those that are sentenced to death, Indonesia considers this to be incorrect. Any individual who is arrested, tried and sentenced for such crimes will be treated equally before the law. There is no discrimination in the judicial process. Indonesia applies and respects the stipulations of Article 14, of the I-WCPR, namely that “all persons shall be equal before the courts and tribunals and everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”. The right of equal treatment before the law is guaranteed in the 1945 Constitution and its subsequent amendments (in particular, Articles 26 and 27 of the Constitution).

Furthermore, it is not the Indonesian government that determines the fact that in Indonesia, it is the foreigners that are, in the majority, involved in drugs trafficking. Therefore, the allegation that during the prosecution for such crimes, it i., the foreigners who receive a death penalty sentence is false, especially when the representation of Indonesians who were indicted for drug trafficking offences is small when compared to the number of foreigners. From this, we can also assume that the narcotics law has indeed been a deterrent to potential national drug traffickers who are Indonesian of origin. Besides, the exact number, nationality and proportion of those convicted and executed is not the determining factor that should be the focus, it is the crime committed, and as determined by the judicial court, the severity of punishment it merits.

In this regard, it should be noted that Indonesians as much as foreigners are subject to national norms relating to narcotics. In this vein, in the abovementioned case No. 2/PUU V/2007, the Supreme Court further ruled that foreign citizens have legal protection “based on the principle of due process of law, in case and they would still have the right to legal remedies in the form of appeal, “cassation, and judicial review. This also extends to the right to seek presidential pardon. In every case, strict legal procedures must be respected 'these procedures apply to one and all, and the government is unstinting in its efforts to abolish drug trafficking in Indonesia.

The Indonesian government is very committed to its war against the illegal use and sale of narcotics in the country. The government can not afford not to be. In the last five years, statistics have shown a 34.4% increase in drug related cases each year. An estimated fifteen-thousand people in Indonesia die from drugs per annum. It is believed there are about 41 deaths every day due to overdose or drug-related HIV/AIDS infection. The then Minister of Law and Human Rights of the Republic of Indonesia, Dr. Hamid Awaludin, stated that there are about 3.2 million drug users in Indonesia. Approximately 30% of the total 111,000 inmates incarcerated nationally are implicated in drug-related cases.

There have since then been various instances when the reasoning behind and the use of the death penalty have been questioned in Indonesia. In 2007, there was a plenary hearing for the

judicial review of Law Number 22 of 1997 on Narcotics. In particular, the provision regarding capital punishment was raised in the Constitutional Court where eminent experts were invited to discuss this issue. One argument was that the general function of the penal law is among others, to protect the interest of the state, the public, and individuals. Narcotics-related crimes could violate the legal interests of those parties.

In 2007, the Constitutional Court ruled 6 to 3 that the constitutional amendment of 2000 upholding the right to life did not apply to capital punishment. It was further determined that the right to life had to be balanced against the rights of the victims of drug trafficking whose lives could potentially be lost as a result.

**Islamic Republic of Iran: Death sentences of Naser Qasemi,  
Reza Hejazi and Iman Hashem**

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

**Subject(s) of appeal:** 3 males (3 minors)

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Urgent appeal dated 27 March 2008**

In this connection, I would like to draw the attention of your Government to information I have received regarding Mr. **Naser Qasemi**, Mr. **Reza Hejazi** and Mr. **Iman Hashem**, who are reportedly at risk of execution for a crime committed when they were still minors.

According to the information I have received:

**Naser Qasemi** was sentenced to death for a murder he allegedly committed in 1999, when he was 15. He has been detained for eight years, during which he has faced a number of trials and retrials, as a result of which he was sentenced to death on three occasions. The victim's family has demanded diyeh ("blood money"), but Naser Qasemi's family has been unable to raise the requested amount.

On 14 November 2005 **Reza Hejazi** was sentenced to Qesas (retribution) by Branch 106 of the Esfahan General Court for a murder he allegedly committed in 2004, when he was 15. The sentence was approved by Branch 28 of the Supreme Court on 6 June 2006, although under Iranian law he should have been tried in a juvenile court. The case was referred for mediation between Reza Hejazi and the victim's family, to try and arrange for the payment of diyeh, but no sum has yet been agreed. If no agreement is reached, Reza Hejazi will be executed.



**Iman Hashemi** was 17 in June 2006 when his brother Majid was arrested for murder. Following his brother's arrest, Iman Hashemi allegedly confessed to the murder, though he later implied in court that he had been coerced into confessing. On 13 January 2007, Iman Hashemi was sentenced to Qesas by a court in Esfahan. On 26 May 2007, Branch 42 of the Supreme Court upheld the verdict; however it has not yet been approved by the Head of the Judiciary.

While I do not wish to prejudge the accuracy of the allegations regarding these specific cases, I would like to draw your attention once again to the fact that the execution of Naser Qasemi, Reza Hejazi and Iman Hashemi and any further executions of juvenile offenders would be 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. Article 37(a) of the Convention on the Rights of the Child to which Iran is a Party expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights to which Iran is a Party provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

I would respectfully reiterate my appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law.

As your Excellency will be aware this is the fourteenth communication that I have had to send since the beginning of 2007 in relation to cases involving the juvenile death penalty in Iran. I have to date received only two responses to these many communications and both were in very similar terms. They concluded that "although there have been a few cases of murder under the age of 18, the pertinent authorities have been exerting their utmost effort to decrease carrying out verdicts to a level close to stop, with the hope of ultimate reconciliation." Under the circumstances I would take this occasion to reiterate my request for a visit to the Islamic Republic of Iran in the hope that a full and open exchange with the relevant authorities could only contribute to the efforts which your Excellency's Government indicates it has initiated. Since the Government has already agreed in principle to a visit on my part I would like to request approval for a visit from 7-15 July, 2008.

It is my responsibility under the mandates provided 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 cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.
2. I also recall my communications dated 5 January 2007, 31 January 2007 and 29 February 2008 seeking confirmation of the current status of the Bill on Juvenile Courts. What provisions will that law, once it enters into force, contain with regard to capital punishment for juvenile offenders?

3. Finally, I would be grateful if Your Excellency's Government could agree to the dates of 7-15 July 2008 proposed for a visit to enable a full and open discussion of the issues raised in this communication and arising under my mandate from the Human Rights Council.

**Islamic Republic of Iran: Death sentence of Abdolwahed (Hiwa) Butimar**

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

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

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Urgent appeal dated 24 April 2008**, sent with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

In this connection, we would like to draw the attention of your Government to information we have received regarding the sentencing to death on appeal of **Abdolwahed (Hiwa) Butimar**, a Kurdish journalist and environmentalist, by Branch No. 1 of the Revolutionary Court in Marivan City in the Province of Kordestan. An urgent appeal was sent on 26 July 2007 on behalf of Hiwa Butimar and his cousin Adnan Hassanpour, a Kurdish journalist and cultural rights activist, by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Representative of the Secretary-General on the situation of human rights defenders, to which your Government replied on 23 August 2007.

According to the information received:

Hiwa Butimar and Adnan Hassanpour were arrested on 23 December 2006 and 25 January 2007 respectively, and reportedly held incommunicado in the Ministry of Intelligence facility in Marivan until 26 March 2007, when they were transferred to Marivan prison. They were tried on 12 June 2007 on charges of espionage and crime of "Moharebeh" (enemy of God) and sentenced to death on 17 July, although information received indicated that the charges were not supported by evidence. They appealed the sentence, and on 23 October 2007 the Supreme Court upheld the death sentence against Adnan Hassanpour, while it overturned the sentence against Hiwa Butimar for procedural irregularities and sent it back to the Marivan Revolutionary Court for re-examination.

According to information received, Hiwa Butimar's death sentence was recently upheld on appeal. It is reported that the case was referred to the same judge on appeal as the first instance judge.

Although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, provides that the “sentence of death may be imposed only for the most serious crimes”.

The charge of espionage is certainly a serious offence. In interpreting Article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As observed in a recent report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the Human Rights Committee last considered a report presented by your Excellency's Government, it expressly stated in its concluding observations that it “considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant” (CCPR/C/79/Add.25, paragraph 9). According to the information we have received, the offences for which Abdolwahed Butimar has been convicted were not intended to result in any killings and did not result in loss of life.

Moreover, regarding the charges of “mohareb”, we would like to draw attention to concerns already raised in correspondence with your Excellency's Government as well as in general reports. In a communication to your Excellency's Government of 31 August 2006 sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the imposition of the death penalty against Ali Motirijejad and others (reproduced in A/HRC/4/20/Add.1, pages 165f) similar concerns were raised with regard to the charge of “mohareb”: “I am concerned that this charge, which according to my information in Iran is directed mainly 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 carrying out of the death penalty. In order for the sentence of death to be imposed “in accordance with the law”, the law in question must be sufficiently precise to clearly allow distinction between conduct punishable with the capital sentence and conduct not 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.” The query to your Government to provide the definition of “mohareb” under Iranian law has unfortunately, to date, remained without a reply.

Furthermore, we would like to draw your Excellency's attention to the article 14 of the International Covenant of Civil and Political Rights (ICCPR) which has been ratified by the Islamic Republic of Iran on 24 June 1975, and which states: 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

We should also 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 person, 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 provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

We wish to reiterate the principle enunciated in Resolution 2005/38 of the Commission of Human Rights, which calls on States, while noting that article 19, paragraph 3, of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

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 to the attention of your Excellency's Government the following provisions of the Declaration:

- Article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- Article 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 the event that your investigations support or suggest the above allegations to be correct, we 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 is ensured. We also request that your Government adopt effective measures to prevent the recurrence of these acts.

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

Moreover, it is our responsibility under the mandates provided to us by the Commission on Human Rights 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, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate the legal basis of the sentencing of Abdolwahed Butimar, and how it is compatible with international norms and standards applicable as contained in the International Covenant on Civil and Political Rights. In particular, please provide details regarding the exact charges against him, as well as on access to legal counsel, public nature of hearings and judgments, the conviction and sentence, and the post-conviction proceedings.
3. Please provide details of the remedies against the execution of the death sentence still available to him.

### **Islamic Republic of Iran: Death sentence of Hossein Haghhi**

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

**Subject(s) of appeal:** 1 male (minor)

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

### **Urgent appeal dated 2 May 2008**

In this connection, I would like to draw the attention of your Government to information I have received regarding Mr. **Hossein Haghhi**, who is reportedly at risk of execution for a crime committed when he was still a minor.

According to the information I have received:

On 12 August 2004, Hossein Haghi, then aged 16, and his friend, known as Amrollah T, intervened to stop a fight between a friend of theirs and another boy, Mehdi Khalili. A number of others were also involved in the fight. According to his testimony, Hossein Haghi was held from behind, and Mehdi Khalili started hitting him. Hossein Haghi was able to free his hands, and retrieved a knife from his pocket to defend himself. Mehdi Khalili was killed by a knife wound to the chest. Upon his arrest, Hossein Haghi admitted to holding a knife and striking Mehdi Khalili to scare him away. However during his trial, Hossein Haghi denied stabbing Mehdi Khalili to death.

On 8 February 2004 Hossein Haghi was sentenced to qesas (retribution) by Branch 74 of the Criminal Court. Based on his initial confessions he was found guilty of premeditated murder under Article 206 (b) of Iran's Criminal Code which states: "Murder is classed as premeditated in cases where the murderer intentionally makes an action which is inherently lethal, even if [the murderer] does not intend to kill the person." On 25 June 2004, the Supreme Court upheld his sentence. Hossein Haghi's defence lawyer lodged a petition demanding a review of the case. Though the petition was rejected, the case was re-examined, and has now been referred to Branch 33 of the Supreme Court by the Head of the Judiciary.

While I do not wish to prejudge the accuracy of the allegations regarding this specific case, I would like to draw your attention once again to the fact that the execution of Hossein Haghi and any further executions of juvenile offenders would be 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. Article 37(a) of the Convention on the Rights of the Child to which Iran is a Party expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights to which Iran is a Party provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

I would respectfully reiterate my appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law. With regard to the case at hand, and in particular in light of the referral of the case to the Supreme Court, this can only mean setting aside of the death sentence imposed against Hossein Haghi.

As your Excellency will be aware this is the fifteenth urgent communication that I have had to send since the beginning of 2007 in relation to cases involving the juvenile death penalty in Iran. I have to date received only two responses to these many communications and both were in very similar terms. They concluded that "although there have been a few cases of murder under the age of 18, the pertinent authorities have been exerting their utmost effort to decrease carrying out verdicts to a level close to stop, with the hope of ultimate reconciliation." Under the circumstances I would take this occasion to reiterate my request for a visit to the Islamic Republic of Iran in the hope that a full and open exchange with the relevant authorities could

only contribute to the efforts which your Excellency's Government indicates it has initiated. Since the Government has already agreed in principle to a visit on my part I would like to request approval for a visit from 7-15 July, 2008.

It is my responsibility under the mandates provided 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 cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.
2. I also recall my communications dated 5 January 2007, 31 January 2007 and 29 February 2008 and 27 March 2008 seeking confirmation of the current status of the Bill on Juvenile Courts. What provisions will that law, once it enters into force, contain with regard to capital punishment for juvenile offenders?
3. Finally, I would be grateful if Your Excellency's Government could agree to the dates of 7-15 July 2008 proposed for a visit to enable a full and open discussion of the issues raised in this communication and arising under my mandate from the Human Rights Council.

**Islamic Republic of Iran: Death sentences of Farzad Kamangar,  
Ali Heydariyan and Farhad Vakili**

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

**Subject(s) of appeal:** 3 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 death sentences of Farzad Kamangar, Ali Heydariyan and Farhad Vakili. However, the Special Rapporteur would note that the information provided does not address the more general issue raised in this communication. The Special Rapporteur has consistently noted that membership in a rebel armed group (in this case a group classified as terrorist by the Government) is often considered a serious offence. Nevertheless, international law permits that death be imposed only for the "most serious crimes", a requirement that is properly interpreted to limit the death penalty to crimes in which there is an intention to kill and a resulting loss of life. The Special Rapporteur looks forward to an explanation of why the Government's domestic law imposes the death sentence for crimes that do not result in an intentional killing.

**Urgent appeal dated 18 July 2008**, sent with the Special Rapporteur on the question of torture and the Special Rapporteur on human rights and counter terrorism

In this connection, we would like to draw the attention of your Government to information we have received regarding the death sentences reportedly imposed on three ethnic Kurds and alleged members of the armed group Kurdistan Workers Party (PKK), **Farzad Kamangar** (also known as Siamand), **Ali Heydariyan** and **Farhad Vakili**. The Supreme Court of Iran is reported to have recently confirmed the death sentences and the execution of Farzad Kamangar might be imminent.

According to the information received:

Farzad Kamangar, Ali Heydariyan and Farhad Vakili were arrested by Ministry of Intelligence officials in Tehran in July or August 2006. Farzad Kamangar was subsequently held incommunicado at a series of different locations, including in Kermanshah, Sanandaj and Tehran. In the course of his detention he was tortured, including by beating, flogging and electrocution. As a result of the treatment inflicted, he had to be transferred twice to prison clinics.

On 27 May 2007, the spokesperson of the Judiciary announced that Farzad Kamangar had been charged with membership in a terrorist organization and with holding explosives. In February 2008, the 36th Revolutionary Court in Tehran found Farzad Kamangar, Ali Heydariyan and Farhad Vakili guilty on charges of “mohareb”, apparently in connection with their alleged membership in the PKK, and sentenced them to death. Ali Heydariyan and Farhad Vakili were also found guilty of forging documents and sentenced to ten years imprisonment, which they have to serve before any execution being undertaken.

Recently (the exact date has not been reported to us), the Supreme Court confirmed the death sentences. It would appear from the information received, that the head of the Judiciary may already have issued the execution order for Farzad Kamangar.

Although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, provides that “in countries which have not abolished the death penalty”, the “sentence of death may be imposed only for the most serious crimes”.

Membership in a rebel armed group (classified as terrorist group by Your Excellency’s Government) is often considered a serious offence. In interpreting Article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life. As observed in a recent report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Moreover, when the Human Rights Committee last considered a report presented by



your Excellency's Government, it expressly stated in its concluding observations that it “considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant” (CCPR/C/79/Add.25, paragraph 9).

The above considerations highlight one reason why the imposition of the death sentence on charges of “mohareb” is so problematic. As the Special Rapporteur on extrajudicial, summary or arbitrary executions explained in previous communications to your Excellency's Government (e.g. of 31 August 2006 concerning the imposition of the death penalty against Ali Motirijejad and others (reproduced in A/HRC/4/20/Add.1, pages 165f) and of 26 July 2007 concerning the imposition of the death penalty against Abdolwahed (Hiwa) Butimar and Adnan Hassanpour (reproduced in A/HRC/8/3/Add.1, pages 210f)):

“I am concerned that this charge, which according to my information in Iran is directed mainly 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 carrying out of the death penalty. In order for the sentence of death to be imposed “in accordance with the law”, the law in question must be sufficiently precise to clearly allow distinction between conduct punishable with the capital sentence and conduct not so punishable.”

Turning to the pre-trial detention of the three men, particularly Farzad Kamangar, while we do not wish to prejudice the accuracy of the information received, we would respectfully remind your Excellency's Government 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. Relevant to the case at hand, these guarantees include the right to be assisted by a lawyer of one's own choosing at all stages of the proceedings, to have adequate time and facilities to prepare one's defence, and the right not to be compelled to confess guilt.

We also recall that paragraph 6c of Human Rights Council resolution 08/08 of 2008 urges States “to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the ICCPR.

In this respect, we would like to draw the attention of your Government to paragraph 12 of General Assembly Resolution A/RES/61/153 of 14 February 2007, which “reminds all States that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person;” Prolonged incommunicado detention furthermore negates the above-mentioned guarantees of the right to a fair trial, such as being assisted by a lawyer and having adequate facilities to prepare one's defence.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Farzad Kamangar, Ali Heydariyan and Farhad Vakili are respected. Considering the irreversible nature of capital punishment, this can only mean

suspension of the death sentence against the three men until the question whether the acts they were found guilty of satisfy international criteria for what constitutes “most serious crimes” has been clarified, the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Farzad Kamangar, Ali Heydariyan and Farhad Vakili in compliance with your Government’s international legal obligations.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate the specific conduct Farzad Kamangar, Ali Heydariyan and Farhad Vakili have been found guilty of and the legal basis of the death sentences imposed against them. Please indicate how these are compatible with international norms, specifically with the requirement in article 6(2) of the ICCPR, to which Iran is a party, that the “sentence of death may be imposed only for the most serious crimes in accordance with the law”. Your Government has in the case of Abdolwahed Butimar and Adnan Hassanpour provided information explaining the charges against them (which would tend to show that at least Mr. Hassanpour was not charged with an offence involving the intentional taking of life). To date, the query to provide the definition of “mohareb” under Iranian law, however, has unfortunately remained without a reply.
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 allegation that Farzad Kamangar was subjected to torture while in pre-trial detention. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide details regarding access to legal counsel, public nature of hearings and judgments, the conviction and sentence, and the post-conviction proceedings in the cases of Farzad Kamangar, Ali Heydariyan and Farhad Vakili.
5. Is it correct that Ali Heydariyan and Farhad Vakili will have to serve a ten year sentence and thereafter be executed? If so, we are concerned that this would constitute cruel, inhuman or degrading punishment. Please submit your Government’s views on this matter.

#### **Response from the Government of the Islamic Republic of Iran dated 8 April 2009**

Mr Farzad Kamangar, Mr. Ali Heydariyan and Mr. Farhad Vakili were charged and arrested for being members of the terrorist group of PEJAK, holding and carrying of 37 kg. of TNT, holding 2 war grenades and forging of identification cards. Their dossiers were brought up in Branch 30 of Tehran Court of Revolution in the presence of their defence lawyers. The

afore-mentioned individuals had prepared the munitions for their acts of terrorism and killing of innocent people. They were found as “Mohareb” and therefore sentenced to death. Pursuant to objection of the defence lawyers, their cases were referred to Branch 31 of the Supreme Court and following re-investigation of the cases, the verdict was reinstated on 9 May 2008. The issued verdict have been merely in connection with their terrorist activities. Any allegation on the judgments connection with their social activities is baseless and rejected.

- Explanation of the verdict of the court and the reasons behind considering their offences as being “heavy” and the final death penalty:

Firstly, the PEJAK terrorist group continues to remain as a terrorist group and it has been carrying out, repeatedly, armed terrorist acts resulting in loss of lives.

Secondly, finding a considerable amount of explosives (37 kg/74 pounds) together with 27 detonators (for bomb explosions) indicated the serious intention for carrying out terrorist acts in which the role of Mr. Kamangar is well proven in the court.

Furthermore, on the basis of the national laws of the Islamic Republic of Iran and due to the special situation in the neighbouring countries which have occasionally resulted in mischievous acts and disturbance of people’s lives and security in border areas, more strict legislations and regulations are enforced.

- Explanation on the information received in relation with terrorist acts of the individuals:

Mr. Kamal Gholami and RM. Ali Heydariyan were suspected by police patrol on 19 August 2006, when they were transferring explosives to a room, rented by MR. Kamangar, in Sepehr building, Razi square, in Tehran. They ignored warning of the police officers and clashed with them; as a result of which MR. Ali Heydariyan was arrested and RM. Gholami escaped the scene. According to the existing information, h has been seen in northern Iraq. Upon the confession of Mr. Ali Heydariyan, who is one of the cadre members of the terrorist group of PEJAK inside the country, his collaborators, particularly Mr. Farhad Vakili and Mr. Farzad Kamangar were arrested, further investigation also revealed that on 19 August 2006, Mr. Kamangar and Mr. Gholami had transferred the explosives from the headquarter of the PKK terrorist group, in northern Iraq, to Tehran (by MR. Gholami’s car and later hid it in the house of Mr. Farhad Vakili.

Upon search of MR. Farhad Valili’s residence, on 7 November 2006, there was found 12 kg. of TNT together with 25 detonators and 2 war grenades. In a further search of the garden of the house, on 6 December 2006, another 5 kg. of TNT was found it was also later disclosed that, on the basis of duty distribution, Mr. Ali Heydariyan was assigned as the technical element for provision of bombs and reconnaissance of explosion targets and Mr. Kamangar was the element for preparing the team house for hiding and covering of the PKK cadre embers who were dispatched from Iraq to Iran for carrying out explosion plans. As it was described above, the individuals, who received death penalty, enjoyed their right of fair trial as well as enough time for review and examination of their cases through legal proceedings. Any allegation on their torture of incommunicado detention is categorically baseless and a fabrication of lies”.

### **Islamic Republic of Iran: Nine persons sentenced to death by stoning**

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

**Subject(s) of appeal:** 8 females; 1 male

**Character of reply:** Cooperative but incomplete response

#### **Observations of the Special Rapporteur**

The Special Rapporteur notes the response of the Government of Iran. The Special Rapporteur regrets that despite repeated requests, he has not been provided with the requested statistics on the number of people sentenced to death and executed for the offence of adultery, and the breakdown of those statistics in terms of gender.

**Urgent appeal dated 30 July 2008**, sent with the Special Rapporteur on the question of torture and the 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 eight women and a man who have been sentenced to death by stoning for adultery: Ms. **Kobra Najjar**, Ms. **Iran Eskandari**, Ms. **Malek (Shamameh) Ghorbani**, Ms. **Zohreh Kabiri** and Ms. **Azar Kabiri**, Ms. **Ashraf Kolhari**, Ms. **Khairieh Valania**, Ms. **Leila Qomi**, and Mr. **Abdollah Farivar Moqaddam**. Ms. Kobra Najjar already was the subject of an urgent appeal sent by us on 2 October 2006. Mr. Abdollah Farivar Moqaddam was the subject of an urgent appeal by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture dated 31 January 2007. Ms. Zohreh Kabiri and Ms. Azar Kabiri were the subject of an urgent appeal by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture dated 13 February 2008. We regret not having received any response to these three communications yet.

According to the information received:

Ms. Kobra Najjar was a victim of domestic violence who was forced into prostitution by her husband in order to support his heroine addiction. He was murdered in 1995 by one of Kobra's clients who sympathized with her plight. Ms. Najjar has already served 8 years in prison as an accessory to her husband's murder. The man who murdered her husband also served 8 years in prison and is now free after paying *diyeh* (blood money) and undergoing 100 lashes.

Ms. Najjar wrote to the Judicial Commission for Amnesty to ask for her sentence of execution by stoning to be commuted. However, her appeal for amnesty has been rejected and she has exhausted all domestic remedies. It is feared that her execution by stoning could happen any time.

Ms. Iran Eskandari was sentenced to death by stoning for adultery, nine years of imprisonment and seventy-four lashes for aiding murder, hiding the body, and destroying the evidence by Branch 1 of Lali General Court in 2005. In 2006 the Supreme Court confirmed the death sentence which is currently being reviewed by the Pardons Commission.

Ms. Malek (Shamameh) Ghorbani was sentenced to death by stoning for adultery by Branch 12 of the Criminal Court of East Azerbaijan Province in 2006. Branch 27 of the Supreme Court has overruled the verdict because of irregularities in the investigation phase. She remains under criminal proceedings.

Ms. Zohreh Kabiri and Ms. Azar Kabiri were arrested on 5 February 2007 in connection with allegations of illegitimate relations other than adultery. On 17 March 2007, they were prosecuted in court, found guilty, and sentenced to 99 lashes. This sentence was executed. Thereafter, both women were returned to prison and another trial took place for the same charges and they were sentenced to death by stoning on 5 August 2007. Branch 27 of the Supreme Court confirmed the death sentence in 2007. The file is now with the Head of the Judiciary.

Ms. Ashraf Kolhari was sentenced to death by stoning for adultery and fifteen years of imprisonment for complicity in murder by Branch 1601 of Tehran General Court. In 2003 Branch 2 of the Supreme Court confirmed the judgment. The Pardons Commission, however, has returned the file to the trial court.

Ms. Khaeirieh Valania was sentenced to death by stoning for adultery and eight years of imprisonment for complicity in murder. Her case is currently before the Head of the Judiciary.

Ms. Leila Qomi was sentenced to death by stoning for adultery and fifteen years of imprisonment for complicity in murder by Branch 71 of the Criminal Court of Tehran. Branch 37 of the Supreme Court confirmed the judgment in 2007.

Mr. Abdollah Farivar Moqaddam was arrested on 8 February 2005 and charged with committing adultery. He was convicted and sentenced to death on 21 December 2005 by the Second Branch of the Mazandaran penal court and the sentence was confirmed by Bureau 41 of the Supreme Court on 1 August 2006. The file is currently with the Pardons Commission.

While we do not wish to prejudge the accuracy of these allegations, we would like to recall that Article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, provides that “in countries which have not abolished the death penalty”, the “sentence of death may be imposed only for the most serious crimes”. In interpreting Article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. As observed in a recent report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic

review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Already in 1993, the Human Rights Committee (CCPR/C/79/Add.25) noted in its concluding observations on your Government's periodic report under the Covenant that the imposition of the death penalty for adultery is incompatible with the Covenant.

We would also like to recall that stoning constitutes an inhuman and degrading treatment. In this regard, we would 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 Government's attention to the report of the Special Rapporteur on torture to the 60th session of the General Assembly, in which, with reference to the jurisprudence of UN treaty bodies, he concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment, and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (A/60/316, para.28). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime of as an educative or disciplinary measure.

We would moreover like to recall that, as a State Party to the International Covenant on Civil and Political Rights, your Government has undertaken to ensure equality between men and women in the enjoyment of all civil and political rights, including the right to life and the right not to be subjected to torture or to cruel, inhuman or degrading punishment. While it would appear that, unfortunately, the abovementioned eight women and one man do not represent all persons sentenced to death by stoning for adultery, the imbalance between the number of men and women among the reported cases raises certain questions in terms of possible discrimination in relation to both criminal enforcement and sentencing in adultery cases. It would be important to know whether the men whom the above eight women were found to have committed adultery with were sentenced to death as well, and, if not so, on what grounds. It would also be important to have gender disaggregated data on the use of the death penalty in the Islamic Republic of Iran.

With regard particularly to the case of Ms. Kobra Najjar we would finally like to bring to Your Excellency's attention Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Ms. Kobra Najjar, Ms. Iran Eskandari, Ms. Malek (Shamameh) Ghorbani, Ms. Zohreh Kabiri and Ms. Azar Kabiri, Ms. Ashraf Kolhari,

Ms. Khaeirieh Valania, Ms. Leila Qomi, and Mr. Abdollah Farivar are respected. Considering the irremediable nature of capital punishment and the fact that the death sentence for adultery is incompatible with your Government's obligations under international law, this can only mean suspension of the executions and eventually commutation of the death sentences.

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

1. Are the facts alleged in the above summaries accurate?
2. If Ms. Kora Najjar, Ms. Iran Eskandari, Ms. Malek (Shamameh) Ghorbani, Ms. Zohreh Kabiri and Ms. Azar Kabiri, Ms. Ashraf Kolhari, Ms. Khaeirieh Valania, Ms. Leila Qomi, and Mr. Abdollah Farivar 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. In particular, indicate how many men and how many women were sentenced to death and executed for the offence of adultery.

#### **Response from the Government of the Islamic Republic of Iran dated 8 April 2009**

The Holy religion of Islam attributes great importance to the issue of safeguarding the security and morality of the society and particularly to the fundamental institution of family. To that end and for securing the cleanliness and purity of the generation (which is amongst the strengthening elements for survival and permanence of family and society) it has prescribed the very heavy punishment of "Hadde Rajm" (Prescribed Punishment of Stoning), for married (and unmarried) individuals, so that its deterring aspect to contribute toward realization of the above-mentioned sacred goal. Meanwhile one should understand that Islam has defined highly difficult conditions, requirements and methods for proving perpetration of this group of offences. (Those requirements could be searched Islamic texts of Jurisprudence). All those required accuracies and attention as well as the difficulties for proving commission of this group of offences have been meant to, extremely, minimize the rate of oversight and error. Furthermore, this type of offenses could be investigated or brought to trial following its approval of hurting public conscience (presence of a large number of witnesses).

Therefore, as it was described, although a heavy punishment is prescribed, provision of the required evidences, on the basis of the Jurisprudent principal of "al-hodoud tadra be-shobahaat" (punishment lapses or/gets aborted in presence of element of ambiguity/doubt), is very difficult to the same extent. Consequently, proving commission of offences deserving stoning gets extremely minimized. Introduction of a mechanism for prevention and discontinuation of such offences has been the main objective of Islamic Laws. In practical terms, one could easily recognize that the rate of family disloyalty Muslim societies is considerably lower than that in western unreligious countries.

In the view of Islamic jurists, the punishment of stoning, in its nature and enforcement is substantially different from execution.

In consideration of all the above mentioned points, and with reference to the raised allegation in the communication, due investigations and legal procedure have been going on and according to parts of the results, the stoning punishment of Ms. Malek (Shamameh) Ghorbani, Ms. Azar Kabiri and Ms. Zohreh Kabiri is ruled out”.

### **Islamic Republic of Iran: Death sentences on six juvenile offenders**

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

**Subject(s) of appeal:** 5 males and 1 female (minors)

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

**Urgent appeal dated 13 August 2008**, sent with the Special Rapporteur on the question of torture

In this connection, we would like to draw the attention of your Government to information we have received regarding six persons allegedly at risk of execution of death sentences imposed for offences they committed as children: **Soghra Najafpoor** (f), **Behnood Shojaee** (m), **Mohammad Feda'i** (m), **Salah Taseb** (m), **Sa'eed Jazee** (m), and **Abu Moslem Sohrabi** (m). The case of Soghra Najafpoor has already been the subject matter of an exchange of communications between this mandate and your Excellency's Government (5 November 2007 and 12 February 2008 respectively), while a previous communication we sent regarding the case of Behnood Shojaee (on 27 December 2007) remained without reply. We would also like to draw your attention to reports regarding executions of juvenile offenders which already took place in Iran during the first half of this year. **Javad Shoja'i** and **Mohammad Hassanzadeh** were reportedly aged 16 at the time of their offence. It is possible that also **Hasan Mozaffari** and **Rahman Shahidi**, reportedly executed on 22 July 2008, were below age 18 at the time of the rape they were sentenced to death for.

According to the information received:

Soghra Najafpour was sentenced to death as qisas (retribution) on 9 November 1990 for a killing which took place when she was only 13 years old. She spent most of the following 17 years in prison. On two occasions, when she was 17 and 21, she was taken to be executed but the family of the victim changed their minds at the last minute. On 1 October 2007, Soghra Najafpour was released on bail of 600 million Iranian rials. She returned to prison later that month to comply with a summons which followed a new



demand by the family of the murder victim for her execution. On 23 October 2007, Soghra Najafpour's lawyer petitioned the Office of the Head of the Judiciary to reinvestigate her case. After renewed judicial proceedings she was again found guilty and sentenced to death as qisas. The guardian of the victim continues to reject all attempts to accept blood money (diyah) instead of execution.

Behnood Shoojaee, now 20, was convicted by a court in Tehran of murdering another boy during a street fight when he was 17 years old. The death sentence was confirmed by the Supreme Court. He was scheduled to be executed on 11 June 2008, but was granted a one month reprieve on 10 June 2008. On or around 11 July 2008, the Head of Judiciary again postponed the execution to give the families more time to negotiate the payment of diyah.

Mohammad Feda'i was found guilty of murder by Branch 71 of the Tehran Criminal Court on 12 March 2005 and was sentenced to death as qisas. Reportedly, the judges in his case found Mohammad Feda'i guilty, but stated in their written verdict that he had killed in self-defence and that he had not been adequately represented at his trial, as his first legal representative was not an accredited lawyer, and two lawyers hired later had only submitted one written defence statement to the court during his trial. The death sentence against Mohammad Feda'i was upheld by Branch 27 of the Supreme Court and confirmed by the Head of the Judiciary. Mohammad Feda'i was due to be executed a first time on 18 April 2007, but the execution was stayed on the basis of the inadequate legal representation during his trial. A subsequent request to the Attorney General for a retrial was rejected, and a new execution date was set for 11 June 2008. On 10 June 2008, the Head of Judiciary granted a one-month reprieve to give Mohammad Feda'i's family additional time to negotiate with the victim's family on the payment of diyah. On or around 11 July 2008, the Head of Judiciary granted a further one month stay of execution. In a letter made public on 7 June 2008, Mohammad Feda'i alleges that, during his detention before trial, official "beat and flogged him repeatedly ... hanged him from the ceiling [and] left him with no hope of living". As a result of that treatment, he signed (by way of a fingerprint) a confession statement.

Salah Taseb, from Sanandaj, was convicted of murder and sentenced to death for a killing committed when he was aged 15. He recently turned 18 and was transferred from the juvenile prison to the adult prison in Sanandaj.

Sa'eed Jazee was convicted of murder and sentenced to death for a killing committed in 2003 when he was aged 17. His execution was scheduled for 25 June 2008 but postponed for a month.

Abu Moslem Sohrabi, was convicted and sentenced to death by Branch 3 of the Firoozabad Court in Fars Province for a killing he committed in December 2001 at the age of 17. The death sentence was affirmed by Supreme Court Branch 33. Reportedly local authorities in Fars province intend to proceed with the execution although authorities in Tehran have ordered a renewed investigation of the case.

We have also received reports concerning two executions of juvenile offenders which already took place during the first half of the year 2008:

Javad Shoja'i was executed in Esfahan on 26 February 2008. He had been sentenced to death as *qisas* for a murder committed when he was 16.

Mohammad Hassanzadeh was executed in Sanandaj prison on 10 June 2008. Reports indicate that at a press conference on 17 June 2008, a spokesperson for the Judiciary disputed that he had been under age 18 at the time of the offence. Mohammad Hassanzadeh's lawyer, however, researched his identity papers and determined that on the day of the killing he was aged 16 years, 11 months and 20 days.

Finally, Hasan Mozaffari and Rahman Shahidi, as well as a third man identified as H.R., were executed in Bushehr on 22 July 2008. They had been found guilty of rape. They possibly were under age 18 at the time of the offence.

While we do not wish to prejudge the accuracy of the allegations regarding these specific cases, we would like to draw your attention once again to the fact that any further executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child, to which Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

We take note of the assurances by your Excellency's Government in its letter dated 12 February 2008 in the case of Soghra Najafpour that "the state judicial system has been trying for resolution of the dispute through conciliation" in the face of "the insistence of guardians of the murder victim for carrying out the verdict", and that "the case is in the conciliation procedure and enforcement of death penalty is not in the programme of work." Your Government also wrote that "although there have been a few cases of murder under the age of 18, the pertinent authorities have been exerting their utmost effort to decrease carrying out verdicts to a level close to stop, with the hope of ultimate conciliation." To this end, "the Government of the Islamic Republic of Iran strives to apply mechanisms, such as provision of financial assistance to the guardians, which might end in receiving the required consent from them."

We can only reiterate, however, that "merely taking gradual measures to decrease the carrying out of sentences to a level "close to a stop" is an utterly inadequate approach. Inasmuch as laws permitting the death sentence to be imposed on juvenile offenders are inherently inconsistent with the international legal obligations assumed by the Islamic Republic of Iran, they should be promptly repealed." (see the observations of the Special Rapporteur on extrajudicial, summary or arbitrary executions in relation to your Government's reply to the communication in the case of Behnam Zare, A/HRC/8/3/Add.1, page 221).

We have also taken note of your Government's explanation with regard to the private (qisas) and public aspects of the punishment of persons found guilty of murder. Your Government writes that "enforcement of Qisas depends upon the request to be made by guardians of the murder victim; and the Government is solely delegated to carry out the verdict, on behalf of the former"; and that therefore the "sentence of Qisas is not open to pardon or amnesty by the state, in absence of consent from guardians of the murder victim." (A/HRC/8/3/Add.1, page 225).

In this regard, we must stress that for the purposes of your Government's obligation under international law to end the imposition of capital punishment for offences committed by persons below eighteen years of age, the distinction between the qisas claim of the victim's family and the public interest to punish murder is immaterial. Article 37(a) of the Convention on the Rights of the Child and Article 6(5) of the International Covenant on Civil and Political Rights apply - and bind your Government - irrespective of this distinction in the law of the Islamic Republic of Iran. To comply with these obligations it is insufficient to abolish the death penalty for offences committed by juveniles as a matter of the State's interest in punishing murder. The abolition must extend to the qisas aspect.

While the imposition of the death penalty for killings committed by minors is thus in all cases and indisputably a blatant and serious violation of your Government's obligations under international treaties it has entered into, we would further like to draw your Government's attention to the general concerns the Special Rapporteur on extrajudicial, summary or arbitrary executions has expressed in a report to the General Assembly with regard to the way the qisas system is applied in some countries (A/61/311, paras. 55-64). We acknowledge that your Government is taking significant measures to address some of the concerns set forth in that Report: governmental financial support to victims' families can contribute to lessen the discrimination against poor offenders who are unable to pay the diyah, which is implicit in the system. Similarly, the law providing that murderers who have been pardoned by the victim's guardian after paying diyah will still have to serve five to fifteen years of imprisonment (as your Government explained in its communication of 14 February 2008 (A/HRC/8/3/Add.1, page 223)), would contribute to reducing the risk that wealthy offenders buy their freedom in a way not open to the poor.

In other respects, however, your Government's explanation of the way Islamic law is applied in the Islamic Republic of Iran confirms the concerns expressed in the Report. Your Excellency's Government states that the "sentence of Qisas is not open to pardon or amnesty by the state, in absence of consent from guardians of the murder victim". As stated in the report to the General Assembly, "where the private diyah pardon stands alone and when it relates to the death penalty, it is almost certain to lead to significant violations of the right to due process in situations where a pardon is not granted." (A/61/311, para. 62). Article 6(4) of the Covenant provides 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." As a consequence, "[t]o the extent that the procedure does not provide [...] for the right to seek pardon or commutation of the sentence from the State authorities, the requirements of international law will be violated. Where the diyah pardon is available it must be supplemented by a separate, public system for seeking an official pardon or commutation." (A/61/311, para. 62).

Many countries with significant Islamic populations have provided for means of commutation additional to or in lieu of diyah. Their practice helps to illustrate that a system of commutation by a public official may not in practice be incompatible with Islamic law, and may exist alongside or in place of the private diyah pardon. (see (A/61/311, para. 63).

With regard to the cases of Hasan Mozaffari and Rahman Shahidi, who were reportedly sentenced to death (and executed) for rape, we would like to recall that Article 6(2) of the International Covenant on Civil and Political Rights provides that “in countries which have not abolished the death penalty”, the “sentence of death may be imposed only for the most serious crimes”. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). This is consistent with the conclusion of the Human Rights Committee in interpreting Article 6(2) of the Covenant. The Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. Accordingly, when it last considered a report presented by your Excellency's Government, the Committee expressly stated in its concluding observations that it “considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant” (CCPR/C/79/Add.25, paragraph 9). According to the information we have received, the offences for which Hasan Mozaffari and Rahman Shahidi have been convicted were not intended to result in any killings and did not result in loss of life.

We would respectfully reiterate our appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law and to take steps to bring its legislation in compliance with Article 37(a) of the Convention on the Rights of the Child and Article 6 of the International Covenant on Civil and Political, to which it is a party. In particular, we urge your Government to expeditiously lift or commute the death sentences imposed against Soghra Najafpoor, Behnood Shojaee, Mohammad Feda'i, Salah Taseb, Sa'eed Jazee, and Abu Moslem Sohrabi, as well as all other persons awaiting executions for offences committed before they reached age 18. All other efforts undertaken by your Government to prevent these executions are insufficient to meet its obligations under international treaties it is a Party to.

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

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy. Clarification of:

- The accuracy of the information regarding assistance by counsel in the case of Mohammed Feda'i;
- Steps taken to investigate his claims of torture to extort a confession;

- The accuracy of reports that local authorities in Fars province intend to proceed with the execution of Abu Moslem Sohrabi although authorities in Tehran have ordered a renewed investigation of the case; and
- The age of Hasan Mozaffari and Rahman Shahidi at the time of the rape they were found guilty of are particularly important in this respect.

2. We also recall our communications dated 5 January 2007, 31 January 2007, 29 February 2008, 27 March 2008 and 2 May 2008 seeking confirmation of the current status of the Bill on Juvenile Courts. What provisions will that law, once it enters into force, contain with regard to capital punishment for juvenile offenders?

3. Please indicate any steps your Government intends to take or has taken to comply with article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, that the “sentence of death may be imposed only for the most serious crimes in accordance with the law”.

4. Please indicate any steps your Government intends to take or has taken to supplement the system of pardons based on the payment of diyah with a separate, public system for seeking an official pardon or commutation, so as to comply with article 6(4) of the International Covenant on Civil and Political Rights.

**Islamic Republic of Iran: Death sentences of Amir Amrollahi,  
Reza Hejazi and Kamal**

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

**Subject(s) of appeal:** 3 males (minors)

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Urgent appeal dated 18 August 2008,** sent with the Special Rapporteur on the question of torture

In this connection, we would like to draw the attention of your Government to information we have received regarding **Amir Amrollahi, Reza Hejazi and Kamal**, three young men allegedly at risk of execution for offences committed when they were minors. The case of Reza Hejazi was already the object of a communication to your Government by the Special Rapporteur on extrajudicial, summary or arbitrary executions on 27 March 2008, which unfortunately has remained without reply.

According to the information received:

Amir Amrollahi fatally injured another boy in Shiraz province during a fight in November 2006, when he was aged 16. On 6 August 2007, Branch 5 of Fars province criminal court sentenced him to death. The sentence was upheld by Branch 27 of Supreme Court on 11 October 2007. Recently (beginning of August 2008), the Head of the Judiciary approved the death sentence and judicial officials in Shiraz province have been asked to prepare to carry out Amir Amrollahi's execution.

Reza Hejazi fatally injured another boy in Esfahan during a fight in 2004 (on 28/6/1382, according to the Iranian calendar). At the time of the offence he was aged 15, as he was born on 30/4/1367. On 14 November 2005, he was sentenced to death as qesas (retribution) by Branch 106 of the Esfahan General Court. The sentence was approved by Branch 28 of the Supreme Court on 6 June 2006, although under Iranian law he should have been tried in a juvenile court. The case was referred for mediation between Reza Hejazi and the victim's family, to try and arrange for the payment of diyeh, but it would appear that the negotiations have yielded no result. His execution was scheduled for this morning (19 August 2008), but appears to have been postponed.

Kamal (further names not reported), a then sixteen years old barber's assistant in Tehran, killed a man in the course of a fight on 10 April 2007. He was found guilty of murder and sentenced to death by a court in Tehran on 12 April 2008. The death sentence was approved by the Supreme Court at the beginning of August 2008, and the case is now before the Head of the Judiciary for final approval of the death sentence.

While we do not wish to prejudge the accuracy of the allegations regarding these specific cases, we would like to draw your attention once again to the fact that any further executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child, to which Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

We would further like to reiterate that:

- Merely taking gradual measures to decrease the carrying out of death sentences against offenders who were juveniles is an utterly inadequate approach to complying with your Government's obligations under international law, which can only be fulfilled by immediately stopping all executions for crimes committed by persons who were not aged 18 at the time of the offence. Laws permitting the death sentence to be imposed on juvenile offenders are inherently inconsistent with the international legal obligations assumed by the Islamic Republic of Iran and should be promptly repealed.

- For the purposes of your Government’s obligation under international law to end the imposition of capital punishment for offences committed by persons below eighteen years of age, the distinction between the qisas claim of the victim’s family and the public interest to punish murder is immaterial. International law bans the imposition of the death penalty for offences committed by children in both cases.
- International law, in particular Article 6(4) of the International Covenant on Civil and Political Rights, guarantees the right to seek pardon or commutation of the sentence from the State authorities. Where the diyah pardon is available, it must be supplemented by a separate, public system for seeking an official pardon or commutation.

We have set forth the arguments underlying these rules of international law on a number of occasions, most recently in our communication to your Excellency’s Government of 13 August 2008 regarding the cases of juvenile offenders Soghra Najafpoor, Behnood Shojaee, Mohammad Feda’i and seven others, to which we would like to refer.

We would respectfully reiterate our appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law and to take steps to bring its legislation in compliance with Article 37(a) of the Convention on the Rights of the Child and Article 6 of the International Covenant on Civil and Political, to which it is a party. In particular, we urge your Government to expeditiously lift or commute the death sentences imposed against Amir Abdollahi, Reza Hejazi and Kamal, as well as all other persons awaiting executions for offences committed before they reached age 18. All other efforts undertaken by your Government to prevent these executions are insufficient to meet its obligations under international treaties it is a Party to.

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

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.
2. Please explain the steps taken by your Government to lift or commute the death sentences imposed against Amir Abdollahi, Reza Hejazi and Kamal.
3. We also recall our communications dated 5 January 2007, 31 January 2007, 29 February 2008, 27 March 2008, 2 May 2008 and 13 August 2008 seeking confirmation of the current status of the Bill on Juvenile Courts. What provisions will that law, once it enters into force, contain with regard to capital punishment for juvenile offenders?

## **Islamic Republic of Iran: Death of Mahdi Hanafi**

**Violation alleged:** Death in custody owing to torture, neglect, or use of force, or fear of death in custody due to life-threatening condition of detention

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

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

**Allegation letter dated 19 August 2008**, sent with the Special Rapporteur on the question of torture

In this connection, we would like to bring to your Government's attention information we have received concerning **Mahdi Hanafi**, student, Gohardasht, Karaj.

According to the allegations received:

On 4 April 2007 around 2 p.m., he was arrested on his way to a party and taken by police to No. 17 Mehrvilla Police Station. His family was not informed of his arrest, and he was allegedly beaten during his detention by a police officer (whose name is on record with us). At 5 p.m., he was taken to the Prosecutor, who ordered his release at 7.30 p.m. He was again taken to the police station, told that the keys to his handcuffs and shackles were left there. After he returned home he reportedly felt dizzy and went to bed. Mr. Hanafi's family was unable to rouse him in the morning and he was taken to the hospital, where the doctor reported that he had suffered injuries to his brain. After 13 days, he was transferred to Shahid Madani Hospital. The doctors there confirmed the diagnosis. Mr. Hanafi died two months later without regaining consciousness.

The Prosecutor of No. 31 Police Station came and photographed the body. However, no further action or investigations were carried out.

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 this case. Article 7 of the International Covenant on Civil and Political Rights provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility.



In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council as recently as at its 8<sup>th</sup> Session in Resolution 8/3 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

The Council added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We understand that Mr. Hanafi was taken to hospital and diagnosed and that the competent prosecutor took the first steps of an investigation. We urge your Government to complete the inquiry into the circumstances surrounding the death of Mr. Hanafi expeditiously, impartially and transparently, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate Mr. Hanafi’s family.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide the full details of any prosecutions which have been undertaken against any police officers responsible for Mr. Hanafi’s death. Have disciplinary or administrative sanctions been imposed on them?
4. Please indicate whether compensation has been provided to Mr. Hanafi’s family.

### **Islamic Republic of Iran: Death sentence of Bahman Soleimani**

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

**Subject(s) of appeal:** 1 male (minor)

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

**Urgent appeal dated 27 August 2008**, sent with the Special Rapporteur on the question of torture

In this connection, we would like to draw the attention of your Government to information we have received regarding **Bahman Soleimani**, a man allegedly at risk of execution for an offence committed when he was a minor.

According to the information received:

Mr. Bahman Soleimani was born in 1981. He killed his grandmother, allegedly unintentionally, 12 years ago when he was 15. He was initially sentenced to 5 years imprisonment, but the victim's family insisted on retribution in kind and he was sentenced to death as *qesas*. Bahman Soleimani is detained in Isfahan and his execution is imminent.

While we do not wish to prejudge the accuracy of the allegations regarding this specific case, we would like to draw your attention once again to the fact that any further executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child, to which Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

We would further like to reiterate that:

- Merely taking gradual measures to decrease the carrying out of death sentences against offenders who were juveniles is an utterly inadequate approach to complying with your Government's obligations under international law, which can only be fulfilled by immediately stopping all executions for crimes committed by persons who were not aged 18 at the time of the offence. Laws permitting the death sentence to be imposed on juvenile offenders are inherently inconsistent with the international legal obligations assumed by the Islamic Republic of Iran and should be promptly repealed.

- For the purposes of your Government’s obligation under international law to end the imposition of capital punishment for offences committed by persons below eighteen years of age, the distinction between the qisas claim of the victim’s family and the public interest to punish murder is immaterial. International law bans the imposition of the death penalty for offences committed by children in both cases.
- International law, in particular Article 6(4) of the International Covenant on Civil and Political Rights, guarantees the right to seek pardon or commutation of the sentence from the State authorities. Where the diyah pardon is available, it must be supplemented by a separate, public system for seeking an official pardon or commutation.

We have set forth the arguments underlying these rules of international law on a number of occasions, most recently in our communication to your Excellency’s Government of 13 August 2008 regarding the cases of juvenile offenders Soghra Najafpoor, Behnood Shojaee, Mohammad Feda’i and seven others, to which we would like to refer.

We would respectfully reiterate our appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law and to take steps to bring its legislation in compliance with Article 37(a) of the Convention on the Rights of the Child and Article 6 of the International Covenant on Civil and Political, to which it is a party. In particular, we urge your Government to expeditiously lift or commute the death sentences imposed against Bahman Soleimani, as well as all other persons awaiting executions for offences committed before they reached age 18. All other efforts undertaken by your Government to prevent these executions are insufficient to meet its obligations under international treaties it is a Party to.

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

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.
2. Please explain the steps taken by your Government to lift or commute the death sentences imposed against Bahman Soleimani.
3. We also recall our communications dated 5 January 2007, 31 January 2007, 29 February 2008, 27 March 2008, 2 May 2008 and 13 August 2008 seeking confirmation of the current status of the Bill on Juvenile Courts. What provisions will that law, once it enters into force, contain with regard to capital punishment for juvenile offenders?

**Islamic Republic of Iran: Death sentences of Abbas Hosseini  
and Rahim Ahmadi**

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

**Subject(s) of appeal:** 2 males (minors)

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Urgent appeal dated 17 September 2008**

I would like to draw the attention of your Government to recent information I have received regarding two young men sentenced to death for offences they committed as minors, Mr. **Abbas Hosseini**, an Afghani refugee, and Mr. **Rahim Ahmadi**.

According to the information received:

Abbas Hosseini was sentenced to death on 3 June 2004 by verdict No.13/277 of Branch 43 of the Mashhad Special Court for a killing committed in July 2003, when he was 17 years old. The sentence was upheld by Branch 41 of the Supreme Court on 28 October 2004 and subsequently by the Head of the Judiciary of the Islamic Republic of Iran.

I addressed an urgent appeal to your Government on 21 April 2005, when Abbas Hosseini's execution was reportedly scheduled for 1 May 2005 (regrettably, your Government never answered that communication). Abbas Hosseini was not executed on 1 May, apparently to give the family of the perpetrator another chance to convince the family of the victim to accept payment of compensation (diyeh) in return for the commutation of the death sentence. On 7 May 2005, the Head of the Judiciary reportedly ordered the judiciary in Mashhad not to proceed with the execution while the file was being reviewed by the central Judiciary in Tehran. More than three years later, the negotiations between the two families appear to have come to a dead end, with the family of the victim refusing to accept payment of compensation (diyeh) and insisting on the death sentence being carried out. On 5 August 2008, the Juvenile Court in Mashhad allegedly confirmed the death verdict (No. 8709975115800339).

Rahim Ahmadi, now aged 20, is convicted of a killing he committed when he was 15 years old. His death sentence has been confirmed by the Supreme Court. The Head of the Judiciary has sent the execution order to Adelabad prison in Shiraz, where Rahim Ahmadi is detained.

While I do not wish to prejudge the accuracy of the allegations regarding these specific cases, I would like to draw your attention once again to the fact that any further executions of juvenile offenders would be 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. Article 37(a) of the Convention on the Rights of the Child to which Iran is a Party expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights to which Iran is a Party provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

I appreciate that your Excellency's Government appears to have taken steps to avoid the execution of the death sentence in the case of Abbas Hosseini, by asking the courts to review the case and by repeatedly postponing the execution in order to provide additional time for agreement between the families on payment of compensation. I can only reiterate, however, that the obligations your Government has entered into under the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights are not fulfilled by such efforts. International law requires that the Islamic Republic of Iran abolish the death sentence for all offences committed by persons under the age of 18 at the time of the crime, and that all death sentences already imposed be vacated or commuted.

I would further like to reiterate that:

- For the purposes of your Government's obligation under international law to end the imposition of capital punishment for offences committed by persons below eighteen years of age, the distinction between the qisas claim of the victim's family and the public interest to punish murder is immaterial. International law bans the imposition of the death penalty for offences committed by children in both cases.
- International law, in particular Article 6(4) of the International Covenant on Civil and Political Rights, guarantees the right to seek pardon or commutation of the sentence from the State authorities. Where the diyah pardon is available, it must be supplemented by a separate, public system for seeking an official pardon or commutation.

I have set forth the arguments underlying these rules of international law on a number of occasions, most recently in my communication to your Excellency's Government of 13 August 2008 regarding the cases of juvenile offenders Soghra Najafpoor, Behnood Shojaee, Mohammad Feda'i and seven others, to which I would like to refer.

To conclude, I would respectfully reiterate my appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law and to take steps to bring its legislation in compliance with Article 37(a) of the Convention on the Rights of the Child and Article 6 of the International Covenant on Civil and Political, to which it is a party. In particular, I urge your Government to expeditiously lift or commute the death sentences imposed against Abbas Hosseini and Rahim Ahmadi, as well as all other persons awaiting executions for offences committed before they reached age 18. As already stated above, all other efforts undertaken by your Government to prevent these executions are insufficient to meet its obligations under international treaties it is a Party to.

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

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.

2. Please explain the steps taken by your Government to lift or commute the death sentence imposed against Abbas Hosseini and Rahim Ahmadi.

3. I also recall my communications dated 5 January 2007, 31 January 2007, 29 February 2008, 27 March 2008, 2 May 2008, 13 August 2008 and 18 August 2008 seeking confirmation of the current status of the Bill on Juvenile Courts. What provisions will that law, once it enters into force, contain with regard to capital punishment for juvenile offenders?

**Islamic Republic of Iran: Death sentences of Mahyar Haghgoo,  
Ms. Maryam and “Zahra”**

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

**Subject(s) of appeal:** 1 male (minor); 2 females

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Urgent appeal dated 26 September 2008**, sent with the Special Rapporteur on violence against women, its causes and consequences

We would like to draw the attention of your Government to recent information we have received regarding a young man sentenced to death for an offence committed as a minor, Mr. **Mahyar Haghgoo**, his mother, Ms. **Maryam**, and another woman sentenced to death, known as “**Zahra**”. They might be at imminent risk of execution.

According to the information received:

In 2004, Mahyar Haghgoo, at the time aged 17, killed his father, who was allegedly addicted to alcohol and beating his wife Maryam (Mahyar Haghgoo’s mother). The court in Rasht found Mahyar Haghgoo guilty of murder, convicted also his mother Maryam as an accomplice in the murder, and sentenced both to death. This death sentence was recently confirmed by the Supreme Court. It is not clear whether the Head of the Judiciary has already confirmed the death sentences.

On 30 November 2001, a woman known as “Zahra” (full name not known) killed her husband. Zahra is reported to have confessed to killing her husband and to have stated that her husband often drank large quantities of alcohol, struck her when she disagreed with him, and sexually abused her. Branch 1601 Penal court in Tehran sentenced her to death as qesas (retribution). This sentence was subsequently confirmed by Branch 34 of the Supreme Court in Tehran. On 14 September 2008, the death sentence was sent to the Office for Implementation of Sentences in Tehran. The family of the victim has requested the execution of the death sentence to take place as soon as possible.

While we do not wish to prejudge the accuracy of the allegations regarding these specific cases, we would like to draw your attention once again to the fact that any further executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child to which Iran is a Party expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights to which Iran is a Party provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

We would further like to reiterate that merely taking gradual measures to decrease the carrying out of death sentences against offenders who were juveniles is an utterly inadequate approach to complying with your Government’s obligations under international law, which can only be fulfilled by immediately stopping all executions for crimes committed by persons who were not aged 18 at the time of the offence. Laws permitting the death sentence to be imposed on juvenile offenders are inherently inconsistent with the international legal obligations assumed by the Islamic Republic of Iran and should be promptly repealed.

With regard to Ms. Maryam and to “Zahra”, we would like to recall that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, provides that “in countries which have not abolished the death penalty”, the “sentence of death may be imposed only for the most serious crimes”. This means on the one hand, that offences which do not involve intentional killing may not be punished with the death penalty (in this respect, we refer to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the General assembly, A/HRC/4/20, para. 53). It also means, on the other hand, that also with regard to offences involving intentional killing, the personal circumstances of each case - particularly potential mitigating circumstances - must be taken into account. We would submit that in most countries, the situation of a woman subjected to repeated severe ill-treatment by her husband would be considered as a possibly mitigating circumstance.

We would further like to stress that, both for the purposes of your Government’s obligation to end the imposition of capital punishment for offences committed by persons below eighteen years of age and of the requirement that the death penalty be imposed only for the “most serious crimes”, the distinction between the qisas claim of the victim’s family and the public interest to punish murder is immaterial. International law bans the imposition of the death penalty for offences committed by children in both cases. International law also bans the imposition of the

death penalty for killings which were not intentional, or which took place under circumstances that amount to weighty mitigating factors, whether or not a qisas claim of the victim's family accrues under the domestic law of a State.

In this respect, it is particularly important to stress that Article 6(4) of the International Covenant on Civil and Political Rights, to which Iran is a Party, guarantees the right to seek pardon or commutation of the sentence from the State authorities. Where the diyah pardon is available, it must be supplemented by a separate, public system for seeking an official pardon or commutation. Under international law binding Iran, the insistence of the victim's family on execution cannot relieve the Government from its obligation to provide an avenue for the convicted killer to seek pardon or commutation from the authorities.

The Special Rapporteur on extrajudicial, summary or arbitrary executions has set forth the arguments underlying these rules of international law on a number of occasions, most recently in the communication to your Excellency's Government of 13 August 2008 regarding the cases of juvenile offenders Soghra Najafpoor, Behnood Shojaee, Mohammad Feda'i and seven others, to which we would like to refer.

With regard to the cases of Ms. Maryam and "Zahra", we would further like to bring to the attention of Your Excellency's Government Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence.

To conclude, we would respectfully reiterate the appeals of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law and to take steps to bring its legislation in compliance with Article 37(a) of the Convention on the Rights of the Child and Article 6 of the International Covenant on Civil and Political, to which it is a party. In particular, we urge your Government to expeditiously lift or commute the death sentences imposed against Mahyar Haghgoo, as well as all other persons awaiting executions for offences committed before they reached age 18. As already stated above, all other efforts undertaken by your Government to prevent these executions are insufficient to meet its obligations under international treaties it is a Party to.

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

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.



2. Please explain the steps taken by your Government to lift or commute the death sentence imposed against Mahyar Haghgoo.

3. Please explain whether allegations that Ms. Maryam and “Zahra” were victims of domestic violence at the hands of their husbands (the murder victims) was considered by the trial courts, whether evidence relating to this allegation was heard at trial, and whether this alleged circumstance was taken into account in sentencing Ms. Maryam and “Zahra”.

### **Islamic Republic of Iran: Execution of juvenile offenders**

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

**Subject(s) of appeal:** 6 males (minors)

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

### **Urgent appeal dated 24 October 2008**

I would like to draw the attention of your Government to information I have received regarding the execution, in August 2008, of two juvenile offenders whose situation I had previously raised in communications to your Government. In this respect, I would also like to seek clarification of reports regarding recent announcements made by a high ranking official of your Government concerning the execution of juvenile offenders.

**Reza Hejazi** killed another boy in Esfahan during a fight in 2004. At the time he was reportedly aged 15. On 14 November 2005, he was sentenced to death as qesas (retribution) by Branch 106 of the Esfahan General Court. The sentence was approved by Branch 28 of the Supreme Court on 6 June 2006. The case was referred for mediation between Reza Hejazi and the victim's family, to try and arrange for the payment of diyeh, but the negotiations yielded no result.

Reza Hejazi's lawyer reportedly learned that the execution might be imminent in the evening of 18 August 2008. According to one source he was informed by the father (who had been informed that same day), according to another by a journalist. In any event, the lawyer was not notified 48 hours prior to the execution, as required by Iranian law. The lawyer immediately left Tehran for Esfahan and arrived at the prison before the scheduled execution at 4 a.m. However, prison authorities reportedly did not permit him to see his client, and he left the prison at 10 a.m. after prison officials assured him that the execution had been stayed. In spite of these assurances, Reza Hejazi was in fact executed at 11 a.m. on 19 August 2008.

I sent a first urgent appeal to your Excellency's Government in the case of Reza Hejazi on 27 March 2008. No reply was received. I again sent an urgent appeal on 18 August 2008, the day before the execution. Again, I did not receive a reply.

**Behnam Zare** killed a man on 21 April 2005 when he was aged 16, according to your Government's communication to me dated 14 February 2008. In that communication, your Government also indicated that "the judicial system, on the basis of human considerations, has entered the case into conciliation process and is seriously following the case with the hope for final settlement." Your Government assured me that "therefore, carrying out the penalty is not in the programme of work." Behnam Zare was reportedly executed in Shiraz on 26 August 2008.

Reports indicate that these were two of at least six executions of juvenile offenders carried out by your Government in 2008. **Javad Shoja'i** was reportedly executed in Esfahan on 26 February 2008. He had been sentenced to death as *qesas* for a murder committed when he was 16. **Mohammad Hassanzadeh** was allegedly sentenced to death for a killing committed when he was aged 16 years, 11 months and 20 days, and was executed in Sanandaj prison on 10 June 2008. **Hasan Mozaffari** and **Rahman Shahidi**, who were reportedly executed in Bushehr on 22 July 2008, had allegedly been found guilty of rape and possibly were under age 18 at the time of the offence. I drew your Government's attention to these cases in a communication of 13 August 2008, which regrettably has remained without a reply.

Recently, I received reports that on 15 October 2008 the Deputy Attorney General of the Islamic Republic of Iran, Mr. Hossein Zabhi, had stated that a new decree had been issued to the effect that death sentences imposed against juvenile offenders would be commuted to prison terms. Subsequently, however, the Deputy Attorney General explained that this decree did not apply to juvenile offenders sentenced to death as *qesas* on murder charges, but only for juvenile offenders convicted of offences such as drugs trafficking. Reports also indicated that this decree is not binding for judges.

While I do not wish to prejudge the accuracy of these reports, I would like to draw your attention once again to the fact that any further executions of juvenile offenders would be 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. Article 37(a) of the Convention on the Rights of the Child to which Iran is a Party expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights to which Iran is a Party provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

I can only reiterate that "merely taking gradual measures to decrease the carrying out of sentences to a level "close to a stop" is an utterly inadequate approach. Inasmuch as laws permitting the death sentence to be imposed on juvenile offenders are inherently inconsistent with the international legal obligations assumed by the Islamic Republic of Iran, they should be promptly repealed." (see my observations in relation to your Government's reply to the communication in the case of Behnam Zare, A/HRC/8/3/Add.1, page 221).

I have also taken note of your Government's explanation with regard to the private (*qesas*) and public aspects of the punishment of persons found guilty of murder. Your Government writes that "enforcement of Qesas depends upon the request to be made by guardians of the murder victim; and the Government is solely delegated to carry out the verdict, on behalf of the former"; and that therefore the "sentence of Qesas is not open to pardon or amnesty by the state, in absence of consent from guardians of the murder victim." (A/HRC/8/3/Add.1, page 225).

In this regard, I must stress that for the purposes of your Government's obligation under international law to end the imposition of capital punishment for offences committed by persons below eighteen years of age, the distinction between the *qesas* claim of the victim's family and the public interest to punish murder is immaterial. Article 37(a) of the Convention on the Rights of the Child and Article 6(5) of the International Covenant on Civil and Political Rights apply - and bind your Government - irrespective of this distinction in the law of the Islamic Republic of Iran. To comply with these obligations it is insufficient to abolish the death penalty for offences committed by juveniles as a matter of the State's interest in punishing murder. The abolition must extend to the *qesas* aspect.

Furthermore, I would note that your Government's explanation that the "sentence of Qesas is not open to pardon or amnesty by the state, in absence of consent from guardians of the murder victim" is difficult to reconcile with Article 6(4) of the Covenant. This provision reads "anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases." The right to seek pardon or commutation cannot be made dependant on the consent of the victim's family, as the provision that "pardon or commutation ... may be granted in all cases" makes clear.

With regard to the reported announcement by the Deputy Attorney General that juvenile offenders convicted of drugs trafficking would no longer be sentenced to death, I would like to recall that Article 6(2) of the International Covenant on Civil and Political Rights provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". The Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, including drugs trafficking. When the Human Rights Committee last considered a report presented by your Excellency's Government, it expressly stated in its concluding observations that it "considers the imposition of [the death] penalty for crimes [...] that do not result in loss of life, as being contrary to the Covenant" (CCPR/C/79/Add.25, paragraph 9). To sum up, your Government is obliged under international law to stop imposing the death sentence and executions for drug trafficking offences - as well as for rape - not only when the offender was a minor at the time of the crime, but also where he is an adult.

I reiterate my appeal to the Government of the Islamic Republic of Iran to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law and to take steps to bring its legislation in compliance with Article 37(a) of the Convention on the Rights of the Child and Article 6 of the International Covenant on Civil and Political, to which it is a party.

It is my responsibility under the mandate provided 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 reports summarized above accurate? If not so, please provide all information and documents proving their inaccuracy.
2. Were laws and procedures violated in the case of the execution of Reza Hejazi, assuming it is accurate that his lawyer was not informed of the imminent execution and then told, a few hours before the execution, that it had been postponed? Was an inquiry carried out into this matter? What, if any, sanctions have been imposed?
3. Please provide a list of the persons executed in Iran in the course of the year 2008 for offences they committed before reaching age 18, including the offences they were found guilty of.
4. I also recall my communications dated 5 January 2007, 31 January 2007, 29 February 2008, 27 March 2008, 2 May 2008 and 13 August 2008 seeking confirmation of the current status of the Bill on Juvenile Courts. What provisions will that law, once it enters into force, contain with regard to capital punishment for juvenile offenders? What is the content of the decree referred to by the Deputy Attorney General on 15 October 2008?
5. Please indicate any steps your Government intends to take or has taken to comply with article 6(2) of the International Covenant on Civil and Political Rights, to which Iran is a party, that the "sentence of death may be imposed only for the most serious crimes in accordance with the law".

### **Islamic Republic of Iran: Death sentence of Reza Alinejad**

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

**Subject(s) of appeal:** 1 male (minor)

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

### **Urgent appeal dated 21 November 2008**

In this connection, I would like to draw the attention of your Government to information I have received regarding **Reza Alinejad**, a young man allegedly at risk of execution for an offence committed when he was a minor. I addressed a communication to your Government regarding this case on 13 March 2007, which regrettably has remained without a reply.

As stated in my previous communication, on 26 December 2002, when he was aged 17, Reza Alinejad reportedly killed a man in a fight. He was sentenced to death as qisas (retribution). The Supreme Court quashed the judgment on the grounds that the trial court had not sufficiently considered the question whether the killing had occurred in self defence, but in the re-trial Reza Alinejad was again sentenced to death as qisas. A few days ago, Reza Alinejad and his family were reportedly granted one month to raise the one billion Iranian rials demanded by the victim's family as blood money.

While I do not wish to prejudge the accuracy of the allegations regarding this specific case, I would like to draw your attention once again to the fact that any executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child, to which Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

I would further like to reiterate that:

- Merely taking gradual measures to decrease the carrying out of death sentences against offenders who were juveniles is an utterly inadequate approach to complying with your Government's obligations under international law, which can only be fulfilled by immediately stopping all executions for crimes committed by persons who were not aged 18 at the time of the offence. Laws permitting the death sentence to be imposed on juvenile offenders are inherently inconsistent with the international legal obligations assumed by the Islamic Republic of Iran and should be promptly repealed.
- For the purposes of your Government's obligation under international law to end the imposition of capital punishment for offences committed by persons below eighteen years of age, the distinction between the qisas claim of the victim's family and the public interest to punish murder is immaterial. International law bans the imposition of the death penalty for offences committed by children in both cases.
- International law, in particular Article 6(4) of the International Covenant on Civil and Political Rights, guarantees the right to seek pardon or commutation of the sentence from the State authorities. Where the diyah pardon is available, it must be supplemented by a separate, public system for seeking an official pardon or commutation.

I would therefore again urge your Government to expeditiously lift or commute the death sentence imposed against Reza Alinejad.

### **Islamic Republic of Iran: Death sentences on charges of adultery**

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

**Subject(s) of appeal:** 9 females; 3 males

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

**Urgent appeal dated 21 January 2009**, sent with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding several cases of persons sentenced to death by stoning on charges of adultery.

According to the information received:

On 26 December 2008, Mr. **Houshang Khodadadeh and another man whose name has not been reported to us** were executed by stoning in Mashhad. These executions were confirmed on 13 January 2009 by Mr. Ali Reza Jamshidi, spokesman of the judiciary. A third man, identified as a citizen of Afghanistan named Mahmoud Gh., reportedly managed to free himself of the pit where he was to be stoned. He is again in custody.

Ms. **Gilan Mohammadi** and Mr. **Gholamali Eskandari** were arrested, possibly in 2003, on charges of adultery. In 2005 or 2006, they were tried and sentenced to death by stoning. The death sentences were possibly confirmed by the Supreme Court in 2008.

On 14 January 2009, two lawyers, Mr. Mohammad Mostafaie and Ms. Shadi Sadr, travelled to Esfahan Central Prison, where Ms. Gilan Mohammadi and Mr. Gholamali Eskandari are detained, to offer their services as lawyers. The prison authorities denied the two lawyers access to the detainees. Mr. Mostafaie and Ms. Sadr appealed to the judicial authorities in Esfahan, which ruled that the lawyers could contact the two convicts only if the detainees first asked to meet with lawyers.

The cases of Ms. **Zohreh Kabiri** and Ms. **Azar Kabiri** were the subject of two urgent appeals dated 13 February 2008 and 30 July 2008, to which we have not received any response from your Excellency's Government. As stated in our previous communications, Ms. Zohreh Kabiri and Ms. Azar Kabiri were arrested on 5 February 2007 in connection with allegations of illegitimate relations other than adultery. On 17 March 2007, they were

prosecuted in court, found guilty, and sentenced to 99 lashes. This sentence was executed. Thereafter, both women were returned to prison and another trial took place for the same charges and they were sentenced to death by stoning on 5 August 2007. Branch 27 of the Supreme Court confirmed the death sentence in 2007.

According to information received since then, the Head of the Judiciary subsequently quashed the death sentence imposed against Ms. Zohreh Kabiri and Ms. Azar Kabiri and sent their case back to Branch 77 of the General Court in Karaj. This court reportedly again imposed the death sentence by stoning and, in the first half of January 2009, Branch 27 of the Supreme Court confirmed the death sentence.

The charges against Ms. Zohreh Kabiri and Ms. Azar Kabiri are primarily based, as evidence, on video footage from a camera Zohreh Kabiri's husband allegedly had secretly installed in his house, which allegedly shows the two women with another man. It would appear that the lawyer defending the two women has never been able to view the video footage which was used as evidence by the court.

In our communication of 30 July 2008, we further brought to your Excellency's Government's attention reports we had received regarding the following other persons allegedly sentenced to death by stoning on charges of adultery: Ms. **Kobra Najjar**, Ms. **Iran Eskandari**, Ms. **Malek (Shamameh) Ghorbani**, Ms. **Ashraf Kolhari**, Ms. **Khaeirieh Valania**, Ms. **Leila Qomi**, and Mr. **Abdollah Farivar Moqaddam**. Regrettably, we have not received a reply from your Excellency's Government on these cases.

Reportedly, in 2002, the Head of the Judiciary issued a directive purporting to introduce a moratorium on executions by stoning. However, it is reported that at least four men and one woman have been stoned to death since 2002, including the two men stoned to death in Mashhad on 26 December 2008. On 13 January 2009, the spokesman of the judiciary, Mr. Ali Reza Jamshidi, reportedly stated that the directive on the moratorium had no legal weight and judges were therefore free to ignore it.

While we do not wish to prejudge the accuracy of these allegations, we would like to recall that the imposition of the death sentence by stoning and its execution in any case violate the obligations your Excellency's Government has entered into under the International Covenant on Civil and Political Rights.

Article 6(2) of Covenant provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". As observed in a recent report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Already in 1993, the Human Rights Committee (CCPR/C/79/Add.25) noted in its concluding observations on your Government's periodic report under the Covenant that the imposition of the death penalty for adultery is incompatible with the Covenant.

We would also like to recall that stoning constitutes an inhuman and degrading treatment. In this regard, we would 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 Government's attention to the report of the Special Rapporteur on torture to the 60th session of the General Assembly, in which, with reference to the jurisprudence of UN treaty bodies, he concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment, and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (A/60/316, para.28). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime of as an educative or disciplinary measure.

With specific regard to the cases of Ms. Gilan Mohammadi and Mr. Gholamali Eskandari and the cases of Ms. Zohreh Kabiri and Ms. Azar Kabiri, we also remind your Excellency's Government 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 Covenant admits of no exception. The Human Rights Committee has observed that "[i]n cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings" (General Comment no. 32, CCPR/C/GC/32, para. 38). The restrictions allegedly placed by the prison and judicial authorities in Esfahan on access by lawyers to Ms. Gilan Mohammadi and Mr. Gholamali Eskandari raise serious concerns in this respect.

Article 14(3) of the Covenant also guarantees the right to "adequate facilities" for the preparation of one's defence. "Adequate facilities" include access by the accused and their defence lawyers to all evidence used against the accused as well as to all potentially exculpatory evidence (General Comment no. 32, CCPR/C/GC/32, para. 33). This fundamental guarantee would be violated if it was true that the defence lawyer in the case of Ms. Zohreh Kabiri and Ms. Azar Kabiri was denied access to the video on which the charges against them appear to be based.

We urge your Excellency's Government to suspend all executions by stoning and lift or commute all death sentences imposed for adultery.

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following questions, which reiterate those asked in our communication of 30 July 2008:

1. Are the facts alleged in the above summaries accurate?
2. If Ms. Kora Najjar, Ms. Iran Eskandari, Ms. Malek (Shamameh) Ghorbani, Ms. Zohreh Kabiri, Ms. Azar Kabiri, Ms. Ashraf Kolhari, Ms. Khaeirieh Valania, Ms. Leila Qomi, Ms. Gilan Mohammadi, Mr. Gholamali Eskandari and Mr. Abdollah Farivar



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. In particular, indicate how many men and how many women were sentenced to death and executed for the offence of adultery.

### **Islamic Republic of Iran: Death sentence of Bahman Salimiaan**

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

**Subject(s) of appeal:** 1 male (minor)

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

### **Urgent appeal dated 30 January 2009**

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding Mr. **Bahman Salimiaan** (also spelled **Soleimani**). As noted in a communication regarding this case I addressed to your Excellency's Government on 27 August 2008, which remains unanswered, Bahman Salimiaan has reportedly been convicted of, and sentenced to death, for a homicide committed at age 15. According to information recently received, he is scheduled to be executed in Isfahan prison on 5 February 2009.

While I do not wish to prejudge the accuracy of the information received, I reiterate that any further executions of juvenile offenders would be 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. Article 37(a) of the Convention on the Rights of the Child, to which the Islamic Republic of Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

I therefore again urge your Excellency's Government to expeditiously lift or commute the death sentences imposed against Bahman Salimiaan, as well as all other persons awaiting execution for offences committed before they reached age 18. All other efforts undertaken by your Government to prevent these executions are insufficient to meet its obligations under international treaties it is a Party to.

It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the

Human Rights Council, I would be grateful for your cooperation and your observations on the following matters (these questions are identical to those asked in my letter of 27 August 2008):

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.
2. Please explain the steps taken by your Excellency's Government to lift or commute the death sentences imposed against Bahman Salimiaan.
3. I also recall my communications dated 5 January 2007, 31 January 2007, 29 February 2008, 27 March 2008, 2 May 2008, 13 and 27 August 2008 seeking confirmation of the current status of the Bill on Juvenile Courts. What provisions will that law, once it enters into force, contain with regard to capital punishment for juvenile offenders?

### **Islamic Republic of Iran: Death sentence of Rahim Ahmadi**

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

**Subject(s) of appeal:** 1 male (minor)

**Character of reply:** No response (recent communication)

### **Observations of the Special Rapporteur**

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

### **Urgent appeal dated 17 February 2009**

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding Mr. **Rahim Ahmadi**. As noted in a communication regarding this case I addressed to your Excellency's Government on 17 September 2008, which remains unanswered, Rahim Ahmadi has reportedly been convicted of, and sentenced to death, for a killing committed when he was 15 years old. According to information recently received, he is scheduled to be executed on 18 February 2009.

While I do not wish to prejudge the accuracy of the information received, I reiterate that any executions of juvenile offenders would be 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. Article 37(a) of the Convention on the Rights of the Child, to which the Islamic Republic of Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which the Islamic Republic of Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

I therefore again urge your Excellency's Government to expeditiously lift or commute the death sentences imposed against Rahim Ahmadi, as well as all other persons awaiting execution

for offences committed before they reached age 18. All other efforts undertaken by your Government to prevent these executions are insufficient to meet its obligations under international treaties it is a Party to.

It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on this case to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters (these questions are identical to those asked in my letter of 17 September 2008):

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.
2. Please explain the steps taken by your Excellency's Government to lift or commute the death sentences imposed against Rahim Ahmadi.
3. I also recall my communications dated 5 January 2007, 31 January 2007, 29 February 2008, 27 March 2008, 2 May 2008, 13 and 27 August 2008 seeking confirmation of the current status of the Bill on Juvenile Courts. What provisions will that law, once it enters into force, contain with regard to capital punishment for juvenile offenders?

#### **Islamic Republic of Iran: Death sentence of Abbas Hosseini**

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

**Subject(s) of appeal:** 1 male (refugee and minor)

**Character of reply:** No response (recent communication)

#### **Observations of the Special Rapporteur**

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

#### **Urgent appeal dated 6 March 2009**

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding Mr. **Abbas Hosseini**, an Afghani refugee first sentenced to death in June 2004 for a killing committed when he was aged 17. My two previous communications to your Excellency's Government regarding this case, dated 21 April 2005 and 17 September 2008, both remain unanswered.

My attention has now been drawn to a judgment by Branch 33 of the Supreme Court affirming the 5 August 2008 judgment of the Juvenile Court in Mashhad which re-imposed the death sentence against Abbas Hosseini. The Supreme Court judgment, issued after a hearing on 29 December 2008, expressly recognizes that Abbas Hosseini was a minor at the time of the offence, but still confirms the death sentence.

While I do not wish to prejudge the accuracy of the information received, I reiterate that any further executions of juvenile offenders would be incompatible with the international legal obligations of the Islamic Republic of Iran under various instruments which we have been mandated to bring to the attention of Governments. Article 37(a) of the Convention on the Rights of the Child, to which Iran is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which Iran is a Party, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

I therefore again urge your Excellency's Government to expeditiously lift or commute the death sentences imposed against Abbas Hosseini, as well as all other persons awaiting execution for offences committed before they reached age 18. All other efforts undertaken by your Government to prevent these executions are insufficient to meet its obligations under international treaties it is a Party to.

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

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.

2. Please explain the steps taken by your Government to lift or commute the death sentences imposed against Abbas Hosseini.

3. I also recall my communications dated 5 January 2007, 31 January 2007, 29 February 2008, 27 March 2008, 2 May 2008, 13 August 2008 and 30 January 2009 seeking confirmation of the current status of the Bill on Juvenile Courts. What provisions will that law, once it enters into force, contain with regard to capital punishment for juvenile offenders?

### **Iraq: Attacks and killings on members of the Christian minority in Mosul**

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

**Subject(s) of appeal:** 20 persons (Members of religious minority)

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

**Allegation letter dated 17 November 2008**, sent with the Special Rapporteur on freedom of religion or belief and the Independent Expert on minority issues

In this connection, we would like to bring to your Government's attention information we have received concerning the **recent increase of the number of targeted attacks against members of the Christian minority in the city of Mosul**.

According to the allegations:

On 7 October 2008, members of the Christian minority living in east Mosul, namely Mr. Amjad Hadi Putres and his son Hussam, Mr. Zeyad Kamal, as well as a pharmacist's assistant in al-Tahrir neighbourhood, were killed. On 8 October 2008, Mr. Hazim Toma was killed when unknown gunmen shot at him in Bab Ul Sarai market, in west Mosul. On 11 October 2008, two people were killed after the perpetrator had requested to see the victims' identity cards, which state the religious affiliation of the bearer. On 12 October 2008, three vacated Christian homes with furniture and belongings still inside were firebombed in al-Sukr neighbourhood of Mosul. Since late September, the total number of Christians killed is estimated at twenty and more than 200 Christian families have reportedly fled certain neighborhoods of Mosul to find shelter with host families. The main destination of these internally displaced persons would be in the al-Hamdaniya and Tilkaif districts (southeast and north of Mosul).

In addition to the above, in early October, some members of the Christian community were threatened in anonymous leaflets to either convert to Islam, pay a "tribute" or be killed. 11 October was specified as the deadline to comply.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to Your Excellency's Government to ensure, to the fullest extent possible, the security of members of the Christian minority. In this respect we would like to recall the relevant human rights standards. Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights provide that every individual has the right to life and security, that this right shall be protected by law and that no-one shall be arbitrarily deprived of his or her life. Although State authorities might not be directly responsible for the above-mentioned killings, your Excellency's Government has a due diligence obligation to protect the lives of all persons within its territory and subject to its jurisdiction from attacks by other persons within its territory (*Jiménez Vaca v.s. Colombia*, United Nations Human Rights Committee, 25 March 2002, paragraph 7.3). We would also like to bring to your Government's attention the duty to thoroughly, promptly and impartially investigate killings, and to prosecute and punish all violations of the right to life. As reiterated by the 61st Commission on Human Rights in Resolution 2005/34, all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions", and "to identify and bring to justice those responsible".

In addition, we call upon your Excellency's Government to ensure the right to freedom of religion or belief of all individuals within Iraq's territory and subject to its jurisdiction in accordance with articles 18 of the Universal Declaration on Human Rights of the International

Covenant on Civil and Political Rights, to which Iraq is a State party, as well as with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief.

While State authorities might not be directly responsible for the allegations of violations above, we would like to stress that according to article 4 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, all States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life. Similarly, we would like to recall your Excellency's Government that Human Rights Council resolution 6/37 urges States to take all necessary and appropriate action, in conformity with international human rights standards, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence, with particular regard to religious minorities.

We equally recall your Excellency's Government to the provisions of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and article 27 of the International Covenant on Civil and Political Rights relating to the rights of persons belonging to minorities to enjoy their own culture, to profess and practice their own religion, or to use their own language, and to enjoy all their human rights and fundamental freedoms without discrimination.

We also would like to recall that in paragraph 3 of its general comment No. 22 (1993), the Human Rights Committee underlined that no one can be compelled to reveal his thoughts or adherence to a religion or belief. As stated by the Special Rapporteur on freedom of religion or belief in her report (see A/63/161, paragraph 77), indicating a person's religious affiliation on official documents carries a serious risk of abuse or subsequent discrimination based on religion or belief, which has to be weighed against the possible reasons for disclosing the holder's religion.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the 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 on behalf of the alleged victims of the incidents mentioned above?
3. Please provide the details and where available, the results, of any judicial investigation, or any criminal charges and other inquiries carried out in relation to the killings of members of the Christian minority in Mosul and other targeted attacks against them.
4. Please indicate the reasons for which the Government of Iraq has decided to include the religious affiliation of the bearer on identity cards?

5. What measures are being taken by the authorities to protect members of the Christian minority against targeted attacks? What steps are being taken for the safe return to their homes of the people who have fled the city of Mosul?

In the event that your investigations support or suggest the above allegations to be correct, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of members of the Christian minority 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.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by Your Excellency's Government in this matter, in compliance with the above international instruments.

### **Iraq: Imminent executions of Majeed Ibrahim Hamo and Saeed Khalil**

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

**Subject(s) of appeal:** 2 males

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

**Urgent appeal dated 23 December 2008**, sent with the Special Rapporteur on the question of torture

In this connection, we would like to draw the attention of your Government to information we have received regarding two persons, **Majeed Ibrahim Hamo** and **Saeed Khalil**, both of whom we understand to be at imminent risk of execution.

According to information received Mr. Hamo and Mr. Khalil were sentenced to death in May 2007 by a criminal court in Dohuk, for the murder of two people in March 2006. In January 2008 the Cassation Court in Dohuk upheld the sentences and sent them to be ratified by President of the Kurdistan Regional Government Mas'ud Barzani.

After his arrest in 2006, Majeed Ibrahim Hamo is reported to have been subjected to torture by *Asayish* (Security) personnel as a result of which he sustained a broken shoulder and was burnt all over his body with cigarettes. The allegations of torture were raised by his lawyer during the trial. The doctor who carried out a medical examination on him two to three months after his arrest wrote a letter to the court stating that the results of the examination were inconclusive.

Concern has been expressed that confessions to the murder charges may have been made under torture.

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. Capital punishment cases must thoroughly respect all due process guarantees and the rule of law with a sentence being pronounced only following a regular judicial process. Relevant to the case at hand, the right to a fair trial includes the right not to be compelled to confess guilt.

We would also like to reiterate my concerns raised with your Excellency's Government in a previous communication dated 21 May 2007, in another case, in relation to general concerns with regards to the right to a fair trial in capital punishment cases. As we have received no response from your Excellency's Government we have no reason to conclude that these concerns are no longer valid. We do not have any detailed accounts of the procedures followed in relation to the trials of these two individuals. Our understanding, however, is that they did not differ in any significant respect from those generally followed in the relevant courts. Based on what we consider to be reliable reports on the pre-trial and trial procedures currently followed before the Central Criminal Court of Iraq and other criminal courts of Iraq as well as appeals before the Court of Cassation, we are very concerned that the various fair trial standards required, especially in relation to capital offences, have not been met.

(1) It is reported that the authorities routinely fail to promptly advise detainees of the reasons for their arrest and subsequently of the details of the charges and evidence against them, thus violating the requirements of Article 9(2) of the International Covenant on Civil and Political Rights. ("the ICCPR").

(2) The authorities routinely fail to bring defendants promptly before an investigative judge within 24 hours of arrest as required by Article 123 of the Code of Criminal Procedure, thus raising concerns as to compliance with Article 9(3) of the ICCPR. It is investigating judges who are required to carry out initial investigations into offences, although in practice it is reported that many defendants charged with capital offences confess while at police stations under the control of the Ministry of Interior. It is also reported that police frequently escort the accused to their first interrogation before an investigating judge. Confessions made before investigating judges are often given substantial weight at trials and confessions obtained under coercion are not specifically prohibited by the Code of Criminal Procedure.

(3) Defendants are frequently denied the right to an adequate defence. They are denied access to evidence against them, as well as to their counsel within a reasonable period of time that would enable them to mount an effective defense. These procedural defects amount to a violation of Article 14(3)(b) of the ICCPR. In practice there is a lack of adequate access to court-appointed counsel prior to the initial investigative hearing and subsequently. The vast majority of defendants are represented by counsel appointed by the court, whom they have never met and who have little or no knowledge of the charges or evidence against their clients. Access to defense counsel is routinely denied during the first sixty days of detention, and subsequently access to privately employed defence counsel is not facilitated, notwithstanding Article 123 of the Code of Criminal Procedure which provides for the right to be represented by legal counsel when being questioned during the pre-trial period. In a great many cases the system allocating court appointed counsel works against defendants, since they are not represented by the same counsel at the investigative or trial stage, eroding further their chances of securing an effective defense.



(4) Trial proceedings are usually brief, with sessions often lasting no more than fifteen to thirty minutes, during which the entire trial is concluded. Deliberations also typically do not last more than several minutes for each trial, including in complex cases involving serious crimes resulting in sentences of life imprisonment or the death penalty. It is not possible, in relation to complex cases, and especially instances in which the death penalty is a consideration, to dispose of the proceedings in such summary fashion without violating Article 14(1) ICCPR providing “Everyone shall be entitled to a fair and public hearing by a competent, independent, impartial tribunal established by law”.

We also recall that paragraph 6c of Human Rights Council resolution 08/08 of 2008 urges States “to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the ICCPR.

Only full respect for stringent due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which violates human rights standards. We therefore urge your Excellency’s Government to take all necessary steps to ensure that the rights under international law of Majeed Ibrahim Hamo and Saeed Khalil are fully respected. Unless your Excellency’s Government is able to demonstrate respect for these essential procedural and substantive protections, which flow from the international obligations accepted by Iraq, in the cases involving Majeed Ibrahim Hamo and Saeed Khalil, the death sentences imposed must be commuted.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide details regarding the four issues raised above in relation to procedural guarantees afforded in criminal proceedings and more specifically in the trials of Majeed Ibrahim Hamo and Saeed Khalil?
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 allegation that after his arrest in 2006, Majeed Ibrahim Hamo was subjected to torture by *Asayish* (Security) personnel. If no inquiries have taken place, or if they have been inconclusive, please explain why. What steps did the court take in response to the allegations of torture raised by Majeed Ibrahim Hamo’s lawyer during the trial?

## **Iraq: Death of Bashir Muzhar Adbullah Al Joorani**

**Violation alleged:** Death in custody

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

**Character of reply:** No response (recent communication)

### **Observations of the Special Rapporteur**

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

**Allegation letter dated 12 March 2009**, sent with the Special Rapporteur on the question of torture

In this connection, we would like to bring to your Government's attention information we have received concerning the death of Mr **Bashir Muzhar Adbullah Al Joorani**.

According to the allegations received:

Mr Bashir Muzhar Adbullah Al Joorani, aged 34, was a teacher living in Baaqouba, Diyala province, and a leader of the "Sahwa" ("Awakening Councils") movement in that city.

In the afternoon of 21 November 2008, a group of police agents from the Jadidat Al Chatt offices of the Diyala Department of Criminal Cases under the command of Commander Hisham Al Tamimi, arrested him at a road block set up in the outskirts of Diyala on the road leading to Baghdad. Mr. Al Joorani was taken to the headquarters of the department of Criminal Cases of Diyala. His family was not informed of his arrest.

Mr Al Joorani's family began looking for him on the day of his disappearance. On 1 December 2008, they learned that he had been admitted to the general hospital of Baaqouba, to which he had been brought by the agents of the Ministry of the Interior. They visited him in hospital that same day and noted that he had several fractured limbs and holes in his body created by the use of a piercing instrument. The family members took pictures of Mr Al Joorani, which confirm these claims (the pictures are on record with the Special Rapporteurs). Mr Al Joorani reportedly was only able to say "they killed me". He passed away the following night, on 2 December 2008 at 4.30 a.m.

The family requested an autopsy, which was carried out notwithstanding death threats issued against doctors of the legal medical services by Commander Al Tamimi. However, the family has not obtained a copy of the autopsy report to this day.

In spite of serious concerns for their security, family members of Mr Al Joorani have filed a complaint against the Diyala Department of Criminal Cases.

While we do not wish to prejudge the accuracy of the report summarized above, we would like to draw your Government's attention to the fundamental principles applicable under international law to this case. Article 7 of the International Covenant on Civil and Political

Rights provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life.

These two fundamental rights imply that all States have the obligation “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”, as stated by the Human Rights Council as recently as at its 8th Session in Resolution 8/3 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4). The Council added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In the context of the cases summarized above, we would particularly like to draw your Government’s attention to Principle 15 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which is equally relevant to cases of torture:

“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.”

We therefore urge your Government to remove those potentially implicated in the death of Mr Al Joorani from any position of control or power, whether direct or indirect, over witnesses, victims and their families; and to complete the inquiries into the circumstances surrounding the death of Mr Al Joorani expeditiously, impartially and transparently, also with a view to taking all appropriate disciplinary and prosecutorial action and to ensure accountability of any person guilty of the alleged violations, as well as to compensate their families.

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

1. Are the facts alleged in the case summaries accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to this case.
3. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons accused of being responsible, as perpetrators or as responsible commanders, for the death of Mr Al Joorani.

4. Please provide the details of any compensation payments made to the family of Mr Al Joorani.

**Israel: Killing of Muhamad Shahad, Issa Marzuk, Imad Kamil and Ahmed al-Balbul in Bethlehem and of 120 civilians between 25 February and 4 March 2008, in the Gaza Strip**

**Violation alleged:** Violations of the right to life during armed conflict; Deaths due to excessive use of force by law enforcement officials

**Subject(s) of appeal:** 4 males and over 120 persons

**Character of reply:** Receipt acknowledged

**Observations of the Special Rapporteur**

The Special Rapporteur looks forward to receiving a substantive response concerning the deaths of Muhamad Shahade, Issa Marzuk, Imad Kamil, and Ahmed al-Balbul and the deaths of over 120 Palestinian civilians in the Gaza strip between 25 February and 4 March 2008. The Special Rapporteur would note, however, that the Government has already taken longer than the customary 90 days to respond.

**Allegation letter dated 3 April 2008**

In this connection, I would like to bring to your Government's attention information I have received concerning a number of Palestinian civilians killed during recent military operations in the Occupied Palestinian Territories.

According to the information received:

Between 25 February and 4 March 2008 over 120 Palestinian civilians, including 29 children and 6 women were killed as a result of Israeli military operations in the Gaza strip.

On 12 March 2008 Israeli security forces conducted an operation in Bethlehem resulting in the death of 4 Palestinians: **Muhamad Shahade, Issa Marzuk, Imad Kamil**, members of the Islamic Jihad and **Ahmed al-Balbul**, a member of the Al-Aqsa Martyrs Brigade. It is alleged that Muhamad Shahade feared that Israeli forces would not try to arrest him but would rather seek to kill him.

While I do not wish to prejudge the accuracy of these reports, I would like to refer Your Excellency's Government to the fundamental legal rules applicable to all armed conflicts under international humanitarian law and human rights law.

In particular, I would like to refer to the customary rules of international humanitarian law governing the conduct of hostilities, including inter alia the prohibition on directing attacks against the civilian population and the need to respect the principles of proportionality and precautions in attack. Civilians are all persons who are not members of the armed forces of a

party to the conflict. Civilians are protected against attack unless and for such time as they take a direct part in hostilities. (Rules 1, 5 and 6 of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross (“Customary Rules”).)

The principle of proportionality prohibits any attack which can be expected to cause incidental loss of civilian life or injury to the civilians which would be excessive in relation to the concrete and direct military advantage expected (Rule 14 of the Customary Rules). Compliance with this rule should be assessed for each attack taken individually and not for an overall military operation. I would note that this approach is also reflected in the Judgment of the Israeli Supreme Court of 14 December 2006 (The Public Committee against Torture in Israel et al. v. The Government of Israel et al.; HCJ 769/02) which observed that “when the damage to innocent civilians is not proportionate to the benefit of the attacking army, the attack is disproportionate and forbidden.”

The obligation to take all necessary precautions to spare the civilian population or in any case to limit to the maximum extent any incidental civilian loss of life, includes taking all appropriate measures to examine that the target of the attack is indeed a military objective, a choice of means and methods of warfare which will seek to avoid civilian loss of life or limit incidental civilian loss of life and a careful assessment of the conformity of the attack with the principle of proportionality. (Rules 15, 16, 17 and 18 of the Customary Rules).

I would also like to refer Your Excellency’s Government to its obligations under human rights law. These are in particular applicable in areas which are under its jurisdiction, including territories subject to belligerent occupation. Article 6 of the International Covenant on Civil and Political Rights, to which Israel is a party, provides that no one shall be arbitrarily deprived of his or her life. In its General Comment on Article 6, the Human Rights Committee has observed “that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities. A civilian taking a direct part in hostilities may be the object an attack, for such time, only if no less harmful means, such as arrest, can be used. This has been the interpretation adopted by the Israeli Supreme Court (The Public Committee against Torture in Israel et al. v. The Government of Israel et al). In the latter case the High Court stated that “a civilian taking a direct part in hostilities cannot be attacked at such time as he is doing so, if a less harmful means can be employed [...]. Indeed, among the military means, one must choose the means whose harm to the human rights of the harmed person is smallest. Thus, if a terrorist taking a direct part in hostilities can be arrested, interrogated, and tried, those are the means which should be employed.” Examining the right to life in the context of an anti-terrorist operation the European Court for Human Rights reached a similar conclusion, in the *McCann v. United Kingdom* case of 1995.

I also take this opportunity to remind your Excellency’s Government of it’s obligation to conduct a thorough investigations of all alleged violations of the right to life. (E/CN.4/2006/53, paras. 33-43, 60.) In this regard I would again observe that the approach adopted by the Israeli Supreme in *The Public Committee against Torture in Israel et al. v. The Government of*

Israel et al, confirmed that cases of attacks on civilians suspected of taking an active part in hostilities, at the time of the attack, must be the object of thorough investigations regarding the precision of the identification of the target and the circumstances of the attack.

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:

1. Are the allegations in the above summary of the events accurate?
2. Exactly how many people were killed in Gaza during the above mentioned operations by the army? How many of those killed were civilians not directly taking part in hostilities? With respect to these, please provide factual details as to the respect of the principle of proportionality.
3. Please explain how the principle of precaution was applied in the course of the recent military operations in Gaza, namely the choice of means and methods of warfare used and the assessment of conformity of an attack with the principles of distinction and proportionality.
4. Please provide details on the circumstances surrounding the killings of Muhamad Shahade, Issa Marzuk, Imad Kamil, members and Ahmed al-Balbul? In particular, what measures were taken by the security forces before the use of lethal force and whether any attempt made to arrest these individuals?
5. Please provide details of any investigation or inquiry that been launched into the above incidents.

#### **Response from the Government of Israel dated 24 April 2008**

I would like to acknowledge receipt of your letter dated 3 April 2008 regarding **Muhamed Shahade, Issa Marzuk, Imad Kamil and Ahmed al-Balbu**. I have transferred your request to the appropriate authorities in Israel, and will forward to you any relevant information that I receive on this matter.

#### **Japan: Imminent execution of Makino Tadashi**

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

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

**Character of reply:** Cooperative but incomplete response

#### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the general information provided by the Government of Japan concerning the application of the death penalty. He regrets, however, that no information was provided in relation to the specific case of Makino Tadashi.

The SR notes the concern of the Government as to the possible mental distress of the prisoner once informed of the date of the execution. However, the Government's stated practice of informing the prisoner of an impending execution on the day of that execution is not consistent with international law. In this regard, the Special Rapporteur refers to the views of the Human Rights Committee, which in two cases concluded that lack of transparency with regards to one's fate can constitute "inhuman or degrading treatment or punishment" within the meaning of Article 7 of the International Covenant on Civil and Political Rights (ICCPR). (Human Rights Committee, *Communication No. 886/1999: Belarus*, para. 10.2, seventy-seventh session, 28 April 2003, CCPR/C/77/D/886/1999; *Pratt and Morgan v. Jamaica*, Human Rights Committee, thirty-fifth session, para. 13.7, CCPR/C/35/D/210/1986, 7 April 1989).

### **Urgent appeal dated 7 October 2008**

I would like to draw the attention of your Government to information I have received regarding **Makino Tadashi**, a man allegedly at imminent risk of execution.

According to the information received, Makino Tadashi was sentenced to death for murder in 1990. Over the following 18 years, a number of appeals against the sentence, motions for retrial and petitions for clemency were rejected. With his most recent petition for clemency having reportedly been rejected on 30 September 2008, he would appear to be now at imminent risk of execution.

Reports indicate that in Japan, as a matter of policy, death row prisoners are generally informed of their execution only a few hours before it is carried out. Often no advance notice at all is given to their families and lawyers, who might learn of the execution after it took place. This pattern is allegedly likely to be followed in the case of Makino Tadashi.

While I do not wish to prejudge the accuracy of the information received regarding this specific case, I would like to recall that such secrecy in post-conviction proceedings in capital cases has been found to violate international legal obligations of Japan, in particular Articles 6(2) and 7 of the International Covenant on Civil and Political Rights, to which Japan is a party. Article 6(2) enshrines the principle that, "[i]n countries which have not abolished the death penalty", the death sentence may only be imposed "not contrary to the [other] provisions of the ... Covenant", which include the due process guarantees of Article 14(1) of the Covenant. Article 7 provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

As I argued in detail in a report to the Human Rights Council on *Transparency and the imposition of the death penalty* (E/CN.4/2006/53/Add.3), "[r]efusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation." The practice of informing prisoners of their impending execution only moments before they die, and families only later, is "inhuman and degrading and undermine[s] the procedural safeguards surrounding the right to life." (para. 32).

I am aware that your Excellency's Government takes the stance that executions must be kept secret in order to protect the privacy of the prisoner as well as that of his or her family. This argument does not, however, withstand close scrutiny. As explained in the report on *Transparency and the imposition of the death penalty* (paras. 46 and 47):

“Two logical limits to the privacy argument against transparency are apparent. The first such logical limit is that ensuring the right to privacy does not justify the denial of information to the very person whose privacy rights are being invoked. Thus, the argument that secrecy protects the privacy of death-row prisoners cannot explain or justify a refusal to reveal the timing and other details of executions to death-row prisoners themselves or to their families. Indeed, privacy protections would, if anything, support the claim that a death-row prisoner and his or her family should be fully informed of the prisoner’s fate. It undermines rather than promotes privacy to forbid families and prisoners the most basic information about the prisoner’s own death.

The second such logical limit is that respect for privacy cannot offset transparency obligations when the prisoner does not desire his experience on death row or the fact of his execution to be private. “Privacy”, in this context, is merely a by-product of enforced secrecy. Because prisoners are not aware of when they will die, they have no opportunity to make this fact public (or alternatively maintain their privacy). Moreover, while on death row they are prohibited from contacting the media or politicians and any contact they do have with permitted visitors is strictly controlled and monitored. By stripping death-row inmates of control over their communications and knowledge of the most crucial aspect of their lives, i.e. the timing of their own death, the Japanese system undermines rather than protects the privacy of death-row prisoners.”

I would therefore respectfully call on your Excellency’s Government to take all necessary steps to ensure Makino Tadashi’s right to due process in post-conviction proceedings, his right not to be subjected to inhuman and degrading treatment, as well as his and his family’s privacy rights are fully respected. A refusal to provide Makino Tadashi, his family and lawyer with timely and reliable information on the timing of any planned execution is highly likely to lead to violations of due process rights and to inhuman and degrading treatment.

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

1. Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.
2. Please explain the steps taken by your Government to ensure that the due process rights of Makino Tadashi and his right not to be subjected to inhuman and degrading treatment continue to be protected also after the rejection of his most recent clemency petition.
3. Please explain the measures taken or planned by the Government of Japan to bring its practice of the death penalty, insofar as it chooses to retain capital punishment, into line with the principles set forth in my report on *Transparency and the imposition of the death penalty* (E/CN.4/2006/53/Add.3).



**Response from the Government of Japan dated 20 November 2008**

- 1. *Are the facts alleged above accurate? If not so, please provide all information and documents proving their inaccuracy.***

The Government of Japan refrains from referring to any individual inmate sentence to death, but the problems referred to in this request are not relevant to the individual results of requests for retrial or applications of pardon made by inmates sentenced to death. They are not problems specific to each inmate sentenced to death, either. Each person who applies for a pardon or submits an appeal for retrial, under the laws and regulations of our country, is to be informed of the results by the authorities that make the decision.

- 2. *Please explain the steps taken by your Government to ensure that the due process rights of Makino Tadashi and his right not to be subjected to inhuman and degrading treatment continue to be protected also after the rejection of his most recent clemency petition.***

In general terms, the death penalty is mandated as a statutory penalty only for the most serious crimes, and sentences of death are handed down only in extremely heinous cases and after courts have conducted meticulous trials in Japan. The Government of Japan, as part of a nation ruled by law, considers that the use of the death sentence should be handled cautiously and gravely, while respecting the decisions of the court.

- 3. *Please explain the measures taken or planned by the Government of Japan to bring its practice of the death penalty, insofar as it chooses to retain capital punishment, into line with the principles set forth in my report on Transparency and the imposition of the death penalty (E/CN.4/2006/53/Add.3).***

An inmate sentenced to death is notified of his/her execution on the day it is due to take place, this is because the Government of Japan is concerned that he/she could become emotionally unstable and suffer from serious emotional distress if he/she is notified in advance. In addition, if his/her family members were to be notified in advance of the execution date, the Government of Japan is concerned that they could suffer from unnecessary mental distress. If an inmate were to learn of his/her execution date through a visit between the inmate and his/her family members who have been notified of the date, the Government of Japan is concerned that he/she could become emotionally unstable and suffer from serious emotional distress through this means as well. For this reason, the Government of Japan believes that the current practice is unavoidable. Furthermore, the Government of Japan considers that the above practice does not violate the International Covenant on Civil and Political Rights.

The Special Rapporteur seems to understand that the situation is handled in this manner in order to protect the privacy of inmates sentenced to death, but the actual reason is as explained above and not for privacy protection.

Concerning the treatment of inmates sentenced to death, the Government of Japan treats them appropriately under the Act of Penal Detention Facilities and Treatment of Inmates and Detainees. Furthermore the Government of Japan will continue to make efforts to enhance their treatment.

### **Kenya: Killing of Francis Nyaruri**

**Violation alleged:** Death due to the attack or killing by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

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

**Character of reply:** No response (recent communication)

#### **Observations of the Special Rapporteur**

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

**Allegation letter dated 18 February 2009**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the killing of Mr. **Francis Nyaruri**, a reporter for the *Weekly Citizen* paper.

According to information received:

Francis Nyaruri was a reporter for the *Weekly Citizen*, writing under the pen name Mong'are Mokuu. He had recently written a series of articles exposing alleged financial malpractice by the police department in Nyanza province and had received threats by police officers as a consequence.

Francis Nyaruri travelled to Kisii, Nyanza province, on the morning of 15 January 2009. He last spoke to his wife on the phone at 11 a.m. on that day and was not heard of again. On 29 January 2009, his body was found in Koderia Forest, Nyanza Province, decapitated with hands tied behind his back and marks on his body.

While we do not wish to prejudge the accuracy of these allegations, we urge your Excellency's Government to take effective measures to rapidly identify, arrest and bring to justice the persons responsible for the killing, both as material perpetrators and as instigators.

Taking effective measures to protect journalists and to prosecute those responsible of killings or death threats against them is a precondition to ensuring the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights, which provide that: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." We are concerned that killings of journalists, particularly if they remain unpunished, could create a climate of impunity and result in preventing independent reporting and stifling freedom of expression. These concerns are further aggravated by information in this case pointing towards police as possible perpetrators of the killing.

In this respect, we would also like to refer your Excellency's Government to Article 6 of the Covenant. It provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. As reiterated in Human Rights Council resolution 8/3 on "The Mandate of the Special Rapporteur 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".

Those potentially implicated in 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 (Principle 15 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions). Families of the deceased should be kept abreast of information relevant to the investigation, and the findings of the investigation should be made public (Principles 16 and 17).

It is our responsibility under the mandate provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases, we 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 so, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of any criminal investigation or other inquiries which may have been carried out in relation to the killing of Francis Nyaruri. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. If no inquiries have taken place or if they have been inconclusive please explain why.
3. Please describe the measures adopted to ensure in this case that "those potentially implicated in 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" as required by Principle 15 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

### **Kenya: Killing of Oscar Kamau King'ara and John Paul Oulu**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the states, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State; Death threats and fear of imminent extrajudicial executions by State officials

**Subject(s) of appeal:** 6 males (6 HRD)

**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 13 March 2009**, sent with the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

In this connection, we would like to bring to your Excellency's Government's attention two separate incidents related to human rights defenders in Kenya.

We have received information concerning the killing of Mr. **Oscar Kamau King'ara**, the founder and Chief Executive Officer of the Oscar Foundation Free Legal Aid Clinic, and Mr. **John Paul Oulu**, its Communications and Advocacy Director. The Oscar Foundation is a human rights organisation providing free legal aid services to the poor. It has carried out research on police brutality in urban areas of Kenya, on corruption in the police force and in prisons, as well as on the alleged enforced disappearance and killing by the police of hundreds of youths alleged to belong to the Mungiki sect. In 2007, the Oscar Foundation had published a report titled "License to kill. Extrajudicial execution and police brutality in Kenya". On 18 February 2009, the Oscar Foundation presented its findings on ongoing disappearances and extrajudicial killings in Kenya to a Member of Parliament for use in a parliamentary debate. The Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, met Mr. Kamau Kingara during his visit to Kenya from 16 to 25 February 2009.

The information received regarding the killing of Oscar Kamau Kingara and John Paul Oulu is:

On 5 March 2009, at approximately 6.00 pm, Oscar Kamau Kingara and John Paul Oulu were driving in heavy traffic on Mamlaka Road near the University of Nairobi. They were on their way to a meeting with a senior staffer of the Kenya National Commission on Human Rights. Their vehicle was blocked by a minibus and a Mitsubishi Pajero vehicle, both of which had been following them. Two men got out of the vehicles, approached the vehicle of Oscar Kamau Kingara and John Paul Oulu and shot them both through the windows from close range. The closest eyewitness to the incident was shot in the leg and later taken away by policemen.

On the same evening, following the killings, several hundred University of Nairobi students held a demonstration protesting the killings. Students took the bullet-riddled car and the body of Kingara onto campus, refusing to surrender the body to police. A standoff ensued between a large contingent of police who demanded that the body be handed over and the angry, but largely peaceful, demonstrators. After negotiations broke down, police officers stormed the campus using tear gas and firing live ammunition, some into the air, others apparently at students, while students threw stones at the police. One student was killed by the police, and a number were injured.

On the day preceding the killing, Mr Alfred Mutua, the Government Spokesman, had publicly denounced the Oscar Foundation as a funder of the illegal Mungiki sect, while a attributed to the Police Spokesman, Mr Eric Kiraithe, stated that a major security operation was "definitely going to get" those responsible for recent demonstrations attributable to the Mungiki. In a briefing to the Special Rapporteur on 16 February 2009, the Chief of Police had stated that Mungiki was funding the Oscar Foundation.

Since this incident, numerous human rights defenders in Kenya have received threats, and a number have been forced to go into hiding.

In addition, we would also like to draw your Government's attention to threats against human rights defenders in Kenya's Western Province who have been in contact with the Special Rapporteur on extrajudicial, summary or arbitrary executions in the course of his recent visit to Kenya, namely Mr. **Job Bwonya Wahdalia**, Mr. **Eric Wambasi**, and Mr. **Eliu Siyoi Tendet** of the Western Kenya Human Rights Watch and Mr. **Taiga Wanyanja** of the Muratikho Torture Survivor's Organisation. Both organizations have been monitoring and reporting on human rights abuses in the Mt Elgon region, and providing assistance to victims and families.

On 18 and 19 February 2009, in the course of his visit to Kenya upon invitation from the Government of Kenya, the Special Rapporteur on extrajudicial, arbitrary or summary executions visited Bungoma and Kapsokwonyi in Western Province to investigate reports of killings and enforced disappearances by the armed group Sabaot Land Defence Force (SLDF), as well as by the Kenya Police and armed forces in their operation against the SLDF. In the days preceding the Special Rapporteur's arrival in the region, representatives of the authorities told individuals not to speak with the Special Rapporteur about police and military abuses, and only to mention abuses by the SLDF. On 17 February, officials told residents at one IDP camp that the food aid upon which they depended would be jeopardized if they were critical of the military in their testimony to the Special Rapporteur.

On 18 February 2009, staff of the Western Kenya Human Rights Watch noticed the presence of intelligence officers outside their offices in Bungoma, where the Special Rapporteur was interviewing victims and witnesses of violence in Mount Elgon. On the following day, intelligence officers were outside the hotel where further interviews were being conducted.

On 19 February 2009, officials visited the home of Eliu Siyoi Tendet, who had organised interviews with witnesses for the Special Rapporteur, and asked him for the list of people who had testified before the Special Rapporteur. The military subsequently came to his home, but Eliu Siyoi Tendet managed to escape. Job Wahdalia also received calls from officials asking for the names of those who testified. Job Wahdalia, Eliu Siyoi Tendet, Eric Wambasi, and Taiga Wanyanja have now all been forced to flee the area to ensure their safety. Subsequently, the families and colleagues of each of them have been harassed as to their whereabouts.

On 19 February 2009, and in the following days, the Special Rapporteur on extrajudicial, arbitrary or summary executions brought these threats repeatedly to the attention of the Ministry of Foreign Affairs and the Ministry of Provincial Administration and Internal Security. He asked for explanations and assurances from the Government. On 25 February 2009, the Special Rapporteur received a letter from the Permanent Secretary in the Ministry of Provincial Administration and Internal Security. It states that "nobody has threatened them" [Job Bwonya [Wahdalia], Eric Wambasi, Eliu Siyoi Tendet and Taiga Wanyanja] and alleges that "there are reports from the mainstream NGOs that some witnesses illegally collected money from the Mt. Elgon SLDF victims so as to forward

their cases for compensation and thereafter disappeared”. The Permanent Secretary concludes that he “[has] ordered that these allegations be thoroughly investigated and in any case the mainstream NGOs be encouraged to talk to you and give more light to the matter”.

On 1, 2 and 4 March 2009, Kenya Police officers entered the offices of Western Kenya Human Rights Watch. They demanded from the remaining staff a list of the victims and witnesses who had spoken to the Special Rapporteur on extrajudicial, summary or arbitrary executions claiming that relatives had been killed or had disappeared at the time of the military operation in Mount Elgon.

With regard to these developments, 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. In particular, articles 1 and 2 of the Declaration 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”. Article 5 points b) and c) provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

Of special relevance to the cases at hand, article 12 paras 2 and 3 of the Declaration provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone against any violence, threats, retaliation, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

These principles have also been spelled out with specific regard to human rights defenders dealing with the question of enforced or involuntary disappearances, such as the members of Western Kenya Human Rights Watch and Oscar Foundation. The United Nations Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, states that States must take steps to ensure that persons involved in investigations of cases of disappearance, including the complainant, shall be protected against ill-treatment, intimidation or reprisal, and any cases of such treatment shall be appropriately punished. In its resolution 7/12, adopted without a vote, the Human Rights Council urged governments to take steps to protect witnesses of disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected.

We would also like to recall the relevant provision of the Terms of Reference for Fact-Finding Missions by Special Rapporteurs/Representatives of the Commission on Human Rights (E/CN.4/1998/45, Appendix 5):

“During fact-finding missions, special rapporteurs or representatives of the Commission on Human Rights [...] should be given the following guarantees and facilities by the Government that invited them to visit its country:

(c) Assurance by the Government that no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings”.

Similarly, in its resolution 2005/9, the Commission on Human Rights urged governments to refrain from all acts of intimidation or reprisal against those who avail or have availed themselves of procedures established under United Nations auspices for the protection of human rights and fundamental freedoms.

We urge your Excellency’s Government to take, without any further delay, all necessary measures to guarantee that all forms of violence, threats, retaliation, pressure or any other arbitrary action against the persons who have been in contact with the Special Rapporteur on extrajudicial, summary or arbitrary executions, as well as against all other human rights defenders in Kenya, cease immediately. We would suggest that this requires both clear instructions to all security forces and other relevant authorities and vigorous public statements of condemnation for such violence and intimidation by the highest levels of Government.

Moreover, we urge your Excellency’s Government to expeditiously carry out an independent investigation into the killing of Oscar Kamau Kingara and John Paul Oulu. While we do not in any way prejudge the question of the responsibility for this assassination, it is inevitable under the circumstances that suspicion should fall upon the Kenya Police. As there is, according inter alia to the report of the Commission of Inquiry into Post-Election Violence (CIPEV, pages 420-421), no existing independent unit capable of effectively and credibly investigating possible police misconduct in Kenya, we consider it imperative that an independent investigation be carried out with support from a foreign police force. In our view, only an independent, expeditious and effective investigation into the killing of Oscar Kamau Kingara and John Paul Oulu can re-establish faith in the commitment of your Excellency’s Government to the right of every member of society “to promote and to strive for the protection and realization of human rights and fundamental freedoms”, as enshrined in the Declaration on Human Rights Defenders.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide information on the steps taken to ensure that all forms of violence, intimidation and harassment against human rights defenders, particularly those who have cooperated with the Special Rapporteur on extrajudicial, arbitrary or summary executions, are brought to an end.
3. Please provide information on the investigations and criminal proceedings regarding the killings of Oscar Kamau Kingara and John Paul Oulu.

**Kuwait: Death sentence of Sheikh Talal bin Nasser al-Sabah**

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

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

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Urgent action letter dated 23 July 2008**

I would like to draw the attention of your Government to information I have received regarding the capital punishment imposed on drug trafficking charges against **Sheikh Talal bin Nasser al-Sabah** and his possibly imminent execution.

According to the information received:

Sheikh Talal bin Nasser al-Sabah was convicted on drug-trafficking charges in December 2007 and sentenced to death. On 24 June 2008, the Supreme Court confirmed the death sentence. The sentence has been submitted to the Head of State, the Amir, for confirmation.

In this connection, I would like to recall that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights, to which Kuwait is a party, provides that “in countries which have not abolished the death penalty”, the “sentence of death may be imposed only for the most serious crimes”.

In interpreting Article 6(2) of the Covenant, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life. As observed in a recent report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

I urge your Excellency’s Government to take all necessary measures to guarantee that Sheikh Talal bin Nasser al-Sabah’s rights under international law are respected. Considering the irremediable nature of capital punishment, this can only mean suspension of the death sentence or its commutation. 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 his rights in compliance with your Government’s international legal obligations.



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

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate which offences carry the death penalty in Kuwait.
3. How many persons are awaiting execution on convictions for drug-related offences in Kuwait? How many executions of persons convicted of drug-related offences were carried out since 2003?

**Madagascar: 28 morts lors d'une manifestation à Antananarivo,  
le 7 février 2009**

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

**Objet de l'appel:** 28 personnes (manifestants)

**Caractère de la réponse:** Pas de réponse (communication récente)

**Observations du Rapporteur Spécial**

Le Rapporteur Spécial espère recevoir une réponse concernant ces allégations.

**Lettre d'allégation envoyée le 24 février 2009**, conjointement avec le Rapporteur Spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression

Dans ce contexte, nous souhaiterions attirer l'attention de votre Gouvernement sur des allégations que nous avons reçues concernant **le décès de 28 personnes** le 7 février 2009 à Antananarivo qui serait imputable aux forces de sécurités malgaches.

Selon les informations reçues, les forces de sécurité malgaches auraient tué au moins 28 personnes le samedi 7 février 2009 à Antananarivo, lors d'une manifestation anti-gouvernementale. Alors que la manifestation progressait en direction du palais présidentiel, les forces de sécurité auraient alors ouvert le feu sur les manifestants tuant 28 d'entre eux.

Selon les allégations, la réaction des forces de sécurité aurait été clairement disproportionnée car les manifestants n'étaient pas armés et la manifestation se déroulait de manière pacifique.

Sans vouloir à ce stade préjuger des faits qui nous ont été soumis, nous souhaiterions intervenir auprès de votre Excellence afin de tirer au clair les circonstances ayant provoqué les faits allégués ci-dessus.

Dans ce contexte, nous aimerions 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.

Nous voudrions également rappeler au Gouvernement de votre Excellence l'applicabilité dans de telles situations des Principes de base sur le recours à la force et l'utilisation des armes à feu par les responsables de l'application des lois, résolution 1989/65 du 24 mai 1989 du Conseil économique et social. Ceux-ci 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 délimitant 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.

Par ailleurs nous prions votre Gouvernement de diligenter une enquête sur les morts qui auraient eu lieu lors de la manifestation du 7 février 2009, de traduire les responsables en justice, s'il est déterminé que les forces de sécurité ont eu recours à un usage excessif de la force, 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.

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

Nous souhaiterions appeler le Gouvernement de son Excellence à prendre toutes les mesures nécessaires pour s'assurer que le droit de réunion pacifique tel qu'énoncé à l'article 21 du Pacte International sur les droits civils et politiques, qui prévoit que "Le droit de réunion pacifique est reconnu. L'exercice de ce droit ne peut faire l'objet que des seules restrictions imposées conformément à la loi et qui sont nécessaires dans une société démocratique, dans l'intérêt de la sécurité nationale, de la sûreté publique, de l'ordre public ou pour protéger la santé ou la moralité publiques, ou les droits et les libertés d'autrui", soit respecté.

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

1. Les faits tels que relatés dans le résumé du cas sont-ils exacts? Si tel n'est pas le cas, quelles enquêtes ont été menées pour conclure à leur réfutation ?
2. Quelles sont les branches des forces de sécurité impliquées dans cette opération? Quels ordres ou instructions avaient-elles reçus, notamment quant à l'usage de la force.
3. Veuillez fournir toute information, et éventuellement tout résultat des enquêtes menées, examens médicaux, investigations judiciaires et autres menées en relation avec les faits.
4. Si les allégations sont avérées, veuillez fournir toute information sur les poursuites et procédures engagées contre les auteurs de la violence.
5. Le cas échéant, veuillez indiquer si les familles des victimes ont été indemnisées.

### **México: Muerte de Miguel Ángel Gutiérrez Ávila**

**Violación alegada:** Muerte a consecuencia de ataque o ejecución por fuerzas de seguridad o por grupos paramilitares, escuadrones de muerte, o otras fuerzas privadas que cooperan con o que están toleradas por el estado

**Persona objeto del llamamiento:** 1 hombre (defensor de los derechos humanos)

**Carácter de la respuesta:** No se recibió ninguna 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 del 8 de septiembre de 2008**, mandado con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión

En este contexto, quisiéramos señalar a la atención urgente de Su Gobierno la información que hemos recibido en relación con el Sr. **Miguel Ángel Gutiérrez Ávila**, antropólogo, profesor e investigador de la Universidad Autónoma de Guerrero. El Sr. Miguel Ángel Gutiérrez Ávila ha trabajado durante los últimos 20 años defendiendo los derechos de la gente de Amuzgo y los pueblos indígenas de México.

De acuerdo con las informaciones recibidas:

El 26 de julio de 2008, hacia la 1.00 a.m., el Sr. Miguel Ángel Gutiérrez Ávila habría sido asesinado mientras conducía hacia la capital de Guerrero. Su cuerpo habría sido hallado a

orillas de la carretera federal Acapulco-Ometepec, cerca de la comunidad La Caridad en el municipio de San Marcos, Guerrero. Según se informa su cuerpo fue cubierto de moretones y cortadas. El vehículo en el cual el Sr. Gutiérrez viajaba estaba intacto y solo su equipo de grabación fue robado.

Entre el 23 y 25 de julio de 2008, el Sr. Gutiérrez habría visitado las comunidades de Suljaa' y Cozoyoapan en Costa Chica, Guerrero, en relación con un documental que el realizaba sobre las culturas indígenas y sus tradiciones. Durante su visita, el Sr. G Gutiérrez habría documentado una supuesta violación de los derechos humanos por parte de las autoridades contra el personal de una estación de radio de la comunidad, Radio Nomndaa o La Palabra del Agua.

Se teme que el asesinato del Sr. Miguel Ángel Gutiérrez Ávila podría estar directamente relacionado con su trabajo en defensa de los derechos de los pueblos indígenas en México.

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 Políticos: "Nadie podrá ser molestado a causa de sus opiniones. Toda persona tiene derecho a la libertad de expresión; este derecho comprende la libertad de buscar, recibir y difundir informaciones e ideas de toda índole, sin consideración de fronteras, ya sea oralmente, por escrito o en forma impresa o artística, o por cualquier otro procedimiento de su elección".

Quisiéramos 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 dirigidos contra los periodistas y llevar ante la justicia a los responsables de esos actos, para luchar contra la impunidad.

En este contexto, quisiéramos también llamar la atención del Gobierno de su Excelencia 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. En particular, los principios 4 y 9 a 19 obligan a los Gobiernos a garantizar una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte. Los Gobiernos deben proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de tales ejecuciones o amenazas; publicar en un informe las conclusiones de estas investigaciones; y velar por que sean juzgadas las personas que la investigación haya identificado como participantes en tales ejecuciones, en cualquier territorio bajo su jurisdicción.

Es nuestra responsabilidad de acuerdo con los mandatos 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. Por favor proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con el caso. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.

**México: Muerte de Norma Dután Parrapi, Levis Clarisa Moina  
y Kevin Pérez Carias**

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

**Persona objeto del llamamiento:** 1 mujer y 2 hombres

**Carácter de la respuesta:** Respuesta en gran parte satisfactoria

**Observaciones del Relator Especial**

El Relator Especial agradece al Gobierno de México por la información detallada que ha proporcionado relativa a la muerte de Norma Dután Parrapi, Levis Clarisa Moina y Kevin Pérez Carias. El Relator Especial, preguntará que se le mantenga informando del progreso de las investigaciones y del proceso penal mencionado en la respuesta del Gobierno.

**Llamamiento urgente del 20 de enero de 2009**, mandado con el Relator Especial sobre los derechos humanos de los migrantes

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido en relación con el **deceso de 3 migrantes y las lesiones personales agravadas ocasionadas a 8 migrantes** cerca de la comunidad El Carmen Arcote del Municipio de San Cristóbal de Las Casas, Chiapas.

De conformidad con la información recibida:

En la mañana del día 9 de enero en las inmediaciones de la comunidad El Carmen Arcotete del Municipio de San Cristóbal de Las Casas, Chiapas, la Policía Estatal Preventiva (PEP) disparó contra una camioneta que transportaba alrededor de 45 migrantes indocumentados, originarios de El Salvador, Honduras, Guatemala, Ecuador y China. El conductor de la camioneta desatendió un llamado de las autoridades locales para que detuviese el vehículo, que recibió como consecuencia numerosos impactos de bala y chocó contra un árbol. La señora **Norma Dután Parrapi** y el señor **Levis Clarisa Moina**, ecuatorios, y el señor **Kevin Pérez Carias**, guatemalteco, perdieron la vida por los disparos. Las siguientes personas sufrieron lesiones físicas: los señores Luis Antonio Zumba Pauta, Alejandro Chanche Cuiza, Manuel Tobías y Cristian Musa Guamaliza de origen ecuatoriano; el señor Gerardo Chávez Miriam de origen guatemalteco; el señor José Jesús Mejía Torres de origen salvadoreño; y los señores Xie Li Yun y Li Tian Hai, ambos de origen chino. Seis de estas personas se hallan hospitalizadas. Los migrantes capturados por las autoridades de policía locales fueron detenidos en la Comisaría de la Policía estatal en Tuxla Gutiérrez para prestar declaración y posteriormente entregados al Instituto Nacional de Migración.

Los migrantes procedentes de Centroamérica fueron presuntamente expulsados de México. Los migrantes procedentes de Sudamérica y China se hayan presuntamente reclusos en la Estación Migratoria de Iztapalapa, en Ciudad de México y temen por su seguridad a causa de sus presuntos testimonios con respecto al tratamiento dado por sus captores.

Los representantes de la Procuraduría General de Justicia del Estado denegaron el permiso para ver los migrantes detenidos al Centro de Derechos Humanos Fray Bartolomé de Las Casas, una organización local de derechos humanos que quiso prestarles asistencia letrada. Según dicha organización, a los migrantes se les negó también el acceso a sus representantes consulares.

Sin que de alguna manera constituya prejujuicio sobre los hechos o el fondo del asunto, nos permitimos hacer un llamamiento al Gobierno de su Excelencia para buscar una clarificación de los hechos con miras a garantizar el respeto de los derechos humanos de los migrantes, de conformidad, entre otros a la Declaración Universal de los Derechos Humanos y al Pacto Internacional de Derechos Civiles y Políticos, inter alia, artículos 2, 6, 7 y 10. Frente a este último instrumento jurídico, vale la pena destacar, que en su observación general No.31 sobre “La índole de la obligación jurídica general impuesta a los Estados Partes en el Pacto”, el Comité de Derechos Humanos recuerda en su párrafo tercero, entre otros, que “[a] los Estados Partes se les impone una obligación general de respetar los derechos del Pacto y de asegurar su aplicación a todos los individuos en su territorio y sometidos a su jurisdicción”. Así mismo, tanto la Declaración Universal de los Derechos Humanos como el Pacto Internacional de Derechos Humanos, establecen garantías en relación con el debido proceso.

Permítanos, Excelencia, solicitar igualmente una clarificación de los hechos en relación con el Código de conducta para funcionarios encargados de hacer cumplir la ley adoptado por la Asamblea General de Naciones Unidas en su resolución 34/169, del 17 de diciembre de 1979. En particular, sus artículos 2 y 3 señalan respectivamente que “en el desempeño de sus tareas, los funcionarios encargados de hacer cumplir la ley respetarán y protegerán la dignidad humana y mantendrán y defenderán los derechos humanos de las personas” y que “podrán usar la fuerza sólo cuando sea estrictamente necesario y en la medida en que lo requiera el desempeño de sus tareas”.

Nos gustaría referirnos también a los Principios relativos a una eficaz prevención e investigación de las ejecuciones extralegales, arbitrarias o sumarias, resolución 1989/65 de 24 de mayo de 1989 del Consejo Económico y Social. En particular, los principios 9 a 19 obligan a los Gobiernos a proceder a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias; a publicar en un informe las conclusiones de estas investigaciones; y a 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 sentido, recibimos con agrado la noticia de que las autoridades judiciales han abierto una investigación preliminar por cargos de homicidio y lesiones, y tres agentes de la policía estatal de Chiapas han sido detenidos. La Comisión Nacional de Derechos Humanos también habría abierto una investigación sobre los abusos contra los migrantes. Exhortamos respetuosamente a las autoridades de su Gobierno a que investiguen de forma completa y

exhaustiva los hechos que dieron lugar a la muerte de Norma Dután Parrapi, Levis Clarisa Moina y Kevin Pérez Carias, que se impongan las sanciones adecuadas a los responsables, y que se otorgue compensación adecuada a las familias de la víctimas.

Estaríamos muy agradecidos si el Gobierno de su Excelencia pudiera suministrar nos información sobre las medidas tomadas por las autoridades competentes, de conformidad con las normas internacionales citadas, para asegurar que los derechos de las personas anteriormente citadas sean respetados.

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

1. ¿Son exactos los hechos a los que se refieren las alegaciones descritas?
2. Por favor proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de exámenes médicos, en caso de que se hubieran llevado a cabo.
3. Por favor proporcione información sobre las diligencias judiciales y, las sanciones de carácter penal, en caso de que hayan sido adoptadas contra el o los presuntos culpables.
4. Por favor proporcione información sobre las disposiciones legislativas, administrativas o de otro carácter que han sido o serán adoptadas con miras a prevenir la ocurrencia futura de hechos similares.

### **Respuesta del gobierno de Mexico del 29 de abril de 2009**

El Gobierno proporciono la información siguiente

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

El 9 de enero de 2009, en el ejido el Arcotete, municipio de San Cristóbal de las Casas, Chiapas, elementos de la policía estatal preventiva de la Secretaría de Seguridad Pública y Protección Ciudadana del estado de Chiapas, dispararon en contra de una camioneta de redilas que transportaba en la parte posterior a 45 migrantes indocumentados.

#### ***2. Se proporcione información detallada sobre las investigaciones iniciadas en relación con el caso, incluyendo los resultados de los exámenes médicos, en caso de que se hubieran llevado a cabo.***

Ese mismo día, la Fiscalía de Distrito Altos de San Cristóbal de las Casas, Chiapas, inició la investigación por los delitos de homicidio y abuso de autoridad en agravio de Norma Dután Parrapi, Leyvis Clarisa Moina Cabrera (de nacionalidad ecuatoriana) y Kevin Pérez Carias (de nacionalidad guatemalteca); lesiones y abuso de autoridad en agravio de José de Jesús Mejía Torres (de nacionalidad salvadoreña), Miriam Esthela Corado Chávez (de nacionalidad guatemalteca), y Luis Antonio Zumba Pauta, Cristian Musa Guanoluiza, Alejandro Canching Caisa y Manuel Tovilla Marca Once (de nacionalidad ecuatoriana).

De igual forma participó la Fiscalía Especializada en delitos cometidos en contra de inmigrantes del estado de Chiapas, misma que el 9 de enero de 2009 inició el acta administrativa 005/FEDCII/2009, la cual se encuentra integrada con las siguientes actuaciones:

- Diligencia de identificación y entrega de cadáveres.
- Necropsias practicadas el 10 de enero de 2009, por dos médicos peritos del servicio médico forense. En la conclusión se estableció que la muerte de las señoras Dután Parrapi y Moina Cabrera fue como consecuencia de las heridas de bala recibidas.
- Constancia de 10 de enero de 2009, mediante la cual se solicitó al Subsecretario de Cooperación Internacional y Asuntos Migratorios del estado de Chiapas que por su conducto se informe a los representantes de los consulados de Guatemala, Ecuador y El Salvador, los apoyos jurídicos y médicos brindados por las autoridades estatales a los migrantes indocumentados, así como, lo relativo al traslado de los cadáveres a su país de origen.
- Solicitud de 12 de enero de 2009, dirigida al Director del Hospital Regional de Tuxtla Gutiérrez, Chiapas, a efecto de que una vez dados de alta del hospital los señores José de Jesús Mejía Torres, Luis Antonia Zumba Pauta, Cristian Musa Guanoluisa, Alejandro Canchig Caisa, Manuel Tovilla Marca Once y María Estela Corado Chávez, fueran trasladados a bordo de una ambulancia a las instalaciones estatales del Sistema para el Desarrollo Integral de la Familia estatal (DIF).
- Solicitud de 12 del enero de 2009, dirigida a la representante del Centro de Recuperación Nutricional del DIF, para que se proporcione alojamiento, alimentos y cuidados necesarios a favor de María Estela Corado Chávez, José de Jesús Mejía Torres y Luis Antonia Zumba Pauta, por no contar con vivienda y recursos económicos para su estancia en el país.
- Solicitud verbal del señor Mejía Torres de 12 de enero de 2009, para ser repatriado a su país de origen. El 13 de enero de 2009 el Fiscal requirió al representante del INM realizar los trámites necesarios para su repatriación.
- Constancia de 15 de enero de 2009, mediante la cual el Fiscal solicitó al representante de INM la expedición del formato migratorio FM3 en beneficio de María Estela Corado Chávez y Luis Antonio Zumba Pauta, para la permanencia en el país.
- Constancia de entrega de pasaportes provisionales y documento migratorio FM3 a los señores Alegría Cabrera y Zumba Pauta.
- Constancia de ayuda humanitaria de 18 de enero de 2009, proporcionada por representantes del gobierno de Chiapas a los familiares de los indocumentados que perdieron la vida y de los lesionados.
- Solicitud de colaboración de 27 de enero de 2009, dirigida al Cónsul de Ecuador para hacer entrega a los familiares de Norma Dután Parrapi, la cantidad de \$270 dólares como parte de las pertenencias de la occisa.



Adicionalmente, la Comisión Nacional de los Derechos Humanos inició una queja de oficio en este asunto por considerarlo de especial gravedad e importancia.

**3. *Se proporcione información sobre las diligencias judiciales y, las sanciones de carácter penal, en caso de que hayan sido adoptadas contra del o los presuntos culpables.***

Después de realizadas las investigaciones por las Fiscalía de Distritos Altos de San Cristóbal de las Casas, el 17 de enero de 2009 ejerció acción penal en contra de Celestino Ávila, José Hermilo García y Eliseo Guzmán Escobar, quienes fungían como policías estatales preventivos al momento de los hechos, por su probable responsabilidad en los delitos de homicidio calificado, lesiones y abuso de autoridad.

El 26 de enero de 2009, el juez penal les dictó auto de formal prisión, por lo que actualmente se encuentran detenidos y se sigue un proceso penal en su contra.

**4. *Se proporcione información sobre las disposiciones legislativas, administrativas o de otro carácter que han sido o serán adoptas con miras a prevenir la ocurrencia futura de hechos similares.***

La política de México en materia de promoción y protección de los derechos humanos de los migrantes tiene como fundamento la universalidad de estos derechos, independientemente de la situación migratoria, el principio de la responsabilidad compartida, el fortalecimiento de la cooperación internacional y la no criminalización de la migración.

En ese espíritu, en julio de 2008 entró en vigor la reforma a la Ley General de Población que despenaliza la migración indocumentada, armoniza el orden jurídico con los tratados internacionales en la materia y contribuye a eliminar abusos contra migrantes indocumentados.

El Instituto Nacional de Migración (INM) es la institución federal especializada para atender la política migratoria. El INM coordina el “Programa de Reordenamiento de la Frontera Sur” que facilita la documentación y vigilancia de los flujos migratorios.

En el mes de marzo 2008 el Instituto Nacional de Migración (INM) introdujo la Forma Migratoria para Trabajadores Fronterizos que permite el ingreso documentado de trabajadores de Guatemala y Belice para laborar en los estados de Chiapas, Campeche, Tabasco y Quintana Roo. Bajo este Programa se amplió la Forma Migratoria de Visitantes Locales, que otorga facilidades a los visitantes locales guatemaltecos, a fin de que la población transfronteriza pueda ingresar en tránsito local en los estados de Chiapas, Tabasco y Campeche, lo que brinda mayor protección a los migrantes frente a posibles abusos.

Se realizan esfuerzos para asegurar que la repatriación de nacionales centroamericanos vía terrestre se lleve a cabo de manera ordenada, digna, ágil y segura, con base en acuerdos con Guatemala, El Salvador, Honduras y Nicaragua.

Desde 2003, el INM opera un “Programa de Dignificación de Estaciones Migratorias”, que tiene por objeto mejorar las condiciones físicas y servicios de las instalaciones destinadas al aseguramiento de migrantes indocumentados. Actualmente, el INM cuenta con 48 estaciones migratorias ubicadas en 23 estados con capacidad total de alojamiento de 3, 958 personas. Bajo esta Programa, entre 2003 y 2007 se han construido 10 y se han dignificado 84 estaciones

migratorias. Se busca garantizar mejores condiciones en las estaciones migratorias, incluidas la atención médica y los problemas sanitarios, así como la atención especial a mujeres, niñas y niños migrantes.

A fin de proteger los derechos humanos de los migrantes, existen los “Grupos Beta de Protección a los Migrantes” que operan en las rutas de migrantes en las fronteras norte y sur. Estos grupos brindan asistencia a migrantes lesionados o heridos; realizan actividades de localización y asistencia jurídica, entre otras. Actualmente operan 20 oficinas en todo el país.

Existen también programas para brindar atención integral especializada a mujeres, niñas, niños y adolescentes migrantes y repatriados, incluyendo los no acompañados, entre otros mediante esfuerzos interinstitucionales y con la sociedad civil, proporcionando servicios integrales de recepción, valoración médica, social y psicológica, alojamiento, alimentación y vestido a través de la Red de Albergues de Tránsito públicos y privados.

### **México: Asesinatos de Manuel Ponce Rosas y Raúl Lucas Lucía**

**Violación alegada:** Muerte a consecuencia de ataque o asesinato; Amenazas de muerte

**Persona objeto del llamamiento:** 2 hombres (defensores de los derechos humanos) y 2 mujeres

**Carácter de la respuesta:** No se recibió ninguna respuesta (comunicación reciente)

### **Observaciones del Relator Especial**

El Relator Especial queda a la espera de la respuesta del Gobierno de México a su comunicación.

**Llamamiento urgente del 10 de marzo de 2009**, mandado con el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, el Vice-Presidente del Grupo de Trabajo sobre las desapariciones forzadas o involuntarias y la Relatora Especial sobre la situación de los defensores de los derechos humanos

En este contexto, quisiéramos señalar a la atención urgente del Gobierno de su Excelencia la información que hemos recibido en relación con la desaparición forzada y asesinato de los Sres. **Manuel Ponce Rosas** y **Raúl Lucas Lucía** y las amenazas recibidas por parte de las familias de los difuntos, por la Sra. **Guadalupe Castro Morales**, esposa de Raúl Lucas Lucía, y sus hijos y su hermana la Sra. **Carmen Lucas Lucía**.

Manuel Ponce Rosas y Raúl Lucas Lucía ocupaban los cargos de Secretario y Presidente, respectivamente, de la *Organización para el Futuro del Pueblo Mixteco* (OFPM). Esta organización se creó a partir de la *Organización del Pueblo Indígena Me Phaa* (OPIM), otra organización indígena en la zona de la Costa Chica. Ambas organizaciones, las cuales están constituidas por comunidades indígenas de la zona (Tlapanecos y Mixtecos), se dedican a la defensa del territorio y recursos naturales y han denunciado presuntas violaciones de derechos humanos por parte del Ejército Mexicano en la zona. La OFPM tiene su base en la capital municipal de Ayutla de los Libres y defiende los derechos de los pueblos indígenas de la región a través de la denuncia de violaciones de derechos humanos, así como creando y gestionando proyectos para mejorar la calidad de vida de los grupos indígenas. La OPIM fue fundada en 2002

para defender y promover los derechos de las personas indígenas Me'phaa en México. Entre otros proyectos, la OPIM aboga por la justicia y la reparación de las violaciones de derechos humanos cometidas por parte del Ejército Mexicano contra la comunidad.

El 19 de febrero de 2009, el Grupo de Trabajo sobre desapariciones forzadas o involuntarias, envió un llamamiento urgente al Gobierno de México en torno a la desaparición de los Sres. Manuel Ponce Rosas y Raúl Lucas Lucía. Aunque el Gobierno respondió a la comunicación del Grupo el 26 de febrero de 2009, dicha comunicación no se recibió hasta el 5 de marzo de 2009. En su respuesta, el Gobierno informó de la causa de la muerte de ambos señores y de las circunstancias en que los cadáveres fueron encontrados. También se les informó sobre las investigaciones judiciales llevadas a cabo sobre la desaparición de los Sres. Manuel Ponce Rosas y Raúl Lucas Lucía.

La OPIM ya fue objeto de varias comunicaciones de la Relatora Especial sobre la situación de los defensores de derechos humanos que envió una carta el 22 de julio de 2008 y de su predecesora, que envió una carta el 28 de febrero de 2008. La Relatora Especial lamenta no haber recibido respuesta a estas comunicaciones en el momento de finalización de la presente comunicación.

Según la información recibida:

El 13 de febrero de 2009, aproximadamente a la 13h35, los Sres. Manuel Ponce Rosas y Raúl Lucas Lucía habrían sido detenidos por tres hombres armados que se identificaron como policías. En el momento del incidente, Manuel Ponce Rosas y Raúl Lucas Lucía se hallarían en la inauguración de unas oficinas en Plan de Ayutla, una escuela secundaria federal ubicada en el Boulevard, carretera Ayutla-Tecoanapa, Ayutla de los Libres, Estado de Guerrero. Los señores habrían sido invitados por la esposa de Raúl, Guadalupe, quien es regidora del Municipio en asuntos indígenas.

Entre las 35 personas que asistieron al acto, se encontraban algunos representantes de las autoridades municipales. El Director de Seguridad Pública de Ayutla y aproximadamente 25 agentes de la Policía Preventiva Federal, vigilaban la zona. Sin embargo, aproximadamente a la 13h00, el Capitán de la policía habría recibido una llamada a su teléfono móvil y él y sus hombres habrían abandonado el lugar en dirección al centro de Ayutla. Aproximadamente a la 13h15 habrían llegado tres individuos que, según algunos testigos, se habrían presentado como miembros de la policía ministerial del Estado de Guerrero. Las tres personas habrían estado vestidas de civiles, llevarían un corte de cabello al estilo militar y habrían portado armas de corto alcance. Un hombre habría amenazado a Manuel Ponce Rosas con un arma de fuego y al intervenir Raúl Lucas Lucía, le habría golpeado en la cabeza con el arma. Otros dos hombres armados habrían obligado a Manuel Ponce Rosas y Raúl Lucas Lucía a salir del lugar de los hechos. Un cuarto hombre les habría esperado a la salida donde se habría obligado a Manuel Ponce Rosas y Raúl Lucas Lucía a subir a un vehículo Domsan negro con vidrios polarizados y sin placas de matriculación.

Aproximadamente a las 14h30, la Sra. Guadalupe Castro Morales, la esposa de Raúl Lucas Lucía, habría recibido una llamada telefónica desde el número de teléfono móvil de

Manuel Ponce Rosas. Al contestar, una voz masculina le habría amenazado diciendo: “[...] esto les pasa por defender indios”. El interlocutor habría colgado cuando la Sra. Castro Morales le hubiese pedido que pusiera a los hombres en libertad y que no les hiciese daño.

El mismo día Guadalupe Castro Morales habría acudido a la Oficina del Fiscal del Departamento de Justicia del Estado de Guerrero en Ayutla para denunciar las desapariciones. Según la información recibida, el personal presente se habría negado a abrir investigaciones y sólo habría establecido un antecedente legal a través del acto ministerial número ALLE/SC/03/A/W015/2009. Junto con Margarita Martín de las Nieves, la esposa de Manuel Ponce Rosas, Guadalupe Castro Morales también habría registrado una denuncia por arrestos comunicados en la Séptima Corte del Distrito en Chilpancingo, Guerrero y habría pedido que se buscara a los desaparecidos en las instalaciones de la policía y de las fuerzas armadas.

Entre la tarde del 13 de febrero y el 14 de febrero de 2009, la Sra. Castro Morales habría visto a varios hombres desconocidos pararse en la esquina frente a su casa en dos ocasiones. Debido al temor a que sus movimientos fuesen vigilados, habría tenido que abandonar su casa temporalmente.

En la madrugada del jueves 19 de febrero de 2009, Margarita Martín de las Nieves y Guadalupe Castro Morales habrían recibido una llamada donde al parecer se escuchaba la voz de Raúl Lucas Lucía siendo torturado. Las personas que habrían llamado habrían informado que estaban vigilando a la familia y les habrían amenazado con llevarse también a la hija de Raúl de 15 años, si continuaban activos en la búsqueda de los Sres. Manuel Ponce Rosas y Raúl Lucas Lucía.

El viernes, 20 de febrero se habría realizado un operativo de búsqueda de las personas. Se habrían encontrado los cuerpos enterrados a un metro de profundidad y en bolsas de plástico. Se habrían podido identificar los cuerpos en los que se habrían encontrado huellas de tortura a pesar de su estado de descomposición. En el caso del Sr. Raúl Lucas, el cadáver habría presentado un orificio de bala en la cabeza, mientras que en el caso del Sr. Manuel Ponce, su muerte podría haber sido por traumatismo craneoencefálico. El Procurador General de Justicia del Estado de Guerrero, el Sr. Eduardo Murueta Urrutia, habría declarado que los Sres. Raúl Lucas Lucía y Manuel Ponce Rosas habían sido “levantados”, lo que podría distraer la investigación.

Anteriormente, Raúl Lucas Lucía habría sido víctima de diversas formas de acoso a causa de su trabajo de denuncia de violaciones de los derechos humanos por parte de miembros del Ejército Mexicano, incluyendo allanamientos, detenciones ilegales, e interrogatorios ilegales. El 18 de octubre de 2006, habría sido detenido ilegalmente por miembros del Ejército Mexicano. El 15 de febrero de 2007, habría sido víctima de una emboscada efectuada por individuos sin identificar que le causaron una herida casi mortal por arma de fuego en el cuello.

Se temería que la presunta desaparición forzosa de los Sres. Manuel Ponce Rosas y Raúl Lucas Lucía estuviese relacionada con sus actividades legítimas en la defensa de los

derechos humanos, específicamente por su labor en la defensa de los derechos de los pueblos indígenas. Se temería también por la seguridad de los familiares de los difuntos y de los defensores de derechos humanos en la región de Ayutla.

Sin que de manera alguna constituya prejujuamiento sobre los hechos o el fondo del asunto, deseamos llamar la atención del Gobierno de su Excelencia sobre las normas fundamentales enunciadas en la Declaración de Naciones Unidas sobre el Derecho y el Deber de los Individuos, los Grupos y las Instituciones de Promover y Proteger los Derechos Humanos y las Libertades Fundamentales Universalmente Reconocidos. Quisiéramos llamar la atención del Gobierno de su Excelencia en particular, sobre los artículos 1 y 2 que establecen, respectivamente, que toda persona tiene derecho, individual o colectivamente, a promover y procurar la protección y realización de los derechos humanos y las libertades fundamentales en los planos nacional e internacional y que es la responsabilidad primordial y el deber de todos los Estados de proteger, promover y hacer efectivos todos los derechos humanos, adoptando las medidas necesarias para crear las condiciones sociales, económicas, políticas y de otra índole, así como las garantías jurídicas requeridas para que toda persona sometida a su jurisdicción, individual o colectivamente, pueda disfrutar en la práctica todos esos derechos y libertades.

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

El Grupo de Trabajo sobre Desapariciones Forzadas o Involuntarias desearía llamar la atención del Gobierno de Su Excelencia sobre la resolución 2005/27, en la cual la Comisión de Derechos Humanos instó a los Estados a que adopten medidas para proteger a los testigos de desapariciones forzadas o involuntarias, a los defensores de los derechos humanos que luchan contra las desapariciones forzadas y a los abogados y a las familias de las personas desaparecidas contra todo acto de intimidación o contra los malos tratos de que pudieran ser objeto.

Además, la Declaración sobre la protección de todas las personas contra las desapariciones forzadas, aprobada por la Asamblea General en su resolución 47/133, de 18 de diciembre de 1992, establece que se tomarán disposiciones para garantizar que todo maltrato, todo acto de intimidación o de represalia, así como toda forma de injerencias, en ocasión de la presentación de una denuncia o durante el procedimiento de investigación, sean castigados como corresponda. Asimismo, el Grupo de Trabajo desearía recordar a su Gobierno el artículo 3 (obligación de tomar medidas legislativas, administrativas, judiciales y otras medidas eficaces para prevenir o erradicar los actos de desapariciones forzadas), el artículo 14 (obligación de que todo presunto autor de un acto de desaparición forzada sea sometido a juicio) y el artículo 19 (obligación de proveer reparación) de la Declaración.

Quisiéramos también llamar la atención del Gobierno de su Excelencia 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. 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 al Gobierno de su Excelencia a que adopte todas las medidas necesarias para proteger la vida y la integridad física de las familias de los difuntos, especialmente la Sra. **Guadalupe Castro Morales**, esposa de Raúl Lucas Lucía, y sus hijos y su hermana la Sra. **Carmen Lucas Lucía**. Quisiéramos asimismo instarle a que tome las medidas eficaces para investigar, procesar e imponer las sanciones adecuadas a cualquier persona responsable de las violaciones alegadas.

Es nuestra responsabilidad, de acuerdo con los mandatos que nos han sido otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a nuestra atención. En este sentido, estaríamos muy agradecidos de obtener su cooperación y observaciones sobre los asuntos siguientes:

1. ¿Son exactos los hechos a los que se refieren las alegaciones presentadas?
2. Por favor proporcione información detallada sobre las investigaciones y diligencias judiciales iniciadas en relación con el caso. Si éstas no tuvieron lugar o no fueron concluidas, le rogamos que explique el porqué.
3. Por favor proporcione información detallada sobre las medidas de protección adoptadas en este caso.
4. Por favor proporcione información detallada sobre las medidas que hayan sido o vayan a ser adoptadas por el gobierno de México para proteger la vida e integridad física de los defensores de derechos humanos en la región de Ayutla, con miras a evitar la ocurrencia futura de hechos similares a los del presente caso.

### **Mongolia: Death of Enkhbat Damiran**

**Violation alleged:** Death in custody owing to torture, neglect, or the use of force

**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 Mongolia with respect to the case of Enkhbat Damiran.

**Allegation letter dated 4 February 2009**, sent with the Special Rapporteur on the question of torture

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding **Enkhbat Damiran**. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited him on 8 June 2005 at Prison No. 413 (Zuunkharaa) (E/CN.4/2006/6/Add.4, Appendix, para.1). He regrets that, in spite of numerous requests for follow-up information, the Government of Mongolia has not provided any follow-up information since the report on the visit was published (see also A/HRC/7/3/Add.2, para. 3).

According to recent allegations brought to our attention:

Mr. Enkhbat Damiran, who was serving a three-year sentence at Prison No. 413 (Zuunkharaa), died two days after his release from prison in 2006. He may have been released because of his imminent death due to his poor health, which appears to have been a result of the ill-treatment to which he was subjected during arrest, transfer and detention. No investigation into the cause of death has been conducted, nobody has been prosecuted in relation to the allegations of torture raised by the Special Rapporteur on Torture, and no compensation has been granted to his relatives.

While we do not wish to prejudge the accuracy of these allegations, we wish to remind your Excellency's Government that, following the personal meeting of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment with Mr. Damiran, he recommended that the latter should be immediately released and that criminal investigations should be initiated in respect of the alleged perpetrators of torture.

In this context, we would like to draw your Excellency's Government's attention to the fundamental principles applicable under international law to this case. Articles 6, 7 and 10 of the International Covenant on Civil and Political Rights provide for the rights to life, physical and mental integrity and human treatment respecting the dignity inherent in the human person. 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 custody or very soon after release from custody, there is a presumption of State responsibility. In this respect, we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermi Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2):

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

In order to overcome the presumption of State responsibility for a death occurring very shortly after release from custody, 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 Human Rights Council as recently as at its 8th Session in Resolution 8/3 on the “Mandate of the Special

Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

The Council added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We urge your Excellency’s Government to inform us about the results of the inquiries into the circumstances surrounding his death. In particular:

1. Please indicate the steps adopted by your Excellency’s Government after the Special Rapporteur on torture expressed concerns regarding the state of Mr. Damiran’s health and appealed, on humanitarian grounds, for his release from custody.
2. Please provide the details, and where available the results, of investigations, medical examinations, and judicial or other inquiries which have been carried out in relation to this case. If no inquiries have taken place or if they have been inconclusive, please explain why. Please describe the measures taken to ensure that the inquiries were conducted in an impartial and transparent manner.
3. Please inform us about any disciplinary and prosecutorial action that was taken in relation to the case of Mr. Damiran and how accountability of any person guilty of the alleged violations was ensured.
4. Please indicate whether compensation has been paid to the family of Mr. Damiran.

### **Response from the Government of Mongolia dated 19 March 2009**

Prior to this moment, Mr. Damiran Enkhbat has been sentenced for six times in 2004, on a basis of Article 87.1 of a Special part of the Criminal Code of Mongolia he was also sentenced for three years in prison.

On August 25, 2005, during the medical meeting of a Central hospital of the Judicial Decision Enforcement Authority, doctors carefully discussed on Mr. Damiran’s health condition and after with the double diagnosis check from the group of experts of State Central Clinic, have, unanimously decided to submit release-from-prison proposal to the Prosecutor’s Office of the Capital city and Court of Khan-Uul district.

Within the frame of the above decision, on February 6, 2006, in accordance with Review Prosecutor Mr. Choijilsuren’s January 18, 2006 Resolution, Dr. B. Undarmaa, Dr. S. Ayurbaatar and R. T. Amartuvshin of the Forensic Unit of the National Center for the Forensic Examination, and a medical examination of the health condition of Mr. Damiran Enkhbat and did Expert Act No. 971.



According to Mr. Damiran's application, which was addressed to the Minister for Justice and Home Affairs and to the Head of the Judicial Decision Enforcement Authority, the Judicial Decision Enforcing Authority, in June 2006, submitted some materials of his release to the prosecutors and judiciaries.

During the trial with the presence of General Judge MR. B. Baatar, Court Secretary Mr. S. Tuvshin, Captain Bayaraa, Dorctor, Captain Ya. Oyunchimeg of Prison No. 401, Ms. B. Undarmaa of the Forensic Unit of the National Center for the Forensic Examination, the panel of judges discussed proposal of the Prison No. 401 that regarding the release issue of Mr. Damiran Enkhbat and as stated in the Article of 75.3 of the General Part of the Criminal Code of Mongolia and in accordance with February 17, 2006 Resolution 38 of the Court of the Khan-Uul district, has decided, from the health condition, to free Mr. Damiran Enkhbat immediately of his 11 year, 8 month and 22 days of unfinished sentence.

Starting from May 20, 2003, Mr. Damiran Enkhbat, under the case no. 822746, had been convicted on June 25, 1998, by giving a bribe to doctors in order to be issued a false medical report stating that he can not physically be in prison, because of health condition. Moreover, some doctors of First Central Clinic, on a basis of Article 241 of the Criminal Code of Mongolia, had been detained of committing bribery crime and after they were found guilty, the police confiscated bribe articles. In connection with the above case, sentence-release resolution of the Court of Beganuur district was revoked and on Many 28, 2003, after considering of his asthma, Mr. Damiran Enkhbat was removed to Conic of the Prison No. 401 at Zaisan in order to be under some medical treatment.

During the ongoing investigation process of Case No. 822746, which was related to the above-mentioned doctors, in accordance with the Article 208.1.1 and 24.1.2 of the Criminal Procedural Code of Mongolia, authorities made a decision to close the case, due to termination of period of limitation in Criminal Code of Mongolia.

From June 2006, resulting from the same diagnosis, Mr. Damiran Enkhbat paid 9 time visit at the Central hospital of the Judicial Decision Enforcement Authority and had a 360 days of medical treatment.

3.

Name: Damiran Enkhbat

Nationality: Mongolian

DOB: 1961

Sex: Male

Origin: Khalkha

Education: Half secondary

Latest destination: Prior to his arrest, he was in Paris, France, as an immigrant.

Of his criminal record:

- For 1.5 year /1977/ - Article 75a, Criminal Code of People's Republic of Mongolia.
- For 3 year and 6 months /1978/ - Article 169b, Criminal Code of People's Republic of Mongolia.

- For 8 year /1979/ - Article 153.2, Article 109b and Article 174, Criminal Code of People’s Republic of Mongolia.
- For 5 year /1982/ - Article 156, Article 76b, Criminal Code of People’s Republic of Mongolia.
- For 13 year and 8 days /1998/ - Article 79 and 127.2, Criminal Code of People’s Republic of Mongolia.
- For 11 year, 2 month and 8 days /2002/ - Article 227.2, Criminal Code of People’s Republic of Mongolia.
- For 14 year, 6 month and 168 days /2004/ - Article 87.1 and 227.2, Criminal Code of People’s Republic of Mongolia.

### **Mozambique: Killing of 18 persons by the police**

**Violation alleged:** Death in custody; Death 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; Impunity

**Subject(s) of appeal:** 18 persons (15 males; 3 demonstrators)

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

### **Allegation letter dated 12 September 2008**

I would like to bring to your Government’s attention information I have received concerning **nine incidents, involving 18 victims, of allegedly arbitrary killings by the police** in Mozambique. While the circumstances under which the killings occurred differ, from summary executions of supposed criminals, to the use of lethal force allegedly to prevent detainees from escaping, to the use of excessive force in policing protests, the information received indicates that in none of these cases, which span over the past five years, have the police officers involved been held accountable. In the Annex to this letter, I have reproduced detailed information on each of the nine cases.

While I do not wish to prejudge the accuracy of these reports, I would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (“ICCPR”), to which Mozambique is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). In particular, Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved.

The Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 December 1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not in themselves binding law, provide an authoritative and convincing interpretation of the limits on the prohibition of arbitrary deprivation of life places on the conduct of law enforcement forces.

Crucially, these instruments put forward the twin safeguards of necessity and proportionality in the use of force. Article 3 of the Code of Conduct for Law Enforcement Officials states: “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”

The reports I have received, see for example the cases of **Júlio Naftal Macule, Abrantes Penicela, and Geraldo Celestino João** in the Annex to this letter, suggest that in many instances the use of firearms by the police might have been entirely unwarranted. I would like to stress, however, that even when the use of firearms has become unavoidable:

“... law enforcement officials shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimize damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”

(Principle 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials).

Of particular relevance in the context of policing of assemblies and demonstrations, such as the protests in Maputo and Gaza in February 2008 (see Annex), are principles 12 to 14 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.

In the light of the reports suggesting pervasive impunity for arbitrary killings by law enforcement officials, I would like to recall that your Government has a duty to investigate, prosecute, and punish all violations of the right to life, and particularly those by state agents. The UN 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) set forth the obligations descending from the right to life and Article 6 ICCPR in particular. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall

ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences (Principle 1). This means that suspension from duty or other “corrective measures” (see the case of Carlos Cossa, Mustafa Assane Momedé and Francisco Nhantumbo, and the case of Julêncio Gove) are insufficient measures to address arbitrary killings, which require severe penal sanctions.

There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions (Principle 9). Several of the cases reported to me raise concerns with regard to your Government meeting these requirements. As for promptness, most dramatically is the case of Geraldo Celestino João, who was killed in March 2004. Four-and-a-half years later, the results of the investigation into this case are reportedly still not known and no trial date has been set. Impartiality of the investigation is also a major concern. In the case of Pedro Mulaudzi, for example, the police investigation reportedly concluded that the police officers involved had used their gun to immobilize the victim, not to kill, although the autopsy allegedly showed that Pedro Mulaudzi had been shot from the front in the heart.

In light of the reports received, I find it appropriate to stress that while an investigation into every killing by police forces must be promptly initiated by the authorities on their own motion (Principle 9), families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation (Principles 16). In the case of Júlio Naftal Macule, reports suggest that the police failed to inform the family of the killing and then tried to prevent an autopsy being performed. A case was allegedly opened by the Procurator’s office eight months after the killing and only after lawyers of a human rights organization started to work on the issue. Most recently, the family has reportedly been asked to pay court fees before the case can proceed to trial.

Principle 15 of the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions provides that “[t]hose 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.” As a minimum, police officers implicated in suspected arbitrary killings should be suspended from duty or transferred to prevent them from influencing the investigation. This appears to be only rarely applied in Mozambique. Moreover, while it is true that “it shall not be the general rule that persons awaiting trial shall be detained in custody” (Article 9 ICCPR), given their particular capability to influence proceedings, pre-trial detention of police officers charged with arbitrary killing might often be appropriate.

Finally, I would like to recall that it is part and parcel of the right to life as protected in Article 6 ICCPR that the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time (Principle 20).

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

1. Are the facts alleged in the case summaries in the Annex accurate? If not, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to each of the cases mentioned in the Annex. Please explain the steps taken to ensure that these investigations comply with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
3. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanders, for the killings mentioned in the Annex.
4. Please provide the details of any measures taken to ensure that complainants, witnesses and family members of the victims in these cases are not subject to any intimidation or retaliation, as provided in the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
5. Please provide the details of any compensation payments made to the families or dependants of any of the victims in the cases mentioned in the Annex.
6. Does your Excellency's Government envisage any reforms to internal and external police oversight and complaints mechanisms, or to the way criminal cases against police officers are prosecuted?

### **Annex**

#### *Killing of Geraldo Celestino João*

On 3 March 2004, Geraldo Celestino João and two other men were arrested without a warrant by police officers from the 4th Police Station in the Manica province. When Geraldo João asked why they were being arrested, one of the officers reportedly opened fire in his direction, but hit another officer in the right tibia. The other two officers then reportedly threw Geraldo João face-down on the floor and shot him twice with a pistol. One shot entered the outside of his right thigh and exited through the groin. The other entered the inside of his left thigh and exited through the other side. The injured officer was taken to hospital, but Geraldo João was reportedly left on the ground for 30 minutes during which time a police officer beat and kicked him. He was then taken to hospital where he died. An autopsy was carried out on 10 March 2004 at the request of a human rights organization. The results of the investigation are not yet known and no trial has been held to date.

#### *Killing of Pedro Mulaudzi, 2005*

Pedro Mulaudzi was shot dead by police in a police detention centre in the Niassa Province in 2005. The police alleged that he had attempted to escape, that they first shot in the air to warn him, and then at him to immobilize him as he did not stop running. An autopsy, however, showed that he had been shot from the front in the heart. A criminal process was instituted against the police officer who reportedly gave the order to shoot and the two officers who fired the shots. The Provincial Prosecutor requested that the police carry out an investigation. In spite

of the autopsy result, the police investigation concluded that the officers involved were not culpable as they had shot to immobilize, not to kill. No further action is known to have been taken.

*Killing of Julêncio Gove*

*(This case was already the subject of a communication to your Government on 22 August 2006, which has regrettably remained without a reply)*

On the morning of 8 January 2006, Julêncio Gove witnessed six police officers from the 7th Police station, in Matola, Maputo Province beating a young woman. He tried to intervene to help her but was warned not to interfere and threatened with a gun by one of the officers. He stepped back, but continued urging the police to stop beating the woman. One of the officers fired a shot at him. When he fell to the ground, the police officers began kicking him until they realized he was dead. The killing prompted demonstrations by hundreds of locals over the next week protesting against repeated police violence. The officer who had shot Julêncio Gove was eventually arrested and charged with murder. The Station Commander said that the six members in question would be the target of “corrective measures”. However, the other police officers involved were not charged and the police officer who was arrested has not been tried to date.

*Shootout killing of four men in Maxaquene, March 2006*

On 17 March 2006, Samuel Nhambe, Aquilas Nguila, Candido Chirindza and Francisco Chirindza, four men who had escaped from Maputo security prison two days earlier, reportedly hijacked a minibus with a driver and three passengers in the vehicle. According to police statements, when the police found the minibus in the neighbourhood of Marracuene and apprehended the four men, they searched the bus for weapons, finding none, and then allowed the men to drive the minibus to Maputo under police escort. In Maxaquene, Maputo province, however, the men allegedly opened fire on the police with weapons they had hidden in the minibus and tried to escape. The four men were killed in the alleged shoot-out that ensued. No investigation is known to have been carried out into this incident to confirm that there was a shootout or establish what actually happened.

*Killings in connection with attempted break-out at Maputo Central Prison, May 2006*

In May 2006, there was an attempted prison break at Maputo Central Prison. According to the Minister of Justice, the police shot and killed two prisoners as they tried to escape by climbing over the prison walls and wounded eight others. Other reports, however, allegedly based on eye-witnesses, state that at least three prisoners were killed, some after they had been recaptured. No investigation was carried out into the killings to establish whether the force used was justified.

*Carlos Cossa, Mustafa Assane Momedé and Francisco Nhantumbo, April 2007*

On the evening of 4 April 2007, three police officers took three detainees, Sousa Carlos Cossa, Mustafa Assane Momedé and Francisco Nhantumbo, from a police station in Laulane, Maputo, to a sports field in the Costa do Sol neighbourhood, outside Maputo. At the sports field the police officers shot and killed the men. A human rights organization received information

about these killings from residents of the neighbourhood and informed the media. The police carried out an investigation. According to its findings, the three men had been taken into police custody after having been apprehended during an attempted break-in. They later agreed to show the police the location of other criminals in the Costa do Sol area, but tried to escape once there and were shot in the process.

An inquiry by the Procurator General, however, found that Carlos Cossa, Mustafa Assane Momedé and Francisco Nhantumbo had been “summarily executed” by the police. Based on autopsy results it found that the three had been shot in the back of the neck at close range, which was incompatible with the account of events given by the police. The police officers were suspended from duty but, initially, the police refused to arrest them, despite an arrest warrant issued by the office of the Procurator of Maputo city. On 15 May 2007 the Commander General of Police finally confirmed that the three police officers had been arrested. Their trial was set for the end of 2007, but was later postponed. As of to date, the trial has not started.

#### *Killing of Abrantes Afonso Penicela, August 2007*

On 14 August 2007 at about 3 p.m., Abrantes Afonso Penicela was unexpectedly grabbed and pushed into a police car as he went to meet an acquaintance (the police had called him from that acquaintance’s mobile phone). In the car, the police officers then gave him an injection and drove him to a secluded area in the district of Xhinavane in Maputo province, where they beat him until he fainted. The police officers then shot him in the back of the neck and set fire to him before leaving the area thinking that he was dead. However, he survived and managed to crawl to a nearby road where he was found by people from the Xhinavane area. He was able to give details of his family to those who found him and was taken to Xhinavane Hospital.

The family reported the case to the police and an officer went to the Maputo Central Hospital to take a statement from Abrantes Penicela. His family recorded this testimony in the presence of the police. Abrantes Penicela died of his injuries on 15 August 2007. Police officials have stated that the case is being investigated, but the investigation appears not to have concluded yet and no police officer has so far been arrested for the killing.

#### *Killing of Júlio Naftal Macule, November 2007*

In the early morning hours of 8 November 2007, Júlio Naftal Macule was asleep in a hotel room in Massinga in Inhambane province, when members of the police Força da Intervenção Rápida (Rapid Intervention Force, FIR) pushed open the door of his hotel room and shot him. He was hit by a bullet in the left thigh which caused a hemorrhage of which he died. It would appear that the FIR had mistaken him for one Agostinho Chauque. Soon after Júlio Naftal Macule’s death, police authorities announced that they had captured and killed “the most wanted criminal in the country”, Agostinho Chauque. When journalists insisted to see the body, the police changed their statement and admitted that they had not caught Agostinho Chauque, but claimed that they had nonetheless caught and killed a dangerous criminal.

On the same day, the police took the body of Júlio Naftal Macule to the morgue in Inhambane city. The following day, inhabitants of Massinga (and not the police) informed

Júlio Naftal Macule's family of his death. The family went to the police and asked for his body, but also insisted that an autopsy be carried out. Initially the police refused, claiming that there were no facilities in Inhambane, but eventually they agreed. The report of the autopsy states that death was caused by blood loss due to a bullet having perforated the femoral artery and vein.

On 26 June 2008, after a lawyer of a human rights organization started to assist them in seeking justice, Júlio Naftal Macule's family was informed that a case had opened in the office of the Inhambane Provincial Prosecutor (case number 255/07). The family was also told to pay procedural costs to the Massinga District Court, where the case would eventually be held. It appears that three police officers have been charged with murder, but have not been detained pending trial. Neither the police nor the Ministry of Interior have at any stage contacted the family to provide explanations on, or apologies for, the killing of Júlio Naftal Macule.

#### *Deaths at demonstration in Maputo on 5 February 2008*

On 5 February 2008, demonstrators protesting against an increase in transport fares took to the streets of Maputo, blocking traffic and causing damage to property, including police vehicles. The police reportedly fired bullets into the air in a bid to disperse the crowds, but were not successful. They then started firing what they claimed were rubber bullets at the crowd. However, at least three people were killed and 30 were injured by stray, live ammunition. Related demonstrations occurred in the provinces of Inhambane and Gaza on 11 February 2008. In Gaza, live ammunition was once again used against demonstrators. The police spokesperson stated that live ammunition was used because some officers were caught by surprise by the rioters.

#### **Niger: Mort de 78 personnes dans le nord du pays**

**Violation alléguée :** Violation du droit à la vie durant des conflits armés

**Objet de l'appel:** 78 personnes (49 hommes ; 2 mineurs ; 2 ressortissants étrangers)

**Caractère de la réponse:** Coopérative mais incomplète

#### **Observations du Rapporteur Spécial**

Le Rapporteur Spécial apprécie les renseignements fournis le Gouvernement du Niger relatifs aux événements survenus dans le nord du pays entre juin 2007 et juin 2008.

En relation aux événements survenus à Tamzalak et à Tiène le 21 et 25 mars 2008, tout en notant que des combats ont eu lieu, le Rapporteur Spécial regrette que le Gouvernement n'ait pas fourni d'informations détaillées relatif aux cas précis des 7 personnes mentionnées dans l'annexe et qui auraient eu lieu à Tamzalak et à Tiène le 21 et 25 mars 2008.

Le Rapporteur Spécial regrette que le Gouvernement n'ait pas fourni plus de détails sur certaines allégations, les qualifiant sans fondements en se basant sur le fait qu'aucune plainte n'avait été déposée dans ces cas. A cet égard le Rapporteur voudrait rappeler au Gouvernement que son obligation d'ouvrir une enquête approfondie et impartiale dans tous les cas allégués



d'exécutions extrajudiciaires et non uniquement à la suite d'une plainte déposée à la Gendarmerie. (Principe 9 des Principes relatifs à la prévention efficace des exécutions extrajudiciaires, arbitraires et sommaires et aux moyens d'enquêter efficacement sur ces exécutions)

Le Rapporteur Spécial demande également au Gouvernement de le tenir informé des progrès de l'enquête sur le décès de 7 personnes survenu le 9 décembre 2007.

### **Lettre d'allégation envoyée le 13 août 2008**

Depuis juin 2007, au moins 78 personnes (voir la liste des victimes alléguées en annexe), la majeure partie d'entre elles appartenant à la communauté Touareg, auraient été abattues de manière extrajudiciaire dans les régions du nord du pays. La plupart des victimes auraient été retrouvées enterrées, quelques-unes auraient aussi été torturées. Les rapports indiquent la responsabilité directe des Forces Armées Nigériennes (FAN) dans ces actes.

Il est allégué que ces exécutions extrajudiciaires pourraient avoir eu lieu en représailles aux attaques lancées par le mouvement d'opposition armé Touareg Mouvement des Nigériens pour la Justice (MNJ), dans le contexte de la reprise des activités armées en février 2007. Plus précisément, la plupart des attaques contre les civils auraient eu lieu à la suite d'explosions de mines contre des militaires des FAN et leurs véhicules.

Sans vouloir à ce stade me prononcer sur les faits qui m'ont été soumis, je voudrais faire référence aux règles coutumières du droit international humanitaire régissant les conflits armés, y compris la prohibition de diriger des attaques contre la population civile. Les civils sont toutes les personnes qui ne sont pas membres des forces armées d'une partie au conflit. Les personnes civiles sont protégées contre les attaques, sauf si elles participent directement aux hostilités et pendant la durée de cette participation. (Règles 1,5 et 6 de règles coutumières du droit international humanitaire, identifiés par le Comité Internationale de la Croix Rouge (« Règles Coutumières »)).

Par ailleurs, il n'est jamais permis de tuer une personne qui a été déjà détenue ou autrement mise hors de combat. Une telle atteinte à la vie constitue un meurtre en vertu du droit international humanitaire, peu importe que la personne ait été un civil ou un combattant. (Article 3 commun aux quatre Conventions de Genève de 1949, Règles 87 et 89 des Règles Coutumières).

De plus, les parties à des conflits armés non internationaux n'ont pas le droit de recourir à des mesures de représailles. Les autres contre-mesures contre des personnes qui ne participent pas ou qui ont cessé de participer directement aux hostilités sont interdites. (Règle 148 des Règles Coutumières).

Je voudrais aussi rappeler au Gouvernement de votre Excellence ses obligations en vertu du droit international des droits de l'homme. En particulier, je voudrais référer aux 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 voudrais attirer l'attention du Gouvernement de votre Excellence sur les 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, comme il a été réitéré par la 61ème session de la Commission des Droits de l'Homme dans la Résolution 2005/34 relative aux exécutions extrajudiciaires, sommaires ou arbitraires. La Commission a ajouté que cette obligation comprend une obligation d'identifier et de traduire en justice les responsables, de fournir une compensation adéquate dans un délai raisonnable pour les victimes ou leurs familles et d'adopter toutes les mesures nécessaires, y compris des mesures légales et judiciaires, afin d'éviter la récurrence de telles exécutions. De plus, les plaignants, les témoins, les personnes chargées de l'enquête et leurs familles doivent être protégés contre les violences ou toute autre forme d'intimidation.

Tel qu'indiqué précédemment dans un rapport présenté au Conseil des Droits de l'Homme (E/CN.4/2006/53), l'obligation d'enquête et de poursuite ne cesse pas en situation de conflit armé, comme c'est le cas concernant le conflit opposant le MNJ et les FAN.

Dans le cas où vos enquêtes appuient ou suggèrent l'exactitude des allégations ci-jointes, je prie le Gouvernement de votre Excellence de prendre toutes les mesures nécessaires pour assurer la protection des droits et des libertés des individus mentionnés, de diligenter des enquêtes sur les violations perpétrées et de traduire les responsables en justice. Je prie aussi le Gouvernement de votre Excellence d'adopter toutes les mesures nécessaires pour prévenir la répétition des faits mentionnés.

Il est de ma responsabilité, en vertu du mandat qui m'a été confié par le Conseil des droits de l'homme de solliciter votre coopération pour tirer au clair les cas qui ont été portés à notre attention. Etant dans l'obligation de faire rapport de ces cas au Conseil des Droits de l'Homme, je serais 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, autopsies, 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. Le cas échéant, veuillez indiquer si les familles des victimes ont été indemnisées.
6. Les membres des FAN ont-ils reçu des ordres spécifiques concernant l'interdiction d'attaquer la population civile? Si non, pourquoi ?

### Annexe

- Le 10 juin 2007, dans la vallée de Tazerzait, les éleveurs M. **Sidi Mohamed Imohan dit Kalakoua**, M. **Abtchaw Kounfi** et M. **Aoussouk Kounfi** auraient été tués et enterrés par les Forces Armées Nigériennes (FAN) près du puits de Tazerzait. Les cadavres, dont un était découpé, auraient été retrouvés par des civils. Selon les rapports, les faits ont été confirmés par le président de l'Etat, le commandant de la zone militaire et le lieutenant qui avait reçu l'ordre « d'exécuter toutes personnes ».
- Le 26 août 2007, M. **Idrissa Takho-Ouidane**, M. **Aghalo Moughamad**, M. **Maghmoud Moughamad**, M. **Ghousmane Ewadane**, M. **Moughmoud Tagho** et **Aghmad Takho Hitane**, des nomades voyageant sur la route nationale entre Iférouane et Gougaram auraient été tués et enterrés par les FAN. Ces exécutions constitueraient des représailles par les FAN suite aux accrochages entre celles-ci et le Mouvement Nigérien pour la Justice (MNJ) autour de Gougaram.
- Le 27 septembre 2007, une patrouille de FAN qui venait d'Assamaka aurait exécuté **12 personnes** entre Innazawa et Tudara au nord d'Iférouane. 8 des personnes tuées auraient été identifiées comme M. **Zeyda ag Badi**, M. **Ahmadu ag Moussa**, M. **Ghoumour ag Ahmad**, M. **Ismaghil ag Akam**, M. **Rhissa ag Attaher**, M. **Bikim ag Ilyas**, M. **Akloua ag Hama**, M. **Oumra Lahcen**. Parmi les 12 victimes, 2 sont de nationalité algérienne. M. Mohamed ag Akarfa aurait été arrêté aussi mais aurait pu s'échapper et témoigner par la suite.
- Le 1 octobre 2007, les FAN auraient arrêté un convoi de cinq véhicules près de la frontière avec l'Algérie. Les passagers auraient été obligés d'abandonner leurs véhicules, et séparés selon leur couleur de peau. **12 personnes** de peau plus claire, ne portant pas d'armes et supposés Touaregs, auraient été séparées du groupe par les militaires, qui les auraient abattus. Les faits auraient été rapportés aux autorités dans les villes de Tamanrasset (Algérie) et Arlit par les témoins des exécutions.
- Le 19 novembre 2007, les FAN auraient abattus **Adam Abarchi** et **Ghoumour Assaleh**, aux environs de la localité d'Atri, dans la région d'Agadez.
- Le 22 novembre 2007, quatre personnes, M. **Bachir Mouhamad**, M. **Mariko Kané**, M. **Oukhoudane Algha**, M. **Hamad Ibrahim**, éleveurs et jardiniers auraient été arrêtées par la Gendarmerie au village de Tchintébizguint, à 30 km à l'ouest d'Agadez, à la suite de l'explosion d'une mine. Alors que les gendarmes voulaient interroger ces suspects, des éléments des FAN se sont emparés de ces quatre personnes. Leurs corps auraient été retrouvés cinq jours plus tard dans une fosse commune. Selon les rapports, les corps portaient des traces de balles au cœur, au front et à l'oreille.
- Le 9 décembre 2007, **sept personnes**, y compris deux commerçants arabes, **Ibrahim Sidi Amar** et **Osmane Sidi Rali**, ainsi qu'un cuisinier, un mécanicien et deux chauffeurs d'ethnies Touareg et Haoussa qui rentraient à Agadez dans leurs véhicules ont été arrêtées sur la route par les forces de sécurité nigériennes. Les familles des victimes qui les attendaient à Agadez auraient vu arriver leurs véhicules conduits par des militaires. Ils auraient alors tenté d'obtenir des informations concernant les

membres de leurs familles. Après avoir longuement insisté, les militaires leur auraient confirmé le 10 décembre les décès des 7 personnes, et les auraient conduits à l'endroit où ces sept personnes auraient été enterrées. Les corps des victimes auraient été retrouvés dans une fosse commune vers les falaises de Tiguidit. Selon les allégations, des personnes qui ont identifié les corps auraient témoigné que les victimes portaient de nombreuses marques de brûlures de cigarettes et de coups de ceintures ainsi que de multiples impacts de balles au visage et à la poitrine. Les familles auraient obtenu une autopsie. Cependant, aucune enquête n'aurait été faite à ce jour.

- Le 12 décembre 2007, M. **Balla Hadaba et ses 3 fils, Akidima, Ahmad et Amoumoune** auraient été exécutés, par 3 balles chacun, par les FAN à l'entrée d'Arlit.
- Le 1 mars 2008, **3 chameliers** auraient été exécutés par les FAN à l'entrée de Gougaram.
- Le 20 mars 2008, M. **Abdoussalam Amadou Zamanka**, Imam de la mosquée de Boughoul, qui avait été enlevé par les FAN auparavant, aurait été torturé et ensuite exécuté par celles-ci. Deux autres personnes ayant subi également des tortures par les FAN, et ensuite libérés, auraient été témoins à ces actes.
- Entre le 21 et le 25 mars 2008, suite à des affrontements violents entre le MNJ et les FAN à Tamazlakh, ces derniers s'en seraient pris à des civils et leurs biens dans plusieurs endroits. A Tamazlakh, les FAN auraient exécutés **au moins 3 personnes, dont 2 enfants, Liman Houdane et Toukane Assale**. Ils y auraient aussi brûlé 8 hameaux et un véhicule tout terrain. Dans la vallée de Safakat ils auraient exécutés 2 civils et mis le feu aux cases après les avoir pillés. A Tidène, les FAN auraient tué M. **Ahmed Rhissa Imolane** et M. **Mohamed Almoctar dit Guinadan**, un notable du village, mis le feu à 7 cases, enlevé du bétail, et enlevé et détenu plusieurs personnes. Les jambes de M. Imolane auraient été fracturées. Au campement de Tabouhait, les FAN auraient tué M. **Mohamed El Moctar**, un jardinier. Avant de l'exécuter, les FAN auraient frappé M. El Moctar avec leurs fusils. A Ghabda, à 10 km de Dabaga, l'éleveur **Hada Baregha** aurait été exécuté par les FAN.
- Le 26 mars 2008, les FAN auraient exécuté **au moins 5 civils** de Dabaga, y compris M. **Kiza Batolane**, M. **Aboubacar**, un commerçant, M. **Amaho Alane, un garçon de 14 ans**, et M. **Mohamed Alane**. M. Aboubacar aurait été torturé avant d'être poignardé : ses oreilles auraient été découpées, et on aurait mis le feu à ses cheveux et sa tête. Les FAN auraient aussi enlevé deux autres personnes, et pillé et détruit des maisons et autres biens de la communauté, y compris 60 animaux. Selon les rapports, l'axe qui mène à cette localité est actuellement occupé par les Forces de défense et de sécurité rendant impossibles les déplacements de la population. Plusieurs personnes la communauté se sont enfuies dans la montagne.
- Le 10 avril 2008, M. **Gousmane Bilal**, chef du village de la commune de Dabaga, aurait été exécuté par les FAN. Son corps aurait été retrouvé par des proches, criblé de balles.
- Le 22 mai 2008, dans le village de Tadak, au pied du Mont Tamgak, les FAN auraient exécutés **9 civils** dans le cadre d'une offensive qui visait à neutraliser les membres du

MNJ actives dans la région. Les villageois n'ayant pas pu s'enfuir auraient été séparés en deux groupes, les femmes d'un côté, les hommes de l'autre. Ces derniers auraient été abattus à bout portant. 7 des victimes auraient été identifiées comme **Mama Ewaden, Ibrahim Ghissa, Boulla Lachi, Hamadi Ghoumour, Idrissa, Lolo et Sidi Koummado**. Les FAN auraient également détruit le bétail et les abris de plusieurs familles.

- Le 29 juin 2008, suite aux affrontements du 27 juin dans la vallée Tezirzaït entre les MNJ et les FAN, les FAN auraient exécuté au village d'Egandawile, dans la vallée de Tidene, **Inana Krima**, un garçon de 15 ou 16 ans, le frère de l'Imam du village.

### Réponse du gouvernement nigérien du 21 avril 2009

Le Gouvernement du Niger a fourni les informations suivantes :

Dans sa ferme détermination à élucider cette affaire, le Gouvernement de la République du Niger a instruit la gendarmerie pour sillonner la région d'Agadez, aller à la rencontre de la population pour investiguer et recueillir des plaintes éventuelles, à l'issue de cette mission, aucune plainte relative aux actes d'abus, de tortures, de traitements, dégradants ou d'exécutions extrajudiciaires par les forces de défenses et de sécurité n'a été enregistrée.

Depuis février 2007, début de l'affaire en objet, une seule plainte émanant d'une famille de sept individus et une déclaration de disparition ont été déposées à la Gendarmerie nationale. Tout le reste n'est que rumeur et spéculation véhiculées par des individus cupides qui veulent transformer les questions de droit de l'homme en fonds de commerce.

Aussi, pour rétablir la vérité, soumettons-nous à votre attention, les données ci-après qui constituent le film des évènements tels qu'ils s'étaient produits.

- (1) le 10 juin 2007, selon l'information reçue par les services de Gendarmerie, il y eut trois véhicules de l'Armée qui ont sauté sur des mines. Premièrement, très tôt le matin, le véhicule militaire a sauté sur une mine faisant des morts et des blessés. Un second véhicule de l'armée portant secours aux blessés a également sauté sur une autre mine. Juste après ce dernier, fait, les militaires ont aperçu des hommes courir, sortant de la vallée. Ils les rattrapent et les fouillent. Ils trouvaient sur eux des allumeurs et détonateurs, ainsi qu'une lettre provenant d'un Chef de bandits. A vu de ces indices graves, le Chef de mission les a embarqués dans un véhicule avec les blessés pour être conduits à Iférouane où ils seront remis à la Gendarmerie pour enquête. A peine le véhicule a-t-il démarré qu'il sauta sur un mine faisant cinq morts dont les trois vieillards qui y ont pris place et dont les noms ont été cités dans le rapport. Le Docteur DANGANA, peu avant son départ pour le MNJ, a confirmé à la Gendarmerie que les tris vieillards ont pris place dans un véhicule de l'Armée, lequel a pris la direction d'Iférouane. Aucune plainte n'a été déposée à la Gendarmerie.
- (2) La Gendarmerie n'a reçu aucune information sur les prétendues exécutions du 26 août 2007, des nomades voyageant entre Iférouane et Gougaram et aucune plainte n'a été déposée. Il s'agit donc des allégations sans fondements.

- (3) Concernant les douze civils qui seraient exécutés le 27 septembre 2007 par une patrouille de l'Armée venant d'Assamaka, aucun renseignement n'est parvenu à la Gendarmerie et aucune plainte n'a été enregistrée. Les Forces Armées Nigériennes ne reconnaissent pas avoir posé de tels actes. Il ne s'agit que de rumeurs dénuées de tout fondement.
- (4) La Gendarmerie n'a pas eu connaissance des ces événements qui se seraient déroulés le 10 octobre 2007 à la frontière avec l'Algérie où douze touaregs auraient été massacrés par l'Armée. La Gendarmerie Nationale n'a jamais été saisie desdits faits.
- (5) Après le 19 novembre 2007, les familles d'ADAM ABARCH et de GHOUMOU ASSALEK n'ont ni porté l'affaire à la connaissance de la Gendarmerie ni porté plainte. Pourtant Atri, où ils habitent, est très proche d'Agadez.
- (6) Le 22 novembre 2007, la Gendarmerie n'était pas en patrouille à Tchinta bizguine, et il n'y pas eu de patrouille mixte FAN-Gendarmerie dans la dite zone, à la date précitée. Mais le 21 novembre, un véhicule avec à son bord, huit bandit armés a été signalé. Ces malfrats étaient à la recherche de l'informateur de l'armée détenant un téléphone Thuraya. Le 24 novembre, le même véhicule a été signalé de nouveau dans la même zone et les bandits étaient accompagnés d'un journaliste muni d'une caméra. Concernant cette affaire, aucun élément objectif ne permet d'établir la véracité des griefs articulés contre les FAN. A ce jour, aucune plainte n'a été enregistrée à ce sujet par les unités d'enquête.
- (7) L'affaire du 9 décembre 2007 est en cours de traitement. Toutes les parties concernées ont été entendues. Le procès-verbal a été transmis au procureur de la République. Aucune autopsie n'a pu être effectuée sur les corps, parce que la saisine avait été effectuée un mois plus tard à un moment où les corps étaient donc en état de décomposition avancée. Toutes les remarques rapportées sur les corps ne reposent sur aucune preuve. Et la procédure suit son cours, conformément aux lois de la République en vigueur, en vue de situer les responsabilités.
- (8) Le prétendu décès de MOUSSA BALLA HADABA et de ses trois fils, le 12 décembre 2007, n'a pas fait l'objet de déclaration et de plainte à la Gendarmerie. Il s'agit des faits qui ne reposent sur aucune preuve.
- (9) Le 1<sup>er</sup> mars 2008, trois chameliers auraient été exécutés à l'entrée de Gougram par l'armée. Cette information n'est jamais parvenue aux unités d'enquête, compétentes et aucune plainte n'a été déposée à ce jour.
- (10) La prétendue exécution, le 20 mars 2008, de Monsieur ABDOULSALAM AMADOU ZAMANKA, iman de la mosquée de Bougoul par les FAN, repose sur une information aussi fausse que toutes les autres. Dès le 21 mars, la Gendarmerie a reçu une déclaration de disparition de personne. Une enquête a été ouverte et des recherches ont été engagées. Un mois plus tard, ABDOULSALAM a été retrouvé et présenté aux autorités civiles et militaires.

ABOULSALAM a été arrêté le 19 mars, veille du mouloud 2007 par un peloton en patrouille. Il a été libéré après avoir été entendu.

- (11) Le 21 et 25 mars 2008, des violents combats ont opposé les forces régulières aux bandits armés à Tamzalak et à Tiène. Monsieur AMOUMANE KALAKOUA, Chef d'Etat Major des bandits armés, surpris à Tidène, a subitement ouvert le feu sur les FAN pour se dégager et se couvrir. Il était lourdement armé. Les étincelles de ses balles ont pu atteindre des cases et provoqué la mort des populations civiles.
- (12) Le 26 mars 2008, les bandits armés ont occasionné le décès de plusieurs civils et brûlé un case. La Gendarmerie n'a été saisie d'aucune plainte à ce sujet. Toutefois, le gouvernement comme à l'accoutumée, a pris des dispositions pur garantir la sécurité des populations et de leurs biens.
- (13) Le 10 avril 2008, MOUSSA GOUSMANE BILAL a été exécuté. Son corps a été retrouvé criblé de balles derrière le village. Il n'est pas le Chef du village de Dabaga mais d'Elméki où il a trouvé la mort. Le 10 avril, l'Armée n'était pas encore arrivée à Elméki. Il a été nultamment enlevé par deux individus en présence de sa femme qui les a formellement identifiés. Il s'agit de ISSA et HAMOU DODO. Le premier a perdu la vie au cours d'un accrochage entre l'Armée et les bandits à Tidène. Le deuxième qui est un cadre MNJ, activement recherché pour atrocités commises sur les populations civiles, court toujours. La femme du défunt a bien suivi leurs conversations. Les discussions ont commencé dans la case, lorsque HAMOU demandait au Chef du village la lettre qu'il avait l'intention d'adresser au Gouverneur, sollicitant une base militaire a Elméki. Devant son entêtement à ne pas reconnaître ladite lettre, ils l'ont conduit derrière le village ou son corps a été retrouvé criblé de balles, la femme a été intimidée et menacée par ceux-là même qui ont tué son époux, en vue de la dissuader à porter plainte.
- (14) Le 22 mai 2008, a vu de la destruction d'une des plus grandes bases des bandits armés, cella la même qui leur servait de lieu de campement. Ce jour là, AGALY et ses lieutenants étaient à Tchintoulouss où ils étaient partis rencontrer le Vice-Président de la Commission Nationale des Droits de l'Homme et des Libertés Fondamentales qu'ils ont enlevé et séquestré à partir de Tanout.

A l'issue de l'opération engagée, il n'a été enregistré aucune perte en vie humaine ; les bandits s'étant repliés sur le mon Tamgak. Comment des lors, peut-on parler d'exécutions extrajudiciaires imputables aux forces de défense et de sécurité.

- (15) La prétendue mort du jeune INANA KRIMA qui serait survenue le 09 juin 2008 à Tidène n'est jamais parvenue à la Gendarmerie. En tout cas, son grand frère, l'imam dudit village, n'a pas porté plainte. Il s'agit, une fois de plus, de faits inventés dans le seul but de ternir l'image de nos forces de défense et de sécurité qui, faut-il le souligner, œuvrent inlassablement à la défense de l'intégrité du territoire dans le strict respect des lois et règlement de la République, ainsi que des dispositions pertinentes du droit international humanitaire.

Le moins qu'on puisse dire est que les allégations contenues dans le rapport qui incrimine nos forces de défense et de sécurité sont d'une légèreté notoire. Le gouvernement, sous l'autorité du Président de la République, ne saurait cautionner ce genre de pratiques contraires à l'éthique de notre Armée Républicaine. Nous relevons pour le déployer, qu'aucune enquête objective et approfondie n'a été diligentée pour étayer les gravissimes allégations faisant état d'actes d'abus, traitements dégradants, d'exécutions extrajudiciaires qui seraient perpétrés par les Forces Armées Nigériennes. Il est particulièrement navrant de relever que les accusateurs de l'Armée Nigérienne se sont tout simplement contentés des informations balancées sur les sites Web utilisés par le MNJ. Sinon comment comprendre que l'on continue à maintenir le nom de Monsieur ABDOUSSALAM AMADOU ZAMANKA sur la liste des personnes exécutées par les Forces Armées Nigériennes, alors même que cet ouéléma, connu de toute population, continue, aujourd'hui encore, de prêcher, les différentes mosquées d'Agadez. S'agissant du Chef de village d'Elméki, une enquête a clairement établi que son assassin est bien M. HAMOU DODO. Les Forcées Armées Nigériennes n'y sont ni de près, ni de loin, impliquées.

### **Nigeria: Killing of Paul Abayomi Ogundeji and Godwin Agbroko**

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

**Subject(s) of appeal:** 2 males (journalists)

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

**Allegation letter dated 3 September 2008**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

In this connection, we would like to bring to your Government's attention information we have received concerning the killing of Mr **Paul Abayomi Ogundeji**, a member of the editorial board of the Lagos-based private daily newspaper *Thisday*. Mr Ogundeji was a former Features Editor of the *Punch Newspapers*, one time Editor of *The Sunday Comet* and Chief Press Secretary to former Lagos state deputy governor Mr Femi Pedro. We would also like to seek information regarding the killing of another journalist, Mr **Godwin Agbroko**, in 2007, as the investigation into the case reportedly remains inconclusive.

According to information received:

On 17 August 2008 at approximately 11 p.m., Mr Paul Abayomi Ogundeji was shot dead near the Dopemu bridge, in a suburb of Lagos. Police reports claim that Mr Ogundeji was ambushed by armed robbers who had earlier stolen a car. The police allege that Mr Ogundeji was on his way home when he was stopped by the armed men and ordered



to get out of his car. When Mr Ogundeji refused to comply with these demands he was shot by the assailants and died at the scene. No items were reportedly removed from the Kia Sports Utility Vehicle (SUV) which Mr Ogundeji was driving.

According to other reports, however, eye witness accounts from local residents in the Dopemu area claim that Mr Paul Abayomi Ogundeji was shot at close range by men in police uniforms who were manning a police checkpoint at the time. It is believed that an argument ensued between Mr Paul Abayomi Ogundeji and one of the police officers when Mr Ogundeji refused to step out of his car. The police officer then reportedly shot Mr Ogundeji in the head before boarding the police vehicle with colleagues and leaving the scene. Mr Ogundeji's body was later taken to the Lagos State University Teaching Hospital (LASUTH), by policemen from Idimu Division.

An official police investigation has been opened by the Special Investigation Unit of the Police Force in Abuja in relation to the killing of Mr, Paul Abayomi Ogundeji. The investigation is reportedly being led headed by Commissioner M. Ali Amadu.

The reports received regarding the killing of Mr Ogundeji bear a preoccupying resemblance to reports regarding the killing of another journalist of the same publication 20 months earlier:

**Mr Godwin Agbroko**, chairman of the editorial board of *Thisday*, was killed on 22 December 2006, in similar circumstances. He was found dead at the wheel of his car, by a roadside in the Isolo district in Lagos, just after he had left his office. A police investigation was opened into the killing of Mr Godwin Agbroko, and police initially pursued the theory of a botched robbery. However, apparently none of his personal belongings had been stolen, including a mobile phone worth several thousand Nairas. No further evidence of an attempted robbery was made public, and on 15 January 2007 the police announced that he may have been killed by "unknown assassins." As of today, police investigations remain inconclusive and no arrests have been made in connection with Mr Godwin Agbroko's case. Mr Agbroko had edited several newspapers during the military rule of 1993 to 1999 and was reportedly detained at least twice during those years.

While the reported police investigation into the killing of Mr Ogundeji is welcomed, concern is expressed that the aforementioned events may represent a direct attempt to prevent independent reporting in Nigeria.

While we do not wish to prejudge the accuracy of these reports, in particular whether Mr Ogundeji was shot by armed robbers or policemen, we would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights ("ICCPR") provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. As expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials ("Basic Principles"), this requires that law enforcement officials shall, as far as possible, apply

non-violent means before resorting to the use of force (Basic Principles, Principle 4). Further, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Basic Principles, Principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9).

We would also like to bring to your Government's attention that your Government has a duty to investigate, prosecute, and punish all violations of the right to life. To fulfill this legal obligation, there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions ("Prevention and Investigation Principles") provides guidelines for investigations, which includes conducting an adequate autopsy, and the collection and analysis of all physical and documentary evidence. Families of the deceased should be informed of information relevant to the investigation, and the findings of the investigation should be made public (Prevention and Investigation Principles, Principles 16 and 17).

We should also 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 person, 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 provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

We also deem it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights, which calls upon states to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence against journalists, and to bring to justice those responsible to combat impunity. We are concerned that killings of journalists, particularly if they remain unpunished, could create a climate of impunity and result in preventing independent reporting and stifling freedom of expression.

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

1. Are the facts alleged in the summary of the cases accurate?
2. Please provide the details, and where available the results, of any criminal investigation or other inquiries which may have been carried out in relation to the killing of Mr Paul Abayomi Ogundeji. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. If no inquiries have taken place or if they have been inconclusive please explain why.

3. Please provide the details, and where available the results, of any criminal investigation or other inquiries which may have been carried out in relation to the killing of Mr Godwin Agbroko. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. If the inquiries have been inconclusive, please explain why.

### **Nigeria: Forced evictions and lethal use of force by the police**

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

**Subject(s) of appeal:** 1 male (protester)

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

**Allegation letter dated 8 September 2008**, sent with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

In this connection, we would like to draw the attention of your Excellency's government to allegations I have received regarding **forced evictions and demolitions of houses in Gosa Sariki and Toge between May and June 2008, as well as threats of further evictions and demolitions in Abuja**. We would also like to draw the attention of your Government to allegations we have received regarding **lethal use of force by the police** in confronting protests related to these forced evictions.

Reports indicate that in May 2008, a number of homes in the Gosa Sariki village alongside the Nnamdi Azikiwe airport road in the Federal Capital Territory (FCT) of Abuja were demolished by bulldozers and residents were made homeless.

According to the information received, forced evictions and demolitions were conducted with inappropriate or no prior notice. It is alleged that officials from the Department of Development Control and the Federal Capital Development Authority (FCDA) visited residents of the Gosa Sariki village on 5 May 2008. They informed them that homes up to 150 metres from the airport road in the village were to be demolished the next day. However, it is further alleged that on 6 May 2008, bulldozers demolished homes in the Gosa Sariki village up to 300 metres from the airport road, thus a significant proportion of residents who had received no information were faced with the destruction of their homes. It is also alleged that many residents in the Gosa Sariki village lost their personal belongings as they were not given adequate time by FCDA officials to recover their possessions before their houses were bulldozed.

Reportedly the same situation occurred in Toge in June 2008, where houses and personal belongings were destroyed by bulldozers with insufficient or no prior notice.

Reports indicate that, as a consequence of these forced evictions, many families and individuals are now homeless, without shelter and living in the open air.

In both cases, no adequate consultations had previously taken place with the affected communities and individuals. The absence of adequate relocation, accommodation or compensation has allegedly further impoverished inhabitants of these areas that were already living in poverty. The majority of the constructions that were demolished in Gosa and Toge were reportedly housing structures of 1 to 3 rooms, stalls and shops where some community members sold their wares. It is alleged that many residents consequently lost their livelihoods, including those who operated small businesses from houses or in shops that were demolished.

In the case of Toge, residents allegedly obtained a court injunction in early June 2008 preventing the demolition of their homes, which was served on the FCDA. A hearing was allegedly scheduled at the High Court of the Federal Capital Territory to decide on the issue of the demolitions. However, the information states that this injunction was ignored by the FCDA, which carried out the demolition of homes on 13 June 2008 regardless of the court injunction.

In addition, the information received alleges that the forced evictions and demolitions were carried out with disproportionate use of force, including the use of violence. The allegations state that a large police presence was brought into the community during the demolition process which targeted protestors against the demolitions with violence. It is alleged that four protestors (Issa Buruku, Kabiru Abubakar, Dan Asebe and Ismaila Abdullahi) were shot, with three being injured and one killed. Two of the injured are still allegedly in a critical condition. According to the reports received, the police allegedly denied culpability during a police investigation.

Reportedly, these evictions are justified by the FCDA as being part of the belated implementation of the 1979 Abuja Master Plan. Allegedly, the implementation of this plan has led to a pattern of forced evictions and demolitions of informal settlements without consultation or compensation since 2003. Evictions and demolitions in Abuja communities and other informal settlements, including in the Municipality of Gwagwalada, have reportedly taken place since 2003/2004, by the Federal Capital Development Authority. Excluding the most recent wave of evictions and demolitions, it is alleged that the total number of dispossessed and homeless people amounts to an estimated 800,000 persons.

We wish to remind your Excellency that this situation was already the subject of a communication by the previous Special Rapporteur on adequate housing on 9 June 2006. Regretfully, no response to this communication has been received to date.

Further reports state that additional evictions and demolitions are scheduled for the Abuja area. In this context, we would like to draw the attention of your Excellency's Government to the provisions contained in the international legal instruments that Nigeria has ratified, including the International Covenant on Economic, Social and Cultural Rights (article 11.1). In 1991, the Committee on Economic, Social and Cultural Rights adopted General Comment No. 4 on the right to adequate housing, which defines seven basic dimensions of the right, which Government must ensure. These include guaranteeing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.

In General Comment No. 7 on forced evictions, adopted by the Committee in 1997, it is recognized that “forced evictions are prima facie incompatible with the requirements of the Covenant” and explicit guidance is provided on how Governments can pursue enduring solutions. The Committee further stated that:

“15. Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

“16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available.”

We should also like to draw to your attention the importance in international law of the protection of the right to adequate housing for communities, in particular women and children, in operative paragraph 11, (a) of resolution 2003/27 under which the Commission on Human Rights reaffirmed, including with respect to forced evictions:

“To give full effect to housing rights, including through domestic development policies at the appropriate level of government and with international assistance and cooperation, giving particular attention to the individuals, most often women and children, and communities living in extreme poverty, and to security of tenure; [...].”

It has been alleged that a number of the residents in Gosa Sariki and Toge forfeited their rights to alternative measures such as compensation because they were squatting in houses that were not built legally. Regardless of the truth of the allegation, in General Comment No.7 it is recognised that “where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality” (Paragraph 14). General Comment No.7 also indicates that “state parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders” (Paragraph 13).

With particular concern for the rights of all residents of Abuja, it is of utmost importance that your Excellency's Government take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected at the present and in the future. We also request that your Government, upon consideration of the legality of these actions, adopts effective measures to prevent the recurrence of acts found to be in contradictions of obligations under international human rights law to which Nigeria is a party. This includes taking all necessary measures to guarantee that rights and freedoms are protected and accountability of any persons guilty of any alleged violations are ensured.

With regard to the alleged use of lethal force by the police when faced with protests against evictions, we would like to refer your Government to the principles of international law governing the use of force when policing rallies and protests. The International Covenant on Civil and Political Rights ("ICCPR"), to which Nigeria is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

The Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 December 1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not in themselves binding law, provide an authoritative and convincing interpretation of the limits the prohibition of arbitrary deprivation of life places on the conduct of law enforcement forces facing allegedly violent crowds, namely by putting forward the twin safeguards of necessity and proportionality in the use of force. In particular, Article 3 of the Code of Conduct for Law Enforcement Officials states: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty."

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide information relating to any notice provided to residents of the alleged evictions and demolitions of houses in the Gosa Sariki or Toge communities. Additionally, please provide information on the proposed notice provided or to be given to residents in regards to the alleged evictions and demolitions scheduled for Abuja in August and September 2008.
3. Please provide information relating to any consultation of residents in relation to the alleged evictions and demolitions in the Gosa Sariki or Toge communities. Additionally, please provide information on the proposed consultation of residents in relation to the alleged evictions and demolitions scheduled for Abuja in August and September 2008.
4. Please provide information relating to any arrangements for the present or future resettlement of residents affected by alleged evictions and demolitions in the Gosa Sariki or

Toge communities. Additionally, please provide information on the proposed arrangements for the future resettlement of residents in relation to the alleged evictions and demolitions scheduled for Abuja in August and September 2008.

5. Please provide information relating to any compensation provided to residents affected by alleged evictions and demolitions in the Gosa Sariki or Toge communities. Additionally, please provide information on the compensation planned in respect of the future resettlement of residents in relation to the alleged evictions and demolitions scheduled for Abuja in August and September 2008.

6. Please provide information in relation to any legal or other remedies available to those residents allegedly affected by evictions and demolitions in the Gosa Sariki or Toge communities and whether or not use has been made of these remedies?

7. Please provide information on court proceedings in relation to the alleged forced evictions and demolitions in Toge or any related proceedings. In the event that an order/verdict has been announced, please clarify whether it has been implemented. Additionally, please provide specific information on the implementation of the High Court injunction of June 2003.

8. Please provide the details, and where available the results, of any investigation, medical examination and judicial or other inquiries which may have been carried out in relation to the four alleged protestors Issa Buruku, Kabiru Abubakar, Dan Asebe and Ismaila Abdullahi during the forced evictions and demolitions affecting the Toge community.

#### **Pakistan: Death sentence of Jawed Khan**

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

**Subject(s) of appeal:** 1 male (minor)

**Character of reply:** Largely satisfactory response

#### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of Pakistan.

#### **Allegation letter dated 28 February 2007**

In this connection, I would like to draw the attention of your Government to information. I have received regarding Mr. **Jawed Khan** who is at imminent risk of execution for the murder of a shop keeper committed when he was under the age of 18. Jawed Khan was charged in 1996 together with two others and convicted before the anti-terrorism court in Faisalabad on 20 February 1998. It is my understanding that Mr. Waheed Iqbal, who was convicted alongside Khan, was sentenced to death and executed on 9 January 2007. Jawed Khan's appeals against conviction were rejected by the Lahore High Court and then the Supreme Court on March 20, 2001 and November 8, 2001 respectively. His mercy petition was subsequently

rejected by the President. It is my understanding that the issue of age was not raised before the trial court or the appellate courts by his counsel, and that a session judge dismissed Jawed Khan's application on 11 March 2004 apparently on the basis that photocopies of school leaving and birth certificates giving his date of birth as 3 April 1982, appeared to be fictitious. It is my understanding that he filed an appeal before the Lahore High Court, due to be heard in late February 2007.

While I do not wish to prejudge the accuracy of the allegations regarding this specific case, I would like to draw your attention once again to the fact that the execution of Mr. Jawed Khan would be incompatible with the international legal obligations of Pakistan. Article 37(a) of the Convention on the Rights of the Child expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. General Comment No. 10 (2007) of the Committee on the Rights of the Child provides in paragraph 22 "If there is no proof of age, the child is entitled to a reliable medical or social investigation that may establish his/her age and, in the case of conflict or inconclusive evidence, the child shall have the right to the rule of the benefit of the doubt".

I would respectfully appeal to the Government of Pakistan to take all necessary measures to comply with international human rights law and to prevent executions of offenders who were under the age of 18 at the time of the offense. This includes, most urgently, the suspension of the execution of Mr. Jawed Khan.

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 cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate? If not so, please share all information and documents proving their inaccuracy. Please confirm whether a medical or social investigation has been carried out to establish Mr. Jawed Khan's age, given that documents pertaining to his age were disputed.

2. Please provide details of the appeal proceedings in Mr. Jawed Khan's case before the Lahore High Court scheduled for February 2007.

### **Response from the Government of Pakistan dated 7 November 2008**

Mr Khan was tried by the Special Judge Anti Terrorism, Faisalabad and sentenced to death. The death sentence was upheld by the Honourable Lahore High Court and was maintained by the Supreme Court of Pakistan.

As stated in your letter the issue of Mr. Khan's age was not raised by his council before the trial by the appellate courts. His claim of being juvenile at the time of committing the crime was considered and dismissed by the District and Sessions Judge Faisalabad.

After exhausting all legal remedies available to him under the law, Mr. Khan's mercy petition was forwarded to the President. The appeal was rejected on 6 June 2007. The accused was executed on 13 February 2008 at the Central Jail Faisalabad.



## **Pakistan: Honour killing of two women**

**Violation alleged:** Impunity for honour killings

**Subject(s) of appeal:** 2 females

**Character of reply:** Receipt acknowledged

### **Observations of the Special Rapporteur**

The Special Rapporteur looks forward to receiving a substantive response concerning the alleged honour killings of two women, Ms. Husna and her daughter Samia. The Special Rapporteur would note, however, that the Government has already taken longer than the customary 90 days to respond.

**Allegation letter dated 8 September 2008**, sent with the 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 a continuing pattern of **honour killings** in Pakistan in which women are killed, usually by a family member because of suspicions of sexual impropriety or because they have married outside their religion. On 4 July 2008, the Special Rapporteur on violence against women, its causes and consequences drew your Government's attention to ten reported cases of honour killings, all alleged to have occurred during the month of April 2008. Today, in addition to the present communication, we are bringing to your Government's attention by separate communication another case of so-called "honour killing" of five women in Balochistan province. We would also like to raise concerns about a report we have received of a **tribal jirga imposing the death sentence**.

Recently, we have received information regarding the killing of Ms. **Husna**, late wife of Mr. Kaloo Jamali, and their daughter **Saima**, all residents of Khaipur Nathan Shah.

According to the information received:

On 28 January 2008, Kaloo Jamali beat his wife Husna, as he allegedly often did, accusing her of a relationship with another man. During the quarrel, Kaloo Jamali ordered his son, Mujeeb Ur Rehman Jamali, to kill Husna. Kaloo Jamali's cousin, Hanif, loaded the rifle and gave it to Mujeeb, telling him that his mother was "kari" (a black character). Mujeeb fired at his mother and killed her. Husna's daughter Saima rushed into the room and Mujeeb shot her as well. Kaloo Jamali told his neighbors that his wife was "kari," that Saima had been supporting her, and that mother and daughter were killed in order to protect the honour and dignity of the Jamali family.

On 30 January 2008, Kaloo Jamali went to Karimdad Lund Police Station, Khaipur Nathan, and reported the matter to the police. Mubeen Jamali, another son of Kaloo Jamali, lodged a First Investigation Report (FIR) against his brother Mujeeb for the murder of his mother and sister. The police arrested Mujeeb Jamali and Hanif, but not Kaloo Jamali. Hanif was subsequently released on bail, while Mujeeb remains in detention.

In a related development, Kaloo Jamali as the head of the Jamali family in the area called a tribal assembly of elders (jirga) to obtain approval for sanctions against his brother-in-law, Anwar Jamali, whom he accused of having sold his daughter Hakima in Karachi (these accusations might also have contributed to the conflict between Kaloo Jamali and his wife). The jirga decided that Anwar Jamali should be killed and all his business confiscated. Anwar escaped from an attack on his house and went into hiding, while Kaloo Jamali took over his two shops and his house. Anwar Jamali has written several letters to the police and various authorities, including the Sindh provincial ministry of human rights, regarding protection for his family members and the “confiscation” of his business, but to date no action has been taken.

While we 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. Under international law, Pakistan has the legal obligation to ensure the right to life by effectively punishing those who commit murder. Article 6(1) of the International Covenant on Civil and Political Rights, which Pakistan signed on 17 April 2008, 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 the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in his report to the Commission on Human Rights, “crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators.” (E/CN.4/2005/7, para. 71.)

We urge your Government to take all necessary measures to prevent and punish honour killings. In this context, we would like to recall the Concluding Observations of the Committee on the Rights of the Child on Pakistan’s report of 27 October 2003 (CRC/C/15/Add.217, paras 34 and 35), in which the Committee expressed its concerns “about the widespread and increasing problem of so-called honour killings” and recommended that Pakistan “take all necessary measures to ensure that there is no discriminatory treatment for crimes of honour, and that they are promptly, fairly and thoroughly investigated and prosecuted”.

We would also like to bring to Your Excellency’s attention Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence.

We would further like to bring to Your Excellency’s attention Article 4 of the United Nations Declaration on the Elimination of Violence against Women which underlines the responsibility of States to condemn violence against women and which calls on States not to invoke any custom, tradition or religious consideration to avoid their obligations with respect to

its elimination. We would also like to refer Your Excellency's Government to the Convention on the Elimination of Discrimination against Women according to which States Parties agree 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 (Article 5 (a)).

As for the "death sentence" reportedly imposed by the tribal jirga against Anwar Jamali, we understand that the courts of Pakistan, including the Supreme Court and the Sindh High Court, have declared criminal sanctions imposed by jirgas as illegal and unconstitutional. It therefore is not necessary for us to highlight how the imposition of the death sentence by a tribal court which does not have a sufficient legal basis and does not observe fair trial guarantees is utterly incompatible with the right to life.

According to our information, however, jirgas continue to operate in so-called "feudal and tribal based areas" of Pakistan, imposing severe penal sanctions, including the death penalty. As with regard to honour killings, international law as reflected in Article 2(2) of the ICCPR requires the State to 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, and to deter, prevent and punish those breaking such laws.

It is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on this case to the Council, we would be grateful for your responses to the following questions:

1. Are the facts alleged in the above summary accurate?
2. Please provide the full details and results of any investigation, prosecution, judicial or other inquiries carried out since the end of January 2008 in relation to the killing of Ms. Husna and her daughter Samia.
3. Please explain what legal, social or other types of measures and programmes have been adopted by Your Government to address the widespread practices of honor killings.
4. Please explain the steps taken to protect Mr. Anwar Jamali from execution of the "death sentence" allegedly imposed against him by the tribal jirga.
5. Please provide full details and results of any investigation, prosecution, judicial or other inquiries carried out in relation to the tribal jirga which allegedly sentenced Mr. Anwar Jamali to death.

### **Response from the Government of Pakistan 11 September 2008**

I have the honour to acknowledge receipt of your letter AL G/SO 214 (32-24) G/SO 214 (89-12) PAK 24/2008 dated 8 September 2008.

I have transmitted your letter to Islamabad for serious consideration and an early response. This mission will revert to you, as soon as a response is received.

### **Pakistan: Honour killing of five women of the Umrani Tribe**

**Violation alleged:** Impunity for honour killings

**Subject(s) of appeal:** 5 females (3 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 that he has been given by the General Assembly and the Human Rights Council.

**Allegation letter dated 8 September 2008**, sent with the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on the question of torture

In this connection, we would like to draw the attention of your Government to allegations we have received concerning **the killing of five women belonging to the Umrani tribe** by burying them while still alive in Baba Kot, a village located 80 kilometers from Usta Mohammad City, Jafferabad district, Balochistan province.

According to the information received, on 14 July 2008 Ms. **Fatima**, 45 years old, wife of Umeed Ali Umrani; **Jannat Bibi**, 38 years old, wife of Qaiser Khan; and three minors, aged between 16 and 18 years old, named Fauzia, Hameeda and Raheema, were in the house of Mr. Chandio, at Baba Kot village, with the intention to leave for a civil court at Usta Mohammad, district Jafarabad, so that the three girls could marry the men of their choice. Their decision to be married in court was the result of several days of discussions with the elders of the tribe, who refused them permission to marry.

As the news of their plans leaked out, Mr. Abdul Sattar Umrani, a brother of provincial minister for housing and construction Mr. Sadiq Umrani, accompanied by six men, abducted the five women at gun point. In a Land Cruiser jeep, bearing a registration number plate of the Balochistan government, they were taken to another area, Nau Abadi, in the vicinity of Baba Kot. After reaching the deserted area of Nau Abadi, Abdul Sattar Umrani and the six men took the three minors out of the jeep and beat them before allegedly opening fire with their guns, leaving them with very serious injuries. Sattar Umrani and his accomplices hurled them into a wide ditch and covered them with earth and stones. When the two older women tried to stop the burial of the minors, the attackers pushed them into the ditch as well and buried them all alive.

The matter was debated in the Senate, the National Assembly of Pakistan and the provincial Assembly of Sindh. In the Senate, Senator Israrullah Zehri tried to defend the burials stating that the killings were part of tribal traditions and that the incident should not be mentioned in the Upper House.

According to information received, no action has been taken to conduct criminal investigations into the matter.

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

To the extent that honour killings are not met with stringent punishments, the State acquiesces in the practice. Under international law, Pakistan has the legal obligation to ensure the right to life by effectively punishing those who commit murder. Article 6(1) of the International Covenant on Civil and Political Rights, which Pakistan signed on 17 April 2008, 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.

In this context, we would like to draw your attention to the latest report of the Special Rapporteur on Torture to the Human Rights Council, A/HRC/7/3, in which he stated that "the concept of "acquiescence", aside from the protection obligations, entails a duty for the State to prevent acts of torture in the private sphere and [...] the concept of due diligence should be applied to examine whether States have lived up to their obligations" (para. 64). Similarly, the Special Rapporteur on extrajudicial, arbitrary and summary executions noted in a report to the Commission on Human Rights, "Crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.)

We would also like to bring to Your Excellency's attention Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence.

We would further like to bring to Your Excellency's attention Article 4 of the United Nations Declaration on the Elimination of Violence against Women which underlines the responsibility of States to condemn violence against women and which calls on States not to invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. We would also like to refer Your Excellency's Government to the Convention on the Elimination of Discrimination against Women according to which States Parties agree 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 (Article 5 (a)).

Finally, we would like to recall the Committee on the Rights of the Child's Concluding Observations to Pakistan on 27 October 2003, in which the Committee expressed its concerns "about the widespread and increasing problem of so-called "honour killings" and recommended that Pakistan take all necessary measures to ensure that there is no discriminatory treatment for crimes of honour, and that they are promptly, fairly and thoroughly investigated and prosecuted".

In the event that your investigations support or suggest the above allegations to be correct, we urge your Government to take all necessary measures to guarantee accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopt effective measures to prevent the recurrence of these acts.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please explain what legal, social or other types of measures and programmes have been adopted by Your Government to address the widespread practices of honor killings.

#### **Pakistan: Death sentence of Zulfiqar Ali**

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

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

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

**Urgent appeal dated 7 October 2008**, sent with the Special Rapporteur on the independence of judges and lawyers

We would like to draw the attention of your Government to information we have received regarding the execution of Mr. **Zulfiqar Ali**, which is reportedly scheduled for 8 October 2008.

According to the information received:

Mr. Zulfiqar Ali was arrested on a murder charge on 14 April 1998, imprisoned at Adiala prison, Rawalpindi, Punjab Province, tried, convicted and sentenced to death. The dates of

trial, sentencing and appeals proceedings have not been reported to us. In September 2008, the President of Pakistan rejected an appeal to commute the sentence and on 29 September 2008 the red warrant to execute Mr. Zulfiqar Ali, who is still detained at Adiala prison, was issued. The execution is scheduled for 8 October 2008.

Mr. Zulfiqar Ali's family is very poor and could not hire a lawyer to defend him. Neither the courts nor any other institution provided him with legal counsel at any stage of the ten years his case has been pending, so that he had to defend himself. Moreover, Mr. Zulfiqar Ali does not speak English, the language of court proceedings in Pakistan.

While we do not wish to prejudge the accuracy of the allegations reported above, we would like to respectfully draw the attention of your Excellency's Government to the principles applicable to this case under international law. In capital punishment cases the obligation to provide criminal defendants "a fair and public hearing before an independent and impartial tribunal" (Article 10 of the Universal Declaration on Human Rights) admits of no exception. Relevant to the case at hand, the right to a fair trial includes the right to be assisted by legal counsel. Persons accused of offences carrying severe penalties are entitled to be assigned a defense lawyer without payment by them if they do not have sufficient means to pay themselves. In this respect, the Human Rights Committee states in its General Comment on Article 14 of the International Covenant on Civil and Political Rights (signed by Pakistan on 17 April 2008), that "[i]n cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings." (CCPR/C/GC/32, para. 38).

We would also like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Principle 1 reads: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings". Principle 7 reads: "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention."

Only full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights under international law of Mr. Zulfiqar Ali are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns regarding the fairness of his trial are dispelled in their entirety. If it is correct that Mr. Zulfiqar Ali was not assisted by a lawyer, and that there is no evidence to show that he voluntarily opted to conduct his own defence without one, a re-trial would be necessary.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide details regarding Mr. Zulfiqar Ali's access to legal counsel, the steps undertaken to determine whether he was able to afford a lawyer, and the steps undertaken to ensure that he is adequately assisted by defence counsel.
3. Please explain the steps your Excellency's Government intends to take to ensure that Mr. Zulfiqar Ali does enjoy a fair trial.

### **Pakistan: Death sentence of Umer Khan**

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

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

**Character of reply:** Cooperative but incomplete response

### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the response of the Government of Pakistan with respect to the case of Umer Khan and notes that the grant of a stay of Mr. Khan's execution by the President is a positive development. However, the Government's response does not address whether the Government's warrant of execution was withdrawn after the acceptance of diyah money by the victim's family and, if not, whether any judicial process, with appropriate due process protections, exists that would override the agreement of the victim's family to pardon Mr. Khan and the subsequent withdrawal of the death penalty under Islamic law. The Special Rapporteur also looks forward to receiving from the Government information about further developments in Mr. Khan's case.

### **Urgent appeal dated 28 October 2008**

I would like to draw the attention of your Government to information I have received regarding Mr. **Umer Khan**, a man sentenced to death whose execution is reportedly scheduled for 29 October 2008.

According to the information received, Umer Khan was found guilty of the murder of Mumtaz Ullah Khan and sentenced to death. In accordance with Islamic Law Umer Khan paid more than one million Rupees (\$16,500) of diyah (blood money) to the mother, wife and children of the murdered man. This payment was made before the District and Session Court as well as before the Anti-terrorism Court of Sargodha district. The family subsequently pardoned Umer Khan in writing before the court on 9 May 2007, and the judge has also made a note of this in his decision. However, the government has not withdrawn the case and a warrant authorizing his execution for 29 October 2008 has been issued.



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. Capital punishment cases must thoroughly respect all due process guarantees and the rule of law with a sentence being pronounced only following a regular judicial process. According to my understanding of Islamic law, as applied to this case, an agreement reached between the accused and the family of the victim, followed by the acceptance of the payment of diyah, would normally lead to the family of the victim agreeing to pardon the accused and the subsequent withdrawal of the death penalty. Where the applicable domestic law explicitly provides for the system of diyah, and it is granted, there would presumably need to be another legal process in order to override that arrangement and the status accorded to it by the law. The information I have received has not drawn my attention to any other legal process in which the convicted person was provided the opportunity to put his case to a relevant court with the assistance of counsel and with measures being taken to ensure that the various other appropriate due process protections are ensured.

In view of the irrevocable nature of the death penalty, I 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.

#### **Response from the Government of Pakistan dated 29 October 2008**

I have the honour to convey that the President of Pakistan has been pleased to grant a second stay in the execution of death sentence to Mr. Umar Khan son of Mr. Nawad Khan presently conf/ request to the concerned authorities.

#### **Pakistan: Honour killings in the Sindh Province**

**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 Pakistan has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent appeal dated 6 November 2008**, sent with the Special Rapporteur on violence against women, its causes and consequences

We would like to draw the attention of your Government to information we have received concerning a recent case of **honour killing** in Chack, Lucky Ghulam Shah, Jahnian, Shikarpur district, Sindh province. In this respect, we would like to refer to previous communications sent on 4 July and 8 September 2008 pertaining to honour killings and to the imposition of sentences by tribal Jirgas.

According to the information received:

Mr. Sher Dil Jatoi, a 62 year-old resident of Goth Allah Wasayo, Chack, Shikarpur district, Sindh province, killed his second wife in August 2008 on the ground that she allegedly had an illicit relationship with a man named Sharoo Jatoi. Mr. Sher Dil Jatoi had already killed his first wife for similar reasons in 2001, but was never punished for the act.

During the same month of August, as a result of public protests following the killing of the wife of Mr. Sher Dil Jatoi, the police took him into custody, but released him after 15 days without charges.

On 20 October 2008, a local Jirga led by Mr. Hassan Jatoi was held by the chiefs of the Jatoi tribe, at Lucky Ghulam Shah, Shikarpur district, Sindh province. The Jirga decided that Sher Dil Jatoi was a victim of honour, and therefore absolved him in the killing of his second wife. The Jirga also ordered Mr. Shatoo Jatoi to hand over 20 buffaloes, costing more than 100,000 rupees (around USD 1,400) each, as a fine for having an illicit relationship with Sher Dil Jatoi's second wife. Shatoo Jatoi was also ordered to compensate Sher Dil by handing over three daughters to him to be at his service. Since Mr. Shahoo's daughters are grown up and married, the Jirga decided that he should give his 10 years-old grand daughter, Ameeran daughter of Rasoolo Jatoi, as well as the two grand daughters of his brothers Mr. Miro Jatoi and Mr. Khanan Jatoi, Gul Bano daughter of Ali Sher Jatoi, and Benazir daughter of Bux Ali Jatoi, aged 13 and 11 year-old.

While we 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. Under international law, Pakistan has the legal obligation to ensure the right to life by effectively punishing those who commit murder. Article 6(1) of the International Covenant on Civil and Political Rights, which Pakistan signed on 17 April 2008, 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 the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in his report to the Commission on Human Rights, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.)

We urge your Government to take all necessary measures to prevent and punish honour killings. In this context, we would like to recall the Concluding Observations of the Committee on the Rights of the Child on Pakistan's report of 27 October 2003 (CRC/C/15/Add.217, paras 34 and 35), in which the Committee expressed its concerns "about the widespread and increasing problem of so-called honour killings" and recommended that Pakistan "take all necessary measures to ensure that there is no discriminatory treatment for crimes of honour, and that they are promptly, fairly and thoroughly investigated and prosecuted".

We would also like to bring to Your Excellency's attention Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, states should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

We would finally like to refer Your Excellency's Government to the Convention on the Elimination of Discrimination against Women, to which Pakistan is a Party. States Parties to this instrument agree 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 (Article 5 (a)).

We are concerned about the physical and emotional safety of the three girls who have reportedly been handed over to Sher Dil Jatoi as compensation, Ameeran daughter of Rasoolo Jatoi, Gul Bano daughter of Ali Sher Jatoi, and Benazir daughter of Bux Ali Jatoi. We urge your Government to take without delay all necessary measures to guarantee that their physical and emotional integrity is respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopt effective measures to prevent the recurrence of these acts.

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

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the full details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to the murder of Mr. Sher Dil Jatoi's wife since August 2008. If no inquiries have taken place, or if they have been inconclusive, please explain why. Please explain the reasons why Sher Dil Jatoi was released without charges.
3. Please provide the full details of any prosecutions which have been undertaken. Have criminal or other sanctions been imposed against Mr. Sher Dil Jatoi and the members of the tribal jirga?

4. Please provide full details and results of any social or other types of measures or programmes adopted by your Government, as well as of any investigation, prosecution, judicial and other inquiries carried out in relation to addressing the practice of honour killings.

5. Please provide the legal basis for the handing over of minor girls as part of a compensation for a wrong committed. Please explain whether such cases are relatively common, and if so, what types of measures have been taken by the Government to ensure the physical and emotional well-being of minor girls being handed over in such way.

We undertake to ensure that your Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

### **Pakistan: Attacks on journalists in November 2008**

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

**Subject(s) of appeal:** 4 males (journalists)

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

**Allegation letter dated 8 January 2009**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

In this connection, we would like to bring to your Government's attention information we have received concerning **three reported attacks on journalists during November 2008**, resulting in the killing of two journalists and the attempted killing of two others.

According to information received:

On 3 November 2008, Mr **Abdul Razzak Johra**, investigative reporter with the Royal TV network, was dragged from his home in Mianwali district, in Punjab province, by a group of six armed and masked men. Mr Johra was then shot six times and died as a result of his injuries. A report written by Mr Johra on drug trafficking was broadcast the day before his murder. Mr Johra had previously worked on cases involving drug trafficking in his region and had received death threats on a number of occasions.

On 8 November 2008, Mr **Qari Muhammad Shoaib**, a journalist with the daily newspapers *Khabar Kar* and *Azadi*, was shot dead at the wheel of his car by soldiers in Mingora in the Swat Valley. Mr Shoaib was returning home with a family member when soldiers reportedly opened fire without warning. The passenger travelling with Mr Shoaib indicated that they had received no signal to stop the car. A statement issued by the military after the incident claimed that Mr Shoaib had received several warnings to pull his car over before the security forces opened fire on the vehicle. Soldiers were reportedly patrolling the area after receiving information of a threatened suicide attack.

On 14 November 2008, Afghan national Mr **Sami Yousafzai**, a special correspondent for U.S. magazine *Newsweek* in Peshawar, and Ms **Motoki Yatsukura**, Pakistan Bureau Chief of Japanese daily newspaper *Asahi Shimbun*, were shot while resisting an attempted abduction in Hayatabad near Peshawar. Reports claim that the abduction attempt was carried out by three men in a car who followed the journalists and opened fire on them. Mr Yousafzai and Ms Yatsukura were seriously injured in the attack and were taken to a hospital in Islamabad where they were treated for their injuries. The journalists were reportedly on their way to the Khyber tribal region to interview members of an armed group, before the attack took place. Previously, in 2004, Mr Yousafzai was purportedly held in incommunicado detention by Pakistani intelligence officials for over a month after accompanying an American journalist to the Tribal Areas in Pakistan's North-West Frontier Province (NWFP).

While we do not wish to prejudge the accuracy of these allegations, we urge your Excellency's Government to take effective measures to take measures to prevent further killings of journalists. In this respect, it is very important that the persons responsible for the killings and the attempted abduction, both as material perpetrators and as instigators, are rapidly identified, arrested and brought to justice. We are particularly concerned about the safety of journalists working in the border area of Pakistan and Afghanistan, in Pakistan's North-West Frontier Province (NWFP).

We would also like to refer your Excellency's Government to the relevant principles of international law. The International Covenant on Civil and Political Rights ("ICCPR"), to which Pakistan is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). In this respect, we would like to recall that, as reiterated in Human Rights Council resolution 8/3 on "The Mandate of the Special Rapporteur 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". Families of the deceased should be informed of information relevant to the investigation, and the findings of the investigation should be made public (Principles 16 and 17 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions).

We would also like to recall that taking effective measures to protect journalists and to prosecute those responsible of killings or death threats against them is a precondition to ensuring the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights and the ICCPR, which provides that: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” We are concerned that killings of journalists, particularly if they remain unpunished, could create a climate of impunity and result in preventing independent reporting and stifling freedom of expression.

In this context, we deem it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights which calls upon states to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity.

With specific regard to the killing of Qari Muhammad Shoaib by military personnel, we would like to recall that Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. As expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials (“Basic Principles”), this requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Further, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Basic Principles, Principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9).

It is our responsibility under the mandate provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases, we 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 so, please share all information and documents proving their inaccuracy.

2. Please provide the details, and where available the results, of any criminal investigation or other inquiries which may have been carried out in relation to the killing of Mr Abdul Razzak Johra and the attempted killing of Mr Sami Yousafzai and Ms Motoki Yatsukura. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. If no inquiries have taken place or if they have been inconclusive please explain why.

3. Please provide the details, and where available the results, of the inquiries carried out in relation to the killing of Mr Qari Muhammad Shoaib by military personnel. Please include details of measures adopted to secure the exhaustiveness and impartiality of the inquiry and to keep the victim’s family apprised of the process.

### **Papua New Guinea: Death sentence on juvenile Fred Abenko**

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

**Subject(s) of appeal:** 1 male (minor)

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

#### **Allegation letter dated 29 December 2008**

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding **Fred Abenko**, a juvenile who has been sentenced to death.

According to the information received, Fred Abenko was convicted of murder on 15 May 2007 (National Court case no 1236/06). On 1 October 2007, he was given a death sentence by the National Court. His file reportedly indicates that an appeal has been lodged by Public Solicitor in the Supreme Court (SCRA 31/07). It would appear that Fred Abenko was aged 15 at the time of the trial. In the same case, a second defendant, Sedoki Lota, was sentenced to death. I have no information regarding his age at the time of the offence.

While I do not wish to prejudge the accuracy of the allegations regarding this case, I would like to draw the attention of your Excellency's Government to Article 37(a) of the Convention on the Rights of the Child, to which Papua New Guinea is a Party. This provision expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which Papua New Guinea acceded on 21 July 2008, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

I understand that Section 78 of the draft Juvenile Justice Act, which has not yet been approved by the legislature, would exclude the imposition of the death penalty for juvenile offenders. I welcome this legislative initiative and encourage your Excellency's Government to proceed with incorporating into domestic law the absolute ban against capital punishment for offences committed by minors.

Pending these legislative changes, however, international law requires your Excellency's Government to expeditiously lift or commute the death sentence imposed against Fred Abenko, as well as any other death sentence imposed for offences committed by persons below the age of eighteen.

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

1. Are the facts alleged in the above summary of the case accurate? If not, please share all information and documents proving their inaccuracy.
2. Please provide information on the steps taken to lift or commute the death sentence imposed against Fred Abenko.
3. Are there any other persons sentenced to death for offences committed as minors?
4. Please provide information on the status of Section 78 of the draft Juvenile Justice Act and on any progress in the incorporation of the prohibition of capital punishment for juvenile offenders into the law of Papua New Guinea.

### **Papua New Guinea: Sorcery-related killings**

**Violation alleged:** Impunity

**Subject(s) of appeal:** At least 50 persons (5 females; 2 males)

**Character of reply:** No response (recent communication)

#### **Observations of the Special Rapporteur**

The Special Rapporteur looks forward to a response from the Government of Papua New Guinea in relation to this communication.

**Allegation letter dated 11 February 2009**, sent with the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning recent reports of sorcery-related killings of women in the highlands provinces of Papua New Guinea.

According to the information received:

A woman was stripped naked, gagged, tightly strapped and burned alive by a group of men at Kerebug Dump in Mount Hagen on 6 January 2009. As of 27 January 2009, the identity of the victim was still unknown, and the Provincial police authorities were still investigating. The body was reportedly too badly burnt for identification purposes.

In addition, at least four similar cases in the highlands area (two resulting in deaths of women, one in which a female victim was tortured but survived, and the killing and burning of a father and son in Ban village on 8 February 2009) were reported to us after the killing in Mount Hagen on 6 January 2009. Provincial police commanders in two highlands provinces, Eastern Highlands and Chimbu, reportedly told journalists that there were more



than 50 sorcery-related killings in their provinces in 2008. Other independent sources estimate that there have been up to 500 of attacks against women accused of practicing witchcraft that have resulted in torture and murder.

The police are often unable to enforce the law and stop mob killings. In the case of the killing and burning of a father and son suspected of sorcery in Ban village on 8 February 2009, the police were able to visit the crime scene and confirm their deaths, but heavily armed locals prevented them from removing the bodies to hospital for autopsies.

While we do not wish to prejudge the accuracy of these allegations, there would be ground for serious concerns if they were correct. We recall that, to the extent that mob killings of persons suspected of sorcery are not effectively prevented, investigated and met with stringent punishments, the State does not live up to its due diligence obligations in this respect. Under international law, Papua New Guinea has the legal obligation to ensure the right to physical and mental integrity and the right to life by effectively punishing those who commit murder, torture or cruel, inhuman and degrading treatment or punishment. Article 6(1) of the International Covenant on Civil and Political Rights, to which Papua New Guinea is a Party, 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. As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, “crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators.” (E/CN.4/2005/7, para. 71.)

The same principle was set forth by the Human Rights Committee with regard to torture: “It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7 [of the Covenant, i.e. torture and other cruel, inhuman and degrading treatment or punishment], whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.” (paragraph 2 of General Comment 20, adopted at the 44th session of the Human Rights Committee, 1992).

While it would appear that some of the persons killed on suspicions of sorcery were men, these mob killings appear to target primarily women. In this respect, we would like to draw the attention of Your Excellency’s Government to Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of states to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. Article 4 further calls on States not to invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.

As the Special Rapporteur on Torture recommended in a report to the Human Rights Council, “... torture and ill-treatment [should] be understood in a gender-inclusive way and that States [should] extend their prevention efforts to fully include torture and ill-treatment of women, even if it occurs in the “private” sphere” (A/HRC/7/3, para. 73).

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation which may have been carried out in relation to killings related to charges of sorcery. 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 sanctions been imposed on the alleged perpetrators?
4. Does your Excellency's Government keep any statistics of the number of sorcery-related killings and torture cases that occurred in Papua New Guinea in the last few years? Even if no official statistics are kept, please provide an estimate of the numbers involved.
5. Please indicate the measures your Excellency's Government has been taking to combat this pattern of violence, including relevant legislation, strict investigations and law enforcement, as well as awareness raising campaigns to combat this type of violence and related myths (e.g. link between HIV and sorcery, etc).

#### **Philippines: Death threats against human rights defenders**

**Violation alleged:** Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, or groups cooperating with or tolerated by the Government

**Subject(s) of appeal:** 3 males (1 priest; 2 HRD); 2 females (HRD)

**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 that he has been given by the General Assembly and the Human Rights Council.

**Urgent appeal dated 29 August 2008**, sent with the Special Rapporteur on the situation of human rights defenders, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

In this connection, we would like to draw the attention of your Government to information we have received regarding threats against Fr **Romeo Tagud**, a priest in the Iglesia Filipina Independiente (IFI - Philippine Independent Church); and the harassment of members of **Karapatan-Central Visayas**, namely Mr **Dennis Michael J Abarrientos**, Secretary-General; Ms **Vimarie Arcilla**, Public Information Officer; Mr **Jean H Suarez**, Research-documentation

Officer; and Ms **Concordia Oyoa**, Direct-services Officer. Karapatan-Central Visayas is a member organization of the KARAPATAN Alliance for the Advancement of People's Rights.

Previous threats against Fr Romeo Tagud were mentioned in an urgent appeal sent by the then Special Representative of the Secretary-General on the situation of human rights defenders to your Government on 13 October 2006. We acknowledge your Government's responses on 23 October 2006 and 27 November 2006.

According to new information received:

Fr Romeo Tagud reportedly joined a delegation of Filipino Americans from the California-Nevada Annual Conference of the United Methodist Church, based in the United States of America, which visited the Philippines from 30 June to 2 July 2008. After Fr Romeo Tagud exposed human rights abuses allegedly committed by the military in certain villages, and the deterioration of respect for human rights on the island of Negros, particularly in areas of heavy military presence, the delegation decided to support a campaign against extrajudicial killings and other human rights violations in Negros. This raised the profile of human rights issues in Negros and attracted international attention. The military subsequently criticized the delegation in the local press for having supposedly violated the human rights of the residents of Linantuyan.

On 1 August 2008, Fr Romeo Tagud took part in a press conference in Bacolod City. There he expressed the views of the IFI on poverty, corruption, extrajudicial killings, the implications of mining in Guihulngan City and Hinobaan, and other alleged human rights violations.

On 3 August 2008, at approximately 6:30 a.m., Fr Romeo Tagud was given an envelope containing a bullet from an M16 armalite rifle by a girl of approximately five or six years of age whose identity is unknown. Fr Romeo Tagud had just participated in Sunday mass and was walking towards the parish house at the time. The girl told him that the envelope was an offering for the church.

Meanwhile, since 18 June 2008, members of Karapatan-Central Visayas have been investigating the disappearance of a man who was allegedly abducted by members of the military in Negros on 11 June 2008. In response, the military reportedly publicly accused Ms **Vimarie Arcilla** of working for the Maoist New People's Army rebels and declared that it planned to file charges against her for the kidnapping of a witness in the disappearance case. These charges are now lodged at the prosecutor's office in Dumaguette Central, Negros Oriental. They are allegedly unfounded and have been filed as part of a smear campaign against those who speak out against them. The military had previously filed charges of multiple murders against Ms Vimarie Arcilla in April 2006 after she had investigated other human rights violations supposedly committed by military members. These charges were dismissed by the Regional Trial Court 7, Branch 29 in Toledo City for "lack of probable cause".

Since then threats have been sent sporadically to members of Karapatan-Central Visayas. On 21 August 2008, threats were sent simultaneously to Mr **Dennis Michael J Abarrientos**, Mr **Jean H Suarez**, Ms **Concordia Oyoa**, and Ms **Vimarie Arcilla** while

they were in a meeting. On 24 August 2008, between 10.30 a.m. and 11.00 a.m., the four members of Karapatan-Central Visayas again received threats by text. Among the threats against the members of Karapatan-Central Visayas were the following messages: “I know what you are doing HR. Your time is up!!!” and “Stop your Fault-Finding Missions...or suffer the consequences!!!”

Serious concern is expressed that Fr Romeo Tagud may have been threatened for speaking out about human rights violations on the island of Negros. Serious concern is also expressed that the threats against members of Karapatan-Central Visayas and the accusations against Ms Vimarie Arcilla may have may be directly related to their investigation of alleged human rights violations in Negros. Further concern is expressed for the physical and psychological integrity of Fr Romeo Tagud, as well as that of all members of Karapatan-Central Visayas. It is feared that the threats against Fr Romeo Tagud and the members of Karapatan-Central Visayas may form part of an ongoing pattern of harassment against members of the IFI and other human rights defenders in the Philippines after the murders of Bishop Alberto Ramento and Fr Diniosio Ging-Ging, and the death threats against Fr Antonio Ablon, Fr Terry Revollido, Fr Sonny Teleron and Fr Marco Sulayao in 2006.

While we do not wish to prejudge the accuracy of these allegations, we urge your Excellency’s Government to take effective measures to protect Fr Romeo Tagud and the members of Karapatan-Central Visayas.

We would like to bring to the attention of your Excellency’s Government resolution 2005/9, whereby the Commission on Human Rights urged governments to refrain from all acts of intimidation or reprisal against those who avail or have availed themselves of procedures established under United Nations auspices for the protection of human rights and fundamental freedoms and all those who have provided legal assistance to them for this purpose. In this recommendation, the Commission requested representatives of United Nations Human Rights Bodies to continue to take urgent steps to help prevent the occurrence of intimidation and reprisals and to include in their respective reports allegations of intimidation or reprisal, as well as an account of action taken by them in this regard.

In its resolution 7/12, the Human Rights Council urged governments to take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected.

Further, in the United Nations Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133, of 18 December 1992, it is stated that States must take steps to ensure that persons involved in investigations of cases of disappearance, including the complainant, shall be protected against ill-treatment, intimidation or reprisal, and any cases of such treatment shall be appropriately punished.

We would also like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (“ICCPR”), to which the Philippines is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). In this respect, we would like to recall that, as reiterated in Human

Rights Council resolution 8/3 on “The Mandate of the Special Rapporteur 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 Committee (see 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 6 of the International Covenant on Civil and Political Rights.

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

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

- Article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- Article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would further like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

In the event that your investigations support or suggest the above allegations to be correct, we 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 is ensured. We also request that your Government adopt effective measures to prevent the recurrence of these acts.

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

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

1. Are the facts alleged in the above summary of the case accurate?
2. Has any complaint been lodged by, or on behalf of, Fr Romeo Tagud or the members of Karapatan-Central Visayas?
3. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have sanctions been imposed on the alleged perpetrators?
5. Please provide information on how the charges against the members of Karapatan-Central Visayas are compatible with international human rights norms and standards.
6. Please indicate what protective measures are to be taken to safeguard the physical and psychological integrity of Fr Romeo Tagud and, more generally, of members of the IFI, as well as of members of Karapatan-Central Visayas.

### **Russian Federation: Killing of Magomed Yevloyev**

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

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

**Character of reply:** Largely satisfactory response

#### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the response of the Government of Russia with respect to the killing of Magomed Yevloyev and looks forward to receiving detailed information about the investigation into Mr. Yevloyev's death, the outcome of prosecution(s). The Special Rapporteur also looks forward to receiving information about the measures taken by the Government to ensure that complainants, witnesses and family members of Mr. Yevloyev are not subject to any intimidation or retaliation, and information about any compensation provided to the victim's family.

**Allegation letter dated 4 September 2008**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders

In this connection, we would like to bring to your Government's attention information we have received in relation to Mr **Magomed Yevloyev**, a well known journalist and founder of the independent news website *ingushetiya.ru*. The website is known as the main non-governmental source of information in the Republic of Ingushetia, and reports on alleged governmental corruption and human rights abuses.

According to information received:

On 31 August 2008, at approximately 1.30 p.m., Mr Magomed Yevloyev was arrested as he disembarked from a plane at Nazran airport in Magas, Republic of Ingushetia. Mr Yevloyev was then escorted to a waiting police vehicle. A short time later, Mr Yevloyev sustained a gunshot wound to the head and was taken by police officers to hospital, where he died later that day.

The Interior Ministry of Ingushetia stated that Mr. Yevloyev was killed "accidentally" while resisting arrest. An Investigative Committee spokesman in Moscow also issued a statement which indicated that Mr Yevloyev was detained by police and died in an "incident" while being taken to police headquarters for interrogation. The office of the Prosecutor General of the Russian Federation has reportedly indicated that it will investigate the incident.

Prior to his death, Mr Yevloyev had been a vocal critic of the government, and particularly of the Regional President of Ingushetia, Murat Zyazikov. Mr Zyazikov had reportedly threatened to shut down the website *ingushetiya.ru* on a number of occasions. In early

August 2008, the Moscow City Court upheld a district court's decision to shut down the website for allegedly "carrying extremist content". Charges of "inciting ethnic hatred" were also being pursued by prosecutors.

In October 2007, Mr Yevloyev had accused the President of the Republic of Ingushetia, Mr. Zyazikov, on the *ingushetiya.ru* website of hiring hit-men to kill him. His family had also received threats from Ingush politicians. The current editor of *ingushetiya.ru*, Ms Roza Malsagova, recently left the Russian Federation and has sought political asylum in France, alleging severe pressure on her by authorities, including through a number of criminal cases brought against her, in connection with her editing of the website.

While the reported investigation by the Public Prosecutor into the killing of Mr Magomed Yevloyev is welcomed, concern is expressed that the aforementioned events may represent a direct attempt to prevent independent reporting in Russia. This concern is reinforced by the fact that the killing of Mr Yevloyev is one in a long series of murders of journalists in the Russian Federation, as reflected inter alia in the communication to your Government by the Special Rapporteur on summary executions of 30 October 2006.

While we do not wish to prejudge the accuracy of these allegations, we would also like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights ("ICCPR"), to which the Russian Federation is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council as recently as at its 8<sup>th</sup> Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions".

We would also like to recall that taking effective measures to protect journalists and writers and to prosecute those responsible of killings or death threats against them is a precondition to ensuring the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and



Political Rights, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

We also deem it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights which calls upon states to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence against journalists, and to bring to justice those responsible to combat impunity.

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

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

- Article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- Article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We urge your Government to take all necessary measures to guarantee that accountability of any person responsible for the killing of Mr. Yevloyev is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of any criminal investigation or other inquiries which may have been carried out in relation to the killing of Mr Magomed Yevloyev, including the allegations of police involvement. Please explain the measures taken to ensure that the investigation into the role of the police and the possible role of political power holders in this case is investigated impartially and independently. If no inquiries have taken place, or if they have been inconclusive please explain why.
3. Please provide the details of any measures taken to ensure that complainants, witnesses and family members of the victims are not subject to any intimidation or retaliation.
4. Please state whether any compensation was, or is intended to be, provided to Mr Magomed Yevloyev' family.

#### **Response from the Government of the Russian Federation dated 29 September 2008**

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 has the honour to transmit information from the Russian Federation in connection with the joint appeal from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the situation of human rights defenders, contained in communication AL G/SO 214 (67-14) G/SO 214 (107-6) G/SO (33-24) RUS 23/2008.

The Permanent Mission takes this opportunity to convey to the Office of the High Commissioner the renewed assurances of its highest consideration.

Information from the Russian Federation in connection with the joint appeal from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the situation of human rights defenders.

On 31 August 2008, officers of the Ministry of Internal Affairs of the Republic of Ingushetia, acting on the instructions of the investigator of the Nazran internal affairs office to

bring the witness M.Y. Evloev in for questioning, arrested Mr. Evloev at Nazran airport. It was necessary to take Mr. Evloev into custody by force because he had ignored the summons issued by the investigator.

At approximately 2 p.m., in a motor vehicle on his way to the Nazran internal affairs office, Mr. Evloev received a bullet wound to the head and, despite the medical treatment provided by one of the Republic's hospitals, died.

The militia officer who fired the shot testified that he had accidentally pulled the trigger of his pistol. He was looking out of the window of the vehicle, since he believed that the vehicle might be attacked. He held the pistol cocked, ready to fire. Suddenly he heard the other militia officer cry out and he turned in his direction. At this time, Mr. Evloev moved forward and his head came in contact with the pistol. It was at that moment that the pistol went off.

Proceedings were instituted under article 109, paragraph 2 (negligent homicide owing to the improper discharge by a person of his professional duties), of the Criminal Code of the Russian Federation. The final classification of the offence will be provided at the concluding stage, once all the facts of the case have been investigated.

The investigators are also considering several other possibilities, including the possibility that Mr. Evloev's death was connected with his public activities and that it occurred as a result of sudden personal animosity.\*

The investigation is being conducted by the central investigative department of the investigative committee attached to the Office of the Procurator of the Russian Federation for the Southern Federal District.

Mr. Evloev was a staunch critic of M.M. Zyazikov, President of the Republic of Ingushetia, and in general of the federal centre policy being conducted in the Republic. He openly propagated his views on the Internet site [www.ingushetia.ru](http://www.ingushetia.ru), which he owned. The Internet resource made active use of various Russian and foreign opposition - and often openly extremist - organizations.

In connection with the repeated publication of extremist materials on the aforementioned website, on 6 June 2008 the Kuntsevo district court of Moscow decided to grant the request made by the procurator of Ingushetia for the closure of the website.

On 12 August 2008, the Moscow city court upheld the decision of the Kuntsevo district court of Moscow to close the website [www.ingushetia.ru](http://www.ingushetia.ru).

In August 2008, the Office of the Procurator for the Republic of Ingushetia instituted criminal proceedings against Mr. Evloev in connection with an explosion near the home of Zelimkhan Khautiev, the director of the monitoring department of the administration of the President of Ingushetia. It was precisely for the purpose of the initial inquiry into this criminal case that, on 31 August 2008, Mr. Evloev was being escorted by militia officers from the airport to the Nazran internal affairs office.

### **Russian Federation: Attack and killing of two journalists**

**Violation alleged:** Death 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; Death threats and fear of imminent extrajudicial execution by State officials

**Subject(s) of appeal:** 2 males (journalists)

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

**Allegation letter dated 16 September 2008**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

In this connection, we would like to bring to your Government's attention information we have received concerning the killing of Mr **Telman Abdulla Alishayev**, a prominent journalist in Dagestan, and the attack against Mr **Miloslav Bitokov**, editor-in-chief of the independent weekly *Gazeta Yuga* in Kabardino-Balkariya.

According to information received:

Mr Alishayev was the host of a popular religious television programme, *Peace to Your Home*, which is broadcast on Islamic television station, TV Chirkei. On 2 September 2008, at approximately 6.30 p.m., two unknown individuals attacked Mr Abdulla Alishayev while in his car in the village of Separatorny, near Makhachkala, the capital of the Republic of Dagestan. He sustained gunshot wounds to his shoulder and head. A short time later Mr Alishayev underwent emergency surgery at Makhachkala's Central Hospital. He succumbed to his injuries the following day. The Dagestan Prosecutor's Office has announced the launching of a criminal investigation and the identification of a suspect.

Mr Miloslav Bitokov is the editor-in-chief of the independent weekly *Gazeta Yuga* in Kabardino-Balkariya. *Gazeta Yuga* is one of the few news outlets in Kabardino-Balkariya to openly criticize local authorities. On 2 September 2008 at 7.30 p.m., Miloslav Bitokov was attacked by unknown aggressors at the entrance of his apartment building in Nalchik, the capital of the Republic of Kabardino-Balkariya. His son Artur Bitokov found his father lying on the ground in a pool of blood. Miloslav Bitokov was hospitalized with a concussion, broken nose and cheekbone, and lip lacerations. The attackers did not take their victim's cash or mobile phone. Miloslav Bitokov had reportedly received threats previously.

We welcome the announced opening of an investigation by the Dagestani Prosecutor's Office into the killing of Mr Alishayev. We note with great concern, however, that this killing and the attack against Mr Bitokov come two days after the killing of another journalist

in Ingushetia, another North Caucasian Republic of the Russian Federation, Mr Magomed Yvevloyev (which is the subject matter of a letter of allegation we sent to your Excellency's Government on 4 September 2008). While there appears to be currently no evidence in the present cases that the perpetrators of the attacks were public officials (as in the case of Mr Yevloyev, who was reportedly killed in a police car), we are concerned that the frequency of the attacks against independent journalists in the Russian Federation, and the impunity such attacks enjoy, may represent a direct attempt to prevent independent reporting. The killings of Mr Yevloyev and Mr Alishayev are the most recent in a long series of murders of journalists in the Russian Federation, as reflected inter alia in the communication to your Government by the Special Rapporteur on summary executions of 30 October 2006.

As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.) In Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), the Human Rights Council reiterates that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions". This obligation on the State is all the more pressing when there is a pattern of attacks against a group, here independent journalists, which can be seen as being in a confrontational relationship with the authorities, and when some of the killings have reportedly been perpetrated by State agents, such as in the case of Mr Yevloyev.

We would also like to recall that taking effective measures to protect journalists and to prosecute those responsible of killings or death threats against them is a precondition to ensuring the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We also deem it appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights which calls upon states to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence against journalists, and to bring to justice those responsible to combat impunity.

We urge your Government to take all necessary measures to guarantee that accountability of any person responsible for the killing of Mr Alishayev and the attack against Mr Bitokov is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of any criminal investigation or other inquiries which may have been carried out in relation to the killing of Mr Alishayev and the attack against Mr Bitokov. If no inquiries have taken place or if they have been inconclusive please explain why.
3. Please provide the details of any measures taken to ensure that complainants, witnesses and family members of the victims are not subject to any intimidation or retaliation.

### **Russian Federation: Killing of Stanislav Markelov and Anastasia Baburova**

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

**Subject(s) of appeal:** 1 male (lawyer and HRD); 1 female (journalist)

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

**Allegation letter dated 22 January 2009**, sent with the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding Mr **Stanislav Markelov** and Ms. **Anastasia Baburova**. Mr. Stanislav Markelov was a lawyer dealing with various human rights related cases and active in defending victims of enforced disappearances and other human rights violations committed in Chechnya. Mr. Markelov was the lawyer of the family of Ms. Elsa Kungaeva, a Chechen woman abducted and murdered by an officer of the armed forces of the Russian Federation in the year 2000, Mr. Yuri Budanov, and was instrumental in the 2005 conviction of a police officer, Sergei Lapin, who was sentenced to 11 years in prison for the torture and disappearance of a young Chechen man. Mr. Markelov previously also represented the journalist Anna Politkovskaya. Ms. Anastasia Baburova was a freelance investigative journalist working for the newspaper Novaya Gazeta.

Mr Stanislav Markelov was the subject of an urgent appeal sent by the Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the then Special Representative of the Secretary-General on the situation of human rights defenders on 4 May 2004. No response has been received to that communication to date.

According to the information recently received:

On 19 January 2009, Mr Stanislav Markelov was shot dead by a masked gunman near the building where he had previously held a press conference. He was shot in the back of the head at close range. Ms Anastasia Baburova, a journalist who also participated in the press conference and who tried to intervene when Mr Markelov was attacked, was also shot. She was taken to hospital in a critical condition where she died later of her injuries.

The press conference held by Mr Markelov was entitled “Unlawful release of Budanov: neglect by the court and direct advantage for militants: who is next?” Mr. Budanov, who had been sentenced to 10 years in prison for the abduction and murder of Ms. Elsa Kungaeva, including time served, in 2003, had been granted an early release on 15 January 2009. Mr. Markelov stated at the press conference his intention to appeal the decision of the court of Dimitrovgrad to reject his appeal concerning Mr. Yuri Budanov’s early release from custody.

While we do not wish to prejudge the accuracy of these allegations, we do express concern that the killing of Mr. Stanislav Markelov and Ms. Anastasia Baburova may be directly related to Mr. Markelov’s work to defend victims of human rights violations.

In this respect, 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”.

Lawyers play a particularly important role in this context, as recognized also in article 9 para. 3 point c) of the Declaration, which provides that everyone has the right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms. In this regard, we would like to refer Your Excellency’s Government also to the Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990. In particular:

- Principle 16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.
- Principle 17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

- Principle 18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

The murders of Mr Markelov and Ms Baburova are also of the greatest concern from the point of view of the right to freedom of expression. We have previously remarked in correspondence with your Excellency's Government that the frequency of the attacks against independent journalists in the Russian Federation, and the impunity such attacks enjoy, may represent a direct attempt to prevent independent reporting. The killing of Ms Baburova is the most recent in a long series of murders of journalists in the Russian Federation, as reflected *inter alia* in the communications to your Government of concerning the killings of, respectively, the journalists Messrs Yevloyev and Alishayev.

We should once again like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression, in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and reiterated in article 19 of the International Covenant on Civil and Political Rights which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.) In Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), the Human Rights Council reiterates that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions". The Council added that this obligation includes the obligation "to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions". This obligation on the State is all the more pressing when there is a pattern of attacks against a group, here independent journalists and human rights defenders, which can be seen as being in a confrontational relationship with the authorities.

These principles are echoed in article 12 paras 2 and 3 of the Declaration on Human Rights Defenders, which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone 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. Everyone is entitled to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts 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 its resolution 2005/9, the Commission on Human Rights urged governments to refrain from all acts of intimidation or reprisal against those who avail or have availed themselves of procedures established under United Nations auspices for the protection of human rights and



fundamental freedoms. In this recommendation, the Commission requested representatives of United Nations human rights bodies to continue to take urgent steps to help prevent the occurrence of intimidation and reprisals and to include in their respective reports allegations of intimidation or reprisal, as well as an account of action taken by them in this regard.

In its resolution 7/12, adopted without a vote, the Human Rights Council urged governments to take steps to protect witnesses of disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected.

Further, in the United Nations Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133, of 18 December 1992, it is stated that States must take steps to ensure that persons involved in investigations of cases of disappearance, including the complainant, shall be protected against ill-treatment, intimidation or reprisal, and any cases of such treatment shall be appropriately punished.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to this case. 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. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

#### **Russian Federation: Killing of Anton Stradymov and Yura Chervochkin**

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

**Subject(s) of appeal:** 2 males

**Character of reply:** Largely satisfactory response

#### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the response of the Government of Russia with respect to the killings of Anton Stradymov and Yura Chervochkin and looks forward to receiving detailed information about the investigations into their deaths and the outcomes of any prosecutions. The Special Rapporteur also notes that the Government's statement that Mr. Chervochkin's mother has had her rights under Russian law explained to her is not fully responsive to the Special Rapporteur's request for information on the steps taken by the Government to comply with Principle 16 of the Prevention and Investigation Principles, and looks forward to the Government's detailed response.

**Allegation letter dated 28 January 2009**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

We would like to bring to the attention of your Excellency's Government information we have received concerning the recent death of Mr **Anton Stradymov**, a political activist involved with the banned National Bolshevik Party. We would in this context also like to bring to your Government's attention reports regarding the alleged lack of progress in the investigation and prosecution of a similar case, the death of Mr. **Yura Chervochkin**, a Parliamentary candidate in the list of the opposition coalition "The Other Russia" and member of the banned National Bolshevik Party.

According to information received:

On 14 January 2009 Anton Stradymov was found in critical condition near the Vykhino metro station in Moscow. His body was covered with bruises. His face was smashed, impeding a prompt identification. His belongings had not been stolen. He was taken to hospital where he subsequently succumbed to his injuries. Anton Stradymov had taken part in a number of opposition demonstrations, including in the "Marches of Dissent" organised by "The Other Russia" coalition.

The violent death of Anton Stradymov bears resemblance to the death of another member of the banned National Bolshevik Party and of "The Other Russia" coalition, Yura Chervochkin. On 23 November 2007, in Serpukhov, Moscow oblast, Yura Chervochkin was found unconscious near the entrance of the building where he lived. He had been severely beaten and died on 10 December 2007, in the Burdenko Research Institute, the clinic where he was hospitalised in a comatose state. An hour before he was found, Yura Chervochkin had called the office of the Kasparov.ru web newspaper informing that four servicemen of UBOP, a special unit to combat organised crime, were following him and that he had recognised them from previous encounters.

Only after Yura Chervochkin died was an investigation launched into the assault. The investigation was suspended in April 2008 on the ground that "there were no suspects". It was reopened in October 2008 and transferred, without any explanation being provided, to the Prosecutor's Office of the town of Kashira (Moscow region). There, the investigation was again suspended in November 2008, apparently on the grounds of "lack of operative information". Yura Chervochkin's mother has repeatedly tried to obtain information on the progress of the investigation, but was told that no suspects had been apprehended and was turned away.

While we do not wish to prejudge the accuracy of these reports, we would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights ("ICCPR"), to which the Russian Federation is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

Article 6 of the ICCPR requires the thorough, prompt and impartial investigations of all violations of the right to life, particularly of suspected cases of extra-legal, arbitrary and summary execution. Principle 9 of the Principles on the Effective Prevention and Investigation

of Extra-Legal, Arbitrary and Summary Executions (“Prevention and Investigation Principles”) provides guidelines for investigations, which include conducting an adequate autopsy, and the collection and analysis of all physical and documentary evidence. Families of the deceased should be notified of information relevant to the investigation, and the findings of the investigation should be made public (Prevention and Investigation Principles, Principles 16 and 17).

We would like also to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the ICCPR. They provide that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

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

1. Are the facts alleged in the summary of the cases accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of the criminal investigations or other inquiries which have been carried out in relation to the killings of Messrs Anton Stradymov and Yura Chervochkin. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide information on the steps taken to comply with Principles 16 and 17 of the Prevention and Investigation Principles, requiring that families of the deceased should be informed of information relevant to the investigation, and the findings of the investigation should be made public.

#### **Response from Government of the Russian Federation dated 1 April 2009**

Information submitted by the Russian Federation in response to the joint enquiry by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the circumstances of the deaths of Mr. A.Y. Stradymov, a political activist of the banned National Bolshevik Party, and Mr. Y.M. Chervochkin, a candidate for the Other Russia opposition coalition in the 2007 elections to the State Duma and member of the banned National Bolshevik Party Reference: AL G/SO 214 (67-14) G/SO 214 (33-24) RUS 3/2009.

On 15 January 2009, the investigation unit in the investigative department of the Investigative Committee attached to the Russian Federation Procurator’s Office for Moscow instituted criminal proceedings against an unidentified individual on the basis of evidence of

an offence contrary to article 111, paragraph 4, of the Criminal Code (Wilful infliction of serious harm to health) in connection with the serious harm inflicted on the health of Mr. A.Y. Stradymov (born in 1988 and resident in Moscow).

In the course of the preliminary investigation, it was ascertained that on 14 January 2009, between midnight and 5 a.m., in an area adjacent to the property at 20 Krasny Kazanets Street, Moscow, an unidentified individual wounded Mr. Stradymov. He was subsequently taken to hospital in Moscow, where he died without regaining consciousness.

Enquiries into the character of the victim established that Mr. Stradymov was an active member of the unofficial National Bolshevik Party and had been arrested and prosecuted for administrative offences on several occasions.

Currently, investigations are being conducted to identify the persons involved in committing the offence.

On 22 November 2007, near 36 Vodoprovodnaya Street in the town of Serpukhov, Moscow province, at least four unidentified individuals assaulted Mr. Y.M. Chervochkin (born in 1984), who died of his injuries on 10 December 2007.

On 23 November 2007, the investigative department of the Internal Affairs Office for the town and district of Serpukhov, Moscow province, instituted criminal proceedings on the basis of evidence of an offence contrary to article 213, paragraph 2, of the Criminal Code (Criminal mischief) in connection with the assault on Mr. Chervochkin.

The case was taken over by the chief of the investigation unit for the town of Serpukhov in the investigative department of the Investigative Committee attached to the Russian Federation Procurator's Office for Moscow province on 13 December 2007, since the actions of the unidentified individuals were deemed to contain elements of the offence stipulated in article 111, paragraph 4, of the Criminal Code (Infliction of serious harm to health resulting in the death of the victim). The criminal case was subsequently referred for investigation to the same investigative department's investigation unit for the town of Kashira. The pretrial investigation into the case has been suspended several times, most recently on the basis of article 208, paragraph 1 (1), of the Code of Criminal Procedure (owing to the failure to identify persons against whom charges could be brought), although that decision was subsequently overturned. The necessary investigative and other procedural actions are being carried out in order to identify the persons involved in committing the offence.

With a view to shedding light on the offence, the victim's close associates have been identified, and his activities in the National Bolshevik Party and Other Russia coalition, of which he was the coordinator for Moscow's southern suburbs, are being studied.

Mr. Chervochkin's mother, Ms. N.G. Chervochkina, has been recognized as a victim in the criminal case, and her rights under the Russian law on criminal procedure have been explained to her. Ms. Chervochkina has made no representations during the investigation. Following the post mortem, Mr. Chervochkin's body was handed over to his mother for burial.

To date, no one against whom charges can be brought for inflicting serious harm to health resulting in the deaths of Mr. Stradymov and Mr. Chervochkin has been identified. The pretrial investigations into these criminal cases are continuing; the progress made is being monitored by the procuratorial offices for Moscow and Moscow province, as well as by the Criminal Investigation Department of the Central Internal Affairs Administration for Moscow and Moscow province. In accordance with article 161 of the Code of Criminal Procedure, details of a preliminary investigation may be made public only with the authorization of a procurator, investigator or person conducting a pretrial inquiry and only to the extent that he or she deems permissible.

### **Saudi Arabia: Death sentence of Suliamon Olyfemi**

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

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

**Character of reply:** Allegations rejected but without adequate substantiation

### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of Saudi Arabia regarding the death sentence against Suliamon Olyfemi. The Special Rapporteur would note, however, that the information provided in no way refutes allegations that Mr. Olyfemi: was not assisted by lawyers at any stage of the legal proceedings; was asked to sign documents in Arabic without being provided a (written) translation; that Nigerian consular authorities were denied access to Olyfemi; that he was sentenced to death in a closed trial; and, that he did not receive adequate translation during trial. That Mr. Olyfemi may not have requested a lawyer “during the investigative stage,” as the Government states, does not satisfy the requirement that he be informed of his right to counsel when charged with a criminal offence. The Government’s response also does not indicate whether and when Mr. Olyfemi received a copy of the judgment in his case and whether the judgment was translated into a language he could understand.

The SR would also note that he would continue to appreciate information that he has consistently requested regarding which offences carry the death penalty in the Kingdom of Saudi Arabia, which courts can impose it, and what percentage of those sentenced to death and executed are foreigners.

**Urgent appeal dated 20 April 2007**, sent with the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture

In this connection, we would like to draw the attention of your Government to information we have received regarding the case of Mr. **Suliamon Olyfemi**, a citizen of Nigeria, who is reportedly at imminent risk of execution. The case of Suliamon Olyfemi was previously brought to the attention of your Excellency’s Government (together with the cases of 12 other Nigerian migrant workers) by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention,

the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture in a communication dated 30 November 2004. Regrettably, their communication has remained without reply.

According to the communication of 30 November 2004, Suliamon Olyfemi and 12 other Nigerian migrant workers resident in Jeddah:

“[...] were among hundreds detained in Jeddah on 29 September 2002 after a policeman was killed in a fight between local men and African nationals. All the other men arrested on that occasion have been deported, including 21 who served prison sentences ranging from six months to two years and flogging.

Subsequent to their arrest, the 13 Nigerian nationals were tortured and ill-treated, including being hung upside down and beaten and subjected to electric shocks to the genitals. Since their arrest over two years ago, the men have not had access to a lawyer or consular assistance. Moreover, translators were present on only two of the four previous court appearances, and all proceedings and court documents are in Arabic.

On 22 November 2004, a hearing in the case of the 13 men took place before three judges in a closed session, without the assistance of a lawyer, a consular representative or adequate translation facilities. They could not fully understand the proceedings, which were conducted in Arabic, and were not able to fully understand whether the hearing concerned the prolongation of their detention or constituted their trial.”

According to information received since then, Suliamon Olyfemi was sentenced to death at a closed trial in May 2005. The twelve other Nigerian men were sentenced to prison terms and corporal punishment. During the trial, Suliamon Olyfemi and his co-defendants neither had access to legal representation nor to consular assistance, nor did they benefit from adequate translation. During interrogation they had been told to put their fingerprints, which can act as a signature, on statements written in Arabic, which they do not read. It is possible that these statements were used as evidence against them during the trial proceedings. Staff from the Nigerian consulate in Jeddah attempted to visit the men in prison on 19 May 2005, but were not allowed to see them. The death sentence imposed on Suliamon Olyfemi has recently been upheld by the Court of Cassation and ratified by the Supreme Judicial Council.

While we do not wish to prejudge the accuracy of the allegations reported above, we respectfully remind your Excellency that in capital punishment cases the obligation to provide criminal defendants “a fair and public hearing before an independent and impartial tribunal” (Article 10 of the Universal Declaration on Human Rights) allows no derogation. A central element of the right to a fair hearing is the right to be assisted by legal counsel. In this respect, we would also like to refer Your Excellency’s Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular Principle 1, which reads: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal

proceedings” and principle 5; “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”

The right to a fair hearing also requires that defendants be given information on the proceedings in which their culpability and sentence will be determined as further stated in the Basic Principles on the Role of Lawyers: “It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.” (Principle 21).

We would also like to remind your Government that article 15 of the Convention against Torture provides that, “[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” Furthermore, in paragraph 4 of Resolution 2005/39, the Commission on Human Rights urges States ensure that statements which are established to have been made as a result of torture are not admitted as evidence.

As for the right to a “public hearing”, while courts may exclude the public from all or part of a trial where publicity would imperil national security or other legitimate interests (e.g. the privacy rights of a minor), the judgment rendered in a criminal case must be made public, allowing only the narrowest of exceptions which clearly find no application in the case at issue.

In this respect, it should be noted that secrecy surrounding trial, sentence and post-conviction proceedings also makes the effective exercise of the right to appeal the sentence and to seek its commutation impossible. Considering the irrevocable nature of capital punishment, these rights are all the more fundamental. Only the full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right.

We urge your Excellency’s Government to take all necessary measures to guarantee that the rights under international law of Suliamon Olyfemi are respected. Considering the irremediable nature of capital punishment, this can only mean suspension of the execution until the complaints regarding his 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.

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:

1. Are the facts alleged in the above summary of the case accurate? In particular, is it accurate that Suliamon Olyfemi was not assisted by lawyers at any stage of the proceedings? Is it accurate that he was asked to sign documents in Arabic without being provided a (written)

translation? What use was made of these documents? Is it accurate that Nigerian consular authorities were denied access to Suliamon Olyfemi? At what stage did he receive a copy of the judgment in his case? Was the judgment translated into a language he can understand?

2. Were the proceedings in this case in accordance with the laws of the Kingdom of Saudi Arabia?

3. We would finally like to reiterate the request by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers in communications to your Excellency's Government of 24 January 2007 and 5 April 2007 for clarification of which offences carry the death penalty in the Kingdom of Saudi Arabia, which courts can impose it, and what percentage of those sentenced to death and executed are foreigners. We have received reports according to which in 2005 out of 86 executions known to have taken place in Saudi Arabia 39 concerned foreigners, in the year 2006 27 out of 39, and in 2007 (to date) 15 out of 34 executions concerned foreigners. If these figures were correct, more than 50 percent of those executed would be foreigners. Can your Government confirm or correct these statistics?

### **Response from the Government of Saudi Arabia 28 October 2008**

The Permanent Mission, of the Kingdom of Saudi Arabia to the United Nations Office and other International Organizations at Geneva, presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to refer to communication UA G/SO 214.(3-3143) G/SO 214 (106-7) G/SO 214 ( 33-24) G/SO 214 (53-21) of 20 April the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the human rights of migrants, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture in which they requested information concerning the Nigerian prisoner Mr. Suliamon Alyfemi.

In this connection, the competent authorities in the Kingdom of Saudi Arabia have indicated as follows:

1. The assistance of a lawyer during the investigatory stage was not requested by any of the accused or by their country's embassy.

2. The accused were assisted by accredited translators during, the stage of interrogation and subsequent signature by them of the record, of the interrogation proceedings.

3. The Nigerian authorities did not request access to the accused at any stage of the investigation. However, the Director of Prisons in the Governorate of Jeddah indicated that the Consulate General of the Republic of Nigeria at Jeddah had requested permission for some persons to visit the Nigerian prisoners on Saturday 42/3/1428 AH (31 March 2007).

4. During the interrogation of the accused the competent authorities did not observe any signs of torture or other ill-treatment to which some of the accused claimed to have been subjected during their preliminary questioning. A physical examination conducted at the time by the investigating officer did not reveal any signs of assault and a report to this effect was duly drawn up.



5. The attack by the accused on the police officers is attributable to the implementation, on 8/9/1423 AH (13 November 2002), of the first phase of the Diya' 90 campaign to arrest Nigerian nationals living in the Balad district of Jeddah in violation of the Kingdom's residence regulations. When one of the Nigerians, Salswa al-Lami, nicknamed "al-Mutawwa", was arrested, Suliamon and the other accused attacked the police officers, freed their friend, and then continued to pursue the officers, pelting them with empty bottles, sticks and skewers. When one of the police officers, senior patrolman Ali bin Tami Asiri, fell to the ground they assaulted him and beat him with the automatic weapon that he was carrying, thereby causing his death. Patrolman Essam bin Salim Al-Muwallad and private Fawaz bin Uweili Al-Muwallad were also injured during the assault and the window of a police patrol vehicle was broken so that one of the arrested persons could be taken out after the patrol commander was attacked. The accused person, Suliamon, confessed to taking the automatic weapon from the police officer's hand when the latter fell to the ground, after which he struck him three times with the butt of the weapon; first on his right cheek, then on the right side of the back of his head, and finally on his shoulder, after which he threw the weapon on the victim's body as he lay on the ground. He observed blood flowing from the dying man's mouth before they fled. The accused also affirmed and legally testified that he and his associates had conspired in advance to attack the police officers. The case was investigated by a district police committee and examined by the Makkah branch of the Public Investigation and Prosecution Department, after which the accused were questioned again by the Department. The indictment was drawn up and reviewed by the Department's governing body (Review Decision No. 470/M of 1423 AH).

**Saudi Arabia: Death sentences of Ali Hassan 'Issa al-Buri, Qassim Bin Rida Bin Sulayman al Mahdi and Khalid Bin Muhammad 'Issa al-Qadih**

**Violation alleged:** Non-respect of international standards on safeguards and restrictions 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 Saudi Arabia has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

**Urgent appeal dated 13 August 2008,** sent with the Special Rapporteur on the question of torture

In this connection, we would like to draw the attention of your Government to information we have received regarding three persons, **Ali Hassan 'Issa al-Buri, Qassim Bin Rida Bin Sulayman al Mahdi and Khalid Bin Muhammad 'Issa al-Qadih** who have reportedly been sentenced to death and are at imminent risk of execution.

According to the information received:

Ali Hassan 'Issa al-Buri, Qassim Bin Rida Bin Sulayman al Mahdi and Khalid Bin Muhammad 'Issa al-Qadih, were arrested in 2004 on charges of drug smuggling. Qassim Bin Rida Bin Sulayman al Mahdi and Khalid Bin Muhammad 'Issa al-Qadih were sentenced to death and Ali Hassan 'Issa al-Buri was sentenced to 20 years of imprisonment and 5000 lashes. However, it is reported that during their interrogation they were held incommunicado and that their confessions, on which their convictions are based, were extracted under torture. In addition, allegedly, they were convicted following a trial during which they were not legally represented.

The Court of Cassation reviewed the case and requested a reduction in the men's sentence. Despite this ruling the Lower Court reportedly maintained the death penalty for Qassim Bin Rida Bin Sulayman al Mahdi and Khalid Bin Muhammad 'Issa al-Qadih and increased Ali Hassan 'Issa al-Buri's sentence by sentencing him to death.

While we do not wish to prejudge the accuracy of the allegations regarding this specific case, we would like to respectfully remind your Excellency's Government that although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). This is consistent with the conclusion of the Human Rights Committee in interpreting Article 6(2) of the Covenant. The Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. According to the information we have received, the offences for which Ali Hassan 'Issa al-Buri, Qassim Bin Rida Bin Sulayman al Mahdi and Khalid Bin Muhammad 'Issa al-Qadih Ya'qub Mehrnehad have been convicted did not involve any intentional killing.

Moreover, we respectfully remind your Excellency that in capital punishment cases the obligation to provide criminal defendants "a fair and public hearing before an independent and impartial tribunal" (Article 10 of the Universal Declaration on Human Rights) allows no derogation. This guarantee includes the right to be assisted by legal counsel and the right not to be compelled to confess guilt.

We should also like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights. We further recall that paragraph 6c of Human Rights Council resolution 8/8 of 2008 urges States "to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made". In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the International Covenant on Civil and Political Rights.

We urge your Excellency's Government to take all necessary steps to ensure that the rights under international law of Ali Hassan 'Issa al-Buri, Qassim Bin Rida Bin Sulayman al Mahdi and Khalid Bin Muhammad 'Issa al-Qadih are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety.

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

1. Are the facts alleged in the above 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 allegation that Ali Hassan 'Issa al-Buri, Qassim Bin Rida Bin Sulayman al Mahdi and Khalid Bin Muhammad 'Issa al-Qadih's confessions were extorted by torture and that they were denied access to counsel. If no inquiries have taken place or if they have been inconclusive, please explain why.

#### **Saudi Arabia: Sentences imposed against seven Filipino men**

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

**Subject(s) of appeal:** 7 males (migrant workers)

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

**Urgent appeal dated 14 August 2008**, sent with the Special Rapporteur on the question of torture, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the human rights situation of migrants

In this connection, we would like to draw the attention of your Government to information we have received regarding the sentences imposed against seven Filipino men found guilty of a triple murder. Three of them were sentenced to death and four to eight years imprisonment and one thousand lashes each.

According to the information we have received:

**Edison Gonzales, Rolando Manaloto Gonzales, Eduardo Arcilla, Victoriano Alfonso, Efren Francisco Dimaun, Omar Basillo and Joel Sinamban**, seven Filipino migrant workers, were arrested in April 2006 on charges of having murdered three other Filipino nationals. The seven men were tried by a General Court in Jeddah and sentenced in

July 2007. Eduardo Arcilla, Edison Gonzales and Rolando Manaloto Gonzales were sentenced to death. Victoriano Alfonso, Efrén Francisco Dimaun, Omar Basillo, and Joel Sinamban were sentenced to eight years imprisonment and one thousand lashes each.

The seven men were held incommunicado and were not given access to lawyers until April 2008, i.e. eight months after their conviction and sentencing in first instance. Allegedly, they were also tortured during interrogation in order to force them to confess to the murders, including by being beaten on the soles of their feet.

The seven men are currently held at Briman Prison in Jeddah. It would appear that their appeals are still pending before the second instance court.

While we do not wish to prejudge the accuracy of the allegations reported above, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to this case under international law.

We would in the first place respectfully remind your Excellency's Government that in capital punishment cases the obligation to provide criminal defendants "a fair and public hearing before an independent and impartial tribunal" (Article 10 of the Universal Declaration on Human Rights) admits of no exception. Relevant to the case at hand, the right to a fair trial includes the right to be assisted by legal counsel at all stages of proceedings and the right not to be compelled to confess guilt.

A central element of the right to a fair hearing is the right to be assisted by legal counsel. In this respect, we would also like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular Principle 1, which reads: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings". Principle 7 reads: "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention." If it was confirmed that the seven men were given access to lawyers only after two years of incommunicado detention and eight months after being sentenced in first instance, this would most radically negate the possibility of a fair trial.

In this respect, we would also like to draw the attention of your Government to paragraph 12 of General Assembly Resolution A/RES/61/153 of 14 February 2007, which "reminds all States that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person". Prolonged incommunicado detention furthermore negates the abovementioned guarantees of the right to a fair trial, such as being assisted by a lawyer and having adequate facilities to prepare one's defence.

We also recall that paragraph 6c of Human Rights Council resolution 8/8 of 2008 urges States "to ensure that no statement established to have been made as a result of torture is invoked

as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made". In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the International Covenant on Civil and Political Rights.

To sum up, only the full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights under international law of Eduardo Arcilla, Edison Gonzales and Rolando Manaloto Gonzales are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety, or the above named men are given a new trial or released.

We would also like to express our concern regarding the apparently disproportionate number of foreigners among those sentenced to death in the Kingdom of Saudi Arabia. As already noted in a previous communication to your Government, we have received reports according to which in 2005 out of 86 executions known to have taken place in Saudi Arabia 39 concerned foreigners, in the year 2006 27 out of 39, and in 2007 (as of April of that year) 15 out of 34 executions concerned foreigners. Recent reports indicate that out of 66 persons executed so far in the Kingdom of Saudi Arabia in the course of the current year, almost half were foreign nationals. If these figures were correct, approximately 50 percent of those executed would be foreigners. Similarly, among the 18 individual cases of persons sentenced to death reported to us and brought to the attention of your Excellency's Government by the Special Rapporteur on extrajudicial, summary or arbitrary executions and other Special Procedures mandate holders since January 2007, ten concerned foreign nationals. While we are fully aware that the Kingdom hosts a significant number of migrant workers and other foreign nationals, these statistics raise certain questions in terms of possible discrimination in relation to both criminal enforcement and sentencing. It would be important to know if more than half of the capital offences are committed by foreigners, if the police use the same approach in investigating and charging both locals and foreigners, and if the sentences handed down are equally harsh in relation to both foreigners and locals. In addition, foreigners in conflict with the law are particularly vulnerable and require special measures to ensure the fairness of the proceedings against them, including interpretation and consular assistance. These needs are protected by international human rights law and the Vienna Convention on Consular Relations, to which Saudi Arabia is a party. In communications to your Excellency's Government of 24 January 2007, 5 April 2007 and 20 April 2007 we sought clarification of what percentage of those sentenced to death and executed are foreigners. Regrettably, we never received a reply to this question, which we would like to reiterate.

As far as the sentence to thousand lashes imposed against Victoriano Alfonso, Efren Francisco Dimaun, Omar Basillo, and Joel Sinamban is concerned, we would like to draw your Government's attention to the report of the Special Rapporteur on Torture to the 60th session of the General Assembly, in which he, 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.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
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 allegation that Edison Gonzales, Rolando Manaloto Gonzales, Eduardo Arcilla, Victoriano Alfonso, Efren Francisco Dimaun, Omar Basillo and Joel Sinamban were detained incommunicado for two years and 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 information as to how the principle that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made, is implemented in Saudi Arabia.
4. Please provide details regarding the defendants' access to legal counsel.
5. We would finally like to reiterate our request in communications to your Excellency's Government of 24 January 2007, 5 April 2007 and 20 April 2007 for clarification of what percentage of those sentenced to death and executed are foreigners.

**Saudi Arabia: Death sentences, flogging and imprisonment for seven persons**

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

**Subject(s) of appeal:** 7 persons (4 minors; 3 foreign nationals)

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Urgent appeal dated 15 August 2008**, sent with the Special Rapporteur on the question of torture

In this connection, we would like to draw the attention of your Government to information we have received regarding the sentences imposed against seven persons, including four who were children at the time of the offences, found guilty of theft, robbery and assault. Five of them were sentenced to death and two to flogging and imprisonment.

According to the information we have received:

**Sultan Bin Khalid Mahmud al-Maskati, Yusef Bin Hassan Bin Salman al-Muwallad, Qassim Bin ‘Ali Bin Ibrahim Al-Nakhli, Sultan Bin Sulayman Bin Muslim al-Muwallad, ‘Issa bin Muhammad ‘Umar Muhammad, Bilal Bin Muslih Bin Jabir al-Muwallad and Ahmad Hamid Muhammad Sabir** were arrested in 2004 and charged with theft, robbery and assault. Bilal Bin Muslih Bin Jabir al-Muwallad and Ahmad Hamid Muhammad Sabir were aged 15 and 13 respectively at the time of the offences. Sultan Bin Sulayman Bin Muslim al-Muwallad and ‘Issa bin Muhammad ‘Umar Muhammad were both aged 17 when the offences were committed. ‘Issa bin Muhammad ‘Umar Muhammad and Ahmad Hamid Muhammad Sabir are citizens of Chad, the other five of the Kingdom of Saudi Arabia.

Following their arrest, they were held incommunicado at police stations in the city of Madina. There they were allegedly beaten in an attempt to make them confess. In February 2008 the General Court in Madina sentenced Sultan Bin Khalid Mahmud al-Maskati, Yusef Bin Hassan Bin Salman al-Muwallad, Qassim Bin ‘Ali Bin Ibrahim Al-Nakhli, Sultan Bin Sulayman Bin Muslim al-Muwallad and ‘Issa bin Muhammad ‘Umar Muhammad to death. The two youngest ones, Bilal Bin Muslih Bin Jabir al-Muwallad and Ahmad Hamid Muhammad Sabir, were sentenced to “severe flogging” and a term of imprisonment. In July 2008, the Court of Cassation in Mecca upheld the sentences. The cases are currently before the Supreme Judicial Council.

Allegedly, the seven convicts and their relatives might not be informed of the outcome of review by the Supreme Judicial Council and of the date set for the execution of the sentences until the day that the executions and floggings are to be carried out.

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

We would in the first place respectfully remind your Excellency’s Government that Article 37(a) of the Convention on the Rights of the Child, to which the Kingdom of Saudi Arabia is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. We have taken note of the clarification provided by your Government to the Special Rapporteur on extrajudicial, summary or arbitrary executions with regard to another case of a juvenile offender sentenced to death (A/HRC/8/3/Add.1, p. 345) that “the regulations applied in the Kingdom stipulate that a person can be held criminally responsible for acts that he commits after reaching the age of majority,

which differs from one individual to another and might exceed 18 years”. As already observed by the Special Rapporteur (A/HRC/8/3/Add.1, p. 343), the application of these regulations is inconsistent with the Convention on the Rights of the Child, which clearly establishes in Article 37(a) that “[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”.

In this respect we also note that the Committee on the Rights of the Child, in its Concluding Observations regarding your Government’s Second Periodic Report under the Convention, “...urges the State party to take the necessary steps 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 into penalties in conformity with the provisions of the Convention and to abolish as a matter of the highest priority 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.” (CRC/C/SAU/CO/2, para. 33).

The death sentences imposed against Sultan Bin Sulayman Bin Muslim al-Muwallad and ‘Issa bin Muhammad ‘Umar Muhammad, who were reportedly aged 17 at the time of the offences, would appear to be incompatible with these obligations under international law of your Government.

As far as the three men who were young adults at the time of the offences are concerned (Sultan Bin Khalid Mahmud al-Maskati, Yusef Bin Hassan Bin Salman al-Muwallad, and Qassim Bin ‘Ali Bin Ibrahim Al-Nakhli), we would like to respectfully remind your Excellency’s Government that although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). According to the information we have received, the offences for which Sultan Bin Khalid Mahmud al-Maskati, Yusef Bin Hassan Bin Salman al-Muwallad and Qassim Bin ‘Ali Bin Ibrahim Al-Nakhli have been convicted were not intended to result in any killings and did not result in loss of life.

Thirdly, we remind your Excellency that in capital punishment cases the obligation to provide criminal defendants “a fair and public hearing before an independent and impartial tribunal” (Article 10 of the Universal Declaration on Human Rights) allows no derogation. This guarantee includes the right to be assisted by legal counsel and the right not to be compelled to confess guilt.

In the latter respect, we would like to draw the attention of your Government to Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” This was reiterated in paragraph 6c of Human Rights Council resolution 8/8 of 2008. In



addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in the Universal Declaration of Human Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the Kingdom of Saudi Arabia is a party.

We also recall paragraph 12 of General Assembly Resolution A/RES/61/153 of 14 February 2007, which “reminds all States that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person”. Prolonged incommunicado detention furthermore negates the abovementioned guarantees of the right to a fair trial, such as being assisted by a lawyer and having adequate facilities to prepare one’s defence.

In addition, with regard to reports that the seven convicts and their relatives might not be informed of the outcome of review by the Supreme Judicial Council and of the date set for the execution of the sentences until the day that the executions and floggings are to be carried out, we would like to recall that transparency is one of the fundamental due process safeguards contributing towards efforts to prevent the arbitrary deprivation of life (see the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on Transparency and the Imposition of the Death Penalty, E/CN.4/2006/53/Add.3). As that report explains in greater detail (paras. 26 and ff.), “condemned persons, their families and their lawyers should be provided with timely and reliable information on the procedures and timing of appeals, clemency petitions, and executions. Experience demonstrates that to do otherwise is highly likely to lead to violations of due process rights and to inhuman and degrading treatment.”

To sum up, only the full respect for the limitations placed by international law on the use of the death penalty and for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency’s Government to take all necessary steps to ensure that the rights under international law of Sultan Bin Khalid Mahmud al-Maskati, Yusef Bin Hassan Bin Salman al-Muwallad, Qassim Bin ‘Ali Bin Ibrahim Al-Nakhli, Sultan Bin Sulayman Bin Muslim al-Muwallad and ‘Issa bin Muhammad ‘Umar Muhammad are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety, or the above named are given a new trial or released.

As far as the sentence to flogging imposed against Bilal Bin Muslih Bin Jabir al-Muwallad and Ahmad Hamid Muhammad Sabir is concerned, who were allegedly aged 13 and 15 respectively at the time of the offences, we would like to draw your Government’s attention to the report of the Special Rapporteur on Torture to the 60th session of the General Assembly, in which he, 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).

In considering your Government's Second Periodic Report under the Convention on the Rights of the Child, the Committee noted your Government's "reassurance that corporal punishment is not imposed upon minors". However, it urged your Government "to take all necessary steps for the immediate abolition of extrajudicial and summary floggings of teenagers as well as other forms of cruel, inhuman or degrading punishments imposed on persons having committed a crime when under the age of 18 years" ((CRC/C/SAU/CO/2, paras. 42 and 43). Also the Committee against Torture, in considering your Government's report, expressed its concern with regard to "[t]he sentencing to, and imposition of, corporal punishments by judicial and administrative authorities, including, in particular, flogging and amputation of limbs, that are not in conformity with the Convention" (CAT/C/CR/28/5, para. 4(c)). It therefore recommended that the Kingdom of Saudi Arabia "[r]e-examine its imposition of corporal punishments, which are in breach of the Convention" (CAT/C/CR/28/5, para. 8(b)).

We therefore urge your Excellency's Government to take all necessary steps to ensure that the sentence to flogging imposed against Bilal Bin Muslih Bin Jabir al-Muwallad and Ahmad Hamid Muhammad Sabir is not carried out.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
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 allegation that the seven abovementioned persons were held incommunicado at police stations in the city of Madina and beaten in an attempt to make them confess. If no inquiries have taken place or if they have been inconclusive please explain why.
3. Please provide information as to how the principle that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made, is implemented in Saudi Arabia.
4. Please provide details regarding the defendants' access to legal counsel. We take note of your Government's general statement, made in reply to a previous communication, that "Article 140 of the Code [of Criminal Procedure] stipulates that a person accused of a major offence should appear in person before the court, without prejudice to his right to defence counsel" (see A/HRC/8/3/Add.1, p. 338). We would like to know how this right to defence counsel was ensured in the present cases.
5. Please explain which offences carry the death penalty under the laws of the Kingdom of Saudi Arabia. We note that in its reply to our communication of 5 April 2007 in another capital punishment case your Excellency's Government stated that "[d]eath sentences are handed

down by the general courts in cases entailing the fixed penalties prescribed in the Islamic Shari'a and in cases of lex talionis and crimes involving repeated offences of drug smuggling and trafficking." The present cases, in which the charges reportedly were theft, robbery and assault would, however, not appear to fall into these categories.

6. Please provide detailed information on the laws governing the imposition of capital punishment and corporal punishment for offences committed by minors, and on how your Excellency's Government intends to bring those laws in line with its obligations under the Convention on the Rights of the Child.

**Saudi Arabia: Death for two foreign nationals, lashes and imprisonment sentence for one minor foreign national**

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

**Subject(s) of appeal:** 3 males (minors and foreign nationals)

**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 Saudi Arabia. The Special Rapporteur acknowledges the Government's statement that Sharia law prohibits torture and the extraction of evidence obtained through torture, but would note, however, that the Government's response does not provide details of any investigation or other inquiries to refute allegations that Mohamed Kohail, Sultan Kohail and Mehanna Sa'd were subjected to torture. The Special Rapporteur would also note that the Government's response acknowledges that two of the defendants were held incommunicado under a provision of the Kingdom of Saudi Arabia's criminal law that permits incommunicado detention for up to 60 days. With respect to this incommunicado detention, the Special Rapporteur notes that states cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law. In addition, the Special Rapporteur notes that the Government's response in no way refutes allegations that Mohamed Kohail and Mehanna Sa'd were sentenced to death following a trial in which their lawyer was not permitted to participate (except for one or two sessions) and was not permitted to challenge the evidence against his clients. The Special Rapporteur remains concerned about the allegations that sentences against the three individuals, including the death penalty, were imposed by the Government based on coerced evidence and without due process, including effective assistance of counsel.

**Urgent appeal dated 21 August 2008**, sent with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture

In this connection, we would like to draw the attention of your Government to information we have received regarding the sentences imposed against three foreign nationals, **Mohamed Kohail, Mehanna Sa'd and Sultan Kohail.**

According to the information we have received:

Mohamed Kohail (now aged 23) and his brother Sultan Kohail (now aged 17) are citizens of Canada. Mehanna Sa'd (now aged 22) is a citizen of Jordan. The three were charged with the murder of a boy who died in a fight in January 2007. Following their arrest, they were held incommunicado for approximately one and a half months. They were allegedly beaten in an attempt to make them confess.

In March 2008, the General Court in Jeddah sentenced Mohamed Kohail and Mehanna Sa'd to death. Their trial before the General Court in Jeddah had taken place over nine sessions, but their lawyer was allowed to attend only the last one or two, and was allegedly not allowed to challenge the evidence brought against his clients. The Court of Cassation subsequently reviewed the case and sent it back to the General Court with recommendations to review the sentence. On 9 August 2008, the Jeddah General Court rejected the recommendations of the Court of Cassation and/or sentenced the two men to death again. The case is now again before the Court of Cassation. If upheld, the death sentences would be submitted to the Supreme Judicial Council for approval.

Sultan Kohail was sentenced to 200 lashes and one year's imprisonment by the Jeddah Summary Court in April 2008. In his case, the Court of Cassation recommended that the case be re-tried by a General Court, which has the power to pass the death sentence against him. His case is now awaiting retrial at a General Court.

While we do not wish to prejudge the accuracy of the allegations reported above, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to this case under international law.

We would in the first place respectfully remind your Excellency's Government that in capital punishment cases the obligation to provide criminal defendants "a fair and public hearing before an independent and impartial tribunal" (Article 10 of the Universal Declaration on Human Rights) admits of no exception. Relevant to the case at hand, the right to a fair trial includes the right to be assisted by legal counsel at all stages of proceedings and the right not to be compelled to confess guilt.

A central element of the right to a fair hearing is the right to be assisted by legal counsel. In this respect, we would also like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular Principle 1, which reads: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings". Principle 7 reads: "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention." If it was confirmed that they were detained incommunicado for a month and a half after their arrest and that the lawyer of Mohamed Kohail and Mehanna Sa'd was allowed only to attend the last one or two hearings of their trial, this would negate the possibility of a fair trial.

In this respect, we would also like to draw the attention of your Government to paragraph 12 of General Assembly Resolution A/RES/61/153 of 14 February 2007, which “reminds all States that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person”. Prolonged incommunicado detention furthermore negates the abovementioned guarantees of the right to a fair trial, such as being assisted by a lawyer and having adequate facilities to prepare one’s defence.

We would also like to draw the attention of your Government to Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the Kingdom of Saudi Arabia is a party, which provides that “[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” This was reiterated in paragraph 6c of Human Rights Council resolution 8/8 of 2008. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, *inter alia*, in the Universal Declaration of Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

To sum up, only the full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency’s Government to take all necessary steps to ensure that the rights under international law of Mohamed Kohail and Mehanna Sa’d are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety, or the two men are given a new trial or released.

As far as the sentence to 200 lashes imposed against Sultan Kohail, who appears to have been aged 16 at the time of the offence, are concerned, we would like to draw your Government’s attention to the report of the Special Rapporteur on Torture to the 60th session of the General Assembly, in which he, 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).

The Committee on the Rights of the Child, in considering your Government’s Second Periodic Report under the Convention on the Rights of the Child, noted your Government’s “reassurance that corporal punishment is not imposed upon minors”. However, it urged your Government “to take all necessary steps for the immediate abolition of extrajudicial and summary floggings of teenagers as well as other forms of cruel, inhuman or degrading punishments imposed on persons having committed a crime when under the age of 18 years” ((CRC/C/SAU/CO/2, paras. 42 and 43). Also the Committee against Torture, in considering your

Government's report, expressed its concern with regard to "[t]he sentencing to, and imposition of, corporal punishments by judicial and administrative authorities, including, in particular, flogging and amputation of limbs, that are not in conformity with the Convention" (CAT/C/CR/28/5, para. 4(c)). It therefore recommended that the Kingdom of Saudi Arabia "[r]e-examine its imposition of corporal punishments, which are in breach of the Convention" (CAT/C/CR/28/5, para. 8(b)).

Finally, we welcome the decision of the Court of Cassation to ask the lower courts to reconsider the sentence imposed in the case of Sultan Kohail, which provides an opportunity to vacate a sentence which, as argued above, is incompatible with your Government's obligations under international law. We are concerned, however, that the referral of Sultan Kohail's case to the General Court in Jeddah could result in the imposition of the death penalty against him. In this respect, we would remind your Excellency's Government that Article 37(a) of the Convention on the Rights of the Child, to which the Kingdom of Saudi Arabia is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
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 allegation that Mohamed Kohail, Sultan Kohail and Mehanna Sa'd were detained incommunicado for a month and a half and subjected to torture in order to compel them to confess. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide information as to how the principle that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made, is implemented in Saudi Arabia.
4. Please provide details regarding the three defendants' access to legal counsel.
5. Please provide information on the further developments in the cases of Mohamed Kohail, Mehanna Sa'd and Sultan Kohail.

### **Response from the Government of Saudi Arabia dated 27 November 2008**

The Permanent Mission of the Kingdom of Saudi Arabia to the United Nations and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to refer to communication UA GSO 214.(3-3-13) G/SO 214 (33-24) G/SO 214 53-21) SAU 14/2008 dated

21 August 2008 from the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in which they requested clarification regarding the cases of Mohamed Kohail, Mehanna Sa'd and Sultan Kohail.

In this connection, the competent authorities in the Kingdom of Saudi Arabia have brought forward the following explanation on the above cases:

(1) Jeddah police has transmitted the suit of the above-mentioned persons to the Commission for Investigation and General Prosecution (Mecca Branch), regarding a mass quarrel resulted in the assassination of a man called Monzer Mo'in Al Haraki, a Syrian citizen. The inquiry and the interrogations made with these persons revealed the indictment of those involved in the incident namely Mohamed Kohail and Mehanna Sa'd of the assassination intentionally of Monzer Mo'in Al Haraki beating hire fatal strokes. Afterwards, Monzer Mo'in Al Haraki drops down dead. Likewise, ' a charge has been raised against Sultan Kohail for taking part with them in beating the man assassinated and making improper advances to the girl called Raneem Al Haraki and uttered against her vulgar and dirty utterances, and for his complicity and incitement in the quarrel according to the evidence and indication set forth in the bill of indictment. The lawsuit has been transmitted to the General Court in Jeddah in order to be examined with regard to the public and private rights. A legal judgment N. 13/300/7 was issued on 26/2/1429 (4 March 2008) comprising the sentence of death penalty against Mohamed Kohail and Mehanna Sa'd. The case has been transmitted to the Court of Cassation.

The legal documents of the juvenile Sultan Kohail have been forwarded to the penal court in Jeddah to be considered by the juvenile judge. A legal judgment has been issued comprising the imprisonment of the juvenile Sultan Koliail for one year and 200 lashes.

(2) The above two persons accused were held incommunicado, without any violation of their rights to contact their lawyers, in the interest of the investigation, for a period not exceeding 60 days according to article ('119) of the law of criminal procedures. They were not subject to torture and their confessions and avowals were registered and checked up in the presence of their lawyers and-were legally endorsed by the General Court in Jeddah.

(3) The governing rules in the Kingdom of Saudi Arabia is the Sharia which prohibits torture and the extraction of any confession under torture. The Sharia proscribes harming any person held in custody either physically or morally, and forbids to be subject to torture or degrading treatment for his dignity pursuant to article two of the law of criminal procedures which does not recognize any confession extracted under torture.

(4) During the first hearing of investigation with each of the persons accused and before starting the interrogation, a reading of the guarantees has taken place regarding their rights to call upon the assistance of a lawyer. Subsequently, they have appointed a lawyer and he was present in the interrogation hearing and was apprised of the legal proceedings documents and has examined the entire procedure.

### **Saudi Arabia: Death sentences of Sabri Bogday and Mustafa Ibrahim**

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

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

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

**Urgent appeal dated 24 October 2008**, sent with the Special Rapporteur on the independence of judges and lawyers

We would like to draw the attention of your Government to information we have received regarding the cases of two foreign men reportedly sentenced to death on charges of apostasy or witchcraft following trials in which they did not, allegedly, enjoy the fundamental fair trial guarantees. One of the men, **Sabri Bogday**, might soon be at risk of execution, while the other, **Mustafa Ibrahim**, was executed in 2007.

According to the information we have received:

Sabri Bogday, a Turkish citizen, owned a barber shop in Jeddah. He was arrested on 11 March 2007 as he had been reported to the police to have insulted Islam and sworn at God in public. He was tried without the assistance of a lawyer or an interpreter, even though his knowledge of Arabic is apparently limited. On 31 March 2008 he was found guilty and sentenced to death on charges of apostasy. His case is reportedly currently at the review stage before the Court of Cassation. Sabri Bogday is detained in Briman Prison in Jeddah.

Mustafa Ibrahim, a citizen of Egypt, was arrested in May 2007 in Arar, where he worked as a pharmacist, and accused of apostasy for having degraded a copy of the Qur'an. It is not known when his trial took place, whether he was assisted by a lawyer, whether he appealed against his first instance sentence. On 2 November 2007, Mustafa Ibrahim was executed in Riyadh. According to announcement of the execution by the Ministry of the Interior, he was convicted of practicing sorcery and witchcraft.

While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to this case under international law.

With regard to the charges of apostasy, sorcery and witchcraft, we would like to respectfully remind your Excellency's Government that although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the



fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). According to the information we have received, the offences for which Sabri Bogday and Mustafa Ibrahim did not result in loss of life.

We would further remind your Excellency's Government that in capital punishment cases the obligation to provide criminal defendants "a fair and public hearing before an independent and impartial tribunal" (Article 10 of the Universal Declaration on Human Rights) admits of no exception. Relevant to the cases at hand, the right to a fair trial includes the right to be assisted by legal counsel at all stages of proceedings. In this respect, we would also like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular Principle 1, which reads: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings".

Only full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights under international law of Sabri Bogday are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide details regarding the trial of Sabri Bogday: which provisions of criminal law was he found guilty of having violated; was he assisted by legal counsel, if so, at what stages of the proceedings; was he assisted by an interpreter; was his trial open to the public; is the sentence imposed public; what remedies against the death sentence imposed on 31 March 2008 has he used, and which are still open to him?
3. Please provide details regarding the trial of Mustafa Ibrahim: which provisions of criminal law was he found guilty of having violated; was he assisted by legal counsel, if so, at what stages of the proceedings; was his trial open to the public; is the sentence imposed public; what remedies against the death sentence did he use?
4. Please provide a list of the offences punishable by death under the laws of the Kingdom of Saudi Arabia.

5. Sabri Bogday and Mustafa Ibrahim are foreigners. We would therefore like to reiterate our request in communications to your Excellency's Government of 24 January 2007, 5 April 2007, 20 April 2007 and 14 August 2008 for clarification of what percentage of those sentenced to death and executed are foreigners.

**Saudi Arabia: Death sentences of Sheikh Mastan alias Mohammed Salim  
and Hamza Abu Bakir**

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

**Subject(s) of appeal:** 2 males

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Urgent appeal dated 27 November 2008**

In this connection, I would like to draw the attention of your Government to the case of two persons, **Sheikh Mastan** alias **Mohammed Salim** and **Hamza Abu Bakir** who have been sentenced to death and who, according to reports I have received, are at imminent risk of execution. I addressed a communication to your Government regarding this case on 20 November 2007.

I thank your Government for its reply of 20 February 2008, in which it confirmed that Mr. Mastan and Mr. Abu Bakir had been sentenced to death in relation to drug trafficking offences. Your Excellency's Government also stated that the accused had benefited from the assistance of interpreters during the trial and that their sentences had been upheld by the Court of Cassation and the Supreme Council of the Judiciary. However, I remain concerned that information brought to my attention, indicates that Mr. Mastan and Mr. Abu Bakir were sentenced to death without having been assisted by legal counsel.

I would therefore, once again, like to draw the attention of Your Excellency's Government to the obligation to provide criminal defendants "a fair and public hearing before an independent and impartial tribunal" as prescribed by Article 10 of the Universal Declaration on Human Rights. A central element of the right to a fair hearing is the right to be assisted by legal counsel. I welcome the fact that the case was heard in the presence of sworn interpreters; however, translation of proceedings is no substitute for adequate legal representation as required by international standards. In this respect, I would like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Principle 6 is particularly pertinent to the present case: "Any such persons [charged with a criminal offence] who do not have a lawyer shall, in all cases in which the

interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.”

I would further like to reiterate that the death penalty as applied in this case does not fall within the category of “most serious crimes” for which international law countenances its possible application. Indeed, a thorough and systematic review of the jurisprudence of the all principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life. I note that in its reply to my communication of 5 April 2007 in another capital punishment case, your Excellency’s Government stated that “[d]eath sentences are handed down by the general courts in cases entailing the fixed penalties prescribed in the Islamic Shari’a and in cases of *lex talionis* and crimes involving repeated offences of drug smuggling and trafficking.” However, no information was provided as to how these different crimes fall within the category of “most serious crimes” as described above.

I also take this opportunity to reiterate my request made in several communications to your Government in other capital punishment cases, for information concerning the percentage of foreigners amongst those sentenced to death and executed.

To sum up, only the full respect for the limitations placed by international law on the use of the death penalty and for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right. I therefore again urge your Excellency’s Government to expeditiously lift or commute the death sentence imposed against Sheikh Mastan and Hamza Abu Bakir, and to ensure that their rights under international law are fully respected.

Since I am expected to report on this case to the Human Rights Council, I would be grateful for information on the steps taken by your Government to lift or commute the death sentence imposed against Sheikh Mastan and Hamza Abu Bakir and for your observations on the issues raised in this communication.

#### **Saudi Arabia: Death sentence of Abdallah Fandi Al Shammari**

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

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

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

### **Urgent appeal dated 9 December 2008**

In this connection, I would like to draw the attention of your Government to information I have received regarding Mr. **Abdallah Fandi Al Shammari**, a man sentenced to death whose execution is reportedly scheduled for 9 December 2008.

According to the information received, Abdallah Fandi Al Shammari was imprisoned on murder charges from 1983 to 1989 (the reports I have received are not clear as to whether he was detained on remand, or serving a sentence, or first on remand and then serving a sentence). In 1989 he was released after having paid 12,000 Saudi Riyals as blood money.

In 1990, however, the Supreme Court decided to overturn the decisions of both the first instance and appeals courts in Mr. Al Shammari's case and ordered his renewed arrest. In this new case opened against him by the Supreme Court, Mr. Al Shammari was sentenced to death in 1992. His access to legal counsel during the Supreme Court proceedings was very limited.

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. Capital punishment cases must thoroughly respect all due process guarantees and the rule of law with a sentence being pronounced only following a regular judicial process. According to my understanding of Islamic law, as applied to this case, an agreement reached between the accused and the family of the victim, followed by the acceptance of the payment of diyah, would normally lead to the family of the victim agreeing to pardon the accused and the subsequent withdrawal of the death penalty.

The information I have received regarding the case of Mr. Al Shammari raises serious concerns as to whether due process guarantees were observed in bringing him again to trial before the Supreme Court in 1990. These concerns are compounded by the allegation that Mr. Al Shammari did not have unhindered access to his legal counsel during the Supreme Court proceedings.

In view of the irrevocable nature of the death penalty, I 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 mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Without 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 to safeguard the rights of Mr. Abdallah Fandi Al Shammari. 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.

### **Saudi Arabia: Death sentences on 38 Syrian men**

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

**Subject(s) of appeal:** 38 males (foreign nationals)

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

**Urgent appeal dated 11 December 2008**, sent with the Special Rapporteur on the independence of judges and lawyers

In this connection, we would like to draw the attention of your Government to information we have received regarding the cases of **38 Syrian men allegedly at risk of execution**. They were reportedly sentenced to death on charges of narcotics trafficking following trials in which they did not, allegedly, enjoy the fundamental fair trial guarantees.

According to the information we have received:

Thirty eight Syrian men, including one Mr. Bahjat Khalid Mas'ud, were sentenced to death on charges of drug trafficking in 2002. At no stage following their arrest were they given access to legal counsel. Their trial was secret and summary. The 38 Syrian prisoners appear to have exhausted all available appeals and their cases are now pending consideration by the King.

The Syrian men were reportedly detained in al-Qurayyat Prison, in the province of al-Jawf, north-western Saudi Arabia. Recently some of them were moved to other, unknown places of detention, which raised fears among their relatives and friends in the Syrian Arab Republic that executions might be imminent.

While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to this case under international law.

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

We would further remind your Excellency's Government that in capital punishment cases the obligation to provide criminal defendants "a fair and public hearing before an independent and impartial tribunal" (Article 10 of the Universal Declaration on Human Rights) admits no exception. Relevant to the cases at hand, the right to a fair trial includes the right to be assisted by legal counsel at all stages of proceedings. In this respect, we would also like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular Principle 1, which reads: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings".

Article 10 of the Universal Declaration on Human Rights also specifically requires a summary or arbitrary executions stated in a report to the Human Rights Council on "Transparency and the imposition of the death penalty" (E/CN.4/2006/53/Add.3, para. 37): "There is no justification for post-conviction secrecy, and [...] a lack of transparency both undermines due process rights and constitutes inhuman and degrading treatment or punishment. Persons sentenced to death, their families, and their lawyers should be provided with timely and reliable information on the procedures and timing of appeals, clemency petitions, and executions."

Only full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights under international law of Bahjat Khalid Mas'ud and the other 37 Syrian men allegedly sentenced to death in 2002 are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy. Please also provide the full names of all 38 Syrian men sentenced to death on drugs trafficking charges in 2002.

2. Please provide details regarding the trial of Bahjat Khalid Mas'ud and the other 37 Syrian men: how many hearings took place and on what dates; were the hearings open to the public; were the defendants assisted by legal counsel, and if so, at what stages of the proceedings?

3. Where are Bahjat Khalid Mas'ud and the other 37 Syrian men currently detained? Have their families been informed of their current place of detention and of their current situation? Have members of their families visited the detainees since their trial in 2002? Have they had continuous access to the Syrian Arab Republic Consular Officials?

4. We would like to reiterate our request in communications to your Excellency's Government of 24 January 2007, 5 April 2007, 20 April 2007, 14 August 2008 and 23 October 2008 for clarification of what percentage of those sentenced to death and executed in the Kingdom of Saudi Arabia are foreigners.

### **Saudi Arabia: Death sentences of 16 Iraqi men**

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

**Subject(s) of appeal:** 16 males (foreign nationals)

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

**Urgent appeal dated 28 January 2009**, sent with the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the question of torture and the Special Rapporteur on the independence of judges and lawyers

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the cases of **16 Iraqi men allegedly at risk of execution** in Saudi Arabia. They were reportedly sentenced to death following trials in which they did not enjoy the fundamental fair trial guarantees, such as access to a lawyer, and statements extorted under torture were allegedly used against them. Several of the men were reportedly sentenced to death on charges of drug trafficking and arms smuggling.

According to the information we have received:

Mr. **Mohammad Abdul Amir**, aged 34, a citizen of Iraq, was arrested in Saudi Arabia in 1995 and charged with murder. He confessed to the crime after three months of interrogation during which he was allegedly beaten and suspended by his feet. He sustained a broken rib as a result of the treatment he was subjected to while being interrogated and was hospitalized for a month. A criminal court in Arar sentenced him to death after a trial closed to the public. He has not been allowed any access to lawyers or other legal assistance at any stage of the proceedings in his case.

The death sentence has not yet been carried out as the children of the murder victim were too young to be consulted on whether Mohammad Abdul Amir was to be pardoned or executed. The children have now reached the age of majority and have informed the court that they want the execution.

Mr. **Ayadh Mana' Wanas Matar**, aged 37, was arrested in November 2004 on charges related to drug trafficking. He was interrogated for three months during which he was allegedly tortured, including by being beaten on the soles of his feet and all over his body.

He confessed to the charges as a consequence of the treatment. Ayadh Mana' Wanas Matar was sentenced to death in July 2008 by a criminal court in Rafha. He had no lawyer during his trial proceedings, which were not open to the public.

At least 14 other Iraqi men are held in Rafha prison on death row and might be at risk of imminent execution. They include Mr. **Hussein Baida Abud**, aged 23, Mr. **Adnan Jamil**, aged 25, Mr. **Mahmoud Shekar**, aged 42, **Khaled Mitan**, aged 25. The charges on which they were convicted and sentenced to death include drug trafficking, connection with armed groups in Iraq and smuggling of weapons into Saudi Arabia. None of them has been allowed access to lawyers since their arrests. They were all beaten until they confessed.

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

With regard to the charges of drug trafficking and arms smuggling, we would like to remind your Excellency's Government that although the death penalty is not prohibited by provisions of international law enshrining the right to life, such as Article 3 of the Universal Declaration on Human Rights, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). This would exclude charges of drug trafficking and smuggling of weapons from those for which the death penalty can be imposed under international law.

We would further remind your Excellency's Government that in capital punishment cases the obligation to provide criminal defendants "a fair and public hearing before an independent and impartial tribunal" (Article 10 of the Universal Declaration on Human Rights) admits of no exception. Relevant to the cases at hand, the right to a fair trial includes the right to be assisted by legal counsel at all stages of proceedings. In this respect, we would also like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular Principle 1, which reads: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings".

Article 10 of the Universal Declaration on Human Rights also specifically requires a "public hearing". We would like to stress that the obligations of publicity and transparency do not end with the conclusion of the first instance trial. As the Special Rapporteur on extrajudicial, summary or arbitrary executions stated in a report to the Human Rights Council on Transparency and the imposition of the death penalty (E/CN.4/2006/53/Add.3, para. 37): "There is no justification for post-conviction secrecy, and [...] a lack of transparency both undermines due process rights and constitutes inhuman and degrading treatment or punishment. Persons sentenced to death, their families, and their lawyers should be provided with timely and reliable information on the procedures and timing of appeals, clemency petitions, and executions."



The right to a fair trial also requires that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. This principle, set forth in Article 15 of the Convention Against Torture, to which the Kingdom of Saudi Arabia is a Party, was recently reiterated by the Human Rights Council in paragraph 6c of resolution 08/08 of 2008. In addition to being a crucial fair trial guarantee, it is also an essential aspect of the non-derogable right to physical and mental integrity protected by the Convention Against Torture.

To make this right effective, the Convention Against Torture dictates in Article 13 that “[e]ach State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.” Where imprisoned defendants are denied access to their lawyers and their families and criminal trials do not take place in public, the right to complain about having been subjected to torture and to see statements compelled by torture excluded from the evidence is seriously undermined.

Only full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law protecting the right to life from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency’s Government to take all necessary steps to ensure that the rights under international law of Mohammad Abdul Amir, Ayadh Mana’ Wanas Matar, Hussein Baida Abud, Adnan Jamil, Mahmoud Shekar, Khaled Mitan and the other Iraqi men allegedly awaiting execution in Rafha prison are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety.

Furthermore, without expressing at this stage an opinion on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency’s Government to take all necessary measures to protect their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide details regarding the trials of Mohammad Abdul Amir, Ayadh Mana’ Wanas Matar, Hussein Baida Abud, Adnan Jamil, Mahmoud Shekar, Khaled Mitan, and the other Iraqi men allegedly awaiting execution in Rafha prison: what are the offences charged; how many hearings took place and on what dates; were the hearings open to the public; were the defendants assisted by legal counsel, if so, at what stages of the proceedings?

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 allegation that Mohammad Abdul Amir, Ayadh Mana' Wanas Matar, Hussein Baida Abud, Adnan Jamil, Mahmoud Shekar, and Khaled Mitan were subjected to torture while in detention. If no inquiries have taken place or if they have been inconclusive please explain why.

4. Have the families of Mohammad Abdul Amir, Ayadh Mana' Wanas Matar, Hussein Baida Abud, Adnan Jamil, Mahmoud Shekar, Khaled Mitan, and the other Iraqi men allegedly awaiting execution in Rafha prison been informed of their current place of detention and of their procedural position? Have family members been allowed to visit these prisoners?

5. The present communication concerns 16 Iraqi citizens sentenced to death in the Kingdom of Saudi Arabia. On 11 December 2008 we sent an urgent communication to your Government regarding 38 Syrian men allegedly sentenced to death on charges of narcotics trafficking following trials in which they did not, allegedly, enjoy the fundamental fair trial guarantees (which, as of to date, has not received a response from your Excellency's Government). We would therefore like to reiterate our request in communications to your Excellency's Government of 24 January 2007, 5 April 2007, 20 April 2007, 14 August 2008, 24 October 2008 and 11 December 2008 for clarification of what percentage of those sentenced to death and executed in the Kingdom of Saudi Arabia are foreigners.

#### **Somalia: Stoning of Aisha Ibrahim Dhuhulow**

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

**Subject(s) of appeal:** 1 female (minor)

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

**Urgent appeal dated 6 November 2008**, sent with the Independent Expert appointed by the Secretary-General on the situation of human rights in Somalia, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences

In this connection, we would like to bring to your Government's attention information we have received concerning **Ms. Aisha Ibrahim Dhuhulow**, aged 13.

According to the information received:

Ms Aisha Ibrahim Dhuhulow was found guilty of adultery, an act considered against Islamic law, by the Kismayo Sharia court, and sentenced to death by stoning.

On 27 October 2008, on one of the main squares of Kismayo, she had her hands and feet tied together, was then buried up to her neck and stoned to death by around 50 men, while thousands of persons watched. She was pulled out three times to see whether she was dead. When a relative and others ran towards her, guards opened fire, killing a child. Since then, Islamist leaders have promised to punish the guard who had shot the child.

Allegedly, the accusation against Ms. Aisha Ibrahim Duhulow of adultery was only made as she attempted to report to the al-Shabab militia controlling Kismayo that she had been raped by three men. None of the men she accused of rape were arrested.

While we do not wish to prejudge the accuracy of these allegations, we would like to recall the fundamental principles of international law applicable to this case. Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights provide 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. Sentence of death may be imposed only for the most serious crimes, which do not include adultery. Furthermore, Article 6(5) of the International Covenant on Civil and Political Rights, to which Somalia is a party, establishes that capital punishment shall not be imposed for offences committed by persons below the age of eighteen.

We would also like to recall that stoning constitutes an inhuman and degrading punishment prohibited by 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.

Furthermore, States have recognized in the Declaration on the Elimination of Violence against Women (Article 4) that they should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to the elimination of violence against women. We would also like to note that stoning of women for adultery is inconsistent with the prohibition of discrimination on the basis of sex, as recognized under the Convention on the Elimination of All Forms of Discrimination against Women. In this regard we would like to refer to Your Excellency's Government to the CEDAW Convention according to which States Parties agree to take all appropriate measures 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 (Article 5 (a)).

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

1. Can your Government confirm the accuracy of the reports summarized above?
2. Does the above incident violate Somali law? What steps, if any, has your Government taken to identify the perpetrators and hold them accountable?

We would appreciate a response within sixty days. We undertake to ensure that your Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

## **Sri Lanka: Death of Lelwala Gamage Nandiraja**

**Violation alleged:** Death in custody

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

**Character of reply:** Cooperative but incomplete response

### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the initial information provided by the Government of Sri Lanka concerning the death in custody of Lelwala Gamage Nandiraja and looks forward to receiving more detailed information on the progress of the investigations and possible criminal proceedings against the alleged perpetrators. The Special Rapporteur notes that the Attorney General's Department has yet to provide information on actions taken in the three years since the alleged perpetrators were released on bail.

**Allegation letter dated 7 March 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 **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 Weliveriya 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.

#### **Response from the Government of Sri Lanka dated 2 September 2008**

Upon receipt of the joint communication from the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions and upon consideration of the allegations contained therein, reports were called from the Police on the alleged death of Mr. Lelwala Gamage Nandiraja in Police custody.

According to available information, a complaint had been made to the Weliveriya Police on 29 May 2005 by Mr. J K Dharmaratne, saying that the office room of his timber mill was broke open and an electric saw worth of Rs. 82.000/- and a grinder were stolen. He had further stated that he suspects Mr. Lelwala Gamage Nandiraja, a worker of the mill. The reason for the suspicion is the fact that after his burglary, Nandiraja had fled the mill.

Weliveriya Police sent two police officers to arrest the suspect to the address supplied by the proprietor of the timber mill. On 29 May 2005 the suspect was arrested at the house of his sister. Lelawala Gamage Weerawathie in Kahaduwa. According to the Police, at the time of the arrest, the suspect was in a heavily intoxicated state and he had a bleeding wound on his forehead. After the arrest of the suspect and after recording his statement, the electric saw was recovered from the house of Mr. K. U. T. Gamini, a neighbour, while the grinder was recovered from under a bush.

The suspect was brought to Weliveriya Police and since he was in a critical condition, he was taken to the Base Hospital Gampaba, but the suspect had passed away before being admitted to the hospital.

Facts regarding this incident were reported under Case No. B 2046/2005 to Magistrate Court Gampaha and on the orders of the Court, the body of the deceased was handed over to Ragama hospital for the post-mortem. The post-mortem was conducted on the 1 June 2005 by Judicial Medical Officer P. Paranitharan and the report was submitted to the Court.

After the relatives of the deceased made a complaint to the Criminal Investigations Department, the two Police officers who arrested the suspect, the driver of the vehicle in which the victim was taken to the Police and the complainant of the burglary were arrested and remanded and subsequently released on bail on 16 December 2005. The investigations conducted so far have been sent to the Attorney General's Department for advice on further action.

### **Sri Lanka: Death of Thadallage Chamil Weerasena**

**Violation alleged:** Death in custody owing to torture, neglect, or the use of force

**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 Sri Lanka on the death of Thadallage Chamil Weerasena, and looks forward to information on the results of the disciplinary proceedings against the police officer in charge on the day of the death.

#### **Allegation letter dated 20 September 2007**

I am writing concerning the death of Mr. **Thadallage Chamil Weerasena** at Ratgama Police Station on 21 July, 2007.

According to information received, Mr. Thadallage Chamil Weerasena was arrested on the above date and taken to Ratgama Police Station, Galle District. The victim's mother travelled to the police station the same morning and observed her son detained in a police cell but was reportedly prevented from approaching the cell by police officers. A friend of the victim who was able to visit him later the same day stated that the victim reported being assaulted by the police. The victim's elder brother and mother returned to the police station later that day where they saw the victim's dead body lying inside the police cell covered in a sarong. A relative observed injuries to the back, chest and face of the victim, including blood to his head.

It was reported that on 22 July, 2007 a doctor took photographs of the body and that a magistrate indicated later in a letter that Mr. Weerasena died of hanging. Three years previously the police had reportedly filed charges against Mr. Weerasena for possession of drugs and the case was still pending before court at the time of his death.

Without in any way implying any conclusion as to the facts of the case, I would like to recall that Article 6 of the International Covenant on Civil and Political Rights (ICCPR) to which Sri Lanka is a Party, enshrines the right not to be arbitrarily deprived of one's 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 (*Dermot Barbato v. Uruguay*, communication no. 84/1981 (1990)): "While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermot 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."

I should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the death of the person named above. I would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

I 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".

Moreover, 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 cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the case of Mr Weerasena.
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 the victim.

#### **Response from the Government of Sri Lanka dated 27 September 2007**

HE Mr. Dayan Jayatilleka will in due course forward your communications [dated 12 September, 19 September and 20 September 2007] to the competent authorities in Colombo seeking urgent responses to the several alleged events and issues raised by you in the aforementioned communications.

## **Response from the Government of Sri Lanka dated 20 August 2008**

On a directive of Inspector General of Police the Criminal Investigation Department commenced investigations into the above noted subject on 23 July 2007.

Inquiries have revealed that on 21 July 2007 at 02.23hrs deceased Chamil Weerasena was arrested by the Officers of Ratgama Police in Ratgama Police area on the charges of physical abuse and robbery of a gold chain (Grave Crime Register No. 62/2007). On their way back to the Police station with the suspect Police arrested another suspect named Sujith Hemantha alias Rupiah, on an arrest warrant issued by the Magistrate court of Balapitiya and both suspects were produced at Ratgama Police Station at 05.45 and detained at two separate cells. No other suspects were in the custody of Ratgama Police on this day.

21<sup>st</sup> July 2007 happened to be the funeral of the spouse of a Woman Police Inspector attached to Ratgama Police Station and the Officer in Charge and most of the Police Officers have gone to attend this funeral leaving a skeleton staff.

Suspects Chamil Weerasena and Sujith Hemantha have been served with breakfast and lunch by the Police on 21<sup>st</sup> July 2007 and entries have been made in the relevant information books. At around 18.50hrs the Reserve-In-Charge of Ratganma Police, Police Constable 58915 Jayatissa had noticed suspect Chamil Weerasena hanging on the top iron bar of the door cell from the white coloured trouser he was wearing and found him dead.

Judicial Medical Officer Dr. Ajith Susantha Kumara, who held the post-mortem examination, opined that the cause of death as death by hanging as there was no medical evidence to establish that someone has strangled the deceased. Further the JMO has reported that there were no internal or external injuries on the body of the deceased.

Facts of this suicide have been reported in the Magistrate Court of Galle under Case No. B 92780/07.

The mother of the deceased Kande Garlishmay of #25, Pannilla, Ratgama was questioned and she stated that on 21<sup>st</sup> July 2007 around 05.00hrs she came to know that her son Chamil Weerasena has been arrested by Ratgama Police and in the afternoon she went to the Police Station and saw Chamil seated on the floor of the cell bear bodied wearing a white coloured trouser. However, she was not allowed to speak to him or go near the cell. She admitted the fact that Chamil Weerasena was a drug addict and was at the Unawatuna Rehabilitation centre about 3 years ago.

Kosman Nandaseeli, the illegitimate wife of suspect Chamil Weerasena stated that she visited Ratgama Police in the afternoon of 21<sup>st</sup> July 2007 and was allowed to speak to Chamil and Chamil bear bodied, informed her that he was assaulted by the Police and wanted her to get him bailed out. However she did not notice any visible injuries on Chamil.

At around midnight she came to know that Chamil had died at the Police Station when she visited the police station she saw the body of Chamil lying face downwards in the cell covered



with a sarong and she did not see his face. She also noticed the white coloured trouser of Chamil tied to the upper iron bar of the cell door. She also corroborated the fact that Chamil was a drug addict and had gone under rehabilitation about 3 years ago.

Sujith Hemantha alias Rupiah of #123, Pannila, New colony, Ratgama, who was brought to Ratgama Police station along with Chamil Weerasena stated that he spoke with Chamil who was in adjoining cell and at no stage he saw Police assaulting Chamil nor Chamil informed him that he was assaulted. At around 17.00hrs he fell asleep and woke up when there was some sort of a commotion and saw Police officers opening the cell of Chamil. He further stated that in the afternoon he shared refreshments brought by his family with Chamil with the permission of Police.

The statements of all persons who visited Ratgama Police Station for various reasons on this particular day have been recorded and none had seen Police assaulting anyone.

Inquires have revealed that deceased Chamil Weerasena has not been assaulted by Police and he had committed suicide in the cell by hanging for reasons best know to him.

Ratgama Police station has been constructed recently and from the place where Reserve/Reception desk was positioned one cannot see the inside of the cells. Further due to the funeral of the spouse of Woman Police Inspector attached to Ratgama Police Station there was no sufficient staff to monitor the movements of the suspects on this ill fated day. Since this incident the Reception Desk has been shifted to an area where inside the cells are visible.

It is the responsibility of the Reserve-In-Charge of a Police Station to look after the safe custody of the suspects. After an preliminary internal investigation conducted by Assistant Superintendent of Police, Galle District (1), the services of Police Constable 58915 Jayatissa, who was the Reserve-In-Charge on this ill fated day, have been suspended pending Departmental disciplinary action for neglect of duty and failing to secure the safety of the suspects in custody.

### **Sri Lanka: Indiscriminate attacks by the Sri Lankan armed forces**

**Violation alleged:** Violations of the right to life during armed conflicts, especially of the civilian population and other non-combatants, contrary to international humanitarian law

**Subject(s) of appeal:** Unknown number of persons

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

### **Allegation letter dated 6 October 2008**

I would like to bring to your Government's attention information I have received concerning reports of attacks on civilian targets by the Sri Lankan armed forces in August 2008 resulting in the killing of civilians.

According to information I have received:

On 9 August 2008, at 1.00 am, approximately forty shells fired by the Sri Lanka armed forces exploded in the immediate surroundings of the Mullaithivu district hospital. One shell exploded 25 meters from the hospital electricity generator. Another shell exploded just seven meters from the residence of the hospital's medical superintendent, 75 meters from the main hospital building. Another shell exploded 50 meters from the nurses' quarters and inside the hospital playground. 40 more shells exploded within a 150 meters surrounding of the hospital compound. In the houses surrounding the hospital a five-year-old, **Iyan Sankeerthanan**, was killed and four women were seriously injured.

On 30 August 2008, the Sri Lanka Army launched an artillery attack on Puthumurippu village, 7 km southwest of Kilinochchi town, where numerous IDPs had converged. On the day before the attack, 29 August 2008, the Sri Lanka Air Force had dropped leaflets warning civilians of possible heavy casualties unless they moved from the LTTE administered Vanni. The artillery attack on 30 August killed at least five IDP civilians: **Mr. Karuppiyah Anantharajah** (aged 28), his 2-year-old son **Anantharajah Gowtham**, **Ms. Thilakeshvari Visvanthan** (aged 27), her 1-month-old baby, and **Ms. Alahesan Luka Pathmalatha** (aged 28). The victims were recently displaced from Parapukadanthan in the Mannar district. Three civilians were taken to Kilinochchi hospital in critical condition, **Kalyani Balasubram** (aged 47), **Rajeswary Balasubramaniam** (aged 17), and **Iyalvili Alageswaran** (a baby of ten months).

While I do not wish to prejudge the accuracy of these reports, I would like to refer Your Excellency's Government to the fundamental legal rules applicable to all armed conflicts under international humanitarian law and human rights law.

Specifically, your Government is under an obligation to distinguish between combatants and civilians and to direct attacks only against combatants (Rules 1, 6 and 7 of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross ("Customary Rules")). Indiscriminate attacks are prohibited (Rule 11 of the Customary Rules). Further, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14 of the Customary Rules). All feasible precautions must be taken to avoid and minimize incidental loss of civilian life (Rule 15 of the Customary Rules). This explicitly requires that parties to a conflict must give effective advance warning of attacks which may affect the civilian population (Rule 20 of the Customary Rules). Medical units exclusively assigned to medical purposes must be respected and protected in all circumstances. They lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy (Rule 28).

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

1. Are the facts alleged in the above summary accurate? Please refer to the results of any police or military investigation, or judicial or other inquiries carried out in relation to the alleged incident.
2. What, if any, assessment was made to ensure that the attack complied with the rules of international humanitarian law and human rights law? Specifically, what safeguards, if any, were employed to verify that only legitimate military targets were attacked? What methods were adopted to distinguish between military and civilian objects? What precautions were taken to minimize loss of civilian life? What means and methods of warfare were adopted to avoid incidental loss of civilian life, and to ensure that incidental loss of life was not excessive in relation to the anticipated military advantage?
3. Please provide the details of any disciplinary measures imposed on, or criminal prosecutions against, members of the armed forces responsible for the alleged incident.
4. Please state whether any compensation was, or is intended to be, provided to the families of the victims.

#### **Sri Lanka: Killings of three men and intimidation of witnesses**

**Violation alleged:** Death threats and fear of imminent extrajudicial executions by State officials; Deaths in custody owing to torture, neglect, or the use of force; Impunity

**Subject(s) of appeal:** 5 males

**Character of reply:** Largely satisfactory response

#### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of the Sri Lanka on these cases.

The Special Rapporteur looks forward to receiving from the Government information about developments in the criminal proceedings initiated in the cases of Seynool Miswar and Gerald Mervin Perera as well as information on the progress of the investigations into the killing of Siyaguna Kosgodage Anton Sugath Nishantha Fernando.

**Allegation letter dated 30 October 2008**, sent with the Special Rapporteur on the question of torture

We would like to bring to your Government's attention information we have recently received concerning a case of death in custody due to torture, the assassination of a torture victim, and threats to the life of another torture victim and a witness in a torture case.

According to the allegations received:

Mr. **Seynool Miswar** died in Negombo prison on 3 July 2008 shortly after 4 p.m.. Around 3 p.m. on that day, Seynool Miswar had told his brother, Mr. Seynool Arbdeen Seynool Aswar, who was visiting him in prison, that prison officers had threatened to assault him unless he paid Rs. 25,000 (approximately USD 232). An hour later, Seynool Miswar was seen holding his chest and abdomen in pain and told another prisoner, Mr. Seyedu Mohmad Abhu Ubeyda, that he had been assaulted by three prison guards. Soon thereafter, Seynool Miswar fell dead on the floor.

In the subsequent investigation, **Abhu Ubeyda** testified to officers from the Crime Section of the Negombo Police Station. Two prison guards were taken into remand custody. Back in Negombo prison after he made his statement to the police, Abhu Ubeyda was approached by two inmates who pretended to hit him and pushed him to the floor. He was admitted to the prison hospital. When he was discharged from hospital, the Chief Jailor of the prison called him to his office, asked questions about the incident, and informed him that he had been released on bail. The Chief Jailor also told him “we will come and see you at home. I will give you Rs. 150,000 if you do not mention my name in the incident.” Abhu Ubeyda did not accept this offer. On 17 July 2008, at around 9:45 p.m., four men in helmets came to his house, tied him to the window grille and beat him with a pole for some time. They warned him not to testify before the court in the case of Seynool Miswar. Abhu Ubeyda recognized two of the aggressors as prison guards.

Mr. **Siyaguna Kosgodage Anton Sugath Nishantha Fernando** was the complainant in a fundamental rights case before the Supreme Court of Sri Lanka (Case No. SCFR. 446/07), in which he alleged that he had been tortured by policemen at Negombo Police Station, as well as in a bribery case in the High Court. He was killed by unidentified gunmen on 20 September 2008. Nishantha Fernando had repeatedly complained to the Inspector General of Police, the Attorney General, the National Police Commission (NPC) and the Human Rights Commission of Sri Lanka, about the constant threats of assassination he and his family had been receiving. On 23 June 2008 four men, believed by him to be hired by the police, arrived at his house and told him to withdraw the case before the Supreme Court. They stated that if within 24 hours he did not do so, he and his family would be killed. Nishantha Fernando and his family went into hiding and informed the relevant authorities of the threat. He returned to his home after a period in hiding shortly before his death on 20 September 2008. The police officers named as perpetrators of torture in his fundamental rights case remain on patrol in the area.

Mr. **Lalith Rajapakse**, a torture victim, is the complainant in a fundamental rights application before the Supreme Court (filed six years ago, in 2002) and the main witness in a torture case (Act No. 22 of 1994) against a Sub Inspector of Police from the Kandana Police Station filed by the Attorney General’s Department. On 7 January 2005, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment drew your Government’s attention to threats against Mr. Rajapakse and Mr. U.L.A. Joseph Perera, a human rights advocate assisting him in his case. Your Government replied on 21 February 2005, stating that the homes of the two men were protected around the clock and that special security arrangements had been made for a court hearing involving Mr. Rajapakse. Notwithstanding these protective measures, Lalith Rajapakse stayed away

from his village in Kandana to avoid harassment by the police for five years. He recently returned to look after his grandfather. On 25 May 2008, around midnight, three persons, two of them armed with pistols, arrived near his house. Lalith Rajapakse saw them approaching and fled. When he thereafter made a complaint to the Human Rights Commission about this incident, he learnt that officers of Kandana police station had been spreading the rumor that he was a notorious criminal, although the Wattala magistrate's court had already acquitted him in three criminal cases brought against him by the Kandana police after he complained of being tortured. This - allegedly completely unsubstantiated - labeling as "notorious criminal", combined with the nightly visit by armed men, raises concerns that Lalith Rajapakse might be at risk of becoming the victim of a fabricated "shoot-out" with the police or killing while escaping arrest.

On 9 October 2008, the High Court trying the criminal case against the policeman accused of subjecting Lalith Rajapakse to torture acquitted the defendant. It would appear that the judge, who reportedly is the same judge who acquitted the defendant in the case regarding the torture of Gerald Mervin Perera (see below), found that the evidence was insufficient to establish that Mr. Lalith Rajapakse had been tortured. This conclusion was reached in spite of medical evidence allegedly indicating that Lalith Rajapakse (who spent 16 days in hospital at the time of the alleged torture incident in 1992) had injuries on the soles of his feet and a cerebral contusion which had caused edema to the brain.

In connection with these recent killings of and threats against victims and witnesses in torture cases, we would like to seek from your Excellency's Government an update on the case against the murderers of Mr. **Gerald Mervin Perera**. As you will recall, Gerald Perera, a torture victim and the subject of an urgent appeal of the Special Rapporteur on torture dated 22 November 2004, was a successful plaintiff in a fundamental human rights case relating to torture. He was due to testify on 2 December 2004 in the criminal case against the policemen who tortured him, but was shot on 21 November and died of the wounds on 24 November 2004. On 25 March 2005, your Government informed the Special Rapporteur on torture that "the Criminal Investigations Department (CID) of Sri Lanka Police undertook the investigations into the killing of Mr. Perera and arrested five suspects including the assassin. The assassin Ajith Nishanta, arrested on 04.02.2005, was produced before an identification parade at the magistrate's Court, Wattala, where he was identified by two witnesses. Out of these five suspects, Sub Inspector Suresh Gunasena and Reserved Sub inspector Asela Kumara Herath have been indicted at the Negombo High Court (Case No: 326/2003) for the alleged torture of the deceased Gerald Mervin Perera." More than three-and-a-half years have passed since this promising communication from your Government, and we would greatly appreciate information on the outcome of the criminal proceedings. We were in the meantime informed that the criminal proceedings against the policeman accused of committing torture against Gerald Perera have ended in an acquittal.

While we do not wish to prejudge the accuracy of the reports summarized above, we would like to draw your Government's attention to the fundamental principles applicable under international law to this case. Article 7 of the International Covenant on Civil and Political Rights provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life.

These two fundamental rights imply that all States have the obligation “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”, as stated by the Human Rights Council as recently as at its 8th Session in Resolution 8/3 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4). The Council added that this obligation includes the obligation “to identify and bring to justice those responsible, . . . , to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In the context of the cases summarized above, we would particularly like to draw your Government’s attention to Article 13 of CAT, which requires that “Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.” Also Principle 15 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which is equally relevant to cases of torture, holds:

“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.”

The reports we have received above regarding the cases of Seynool Miswar, Abhu Ubeyda, Nishantha Fernando, and Lalith Rajapakse all suggest that, contrary to the above provisions, police officers potentially implicated in torture and executions remain in a position of power over complainants and witnesses, free to intimidate, attack and even kill them. The excessive duration of criminal proceedings against perpetrators - in the case of Mr. Rajapakse, it would appear that the case took six years for a first instance judgment to be reached - of course increases the vulnerability of victims and witnesses to intimidation and violence.

We therefore urge your Government to:

- Adopt effective protective measures for Abhu Ubeyda and Lalith Rajapakse, as well as for the families of Seynool Miswar and Nishantha Fernando.
- To remove those potentially implicated in the cases of Seynool Miswar and Nishantha Fernando from any position of control or power, whether direct or indirect, over witnesses, victims and their families; and to complete the inquiries into the circumstances surrounding the deaths of Seynool Miswar and Nishantha Fernando and the torture of Lalith Rajapakse expeditiously, impartially and transparently, also with a

view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate their families.

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

1. Are the facts alleged in the case summaries accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to each of the cases. Please explain the steps taken to ensure that these investigations comply with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
3. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons accused of being responsible, as perpetrators or as responsible commanders, for the deaths of Gerald Mervin Perera, Seynool Miswar and Nishantha Fernando and the torture of Lalith Rajapakse and Gerald Mervin Perera.
4. Please provide the details of any measures taken to ensure that complainants, witnesses and family members of the victims in these cases are not subject to any intimidation or retaliation, as provided in the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
5. Please provide the details of any compensation payments made to the families or dependants of any of the victims in the cases described above.
6. Please provide details of any successful prosecution of police officers charged with an offense under the CAT Act (Act No. 22 of 1994).

#### **Response from the Government of Sri Lanka dated 26 January 2009**

The Government of Sri Lanka provided the following information: Cases concerning the following information:

**(i) Mr. Seynool Abdeen Seynool Miswar**

He has been in remand Prison Negombo under Prison No. M. 0558 and he has fallen sick whilst in Prison custody and has been admitted to Negombo Base Hospital on 3rd July 2008 with a history of assault. Subsequent to admission he died at the Negombo Base Hospital. Police have reported facts relevant to this death to Magistrate Court Negombo in case No. B. 313/08 and thereafter the Postmortem Examination was conducted by JMO Negombd, Dr. Channa Perera. The Police led evidence of the witnesses namely the brother of the deceased Seynool Abdeen S'eynool Anwar, other two inmates in the Prison Sahul Hameed Mohamed Nawfer,

Siyadu Mohamad Abu Ubeyda during the inquest. Subsequent to hearing of the material including the findings in the JMO report; Magistrate returned a verdict of death due to an assault and ordered the Police to conduct an investigation relevant to the crime.

Accordingly, Police conducted investigations and arrested Warnakulasooriya Rotito Meril. Francis Lowe alias “Lo Mahattaya” a Prison Jailer, attached to Negombo Prisons and Mohomad Ramlage Buddhika Jayasanka, a Prison Guard of the same Prisons and were produced in Court and remanded. On conclusion of the investigations, Police have instituted criminal proceedings against the aforesaid two accused in the Magistrate Court of Negombo in Case No. A 8384/02 and this case is fixed for hearing on 01.12.2008.

However, as regards the allegation of Abu Ubeyda referred to in the UN communication, no complaint has been received to such effect by Police. Nevertheless, it is correct that Ubeyda and Nawfer who were inmates of Negombo. Prison at the time of the incident are the two principle witnesses in the case against the Jailer and the Prison guard.

**(ii) Mr. Siyaguna Kosgodage Anton Sugath Nishantha Fernando**

As regards this person, subject has been killed by unidentified, gunmen on 20th September 2008 at Dalupotha in Negombo Police area. Police ‘have promptly visited the scene and initiated investigations. Inquiries conducted, so far, have not led to the identification of the culprit or culprits. According to SSP / Negombo the deceased had been a suspect in several criminal cases including offences of robbery, arson & even in incidents of obstruction to Police Officers in the discharge of their duties. There had also been public complaints against him for his bad behaviour and for causing harassment to neighbours, where complaints have been lodged by residents, both at Negombo and Kochchikade Police Stations. The Police have also reported that whenever such a complaint against him was made and he found investigations are not made by the Police in a manner favourable to him he has been in the habit of making complaints of frivolous nature against the Investigators.

It is also reported that on 12..11.2007 a Police team headed by S.I. Abeynayake of Negombo Police who were on vehicle checking at Dalupotha junction had signaled a motorcyclist who was without a helmet traveling with a lady passenger on the pillion but the motor cyclist had gone without stopping, disregarding the Police signal. On suspicion the SI with a PC had given chase in their motorcycle and were able to locate him in front of a house in Jaya Mawatha off Dalupotha Junction. When the SI questioned the rider, who was later, identified to be the subject, he and the lady passenger who travelled in the pillion had abused the SI and assaulted him and for his uniform. A Police party arrived, at the scene, later arrested the subject, his wife and their daughter Kalpani Dilrukshy. The SI was treated at the Negombo Base Hospital and the subject and his wife too were subjected to medical examinations. Later the Police reported facts to Courts and produced the three suspects in Court under Case No. B 381/07. They were later released on bail by court. They have complained against the Police relevant to this incident before the Human Rights Commission and to the National Child Protection Authority. He had also filed a Fundamental Rights application in the Supreme Court. This refers to SCFR 446/07. The Inspector General of Police, SSP/Negombo & two other Police officers have



been cited as respondents in this case. This case is yet under hearing. There is no basis to substantiate that the killing of Nishantha Fernando had been due to instances referred to in UN communication and there is no evidence to suggest the involvement of any Police Officer in the killing.

**(iii) Mr. Lalith Rajapakse**

Reference the communication concerning this person, it is correct that he was the main witness in a torture case against SI Prasanga Peiris who was attached to Kandana Police Station. This case was filed by the Hon. Attorney General in the High Court of Negombo subsequent to the conduct of a criminal investigation by the CID. This refers to Case No. 259/03. However, the accused officer has been exonerated and discharged from the proceedings by the High Court of Negombo at a latter date of hearing. The allegation of torture against the SI has been consequent to his arrest by the Sub Inspector on a complaint of causing grievous hurt by stabbing with a knife where he was prosecuted in M.C. Wattala in Case No. 92619, under Section 326 of the Penal Code for causing grievous hurt.

However, in view of the torture complaint against the SI the Hon. Attorney General directed to lay-by the criminal case against him until the conclusion of the torture case in the High Court of Negombo. Police now contemplates of re-opening the case as the torture case since been concluded.

On 24.05.2008 one Lakshman Jayalath Fernando, of 532/09, Kapuwatta, Ja-ela has complained to Police of a theft of a Peddle Cycle to the value of Rs. 5000/= accusing Lalith Rajapakse as the culprit. This refers to MC Kanuwana Case No. 1509/08. In the light of this complaint against the subject Police had gone looking for him. Ever since then Lalith Rajapakse is evading Police. It appears that Rajapakse is trying to take cover by making complaints to the Human Rights Commission and to the Special Rapporteur on Torture UNHRC with a view to finding ways and means of proving his innocence by bringing forth allegations against Police which are of frivolous nature.

**(iv) Mr. Gerald Mervin Perera**

In relation to the killing of this person it is true that he was a torture victim and in this respect a criminal investigation was conducted by CID. At the conclusion of these inquiries six suspects, all of whom who were Police officers, were prosecuted by the Hon. Attorney General in the High Court of Negombo in case No. 326/03. However, subsequent to a protracted hearing of this case the Court on 02.04.2008, discharged all of them due to inadequate evidence to sustain charges preferred against them.

However, in the subsequent investigation conducted by the CID relevant to the murder of Gerald Mervin Perera, the Hon. Attorney General indicted SI Makavitage Suresh Gunasena and another in the High Court of Negombo under Case No. 445/05. Further hearing of this case is fixed for 06.02.2009.

The first accused in the aforesaid murder case SI Makavitage Sures Gunasena, has ironically been also the 1st accused against whom charges were preferred under the Torture Act by the Hon. A.G. for a causing degrading and inhuman treatment to Gerald Mervin Perera.

### **Sri Lanka: Killing of Lasantha Wickrematunga**

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

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

**Character of reply:** Largely satisfactory response

#### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of the Sri Lanka on the killing of Lasantha Wickrematunga. The Special Rapporteur looks forward to receiving detailed information from the Government both on the progress of the police investigation into the killing and on any resulting prosecutions.

**Allegation letter dated 9 January 2009**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

In this connection, we would like to bring to your Government's attention information we have received concerning the killing of Mr **Lasantha Wickrematunga**, chief editor of the English language weekly newspaper the *Sunday Leader*, an investigative newspaper which often reports on cases of alleged corruption and abuse of authority in Sri Lanka, and an attack on the premises of the independent television station, *Sirasa TV* (formerly know as Pannipitiya MTV/MBC) in Colombo.

According to information received:

On 8 January 2009, Mr Wickrematunga was driving to work in Colombo. Two unidentified gunmen, who were travelling by motorcycle, smashed the window of Mr Wickrematunga's car with a steel bar before shooting him at close range in the head, chest and stomach. The attack occurred in rush-hour traffic about 100 metres from an air force checkpoint. Mr Wickrematunga was rushed to Colombo National Hospital where he died a few hours later from his injuries. A police investigation has been opened into the case.

Prior to his death, Mr Wickrematunga had been the target of numerous intimidation attempts and libel suits for his outspoken criticism of your Excellency's Government. The most recent libel case had been brought against him by the Defence Secretary, Mr. Gotabaya Rajapaksa, over stories published in the *Sunday Leader* alleging corruption in defence procurement. Following the Court proceedings a ban was placed on the newspaper mentioning the Defence Secretary for several weeks. Previously, in November 2007, the printing press of the *Sunday Leader* media group (Leader Publications), located in a high security area near Colombo, was destroyed in an arson

attack by a group of unidentified gunmen. No arrests were made in relation to the attack and reports claim that a full investigation was not carried out. It is further reported that in October 2008 the President of Sri Lanka referred to Mr Wickrematunga as a “terrorist journalist” during an interview with the non governmental organization Reporters Without Borders.

Furthermore, in the early hours of the morning of 6 January 2009, approximately 20 unidentified individuals wielding assault rifles, pistols and armed bars raided the premises of Sirasa TV in Pannipitiya, Colombo. The assailants, who reportedly arrived at the premises in a white unmarked van, overpowered security personnel at the entrance before entering the main studio complex where they proceeded to assault staff who were working at the time. A few staff members, who were held at gunpoint, were forced to guide their attackers to the main control room. The assailants then destroyed the room with explosives, causing considerable damage to broadcasting equipment. An unexploded grenade was later recovered from the premises.

While we do not wish to prejudge the accuracy of these allegations, we urge your Excellency’s Government to take effective measures to take measures to prevent further killings of journalists and protect journalists and media organisations. In this respect, it is very important that the persons responsible for the assassination of Mr Wickrematunga and for the attacks against media premises, both as material perpetrators and as instigators, are rapidly identified, arrested and brought to justice. It would appear to be equally important that your Excellency’s Government unreservedly condemns these attacks.

We would also like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (“ICCPR”), to which Sri Lanka is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). In this respect, we would like to recall that, as reiterated in Human Rights Council resolution 8/3 on “The Mandate of the Special Rapporteur 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”. Families of the deceased should be informed of information relevant to the investigation, and the findings of the investigation should be made public (Principles 16 and 17 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions).

We would also like to recall that taking effective measures to protect journalists and to prosecute those responsible of killings or death threats against them is a precondition to ensuring the right to freedom of opinion and expression as set forth in article 19 of the Universal Declaration of Human Rights and the ICCPR, which provides that: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

In this context, we deem it further appropriate to make reference to Resolution 2005/38 of the Commission on Human Rights which calls upon States to ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity.

These principles are reiterated with specific focus on the role of human rights defenders 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. The Declaration highlights the importance of “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” (article 6 points b) and c)) for the effective enjoyment of “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” (article 1). Article 12 paras 2) and 3) of the Declaration 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. This is an essential part of “each [State’s] prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms” (article 2).

We are concerned that killings of journalists and attacks on the premises of media organisations, particularly if they remain unpunished, could create a climate of impunity and result in preventing independent reporting and stifling freedom of expression. As stressed by the Declaration, freedom of expression and independent reporting are in their turn key safeguards for the protection of human rights.

It is our responsibility under the mandate provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases, we 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 so, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of any criminal investigation or other inquiries which may have been carried out in relation to the killing of Mr Lasantha Wickrematunga and the raid on the Sirasa TV station. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. If no inquiries have taken place or if they have been inconclusive, please explain why.

### **Response from the Government of Sri Lanka dated 12 January 2009**

Pending a comprehensive response from the relevant authorities with regard to the concerns expressed by the Special Rapporteurs on the subject, the Permanent Mission of Sri Lanka wishes to inform the Special Rapporteurs that soon after the assassination of

Mr. Wickramatunga, President of Sri Lanka His Excellency Mahinda Rajapaksa most vehemently and unequivocally condemned the assassination and directed the law enforcement authorities to conduct the most thorough investigation to bring to book any and all persons responsible for this act of brutality, with maximum speed. The full text of the statement made by the President of Sri Lanka in this regard is as follows:

“My government and I most vehemently and unequivocally condemn the murder of Mr. Lasantha Wickramatunga, Editor of the Sunday Leader, which took place today. I am both grieved and shocked by his tragic death as Mr. Wickramatunga was a close friend of mine who I have known for many years as a courageous journalist. This heinous crime points to the grave dangers faced by the democratic social order of our country, and the existence of forces that will go to the furthest extremes in using terror and criminality to damage our social fabric and bring disrepute to the country. It is significant that such an attack was carried out at a time when the country is gaining repeated victories over the forces of terrorism, in our efforts to establish freedom and democracy throughout the country. I have directed the Police to conduct the most thorough investigation to bring to book any and all persons responsible for this act of brutality, with maximum speed. On this sad occasion, I extend my deepest sympathies to the members of the family of the late Mr. Wickramatunga, to all his colleagues in The Sunday Leader and associated newspapers, and in the profession of journalism. Despite grave threats of this nature, my government reiterates its commitment to upholding the principles of Media Freedom and Freedom of Expression, even under the most trying circumstances, as we have witnessed today.”

### **Response from the Government of Sri Lanka dated 11 February 2009**

The Government of Sri Lanka provided the following information:

#### **Facts in brief**

On 8<sup>th</sup> January 2009 at about 10:15hrs. Mr. Wickramatunga left in his car No. WP KC-1098 to go to his office in Attidiya in Templers Road, Mt. Lavinia. At 10:20 hrs. when he was passing Attidiya on his way to Templers Road opposite Attidiya Girls School, four Motorcyclists who came after the car blocked the road and Mr. Wickramatunga's car came to a halt on seeing the motorcyclists who were blocking the road. The four motorcyclists had been wearing helmets covering their faces, black jackets and all of them came on black coloured motorcycles. The cyclists surrounded the car and left on their bikes after a few minutes.

After the motorcycles had left, the onlookers had approached the car and found Mr. Wickramatunga lying on the seat with bleeding injuries on his head and the windscreen damaged. Both side-glasses of the car also had been damaged. One Dinesh K. who was in the printing press opposite the place of incident, rushed Mr. Wickramatunga to Kalubowila Hospital in a passing vehicle. The onlookers also informed the Police regarding the incident.

#### **Action taken**

On receipt of this information, Officer-In-Charge/Crimes, Mt. Lavinia Inspector of Police (IP) Sugathapala along with a team of Officers visited the scene and conducted inquiries.

Thereafter, on the instructions of the Inspector-General of Police, Senior Superintendent of Police (SSP) for Mt. Lavinia directed inquiries along with Assistant Superintendent of Police (ASP) for Mt. Lavinia, (I) Mr. C. Gunawarena in this connection.

Mr. Wickramatunga succumbed to injuries at the Hospital and post-mortem inquiry was conducted by Dr. K. Sunil Kumara, Judicial Medical Officer (JMO) for Colombo South. He reported that the death was due to shock and haemorrhage following gun shot injuries in the head.

Mr. Harsha Sethunga, Magistrate for Mt. Lavinia, who held the inquest in connection with the death, returned a verdict of murder.

The Government Analyst was summoned to examine the scene as well as the victim's car and his report is being awaited. No empty cartridges or used slugs have been traced from the scene of the dead body.

Statements have been recorded from 4 eye-witnesses, but none of them are in a position to identify the suspects or to disclose the registration numbers of the Motorcycles. One of them also had heard report of a gun from the scene of the incident.

### **Observations**

The deceased had died of gun shot injuries in his head. The assailants had committed this murder at a lonely stretch of Attidiya Road when the victim was on his way to office.

### **Sudan: Death sentence of 10 persons, in relation to the murder of Mohammed Taha**

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

**Subject(s) of appeal:** 10 males (1 minor)

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

**Urgent appeal dated 3 April 2008**, sent with the Special Rapporteur on the question of torture

In this connection, we would like to draw the attention of your Government to information we have received regarding **Al-Tayeb Abdel Aziz, Ishaq Mohammed Sanousi, Abdel Hay Omar, Mustafa Adam, Mohammed Birgid, Hassan Adam Fadel, Adam Ibrahim, Jamaledin Isa, Abdel Magid Ali Abdel Magid** and **Saibr Hassan**, who reportedly have been sentenced to death by the Khartoum-North Court of Appeal for the murder of Mohammed Taha, Editor of Al-Wifaq newspaper, in September 2006.

According to the information received:

Al-Tayeb Abdel Aziz was only 15 years old at the time of the murder. All those sentenced to death said they were tortured in order to confess to the crime and had been forced to sign confessions, which were later produced in court. They retracted their confessions in court, but the Appeal Court accepted the confessions as evidence against them. The case has been brought before the Supreme Court, where a panel of three judges will hear the appeal. A further appeal is possible to the Constitutional Court, whose final decision has to be ratified by the president.

While we do not wish to prejudge the accuracy of the allegations regarding this specific case, we would like to draw your attention to the fact that the execution of Al-Tayeb Abdel Aziz would violate Sudan's international legal obligations. In particular, the execution would be explicitly contrary to Article 37(a) of the Convention on the Rights of the Child which provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age, and to Article 6(5) of the International Covenant on Civil and Political Rights which provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age. Sudan is a party to each of these treaties and is thus bound by these provisions.

We would also like to 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. 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, except against a person accused of torture as evidence that the statement was made. This principle is an essential aspect of the non-derogable 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. In this regard, we would further like to express our concern regarding Article 10(i) of the Law of Evidence of 1993, which states that "...evidence is not dismissed solely because it has been obtained through an improper procedure, if the court is satisfied that it is independent and admissible."

We would further like to draw your Government's attention to paragraph 1 of Resolution 2005/39 of the Commission on Human Rights which, "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We urge your Government to take all necessary measures to guarantee that the rights under international law of Al-Tayeb Abdel Aziz, Ishaq Mohammed Sanousi, Abdel Hay Omar, Mustafa Adam, Mohammed Birgid, Hassan Adam Fadel, Adam Ibrahim, Jamaledin Isa,

Abdel Magid Ali Abdel Magid and Saibr Hassan are respected, in particular in light of the pending appeal of their case before the Supreme Court. This can only mean setting aside of the death sentence imposed against Al-Tayeb Abdel Aziz and suspension of the capital punishment against the other 9 persons 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 them to torture is ensured.

It is our responsibility under the mandates provided to us by the Commission on Human Rights 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 above reports accurate? If not so, please share all information and documents proving their inaccuracy.

2. Please provide details regarding the steps undertaken to investigate the reports of torture and any proceedings initiated against those suspected of having tortured these ten persons.

**Sudan: Death sentence of 30 men for the attack on Omdurman, on 10 May 2008**

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

**Subject(s) of appeal:** 30 males (1 minor)

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Urgent appeal dated 11 August 2008**, sent with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, the Special Rapporteur on the situation on human rights in the Sudan and the Special Rapporteur on the question of torture

In this connection, we would like to draw the attention of your Government to information we have received regarding the death sentences imposed against 30 men convicted on charges connected to the attack on Omdurman on 10 May 2008 led by the Justice and Equality Movement.

According to the information we have received:

**Kamal Mohamed Sabun, Musa Hamid Osman Katar, Yunis Abdallah Al Nedif Bahar El Deen**, a national of Chad, **Musa Adam Hassan Omar, Bahar El Deen Beshir Idriss, Bushara Abdullah Eissa, Ibrahim Al Nur Zakaria, Shumu Osman Ishaq Gibril,**



**Fadul Hussain Rezeg Allah, Mohamed Arabi Ismail Ahmed, Mahmoud Abaker Mursal Yahia, Bushara Eissa Mohamed Salih, Mohamed Adam Abdallah Mohamed, Mohamed Hashim Ali Abdu, Haitham Adam Ali Adam, Awad Mohamed Hussein, Adam Abdallah, Haroun Abdelgadir, Mohamed Mansour Eissa, Osman Rabeh Mursal, Adam Mohamed Eissa Adam, Ibrahim Abaker Hashim, Mohamed Sharif Abdallah Suleiman, Mahmoud Adam, Adam Al Nour Abdelrahman Osman, Bashir Adam Mohamed Saleh, Abubaker Ibrahim Breima, Abdallah Adam Ibrahim Al Duma, Ibrahim Ali Rashid, Bashir Adam Sanusi Hashim and Mustafa Adam Sabun** were arrested in the days following the Justice and Equality Movement (JEM) attack on Omdurman on 10 May 2008. Following their apprehension, they were held without access to the outside world for over one month and were not given access to lawyers until after the trial proceedings opened.

As of 18 June 2008, these 30 men and other defendants were presented before newly created counter-terrorism courts in greater Khartoum. Five special courts were created in early June in response to the attack on Omdurman and these 30 men and other defendants were brought before three of these special courts. Observers noticed that the defendants looked tired and appeared to be in pain. The defendants complained that they were subjected to torture or ill-treatment, but the court did not investigate these allegations and refused to grant requests by the defendants' lawyers for independent medical examinations.

On 29 and 31 July 2008, the courts announced their verdicts. They sentenced the 30 above named defendants to death, acquitted one, and ordered the transfer of four minors, to a detention facility where more than 90 children captured after the attacks are being held. One of those sentenced to death, Mahmood Adam Zariba, is reportedly a minor of 16 years of age, whose age was not determined by a medical examination. The 30 defendants were found guilty of a range of criminal charges defined in the 1991 Criminal Act, the 2001 Counter-Terrorism Act and the 1986 Arms, Ammunitions and Explosives Act. The charges included terrorist acts, participation in a terrorist criminal organization (respectively sections 5 and 6 of the Counter-Terrorism Act), as well as criminal conspiracy, waging war against the state and sedition (respectively sections 24, 51 and 63 of the Criminal Act).

In reaching their verdicts, the courts relied as evidence primarily on confessions by the defendants which the defendants said they were forced to make under torture and ill-treatment and which they retracted in court. The court made reference to the Sudanese Evidence Act which permits the admission to judicial proceedings of statements obtained by unlawful means. The court also relied on the testimonies by children who have been detained since the attacks and who stated in court that they recognized the defendants as having been among the attackers.

We understand that judgments in respect of 28 further defendants are expected to be announced shortly, and that charges may be brought against others currently held without charge or trial.

While we do not wish to prejudge the accuracy of the reports received, we would like to draw the attention of your Excellency's Government to several principles applicable to this case under international law.

We would in the first place respectfully remind your Excellency's Government 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, to which Sudan is a party and which (pursuant to article 27(3) of Sudan's Interim National Constitution is "an integral part" of the constitutional Bill of Rights, admits of no exception. Relevant to the case at hand, these guarantees include the right to "have adequate time and facilities for the preparation of [one's] defence and to communicate with counsel of [one's] own choosing" and the right not to be compelled to confess guilt.

In this respect, we would like to draw the attention of your Government to paragraph 12 of General Assembly Resolution A/RES/61/153 of 14 February 2007, which "reminds all States that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person". Prolonged incommunicado detention furthermore negates the abovementioned guarantees of the right to a fair trial, such as being assisted by a lawyer and having adequate facilities 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, except against a person accused of torture as evidence that the statement was made. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the International Covenant on Civil and Political Rights. Reports that the court refused requests by the defence lawyers for medical examination of the defendants and then relied on their self-incriminating statements made during incommunicado detention and, allegedly, under torture would appear to suggest a particularly serious violation of these principles of international law.

With regard to the right to "have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing" (Article 14(3)(b) of the Covenant), we would refer your Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Principle 7 reads: "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention." The Human Rights Committee has observed that "[i]n cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings." (General Comment no. 32, CCPR/C/GC/32, para. 38). If it was confirmed that the thirty men sentenced to death were only able to speak to their lawyers when their trials began after more than a month of detention, this would negate the possibility of a fair trial.

We are also concerned by reports that the procedures of the special counter-terrorism courts are determined by the Chief Justice. We received information that the procedural rules of these courts may override existing laws, dispensing with certain guarantees contained in the Sudanese Criminal Procedure Code. For example, under the courts' rules of procedure defendants may only appeal the verdict once.

It is our understanding that the 30 men were apprehended, charged and convicted in connection with the attack by hundreds of armed fighters of the Justice and Equality Movement on Omdurman, which could be seen as part of the ongoing armed conflict between your Government and this rebel armed group in Darfur. In this context, the question of the applicability of international humanitarian law to the proceedings against the thirty men arises. Indeed, we have received reports that in the weeks following the attacks, different official sources were quoted in the Sudanese media as stating that JEM combatants would be treated as Prisoners of War. In a briefing to the diplomatic community and UNMIS/UNAMID Human Rights on 10 June 2008, a military representative (Brigadier Dr. Mustafa Ibrahim) is reported to have announced that captured JEM combatants would be treated as Prisoners of War under the Third Geneva Convention of 1949 Relative to the Treatment of Prisoners of War (Geneva Convention III).

In this respect we would like to bring to your Government's attention that under Geneva Convention III and other international humanitarian law and international human rights norms applicable in all types of armed conflict all who are detained or tried are protected by certain fundamental guarantees. Common Article 3 to the four Geneva Conventions of 1949 and Article 6 of Additional Protocol II to the Geneva Conventions, relating to the protection of victims of non-international armed conflicts (Additional Protocol II), which your Government acceded to in 2006, prohibit the passing of sentences and the carrying out of sentences without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees. This prohibition is also reflected in a rule of customary law stating that "no one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees" (Rule 100 of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross). In addition, Article 84 of Geneva Convention III states that "... [i]n no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105." Article 105 in turn provides, inter alia, that "...[t]he advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private." Also relevant to the case at hand, Article 99(2) of Geneva Convention III states "[n]o moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused." Similarly, Article 6(2) of Additional Protocol II, states that "no one shall be compelled to testify against himself or to confess guilt."

To sum up, both in human rights law and under international humanitarian law, only the full respect for stringent due process guarantees distinguishes capital punishment, applied in conformity with international law, from a summary execution which violates the most fundamental human right. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights under international law of Kamal Mohamed Sabun, Musa Hamid Osman Katar, Yunis Abdallah Al Nedif Bahar El Deen, Musa Adam Hassan Omar, Bahar El Deen Beshir Idriss, Bushara Abdullah Eissa, Ibrahim Al Nur Zakaria and Shumu Osman Ishaq Gibril are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety, or the above named men are given a new trial or released.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
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 allegation that Kamal Mohamed Sabun, Musa Hamid Osman Katar, Yunis Abdallah Al Nedif Bahar El Deen, Musa Adam Hassan Omar, Bahar El Deen Beshir Idriss, Bushara Abdullah Eissa, Ibrahim Al Nur Zakaria, Shumu Osman Ishaq Gibril, Fadul Hussain Rezeg Allah, Mohamed Arabi Ismail Ahmed, Mahmoud Abaker Mursal Yahia, Bushara Eissa Mohamed Salih, Mohamed Adam Abdallah Mohamed, Mohamed Hashim Ali Abdu, Haitham Adam Ali Adam, Awad Mohamed Hussein, Adam Abdallah, Haroun Abdelgadir, Mohamed Mansour Eissa, Osman Rabeh Mursal, Adam Mohamed Eissa Adam, Ibrahim Abaker Hashim, Mohamed Sharif Abdallah Suleiman, Mahmoud Adam, Adam Al Nour Abdelrahman Osman, Bashir Adam Mohamed Saleh, Abubaker Ibrahim Breima, Abdallah Adam Ibrahim Al Duma, Ibrahim Ali Rashid, Bashir Adam Sanusi Hashim and Mustafa Adam Sabun 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 information as to how the principle that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made, is implemented in the Sudan? What steps should judges take under Sudanese law when confronted with allegations by defendants that they have been compelled to make confessions?
4. Please provide details regarding the defendants' access to legal counsel before the trial and their possibility to communicate in private with counsel during the trial.
5. Please explain what are the specific acts the defendants were found guilty of beyond participation in an armed uprising. Which acts the defendants engaged in were found by the court to constitute "terrorist acts" for the purposes of Articles 5 and 6 of the 2001 Counter-Terrorism Act? Please provide the exact wording of the provisions that form the legal basis of the arrest, detention, conviction and sentencing of these defendants.
6. Is it correct that your Government recognizes the persons arrested in connection with the 10 May 2008 JEM attack on Omdurman as prisoners of war? Please explain the legal consequences your Government draws from that qualification for the purposes of criminal proceedings against these persons. Does your Government see any conflict between recognizing the apprehended combatants as prisoners of war on the one hand and, on the other, the charges of criminal conspiracy, waging war against the state, sedition, and violations of the Arms, Ammunitions and Explosives Act raised against them, considering that these charges would appear to presuppose a duty of allegiance to your Government?
7. Please explain the appeals and other challenges against the judgment and sentence open to the defendants, including ex gratia proceedings.

**Sudan: Death sentence of 20 men for the attack on Omdurman,  
on 17 and 20 August 2008**

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

**Subject(s) of appeal:** 20 males (1 minor)

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Urgent appeal dated 24 September 2008**, sent with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and the Special Rapporteur on the question of torture

We would like to draw the attention of your Government to information we have received regarding the death sentences imposed by counter-terrorism courts in greater Khartoum against 20 men on 17 and 20 August 2008. The men were convicted on charges connected to the attack on Omdurman on 10 May 2008 led by the Justice and Equality Movement.

According to the information we have received:

On 17 August 2008, a counter-terrorism court in Khartoum found **Abdelaziz Al Nour Aousher Fedail, Al Sadig Mohamed Jaber Al Dar Adam, Al Taib Abdelkarim Idris Adam, Bashir Adam Aousher Fedail, Hamid Hassan Hamid Ahmed, Malik Adam Ahmed Mohamed, Mohamed Bahar Ali Hamadeen, and Tag Al Deen Mahmoud Abdurahman Ali** guilty on a range of offences under the 1991 Criminal Act, the 1986 Arms, Ammunitions and Explosives Act and the 2001 Counter-Terrorism Act and sentenced them to death.

On 20 August 2008, a counter-terrorism court sitting in Omdurman sentenced another twelve men to death on similar charges: **Azrag Daldoum Adam, Yahia Fadel Abaker Adam, Musa Abdallah Ali Shugar, Mohamed Abaker Naser Hussein, Ibrahim Saleh Ali, Idriss Omar Mohamed Ahmed, Mahjoub Suleiman Adam, Naser Jibreel Adam, Abdallah Mursal Tour, Adam Ibrahim Nur Mohamed, James Bol Francis, and Adam Suleiman Abaker**. The court also acquitted four defendants in this trial and referred four defendants to be tried by juvenile offender courts.

The allegations we have received with regard to the detention and trial of the persons named above are very similar to those we brought to your Government's attention on 11 August 2008 in relation to another 30 persons sentenced to death on 29 and 31 July 2008. They were arrested in the days following the Justice and Equality Movement (JEM) attack on Omdurman on 10 May 2008. Following their apprehension, they were held without access to the outside world by the National Intelligence and Security Service (NISS). It would appear that they

were not given access to lawyers until after the trial proceedings opened. In reaching their verdicts, the Khartoum and Omdurman counter-terrorism courts appear to have relied primarily on confessions by the defendants as evidence. Most of the defendants said they were forced to make these confessions under torture and ill-treatment and retracted them in court. No investigations were opened to investigate these allegations.

One of the defendants sentenced to death by the Khartoum counter-terrorism court on 17 August 2008 is a minor. Al Sadig Mohamed Jaber Al Dar Adam is 17 years old and the court accepted his birth certificate as valid documentation of his age. It found, however, that since Al Sadig Mohamed Jaber Al Dar Adam was found guilty of hiraba, or brigandage (Article 167 of the Criminal Act), a hudud offence, he could nevertheless be sentenced to death. Article 27(2) of the Sudanese Criminal Act allows the death penalty to be applied for hudud crimes regardless of age.

While we do not wish to prejudge the accuracy of the reports received, we would like to draw the attention of your Excellency's Government to several principles applicable to this case under international law which we have already set forth in our communication of on 11 August 2008.

We would in the first place respectfully remind your Excellency's Government 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, to which Sudan is a party and which (pursuant to article 27(3) of Sudan's Interim National Constitution) is "an integral part" of the constitutional Bill of Rights, admits of no exception. Relevant to the case at hand, these guarantees include the right to "have adequate time and facilities for the preparation of [one's] defence and to communicate with counsel of [one's] own choosing" and the right not to be compelled to confess guilt.

We recall that "prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment" (General Assembly Resolution A/RES/61/153 of 14 February 2007, paragraph 12). Prolonged incommunicado detention furthermore negates the abovementioned guarantees of the right to a fair trial, such as being assisted by a lawyer and having adequate facilities 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, except against a person accused of torture as evidence that the statement was made. In addition to being a crucial fair trial guarantee, this principle is an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the International Covenant on Civil and Political Rights. Reports that the courts relied on self-incriminating statements made by defendants during incommunicado detention in NISS facilities and, allegedly, under torture would appear to suggest a particularly serious violation of these principles of international law.

With regard to the right to "have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing" (Article 14(3)(b) of the Covenant), we would refer your Government to the Basic Principles on the Role of Lawyers,

adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Principle 7 reads: "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention." The Human Rights Committee has observed that "[i]n cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings." (General Comment no. 32, CCPR/C/GC/32, para. 38). If it was confirmed that the 20 defendants sentenced to death were only able to speak to their lawyers when their trials began after more than a month of detention, this would negate the possibility of a fair trial.

We are also concerned by reports that the procedures of the special counter-terrorism courts are determined by the Chief Justice. We received information that the procedural rules of these courts may override existing laws, dispensing with certain guarantees contained in the Sudanese Criminal Procedure Code. For example, under the courts' rules of procedure defendants may only appeal the verdict once.

It is our understanding that the 20 prisoners sentenced to death were apprehended, charged and convicted in connection with the JEM attack on Omdurman, which could be seen as part of the ongoing armed conflict between your Government and this rebel armed group in Darfur. In this context, the question of the applicability of international humanitarian law to the proceedings arises. In our communication to your Government of 11 August 2008, to which we refer in this respect, we drew your Government's attention to the norms of international humanitarian law protecting persons apprehended and detained in the course of an armed conflict. These norms provide that no such detainee may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees, including assistance by counsel and the prohibition of moral or physical coercion exerted in order to induce him to admit guilt.

To sum up, both in human rights law and under international humanitarian law, only the full respect for stringent due process guarantees distinguishes capital punishment, applied in conformity with international law, from a summary execution which violates the most fundamental human right. We therefore urge your Excellency's Government to take all necessary steps to ensure that the rights under international law of the twenty prisoners named above are fully respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety, or the above named men are given a new trial or released.

Finally, we would like to express our particular concern with regard to reports that one of the defendants sentenced to death on 17 August 2008, Al Sadig Mohamed Jaber Al Dar Adam, is only 17 years old.

We would like to draw your attention to the fact that Article 37(a) of the Convention on the Rights of the Child, to which Sudan is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights, to which Sudan is a Party as well, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

According to the information we have received, the court accepted that Al Sadig Mohamed Jaber Al Dar Adam was a minor but sentenced him to death in spite of his age on the ground that the offences he was found guilty of included a hudud offence (brigandage). This would be in accordance with Article 36(2) of the Interim National Constitution and Article 27 of the 1991 Criminal Act, which prohibit the death penalty for offences committed by minors when it would be imposed as ta'azir penalty, but allow it for qisas and hudud offences. In this regard, we must stress that, for the purposes of your Government's obligation under international law, the distinction between hudud, ta'azir and qisas offences is immaterial. Article 37(a) of the Convention on the Rights of the Child and Article 6(5) of the International Covenant on Civil and Political Rights apply - and bind your Government - irrespective of this distinction in the law of the Sudan.

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

1. Are the facts alleged in the above summary of the case accurate? If not so, please share all information and documents proving their inaccuracy.
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 allegation that Abdelaziz Al Nour Aousher Fedail, Al Sadig Mohamed Jaber Al Dar Adam, Al Taib Abdelkarim Idris Adam, Bashir Adam Aousher Fedail, Hamid Hassan Hamid Ahmed, Malik Adam Ahmed Mohamed, Mohamed Bahar Ali Hamadeen, Tag Al Deen Mahmoud Abdurahman Ali, Azrag Daldoum Adam, Yahia Fadel Abaker Adam, Musa Abdallah Ali Shugar, Mohamed Abaker Naser Hussein, Ibrahim Saleh Ali, Idriss Omar Mohamed Ahmed, Mahjoub Suleiman Adam, Naser Jibreel Adam, Abdallah Mursal Tour, Adam Ibrahim Nur Mohamed, James Bol Francis, and Adam Suleiman Abaker may have been subjected to torture while in NISS detention. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide details regarding the defendants' access to legal counsel before and during the trial and please indicate whether the defendants had the possibility to communicate in private with their counsels.
4. Please explain the steps taken by your Government to lift or commute the death sentence imposed against Al Sadig Mohamed Jaber Al Dar Adam.
5. Please explain the current situation of the prisoners who were found to be minors by the counter-terrorism courts and whose re-trial by juvenile courts was ordered by the counter-terrorism courts. Where are they currently detained? Does your Government intend to bring them to trial? Do they have legal counsel defending them and does such legal counsel have access to them? Is it accurate that there are other children apprehended after the JEM attack and not charged who are still held at a detention facility near Al Jeili?
6. Please explain the appeals and other challenges against the judgment and sentence open to the defendants sentenced by counter-terrorism courts on 17 and 20 August 2008,



including ex gratia proceedings. What is the impact of Article 38(1) of the Criminal Act, providing that there shall be no pardon for hudud offences, in this respect? How is this provision compatible with Article 6(4) of the International Covenant on Civil and Political Rights, which guarantees the right to seek pardon or commutation of any death sentence? We would further like to reiterate the following questions already asked in our communication of 11 August 2008, which has regrettably remained without a reply as of today.

7. Please provide information as to how the principle that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings, except against a person accused of torture as evidence that the statement was made, is implemented in the Sudan? What steps should judges take under Sudanese law when confronted with allegations by defendants that they have been compelled to make confessions?

8. Please explain what are the specific acts the defendants were found guilty of beyond participation in an armed uprising. Which acts the defendants engaged in were found by the court to constitute “terrorist acts” for the purposes of Articles 5 and 6 of the 2001 Counter-Terrorism Act?

9. Is it correct that your Government recognizes the persons arrested in connection with the 10 May 2008 JEM attack on Omdurman as prisoners of war? Please explain the legal consequences your Government draws from that qualification for the purposes of criminal proceedings against these persons. Does your Government see any conflict between recognizing the apprehended combatants as prisoners of war on the one hand and, on the other, the charges of criminal conspiracy, waging war against the state, sedition, and violations of the Arms, Ammunitions and Explosives Act raised against them, considering that these charges would appear to presuppose a duty of allegiance to your Government?

#### **Sudan: Attacks against the civilian population of the villages Logurony and Ioli in Eastern Equatoria State**

**Violation alleged:** Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality; Deaths due to the attacks or killings by security forces of the State, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State

**Subject(s) of appeal:** Unknown number of 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 Human Rights Council.

**Urgent appeal dated 8 October 2008**, sent with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences

We would like to bring to your Government's attention information we have received regarding attacks against the civilian population of the villages Logurony and Ioli in Eastern Equatoria State by the Sudan People's Liberation Army, which resulted in the **killing and beating of civilians, rape of women and destruction of dwellings and livelihoods** on 4 June 2008 and in the following days.

According to the information received:

The villages of Logurony and Ioli are located near Hiyala, in Torit county, Eastern Equatoria State, Southern Sudan. The two villages have a history of occasionally tense relationships, due primarily to cattle raiding incidents. At the beginning of June 2008, the Governor of Eastern Equatoria State dispatched the Sudan People's Liberation Army (SPLA) to the two villages.

On 4 June 2008 at around 4 a.m., SPLA forces surrounded Logurony. While it was still completely dark, they started shooting, at first aiming in the air. The villagers, who were on high alert due to an expected attack from Ioli, returned fire. Only when it became light, they realized that they had killed SPLA soldiers. Fearing retaliation by the SPLA, they fled into the bush. SPLA soldiers shot at Logurony villagers, reportedly killing four: Tome Marcello, the headmaster of the primary school; Ogesa Orlando, a police officer; Oreste Ogubung; and Origo Agala. They also started burning down the village. Two elderly people, Ojeno Itak and his wife Amisia Itak, died in their dwelling during the fire. On 21 June 2008, another elderly woman, Anisa Anohira Oteng, succumbed, to the burn injuries sustained, at the hospital to which she had been taken by SPLA soldiers.

Also on 4 June 2008, SPLA forces (reportedly counting 300 men) surrounded Ioli. When news of the SPLA members killed in Logurony reached Ioli, the soldiers took the inhabitants outside the village and then started burning down the village, killing one woman, Abung Elizabeth. The SPLA also arrested five men and tied their hands behind their backs. The SPLA Operational Commander came to Ioli and allegedly ordered the soldiers to execute those arrested. The five men were led back to Ioli. Three men, named Bertino Odiongo, Angelo Otuno Ogede and Francesco Asai Omudek, were executed on the spot in front of the remaining village community. One of those arrested was injured but managed to escape. The fifth man was beaten by the soldiers and chased away. The population started running towards the bush. The SPLA opened fire on them, injuring another man. On 9 June 2008, the bodies of two children, aged 5 and 6 (Ramonok Joseph and Omode Leone), were found in the bush surrounding the village. Ioli village was burned to the ground.

Soldiers gathered the remaining Ioli and Logurony villagers, approximately one thousand persons, and brought them to the SPLA barracks in Ramshel. There they spent the remainder of the day under the trees. Women were reportedly beaten with sticks. Many women were raped by SPLA soldiers at the SPLA barracks in Ramshel on 4 June, some of them in front of their children. The raped women include M.E. and A.T. (full names on record with the Special Rapporteurs), as well as Kelenga Obong. The mortal remains of

Kelenga Obong, who suffered from epilepsy, were later found in the bush. She did not survive the torture she underwent including the stress resulting from her flight. In the evening of 4 June 2008, the villagers held at the SPLA barracks were released, apparently on orders of the Torit County Commissioner.

Twelve male villagers, five from Logurony and seven from Ioli, however remained in SPLA detention until 7 June 2008 (one of them seven days longer). Some were allegedly held in a tukul, while others were kept in a hole in the ground. All were beaten on their head and stomach with gun barrels and other wooden and iron objects. Two Logurony detainees sustained severe head injuries, while another had whipping marks on his buttocks. These men did not report the ill-treatment to the police as they feared re-arrest by the SPLA.

On 10 June 2008, a young man from Hiyala was arrested on suspicion of involvement in the shooting that led to the death of SPLA soldiers. He was taken to the SPLA barracks and severely beaten. He was released following a meeting between the Hiyala Head Chief and the SPLA, and had to be taken to Hiyala Hospital for medical treatment.

SPLA retaliation against the civilian population of Logurony, Ioli and Hiyala continued in the days following 4 June 2008. On 6 June 2008, SPLA men shot at Hiyala villagers who were working in the field. A man and a woman were killed (Oronjo Safarino and Odiongo Salvatore), another woman injured. On 7 June 2008, Omudek Alajut, a man from Ioli who had returned to the village, was apprehended by SPLA soldiers, tied up and executed on the spot. On 10 June 2008, Omunong Ohisa Ernaldo and Oreste Ohuro, two Logurony villagers, were found shot dead near Hiyala village square.

These events resulted in major displacement from Ioli and Logurony villages. Approximately 2,800 inhabitants of Logurony and approximately 1,500 of Ioli were displaced. Their dwellings were destroyed and they lacked the materials to rebuild them. At the beginning of August 2008, the Eastern Equatoria State government distributed some bamboo building materials, but these were insufficient to cover the needs. People still remained in tents, which were leaking during the heavy rains characteristic of the season.

Moreover, on 4 June 2008, the SPLA seized the cattle belonging to the Ioli and Logurony villages, on which the population relied for their livelihood. The cattle was only partially returned over the coming two months. Additionally, SPLA soldiers destroyed or took away the solar panels operating the Ioli water boreholes. As of 25 August 2008, six of ten solar panels had been returned, not enough to operate the boreholes, forcing the population to collect water in the surrounding mountains.

Small children and elderly people have been dying since the attacks due to the lack of food, medicine, clean drinking water, adequate shelter and the cold at night. Some reports indicate that 24 children may have died, including Amuronyang Osuru, Hakim Odiongo, Orisa Akim Kisario, Omote Oduho, Kulang Oduho and Ewot Agara Obora. Four elderly people, Kwahina Ojafa and Tjirino Obwana (female), Avore Odiongo and Claudio Okura (male) died as a result of lacking resources as well.

Government representatives from Eastern Equatoria State have visited the area and submitted reports to both the President and Vice-President of the Government of Southern Sudan. In the immediate aftermath of the incidents, the Eastern Equatoria State authorities and the Ministry of SPLA Affairs announced that a high-level committee would be investigating the incidents, but four months later the members of the inquiry have not been appointed, nor any other steps taken. The Eastern Equatoria State Government and the Torit County Commissioner took part in peace and reconciliation efforts between the two villages.

While we do not wish to prejudge the accuracy of these reports, we would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (“ICCPR”), to which Sudan is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). In particular, Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. As expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials (“Basic Principles”), this requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Further, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Basic Principles, Principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9).

We would also like to bring to your Government’s attention that your Government has a duty to investigate, prosecute, and punish all violations of the right to life. To fulfill this legal obligation, governments must ensure that arbitrary or abusive use of force by law enforcement officials is punished as a criminal offence (Basic Principles, Principle 7). There must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. While a commission of inquiry into the events may be a very appropriate measure in a case such as the reported events in Loguronyi and Iloli on 4 June 2008 and the following days, it is not sufficient. Principle 18 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (“Prevention and Investigation Principles”) provides that “Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice.” Superiors and other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts (Principle 19 of the Prevention and Investigation Principles, see also Principle 24 of the Basic Principles) - all the more so, if they ordered the executions.

With regard to witnesses and family members of victims, Principle 15 of the Prevention and Investigation Principles provides that complainants, witnesses, and their families shall be protected from violence and any other form of intimidation. Those potentially implicated in extra-legal 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. Families of the deceased should be informed about the investigation, and the

findings of the investigation should be made public (Prevention and Investigation Principles, Principles 16 and 17). The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time (Prevention and Investigation Principles, Principle 20).

We would also like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

We would further like to draw your Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to recall 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. In addition, Article 4 (c & d) of the Declaration 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.

We are encouraged by the reports indicating that representatives of Eastern Equatoria State and of the Government of Southern Sudan intend to carry out an in depth investigation into the incidents summarized above. We are, however, concerned about reports indicating that, four months after the incident, the investigation has not started and the members of the high level committee might not even have been appointed. We would ask your Excellency's Government to keep us informed of the developments and outcomes of this investigation, as well as of disciplinary and criminal proceedings initiated against the perpetrators of extra-judicial executions.

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

1. Are the facts alleged in the above summary accurate? If not so, please share all information and documents proving their inaccuracy.
2. Which authority decided to entrust the SPLA (instead of the Southern Sudan Police Service) with an operation aimed at ending cattle rustling and other disputes between two villages, and on what grounds? What were the orders of engagement of the SPLA units dispatched to Logronyi and Iloli?

3. Please provide details on the proceedings and results of the investigation by the high-level committee reportedly announced by the Ministry of SPLA Affairs.
4. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanders, for the alleged extra-judicial executions and rapes of women.
5. Please provide the details of any measures taken to ensure that complainants, witnesses and family members of the victims are not subject to any intimidation or retaliation.
6. Please provide information on measures adopted to ensure that law enforcement forces in Southern Sudan comply with the UN Basic Principles on the Use of Firearms by Law Enforcement Officials.
7. Please state whether any compensation was, or is intended to be, provided to the rape victims and the families of the victims of killings by SPLA forces.
8. Please explain the steps taken by your Government to restore adequate housing and access to adequate food and water to the populations of Logurony and Ioli. Please state whether any compensation was, or is intended to be, provided to the families whose housing was destroyed by the SPLA forces and whose cattle has not been returned.

### **Sudan: The use of the death penalty in Southern Sudan**

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

**Subject(s) of appeal:** Unknown

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

**Allegation letter dated 10 October 2008**, sent with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the situation of human rights in the Sudan and the Special Rapporteur on the question of torture

We are writing to your Excellency's Government in relation to reports we have received regarding **the use of the death penalty in Southern Sudan**.

In this connection, we would like to recall that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner. Based on the reports we have received, we would like to bring to your Government's attention our concerns with regard to capital punishment in Southern Sudan in four regards: (1) the requirement that in capital

punishment cases all fair trial guarantees are rigorously observed, including particularly the right to assistance by a lawyer, (2) the prohibition of the imposition of the death penalty against offenders aged under 18 at the time of the crime, (3) limitations on judicial discretion to apply prison sentences instead of the death penalty in murder cases, and (4) conditions of detention of prisoners sentenced to death.

**1. *Fair trial guarantees, in particular the right to be assisted by legal counsel***

We would in the first place to respectfully recall to your Excellency's Government 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), to which Sudan is a party, admits no exception.

**(a) *International law principles regarding the right to legal counsel in capital cases***

Relevant to the case at hand, these guarantees include the right of every person accused of a criminal offence "to defend himself in person or through legal assistance of his own choosing" (Article 14(3)(d) ICCPR). The Human Rights Committee has observed that "[i]n cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings" (General Comment no. 32, CCPR/C/GC/32, para. 38). According to article 27(3) of the Interim National Constitution and article 13(3) of the Interim Constitution of Southern Sudan (ICSS) these guarantees are "an integral part" of the constitutional Bill of Rights.

Where a defendant does not have legal assistance, he must be informed of this right. Where the interests of justice so require, the Government must provide a defendant with legal counsel without payment by him if he does not have sufficient means to pay for it (Article 14(3)(d) ICCPR). These guarantees are further spelled out in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Principle 5 reads: "Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence." Principle 6 adds: "Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services."

We understand that the right to be assisted by legal counsel is reflected in Southern Sudanese law as well. The ICSS Bill of Rights (art. 23(6)), the 2003 New Sudan Code of Criminal Procedure and the 1991 Code of Criminal Procedure all provide, though in slightly different terms, that a person accused of an offence as serious as murder has the right to be assisted by an advocate. Where he does not have sufficient means to retain a lawyer, he has the right to have legal aid assigned to him by the government and at the government's expenses. One important element that is clearly spelled out in the international standards cited above and might not be as clear in Southern Sudanese law is that, where a person accused of a crime carrying the death penalty is not assisted by a lawyer, the investigatory and judicial authorities are under an obligation to inform him of the availability of legal aid.

**(b) Information received regarding the situation in Southern Sudan**

In practice, however, the information we have received suggests that most of the condemned prisoners do not have legal counsel, and even more did not have legal counsel during the trial in which they were sentenced to death. In Juba Central Prison, for instance, it would appear that the following prisoners sentenced to death are not assisted by legal counsel (and most probably were not assisted during their trial): Balla Kamal Tahir, Gabriel Nyara Pio, Moses Ohiti Lowa, Charles Lokudu Remeo, Mauro Ohisa Ogotow, Mario Oburau Okoloputa, Peter Jutti Budenga, Thiplious Tongun Wusang, Abdauraman Marino Lwarene, Sejeriwa Poni Tombe, Bol Makol Malual, Gabriel Sule Jada, Joseph Ladu Kamuka, Simplisio Ataka Adelio, Tadeo Lodu wani, Bulli Jelly Kewyi, Emanuel Gift Repent, Simon Mayuong Akoon, and Lojere Lorot Loseriko. It would also most regrettably appear that Joseph Jelly Morgo, who was reportedly executed in Juba Central Prison on 27 June 2008, did not have legal counsel.

Wilson Elisa Basangi, who was found guilty of murder and sentenced to death by the Western Equatoria State High Court in Yambio on 30 November 2007, and is currently detained in Yambio Central Prison, was reportedly not assisted by legal counsel at his trial and was not informed on his constitutional right to obtain legal aid. He is currently, at the appeals stage, assisted *pro bono* by an advocate in private practice.

In Upper Nile State, Nig Mashar, Khamis Joseph Lugi, Mohamed Adeng, Wier Quench Kwangang, Abiel Otuang, Mohamed Saleh Hassan and Tut Dol Rut were all, allegedly, not assisted by legal counsel at the time of the trial in which they were sentenced to death. Two of them are reported to now have retained advocates against a fee, while the other five have been able to secure assistance *pro bono* by an advocate in private practice for the appeals stage through the intervention of the UNMIS Human Rights Section.

There are reportedly eight prisoners sentenced to death in Bentiu Central Prison in Unity State. Allegedly, none of them was represented by a lawyer at the time of trial. Two of them appear to have secured the assistance of an advocate for the appeals proceedings. In Bor, Jonglei State, there is one condemned prisoner. He was not assisted by a lawyer at the time of his trial.

In Wau, a prisoner named Jacob Makoi Majok was reportedly executed in Wau Central Prison on 24 July 2008. The nine remaining condemned prisoners include two women, Nyanthuoi Ater Matim and Akoi Bol Manding Lual and seven men: Guriguri Andrea Akot, James Nyon Koch (aged 72), Wol Akolino Akoi, Issaa Abdul Hamid, Alfred Share Guer, Lawrence Wol Mayen, and Marial Mol Kon. Issaa Abdul Hamid, who was sentenced to death in August 2007, was reportedly temporarily assisted by an advocate, but as he had no money to pay him, the advocate did not assist him throughout the trial. None of the other condemned prisoners was assisted by legal counsel at any time of the proceedings in their case.

Our information indicates that in Aweil Central Prison, three prisoners are sentenced to death: Malik Ayi, Dut Ahoey, and Makol Malong. Neither were they assisted by legal counsel at any time of the proceedings in their case, nor were they informed or otherwise aware of their right to be assisted.



In Rumbek Central Prison as well, there are three condemned prisoners: Chagao Mwopor Akech, Majur Manyur Mayom, and Chol Kor Dit Majok. None of them was assisted by legal counsel at any time of the proceedings in their case.

The Interim Constitution of Southern Sudan provides in Article 138(3) that the Southern Sudan Ministry for Legal Affairs and Constitutional Development is mandated to “render legal aid”. According to our information, although the majority of the accused charged with a capital offence and of the prisoners already sentenced to death neither have a lawyer nor the means to retain one, not one of them has received legal aid from the Ministry for Legal Affairs and Constitutional Development.

**(c) *The right to appeal***

We further note that in Judicial Circular No. 3 of 21 August 2007, the Supreme Court of Southern Sudan has acknowledged the problem of numerous persons being tried on murder charges without the assistance of an advocate.

The Circular also observes that “[m]any accused persons who are not represented by advocates do not make appeals against the judicial decisions passed against them simply because they are ignorant of their right to appeal. This is their legal and constitutional right which they cannot lose because they are unaware of it.” We are very encouraged by this stance of the Supreme Court of Southern Sudan, which is in line with paragraph 5 of Article 14 of the International Covenant on Civil and Political Rights, reading: “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.”

We would, however, like to highlight two concerns we have in this respect. Both are based on the principle that the right to review of the sentence must not only be respected formally, but also be made effective. The first one, already amply discussed above, is that, in order for the right to seek review of a death sentence to be effective, the defendant must be assisted by legal counsel. As the Human Rights Committee stated in a case concerning a capital punishment case in Jamaica, “it is axiomatic that legal assistance must be made available to a convicted prisoner under sentence of death. This applies to the trial in the court of first instance as well as to appellate proceedings.” (Communication No. 250/1987, *Carlton Reid v. Jamaica*, para. 11.4).

Secondly, it would appear that according to Articles 251 and 255 of the 2003 New Sudan Code of Criminal Procedure, the defendant has only seven days from the date of the judgment to submit to the Court of Appeals (and thereafter, to the Supreme Court) a written statement setting forth reasons why the judgment should not be confirmed. This extremely short delay to submit the appeal could in many cases negate the effective exercise of the right to appeal against conviction.

Finally, we would like to stress that it is not sufficient for a person sentenced to death to be represented by legal counsel at the appeals stage, as seems to be the case of the Malakal condemned prisoners. Where someone was sentenced to death after a first instance trial in which he was not assisted by legal counsel, a full retrial must be ordered (or the death sentence commuted). Otherwise, not only the right to a fair trial, but also the right to life will be violated.

**2. *The prohibition of the death penalty for juvenile offenders***

We would also like to draw your attention to the fact that Article 37(a) of the Convention on the Rights of the Child, to which Sudan is a Party, expressly provides that capital punishment shall not be imposed for offences committed by persons below the age of 18. 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 understand that also the Interim Constitution of Southern Sudan provides in Article 25(2) that “no death penalty shall be imposed on a person under the age of eighteen”.

Notwithstanding these unambiguous provisions, it would appear that there are four prisoners awaiting execution detained in Juba Central Prison who had not reached the age of 18 at the time of the murder for which they have been sentenced. Their names are Joseph George Modi, Peter Stephen Wawi, Adil Osaman Gwagwe, and Peter Taban Angelo. We have also received information that Wier Quench Kwangang, who was sentenced to death in Malakal where he remains detained awaiting his appeal, may have been under 18 at the time of the offence he was found guilty of. Malik Ayi, who was reportedly sentenced to death by the High Court in Aweil at the beginning of 2008 and is held in Aweil Central Prison, was allegedly aged 16 at the time of the offence in June 2007. We were moreover informed that at the time of their trial there were no juvenile courts in Southern Sudan.

**3. *Limitations on judicial discretion to apply prison sentences instead of the death penalty in murder cases***

According to the information we have received, many of the prisoners awaiting execution in Southern Sudan were found guilty of murder under Article 130 of the 1991 Criminal Code. Under this provision, the death sentence is the only possible punishment for murder, unless the family of the victim forgoes retribution in kind and opts for the payment of compensation. This provision deprives the judge of the necessary discretion to tailor the sentence to the specific circumstances of the case and of the accused. Inevitably, some accused will be sentenced to death even though that sentence is disproportionate to the facts of their crimes. We would therefore urge your Government to review all death sentences imposed under Article 130 also on this ground.

We are aware that many other prisoners sentenced to death in Southern Sudan were found guilty and sentenced under Article 251 of the 2003 New Sudan Criminal Law. This provision allows the judge to impose the death sentence or life imprisonment for murder. We are, however, concerned about Article 244 of the 2003 Code of Criminal Procedure, which states that “[i]f the accused is convicted of an offence punishable with death and the Court sentences him to any punishment other than death, the Court shall in its judgement state the reasons why sentence of death was not passed.” This provision seems to suggest that for murder the death penalty is the rule and life imprisonment the exception, and that a judge must provide special reasons why he does not impose the death penalty. Such a rule would be incompatible with the principle that, under international law, the death sentence is an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner.

#### **4. *Conditions of detention of condemned prisoners in Juba Prison***

Finally, we are very concerned about reports regarding the conditions of detention of prisoners sentenced to death. Reports we have received indicate that because the Prisons Service considers that the walls, roofs and security at Juba Prison are insufficient to effectively prevent escapes, condemned prisoners are shackled at their feet day and night, every day of the week and year. In Malakal, Aweil and Wau as well, all death row prisoners are shackled above the ankle. It would appear that many of the prisoners have been detained in these conditions for years. To cite two extreme cases reported to us: Mohamed Adeng has been imprisoned in Malakal since 1999, as has Enoka Poli Jacob in Juba.

In this regard, we would like to recall that Article 10 of the International Covenant on Civil and Political Rights provides that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” We also wish to stress that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. We would urge your Government to take all necessary steps to ensure that these prisoners are prevented from escaping without recourse to inhumane measures.

To conclude, only the full respect for stringent due process guarantees distinguishes capital punishment as still permissible under international law from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency’s Government to take all necessary steps to ensure that the rights of those sentenced to death in Southern Sudan and those facing charges for which the death penalty could be imposed are respected. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not carried out until all concerns we have raised are dispelled in their entirety. This would require, as a minimum, that:

- (i) The death penalty is not carried out against anyone who has not been assisted by defence counsel during the first instance trial and all subsequent appeals proceedings;
- (ii) That every one charged with murder is informed of the “right to have legal assistance assigned to him or her, [...], and without payment by him or her in any such case if he or she does not have sufficient means to pay for it”, as provided in Article 14(3)(d) of the International Covenant on Civil and Political Rights and Article 23(6) of the Interim Constitution of Southern Sudan; and
- (iii) That all death sentences imposed under Article 130 of the 1991 Criminal Code, and possibly also those imposed under Article 251 of the 2003 Criminal Code in conjunction with Article 244 of the 2003 Code of Criminal Procedure, are reviewed to establish whether, on the facts of the individual case, there are no circumstances militating in favour of a lesser sentence.

Under international law, including the International Covenant on Civil and Political Rights, to which Sudan is a Party and which it has incorporated into the constitutional Bill of Rights, States deciding to retain capital punishment must provide a legal aid system meeting the highest standards. Our understanding is that the legal aid system in Southern Sudan is currently not in operation, inter alia as a consequence of the decades long armed conflict which has ravaged the

country until the Comprehensive Peace Agreement entered into force. If that was correct, we would suggest that international law requires that all executions in Southern Sudan be suspended until there is a functioning system for legal aid in capital cases.

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

1. Are the allegations above accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide detailed information regarding access to legal counsel by all persons sentenced to death. Were they assisted by legal counsel during the first instance trial? Are they currently assisted by legal counsel? Were they informed at any stage of their right to be assisted by legal counsel, and of the right to be assigned legal counsel, at no cost if they cannot afford it?
3. Please provide information on the Southern Sudan legal aid system and on the steps the Government of Southern Sudan is taking to ensure that all persons charged with a capital offence are informed of their right to be assisted by legal counsel, and of the right to be assigned legal counsel, at no cost if they cannot afford it?
4. Please provide your Government's views with regard to the concerns raised above in respect of Article 130 of the 1991 Criminal Code and Article 244 of the 2003 Code of Criminal Procedure.
5. Please provide information on the steps taken by your Government to ensure that no one who was under the age of 18 at the time of the offence is sentenced to death or executed, and that all death sentences imposed against children in the past are commuted. Also please evaluate whether it will be possible to provide persons sentenced to death for offences committed as children a new trial before a juvenile court?
6. Please provide information on the steps taken to ensure that the conditions for condemned prisoners in Juba, Wau, Aweil and Malakal Central Prisons, as well as all other prisons where prisoners sentenced to death are held, comply with minimum international standards.

**Sudan: Death in custody of Mohamed Ahmed Osman Alkhair**

**Violation alleged:** Death in custody owing to torture, neglect, or the use of force

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

**Character of reply:** No response (recent communication)

**Observations of the Special Rapporteur**

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

**Allegation letter dated 12 March 2009**, sent with the Special Rapporteur on the question of torture

We would like to draw the attention of your Excellency's Government to information we have received concerning the death in custody of **Mr. Mohamed Ahmed Osman Alkhair**, a businessman from Nyala, South Darfur.

According to the information received:

On 9 June 2008, officers of the National Intelligence and Security Service (NISS) detained Mohamed Ahmed Osman Alkhair in Nyala and took him to a detention facility near the Nyala Railway Station. There he died as a result of torture. On 11 June 2008, NISS officers took his mortal remains to the family's home in the Hay Alwadi area in the center of Nyala. His relatives refused to accept the body, which was taken to a police station. Thereafter, the security forces found Mohamed Ahmed Osman Alkhair's 16-year old son, whom they forced to receive his father's body.

The case has been brought before the competent prosecutor but, in spite of the efforts of a team of lawyers assisting the victim's family, the case has made no progress in the nine months since the death of Mohamed Ahmed Osman Alkhair. Members of the security services have offered the wife 2000 Sudanese Pounds as compensation for dropping the case, which she has refused.

There are concerns that those responsible may be shielded from prosecution and punishment by Article 33 of the National Security Forces Act of 1999, which grants immunity to members of the security forces against ordinary civil or criminal proceedings for any act connected with official duties. Criminal cases may be prosecuted only with the approval of the Director-General of National Security.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the fundamental principles applicable under international law to these cases. Article 7 of the International Covenant on Civil and Political Rights provides, to which Sudan is a Party, that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility.

In order to overcome the presumption of State responsibility for a death in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary

Executions). This principle was reiterated by the Human Rights Council as recently as at its 8th Session in Resolution 8/3 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

The Council added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Sudan is a Party.

We urge your Excellency’s Government to carry out an investigation into the circumstances surrounding the death of Mohamed Ahmed Osman Alkhair expeditiously, impartially and transparently, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of this alleged death under torture, both as immediate perpetrators and as responsible commanders, as well as to compensate the family. We urge your Excellency’s Government to waive any immunity which under Sudanese law may shield those responsible for the death of Mohamed Ahmed Osman Alkhair.

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

1. Are the facts alleged in the case summaries accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to the case.
3. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanders, for the death in custody of Mohamed Ahmed Osman Alkhair.
4. Please explain whether Article 33 of the National Security Forces Act of 1999 applies to the investigation and prosecution of this case. If so, has the Director-General of National Security given his approval for prosecution?
5. Please provide the details of any compensation payments made to the family of Mohamed Ahmed Osman Alkhair.

### **Syrian Arab Republic: Killing of prisoners at Sednaya Prison**

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

**Subject(s) of appeal:** At least 25 persons

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

#### **Allegation letter dated 6 August 2008**

I would like to draw the attention of your Government to reports I have received regarding **the killing of up to 25 prisoners at Sednaya prison**, allegedly at the hands of military police, on 5 July 2008 and in the following days.

According to the information received:

Sednaya prison near Damascus is a military prison used for pre-trial detention of suspects held by Military Intelligence, Air Force Intelligence and State Security and for convict prisoners sentenced by the State Security Court. In the morning of 5 July 2008, Military Police officers carrying out searches of prisoner cells got into a scuffle with a group of, allegedly unarmed, prisoners and lethally shot nine of them. Reports indicate that the confrontation was triggered by the military police throwing copies of the Qur'an on the floor and otherwise insulting the inmates.

Thereafter, detainees overpowered the security guards and took several hostages, including the prison director. Army troops and tanks were sent as reinforcements and the following four days security forces surrounded the prison. The prisoners, however, refused to surrender as long as the authorities refused to give them guarantees for their safety. Through cellular phones seized from the hostages, the prisoners remained in contact with outside world until 8 July 2008.

Finally, at a time and under circumstances not known, the prisoners appear to have released their hostages and the security forces regained control of Sednaya prison. Several more prisoners, possibly up to 16, were allegedly killed in the process. One prison guard was killed as well towards the beginning of the standoff.

Families of inmates have thus far not been able to obtain any information about their relatives. As soon as news of the confrontation leaked, relatives of some prisoners went to the Tishrin Military Hospital, where the wounded and killed were reported to have been transferred, but security forces prevented them from entering. Relatives of inmates also

addressed the Ministry of Justice seeking information about prisoners but did not receive any. The authorities have so far neither provided a list of names of the killed inmates nor an account of what happened at Sednaya prison.

While I do not wish to prejudge the accuracy of these reports, I would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights (“ICCPR”) provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). In particular, Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. As expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials (“Basic Principles”), this requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Further, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimize injury, and respect human life (Basic Principles, Principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9).

I would also like to bring to your Government’s attention that your Government has a duty to investigate, prosecute, and punish all violations of the right to life. To fulfill this legal obligation, governments must ensure that arbitrary or abusive use of force by law enforcement officials is punished as a criminal offence (Basic Principles, Principle 7). There must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (“Prevention and Investigation Principles”) provides guidelines for investigations, which includes conducting an adequate autopsy, and the collection and analysis of all physical and documentary evidence. Families of the deceased should be informed of information relevant to the investigation, and the findings of the investigation should be made public (Prevention and Investigation Principles, Principles 16 and 17).

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

1. Are the facts alleged in the above summary accurate? Please refer to the status or results of any police, medical, or military investigation, or judicial or other inquiries carried out in relation to the alleged incident. Please also indicate whether, and if so, when, your Government intends to make the results of investigations available to the families of the deceased victims. Has your Government informed the families of the deceased prisoners and made their names public?

2. Please provide the details of any disciplinary measures imposed on, or criminal prosecutions against, military police or other members of the armed forces responsible for possible extrajudicial executions in connection with the alleged incidents at Sednaya prison.



3. Please explain whether there are any provisions that effectively grant immunity from prosecution to employees of the security forces for offences committed while carrying out their duties (such as Article 16 of Legislative Decree no. 14 of 1969) which would preclude or otherwise affect criminal prosecutions in relation to this alleged incident.

4. What measures are taken by your Government to ensure that police and the armed forces, as far as possible, apply non-violent means before resorting to the use of force in controlling prison riots, and that they respect and preserve life when the lawful use of force is unavoidable?

5. Please state whether any compensation was, or is intended to be, provided to the families of the victims.

**Tchad: Décès de 68 fidèles du cheikh Ahmet Ismaël Bichara et de quatre membres des forces de sécurité tchadiennes**

**Violation alléguée :** usage excessif de la force par des forces de sécurité

**Objet de l'appel :** 72 personnes (4 membres des forces de sécurité)

**Caractère de la réponse :** Pas de réponse

**Observations du Rapporteur Spécial**

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

**Lettre d'allégation envoyée le 27 août 2008**

Dans ce contexte, je souhaiterais attirer l'attention de votre Gouvernement sur des informations que j'ai reçu concernant **le décès de 68 personnes** le 29 juin à Kouno, qui serait imputable aux forces de sécurités tchadiennes.

Selon les informations reçues :

Au moins 68 personnes auraient été tuées par les forces de sécurité tchadiennes le dimanche 29 juin 2008 à Kouno, à 300 kilomètres au sud-est de la capitale, N'Djamena.

Les faits se seraient produits lors d'une tentative des forces tchadiennes d'arrêter un chef spirituel musulman qui a menacé de lancer « une guerre sainte du Tchad jusqu'au Danemark ». Au moins 68 fidèles du cheikh Ahmet Ismaël Bichara et quatre membres des forces de sécurité auraient été tués, et plus de 51 personnes grièvement blessées. Le cheikh et sept de ses lieutenants auraient été arrêtés et transférés à N'Djamena, où ils auraient été exhibés lors d'une conférence de presse organisée par les autorités tchadiennes le 2 juillet.

Le ministre de l'Intérieur tchadien, Ahmat Mahamat Bachir, aurait annoncé que quelque 700 fidèles du chef musulman avaient attaqué Kouno, mettant le feu à 158 cases, deux églises, un dispensaire et la gendarmerie, avant de remplacer le drapeau national tchadien par un drapeau portant l'inscription « Au nom d'Allah, Dieu est Grand ». Le ministre aurait

affirmé que le cheik Ahmet Ismaël Bichara et ses fidèles étaient armés de lances, d'épées et de flèches empoisonnées. Il aurait ajouté que le cheikh était un homme dangereux, un extrémiste et un terroriste. Il aurait aussi déclaré que les forces gouvernementales étaient parvenues à libérer 90 femmes et 121 enfants.

Selon les allégations, la réaction des forces de sécurité à l'attaque contre Kouno aurait été clairement disproportionnée, ce qui serait illustré par le nombre élevé de morts. Les forces de sécurité auraient ouvert le feu sans discrimination et tué des personnes alors qu'elles auraient pu les arrêter.

Lorsque le cheikh Ahmet Ismaël Bichara avait lancé, avant 2006, sa « guerre sainte », soi-disant contre la corruption de la foi islamique et pour la restauration de la Justice au Tchad depuis la ville de Sarh, au sud-est du pays, avant de s'installer à Kouno, les autorités locales et nationales auraient été conscientes du danger que ses activités et ses discours représentaient pour les autres communautés religieuses. Son mouvement aurait créé dans ces régions des tensions entre musulmans, chrétiens et animistes, mais rien n'aurait été fait pour l'arrêter.

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.

Je voudrais également rappeler au Gouvernement de votre Excellence l'applicabilité dans de telles situations des Principes de base sur le recours à la force et l'utilisation des armes à feu par les responsables de l'application des lois, résolution 1989/65 du 24 mai 1989 du Conseil économique et social. Ceux-ci 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 délimitant 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.

Par ailleurs je prie votre Gouvernement de diligenter une enquête sur les morts qui ont eu lieu lors de l'opération par les forces de sécurité le 29 juin et, de traduire les responsables en justice, s'il est déterminé que les forces de sécurité ont eu recours à un usage excessif de la force, 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 toute autre forme d'intimidation.

Il est de ma responsabilité, en vertu du mandat qui m'a été confié par le Conseil des droits de l'homme de solliciter votre coopération pour tirer au clair les cas qui ont été portés à mon attention. Etant dans l'obligation de faire rapport de ces cas au Conseil des Droits de l'Homme, je serais 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. Quelles sont les branches des forces de sécurité impliquées dans cette opération? Quels ordres ou instructions avaient-elles reçus, notamment quant à l'usage de la force.
3. Veuillez fournir toute information, et éventuellement tout résultat des enquêtes menées, examens médicaux, investigations judiciaires et autres menées en relation avec les faits.
4. Si les allégations sont avérées, veuillez fournir toute information sur les poursuites et procédures engagées contre les auteurs de la violence.
5. Le cas échéant, veuillez indiquer si les familles des victimes ont été indemnisées.

#### **United States of America: Killing of Waleed Khaled**

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

**Subject(s) of appeal:** 1 male (media worker)

**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 in relation to the killing of Waleed Khaled.

**Allegation letter dated 16 September 2005**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

In this connection, we should like to bring to your Government's attention - as well as to the attention of the Government of Iraq, which we are addressing in this matter as well - information we have received concerning the fatal shooting of **Waleed Khaled**, a 24-year old TV soundman working for Reuters, based in Samawa.

According to information received, on 28 August 2005 a Reuters TV crew consisting of Waleed Khaled and the cameraman Haider Khadem went to the site of a terrorist attack that had resulted in the death of two Iraqi policemen in the Hay-al-Adil district of West Baghdad. Upon arrival at the scene, a United States military sniper standing on the roof of a shopping centre opened fire on him, hitting him fatally once in the head and four times in the chest. Mr. Khadem was slightly wounded and immediately arrested by U.S. forces. A U.S. military statement said that "U.S. Task Force Baghdad units responded to a terrorist attack on an Iraqi Police convoy. (...) One civilian was killed and another was wounded by small-arms fire during the attack."

Without in any way implying any determination on the facts and circumstances of this case, 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 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 recently 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".

In Resolution 2005/38 the Commission on Human Rights restated this principle with specific regard to acts of violence against journalists, calling on States to investigate such acts and to bring those responsible to justice, and adding explicitly that the principle applied also in situations of armed conflict. Respect of the outlined norms of international law is crucial not only in order to protect the right to life of journalists, but also to ensure respect for the right to freedom of opinion and expression, 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.

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 that may have been carried out in relation to the shooting of Waleed Khaled. Have penal, disciplinary or administrative sanctions been imposed in connection with this incident? If no inquiries have taken place or if they have been inconclusive, please explain why.

3. Please explain what rules of engagement or policies are in place to protect the right to life and physical integrity, as well as the right to freedom of expression and information, of journalists covering terrorist attacks in Iraq, in order to prevent incidents such as the one resulting in the death of Waleed Khaled.

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

### **Response from the Government of the United States of America dated 14 July 2008**

This letter responds to Mr. Ligabo and Mr. Alston's communication of September 16, 2005, concerning circumstances surrounding the death of Waleed Khaled. We sincerely apologize for the long delay in responding to your inquiry, due in part to unexpected delays in researching the facts of this case and the need for careful coordination among all government agencies with responsibility for the subject of the inquiry. As an initial comment, we note that your request for information cited the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights (ICCPR). The United States has long taken the position that the ICCPR does not apply extraterritorially. In Iraq, U.S. forces are operating as part of the Multi-National Forces under a UN Security Council Chapter VII mandate. Furthermore, the circumstances of this incident did not involve, as your letter suggests, a law enforcement operation. Nonetheless, the U.S. Government is pleased to provide this response as a courtesy.

On August 28, 2005, Waleed Khaled, a reporter from Reuters news agency, and his cameraman, Haider Khadem, were reporting on an attack against an Iraqi police envoy in the Hay-al-Adil district of west Baghdad. U.S. military units were dispatched to Hay-al-Adil in response to the attacks against the Iraqi police, Emd, as described below, fired at the reporters car, killing Mr. Kahled and wounding the cameraman, Mr. Khadem.

The U.S. Government conducted a comprehensive investigation into the shooting of Mr. Khaled and concluded that no disciplinary action against military personnel was required. The U.S. Government (Army) investigation determined that the shooting followed the applicable rules of engagement, under which military personnel are authorized to use force if they feel someone poses an immediate threat or threatens the integrity of the operation. The investigation indicated that Mr. Khaled failed to use appropriate precaution upon entering a hostile environment; the investigation found that Mr. Khadem was hanging out of the car window, holding what appeared to be a potential explosive device or a rocket-propelled grenade launcher.

The investigation later confirmed that this piece of equipment, which U.S. forces believed at the time to be a deadly weapon, was the video camera Mr. Khadem used to investigate the original attacks against the Iraqi police. The military officers perceived the failure of Misters Khaled and Khadem to slow their vehicle down as a potential threat, because of previous experiences by military personnel with suicide car bombers. Under these circumstances, U.S. military personnel used force against what appeared to be an immediate threat to their unit and civilian and military personnel nearby.

The U.S. military rules of engagement promote the physical protection of journalists, as well as of other civilians. The U.S. Government strongly supports freedom of the press and freedom of opinion, and tries to equip journalists with the tools and protection that will allow them to conduct their jobs in a safe and effective manner. Specifically, the U.S. military guidelines and protocols detail how journalists should conduct themselves when reporting from a conflict area. The codes of conduct and procedures pertaining to the proper conduct and engagement by journalists operating in hostile areas are put in place for the safety of the journalists. The responsibility to abide by these rules, however, ultimately rests with the journalists, who must exercise discretion and caution in dangerous situations.

The U.S. Government deeply regrets the loss of life and fully recognizes the important role played by the news media in Iraq and other hostile environments.

### **United States of America: Execution of Earl Wesley Berry**

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

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

**Character of reply:** No response

### **Observations of the Special Rapporteur**

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

### **Urgent appeal dated 21 May 2008**

In this connection, I would like to draw the attention of your Government to information I have received regarding Mr. **Earl Wesley Berry**, who is reportedly scheduled to be executed in Mississippi at **6pm on 21 May 2008**. He was sentenced to death for the murder of Mary Bounds in 1987. To the extent that he can be classified, on the basis of the facts described below, as mentally retarded, his execution would be in violation of the international legal norms which I have been mandated to bring to the attention of Governments. It is reported that he has exhibited signs of mental retardation for most of his life.

According to the information I have received Mary Bounds was reported missing on 29 November 1987. Her car was found on 1 December near the First Baptist Church she attended in Houston, Mississippi. Her body was found the next day in nearby woods. She had died of head injuries as a result of blows to the head. On 6 December, 28-year-old Earl Berry was arrested at his grandmother's house, and confessed to the crime. He rejected an offer from the prosecution of a life sentence in return for a guilty plea. After a jury trial, he was sentenced to death on 28 October 1988. The death sentence was overturned by the state Supreme Court which found fault with the instructions given to the jury, and a resentencing was held in June 1992. At this hearing, the defense presented mitigating evidence, including testimony from a

neuropsychologist about Earl Berry's low intellectual functioning and possible brain damage. A psychologist also testified that, in his opinion, Berry suffered from paranoid schizophrenia. He was nonetheless sentenced once again to death.

According to the information received, Earl Berry's lawyers have challenged his death sentence with the claim that he has mental retardation. It has been reported that for reasons that are unclear, but possibly due to lack of funding for, and the sheer workload on, the understaffed public defender office representing Earl Berry at that time - Berry's claim of retardation was not supplemented by the requisite expert affidavit which would have allowed the Court to determine whether the inmate should receive an evidentiary hearing on the claim of mental retardation. In August 2004, the state Supreme Court ruled that Berry had failed to comply with the criteria established by the Court in *Chase v. State* and denied him an evidentiary hearing. Under this test, the condemned prisoner must provide on appeal an affidavit from a qualified expert to the effect that the inmate has an IQ of 75 or below, and in the opinion of the expert.

It has been brought to my attention, that on 24 April 2008, a psychologist with expertise in mental retardation signed an affidavit stating that his review of the materials relating to Earl Berry had led him to the conclusion that Berry had an IQ of 75 or lower and/or "significantly sub-average intellectual functioning, and "to a reasonable degree of psychological certainty that further testing will demonstrate that Mr Berry meets the criteria established by the American Psychiatric Association and the American Association on Mental Retardation to be classified as mentally retarded". Among other things, he noted that during Berry's school years his IQ was assessed as low as 72, and when the 25-year-old Berry was discharged from a Mississippi Department of Corrections prison hospital on 24 April 1985 following an apparent suicide attempt, the final diagnosis was "suicidal gestures / mentally retarded". Other affidavits - from Earl Berry's mother, other relatives, and people who knew Berry - describe Berry's slow development as a child, childhood head injuries he sustained as a boy, and the fact that even as an adult he never lived independently. His mother said that he attempted suicide six or seven times.

Finally, I have been informed that on 5 May 2008, despite this new Chase-compliant expert affidavit, the Mississippi Supreme Court ruled that Earl Berry's claim of retardation was procedurally barred. The Presiding Justice of the Court dissented: "As an indigent defendant sentenced to the ultimate and final punishment, Berry is entitled to appointed competent and conscientious counsel to assist him with his pursuit of post-conviction relief. He has now presented this Court with substantial evidence that but for his post-conviction attorney's deficient performance, he would have been granted an opportunity to pursue his claim that he is mentally incompetent pursuant to *Atkins*... Whatever the reasons for his prior counsel's deficient performance, it is clear that Berry was not allowed a meaningful opportunity to present his mental retardation claim to this Court. When appointed counsel fails to provide the Court with the relevant facts, the system designed to ensure due process as well as a timely end to the appellate process, ceases to function. In the end, justice fails for all of those involved".

In this connection, I would like to refer Your Excellency's Government to the fundamental principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Articles 3 and 6 of these instruments, respectively, provide that every individual has the right to life and security of the person, that this right shall be protected

by law and that no one shall be arbitrarily deprived of his or her life. It is generally accepted that the execution of an individual who is mentally insane is incompatible with the prohibition of arbitrariness under these provisions.

I would also like to refer Your Excellency's Government to the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, Economic and Social Council resolution 1984/50 of 25 May 1984. Of particular relevance is paragraph 3 which provides that the death penalty shall not be carried out on persons who have become insane. In addition resolution 1989/64 of the Economic and Social Council resolution of 24 May 1989 on the Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, recommends in paragraph 1(d) that States further strengthen the protection of the rights of those facing the death penalty, eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution. Legal authorities have concluded that it has become a norm of customary law that the insane may not be executed.

I would greatly appreciate receiving, on an urgent basis, information from your Government concerning the steps taken by the competent authorities to comply with the State Party's relevant obligations under international law.

#### **United States of America: Execution of five Mexican nationals**

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

**Subject(s) of appeal:** 5 males (foreign nationals)

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

#### **Urgent appeal dated 4 August 2008**

In this connection, I would like to draw the attention of your Government to information I have received regarding Mr. **José Ernesto Medellín Rojas**, a Mexican national who is scheduled to be executed in Texas on 5 August 2008. I have also received information on four other Mexican nationals - Mr. César Roberto Fierro Reyna, Mr. Rubén Ramírez Cárdenas, Mr. Humberto Leal García, and Mr. Roberto Moreno Ramos - who have not yet been set execution dates, but who are all at risk of imminent execution.

Each of these men are part of a group of Mexican nationals currently on death row who were denied the right to consular access guaranteed by the Vienna Convention on Consular Relations (VCCR). Article 31 of the VCCR, a treaty to which the United States has been a party since 1969, provides that any foreign national who is arrested or detained must be informed of



his or her consular rights. These include the right to have the consulate informed of the detention, and the right to communicate with the consulate. Because the Mexican nationals were denied these rights, Mexico brought a case to the International Court of Justice (ICJ), claiming that the United States violated the VCCR, and seeking reparations under the Convention. The ICJ ruled in 2004 that the US had in fact violated the VCCR because of its failure to inform the Mexican nationals of their consular rights, and ordered that the United States provide “review and reconsideration” of each of the cases: Case Concerning Avena and other Mexican Nationals (Mexico v US), 2004 ICJ No 128 (Judgment of 31 March 2004). This review is necessary to assess whether any of the trials of the Mexican nationals were prejudiced because of the violation of their consular rights.

However, it appears that none of the above-named persons has been provided the required review. Your Excellency’s Government has consistently acknowledged that it has an international legal obligation to provide review in accordance with the ICJ judgment: see International Court of Justice, Verbatim Record (20 June 2008), Closing statement of Mr John B Bellinger, III, pages 8, 13-16. I am also aware of the Memorandum issued by the President of the United States on February 28, 2005, directing US states to provide review, and of the ruling by the US Supreme Court in March 2008 that states were not constitutionally obligated to act in accordance with the Memorandum (Medellín v Texas, 522 US \_\_\_ (2008)). My understanding is that the US Attorney General and Secretary of State subsequently requested Texas to provide review, but that the Government of Texas has indicated that it is not prepared to provide such a review.

On 5 June 2008, Mexico filed a further request to the ICJ for an interpretation of the obligations of the US as required by the Avena case. On 16 July 2008, the ICJ ordered that the United States take all necessary measures to ensure that Medellín and the other foreign nationals are not executed - pending the final judgment of the ICJ on Mexico’s request for interpretation, and unless the Mexican nationals receive the required review and reconsideration (Request for Interpretation of the Judgment of 31 March 2004 in the Case Concerning Avena and Other Mexican Nationals (Mexico v United States of America); Request for the Indication of Provisional Measures (Order), 16 July 2008, p. 19, para. 80).

According to the information available to me, the Government of Texas has nevertheless confirmed its intention to execute Medellín on 5 August 2008 without providing review. Although a Bill (the Avena Case Implementation Act) was introduced into the US House of Representatives which would provide review without the need for the consent of Texas, I have been informed that this is unlikely to come into law before Medellín’s execution date.

It thus appears that - unless urgent measures are taken by the US Government - Texas will execute Medellín in violation of the 2005 Avena Judgment, and the 2008 Avena Order. This execution, and any further executions of other Mexican nationals without review, will constitute a violation of international law, and will engage the international responsibility of the US Government.

I would thus greatly appreciate receiving, on an urgent basis, information from your Excellency’s Government concerning the steps being taken to comply with its international legal obligations. In particular:

1. Please provide information on the immediate measures being taken to prevent any imminent executions from taking place without the required review and reconsideration.
2. Please indicate if your Excellency's Government considers that the United States Congress is in a position to implement the necessary legal measures to ensure that steps are taken to comply with the international legal obligations of the United States in relation to this issue.
3. Please provide information as to the measures that will be taken to provide review to those foreign nationals currently on death row, but without execution dates.

### **United States of America: Death sentence of Troy Anthony Davis**

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

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

**Character of reply:** Cooperative but incomplete response

### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the response of the Government of the United States with respect to the case of Troy Anthony Davis, but notes that the response does not address the substantive issues raised by the Special Rapporteur, including the issue of poor legal representation resulting from a lack of resources for public defender services. The Special Rapporteur further notes that since the Government submitted its response, there have been additional proceedings in the case, including a stay of execution by the Federal Appeals Court for the Eleventh Circuit, which has since expired. The Special Rapporteur looks forward to receiving from the Government information about further developments in Mr. Davis' case.

### **Urgent appeal dated 12 September 2008**

In this connection, I would like to draw the attention of your Government to information I have received regarding **Troy Anthony Davis** who has been sentenced to death and is reportedly scheduled to be executed on 23 September 2008. Mr Davis was sentenced to death in 1991 for the August 1989 killing of Mark Allen McPhail, a security officer (and off-duty police officer) in Savannah, Georgia. It is my understanding that a clemency hearing before the state Board of Pardons and Paroles is scheduled to take place today, 12 September 2008.

In recent years, Mr Davis' defense has made numerous unsuccessful attempts to obtain a hearing to present post-conviction evidence, including affidavits from the seven out of nine non-police witnesses who have recanted or changed their testimony subsequent to the conviction. In 2007, a Georgia trial-level judge dismissed Mr Davis' appeal for a new trial without conducting a hearing. On 17 March 2008, the Georgia Supreme Court ruled on the appeal against this decision. In a 4-3 ruling, it decided that the lower court had not abused its discretion.

The Chief Justice of the Georgia Supreme Court authored the dissenting opinion. She noted that “nearly every witness who identified Davis as the shooter at trial has now disclaimed his or her ability to do so reliably”. Most importantly from the perspective of international law, the Chief Justice argued that “this case illustrates that this Court’s approach in extraordinary motions for new trials based on new evidence is overly rigid and fails to allow an adequate inquiry into the fundamental question, which is whether or not an innocent person might have been convicted or even, as in this case, might be put to death.”

Article 14(5) of the International Covenant on Civil and Political Rights (ICCPR), to which the United States of America is a party, provides “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.” On the one hand, there can be no doubt that - from a formal point of view - this right is protected to an exemplary degree in the United States, as illustrated by the innumerable instances of appeal at the State and Federal level the case of Mr Davis has gone through in the seventeen years since his conviction. On the other hand, however, Article 14(5) ICCPR requires that a review by a higher court must be a genuine review of the issues in the case. An “overly rigid [approach which] fails to allow an adequate inquiry into the fundamental question” (in the words of the Georgia Chief Justice) cannot live up to that standard. In the context of Mr Davis’ case, the refusal by the courts to grant a rehearing when presented with significant new evidence which casts doubt on the initial conviction, appears to amount to a denial of the right to a genuine review as required.

Such a genuine review would be particularly appropriate in this case in the light of information regarding the alleged failure of trial counsel to conduct an adequate investigation of the state’s evidence, to which I drew your Government’s attention in a previous communication regarding this case dated 16 July 2007. I also noted that the Georgia Resource Center, a post-conviction defender organization (PCDO) which represented Mr Davis, reportedly had its budget reduced by two-thirds and the number of lawyers on its staff reduced from eight to two at the time it was engaged in Mr Davis’ defense. A lawyer working on Troy Davis’ case stated in an affidavit that “I desperately tried to represent Mr Davis during this period, but the lack of adequate resources and the numerous intervening crises made that impossible... We were simply trying to avert total disaster rather than provide any kind of active or effective representation”.

International law requires Governments to provide a defendant accused of a serious crime with legal counsel without payment by him if he does not have sufficient means to pay for it (Article 14(3)(d) ICCPR). Where such public defense is provided to an indigent defendant, it must live up to the requirement that the accused shall have “adequate time and facilities for the preparation of his defense” (Article 14(3)(b) ICCPR). As stated by the UN Human Rights Committee, “[w]hen an accused is represented by assigned counsel, the authorities [...] have a special duty to take measures to ensure that the accused is effectively represented (Kelly v. Jamaica (253/1987), 8 April 1991, Report of the HRC, (A/46/40), 1991, at 248, para. 5.10).” In the present case there are grounds for concern that poor legal representation afforded to Mr Davis since 1989 has denied him both the right to a fair trial and the right to effectively appeal against conviction and the death sentence.

In light of these serious and pressing concerns, based upon human rights norms recognized by the international community, I would respectfully request Your Excellency's Government to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law. I urge your Excellency's Government to put Mr Davis execution on hold in light of the above facts with a view to commuting his death sentence.

In closing I wish to reiterate two points. The first is that, despite receiving a significant number of complaints in relation to the carrying out of the death sentence in the United States, I have only rarely acted on these complaints. In this instance I firmly believe that the case merits this urgent appeal and warrants immediate action on the part of the U.S. Government. The second is that I take no position either for or against the death penalty but act only when it seems clear that the risk of injustice is such that internationally accepted standards will be violated in the absence of urgent intervention by the Government.

### **Response from the Government of the United States of America dated 6 October 2008**

We are in receipt of your letter of September 12 regarding the pending execution of Troy Anthony Davis. Mr. Davis was sentenced to death in 1991 for the August 1989 killing of security officer Mark Allen McPhail in Savannah, Georgia. We have passed along your letter to the offices of Georgia Attorney General Thurbert E. Baker and Governor Sonny Perdue for information regarding the steps taken to comply with the State Party's relevant obligations under international law.

As you may be aware, on September 23, prior to Mr. Davis' scheduled execution, the U.S. Supreme Court granted Mr. Davis' application for a stay of execution. The Court is now considering whether to grant Mr. Davis' petition for a writ of certiorari. The stay order issued by the Court states: "Should the petition for a writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for a writ of certiorari is granted, the stay shall terminate upon the issuance of the mandate of this Court."

We thank you for your letter. Please be assured we will pay utmost attention to this case.

### **United States of America: Death sentence of Larry Ray Swearingen**

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

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

**Character of reply:** Cooperative but incomplete response

### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the response of the Government of the United States with respect to the case of Larry Ray Swearingen, but notes that the response does not address the substantive issues raised by the Special Rapporteur, including the existence of procedural

barriers to judicial consideration of potentially exculpatory evidence. The Special Rapporteur looks forward to receiving from the Government information about further developments in Mr. Swearingen's case.

### **Urgent appeal dated 26 January 2009**

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding Mr. **Larry Ray Swearingen**, who is reportedly scheduled to be executed in Texas on **27 January 2009**. Mr. Swearingen was sentenced to death in 2000 for the 1998 killing of Melissa Trotter.

In recent years, Mr. Swearingen's defense has made several requests to obtain full DNA testing of crime scene evidence which includes male blood found under the victim's fingernails and pubic hair found on the victim's body. According to information received testing of both these elements has excluded Mr. Swearingen as the donor. The requests for full DNA testing have been denied on several occasions including by the Texas Court of Criminal Appeals on 1 February 2006 and most recently by the Ninth State District Court on 17 January 2009.

Article 14(5) of the International Covenant on Civil and Political Rights (ICCPR), to which the United States of America is a party, provides "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." On the one hand, there can be no doubt that - from a formal point of view - this right is protected to an exemplary degree in the United States, as illustrated by the numerous instances of appeal at the State and Federal level the case of Mr Swearingen has gone through in the eight years since his conviction. On the other hand, however, Article 14(5) ICCPR requires that a review by a higher court must be a genuine review of the issues in the case. While it may be appropriate for a State to enact procedural barriers in order to limit the basis upon which appeals may be lodged and be entitled to be heard, it cannot be justified under the terms of the Covenant for a State to proceed with the ultimate penalty of death in circumstances in which it has failed to give appropriate consideration to potentially exculpatory evidence that might emerge from a DNA request which is sought in good faith and on the understanding that it genuinely offers the prospect of putting new evidence before the court. This is underscored by the record of over 220 post-conviction DNA exonerations in the United States, including 17 capital cases.

In light of these serious and pressing concerns, based upon human rights norms recognized by the international community, I would respectfully request Your Excellency's Government to take all necessary steps to avoid executions that would be inconsistent with accepted standards of international human rights law. I urge your Excellency's Government to put Mr Swearingen's execution on hold in light of the above facts.

In closing I wish to reiterate two points. The first is that, despite receiving a significant number of complaints in relation to the carrying out of the death sentence in the United States, I have only rarely acted on these complaints. In this instance I firmly believe that the case merits this urgent appeal and warrants immediate action on the part of Your Excellency's Government.

The second is that I take no position either for or against the death penalty but act only when it seems clear that the risk of injustice is such that internationally accepted standards will be violated in the absence of urgent intervention by the Government.

Since I am expected to report on this case to the UN Human Rights Council, I would be grateful for your cooperation and your observations. In addition to an expeditious first reply, I would greatly appreciate being informed about further developments in this case. I undertake to ensure that your Excellency's Government's response is accurately reflected in the report I will submit to the UN Human Rights Council for its consideration.

### **Response from the Government of the United States of America dated 19 February 2009**

We are in receipt of your letter of January 26, 2009, regarding the pending execution of Larry Ray Swearingen, who was charged with the murder of Melissa Trotter in 1998.

Mr. Swearingen was scheduled to be executed on January 27, 2009; however, on January 26, the United States Court of Appeals for the Fifth Circuit granted a stay of execution and authorized Mr. Swearingen to file a successive habeas petition with the district court. In addition, on 14 January, Mr. Swearingen's lawyers filed a petition for review with the United States Supreme Court whereby Mr. Swearingen requested a stay of his execution and review of the state appellate court's denial of his second state habeas petition. The Supreme Court has not yet ruled on this motion.

We thank you for your letter and have passed it on to Greg Abbott, Attorney General of Texas.

### **Uzbekistan: Death in custody of Hoshimjon Kadyrov, Muhammadshokir Artykov, and Abdurahman Kuchkarov**

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

**Subject(s) of appeal:** 3 males

**Character of reply:** Largely satisfactory response

### **Observations of the Special Rapporteur**

The Special Rapporteur notes the response of the Government of Uzbekistan and looks forward to obtaining the details of the investigations into the deaths of Hoshimjon Kadyrov, Muhammadshokir Artykov, and Abdurahman Kuchkarov that are the basis for the Government's rejection of allegations that the men died as a result of torture or other rights violations.

**Allegation letter dated 3 February 2009**, sent with the Special Rapporteur on the question of torture

We would like to bring to the attention of your Excellency's Government information we have received concerning three recent cases of death in custody in Uzbekistan. The three victims,

Mr. **Hoshimjon Kadyrov**, aged 33, Mr. **Muhammadshokir Artykov**, aged 33, and Mr. **Abdurahman Kuchkarov**, aged 36, were all imprisoned in connection with the events of May 2005 in Andijan.

According to the information received:

Hoshimjon Kadyrov went into hiding after being involved in the 2005 Andijan events. On 3 November 2008 he secretly visited his parents in Andijan and was taken into custody and detained in the Andijan prison. On 23 November 2008, the police returned his remains to his family. His body was covered with bruises, his nails had been removed and he had no teeth left in his mouth. Mr. Kadyrov's parents were told by the authorities to bury him quickly and not to protest.

Muhammadshokir Artykov was one of the prisoners freed during the Andijan prison break of 12 May 2005. He was subsequently re-arrested and imprisoned in Tashkent. He became physically disabled due to ill-treatment by prison guards. On an unspecified date in autumn 2008 his mortal remains were returned to his family. The authorities explained that he died of natural causes.

Abdurahman Kuchkarov was serving a sentence for his involvement in the 2005 Andijan events in the Tavaksay prison in Tashkent Region. His mortal remains were returned to his family in Andijan, on 3 October 2008. He had been taken from the prison to the prison hospital, where he died. The circumstances surrounding his death were not explained in detail to the family, who was told to proceed quickly with the funeral.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the fundamental principles applicable under international law to these cases. Article 7 of the International Covenant on Civil and Political Rights provides, to which Uzbekistan is a Party, that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In this respect we would like to recall the conclusion of the Human Rights Committee in a custodial death case (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraphe 9.2):

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

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above

circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council as recently as at its 8th Session in Resolution 8/3 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

The Council added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Uzbekistan is a Party.

We urge your Excellency’s Government to carry out inquiries into the circumstances surrounding the deaths of Hoshimjon Kadyrov, Muhammadshokir Artykov and Abdurahman Kuchkarov expeditiously, impartially and transparently, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate their families.

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

1. Are the facts alleged in the case summaries accurate? If not so, please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to each of the cases. Please explain the steps taken to ensure that these investigations comply with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
3. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanders, for the deaths in custody of Hoshimjon Kadyrov, Muhammadshokir Artykov and Abdurahman Kuchkarov.
4. Please provide the details of any compensation payments made to the families or dependants, if any, of Hoshimjon Kadyrov, Muhammadshokir Artykov and Abdurahman Kuchkarov.



**Response from the Government of Uzbekistan dated 6 February 2009**

**Information concerning the cases of Hoshimjon (Khoshimzhon) Kasimovich KADYROV (Kadirov), Muhammadshokir (Makhammadshokir) Sodikzhonovich ARTYKOV (Artikov) and Abdurahman (Abdurakhmon) Nuriddinovich KUCHKAROV**

1. **H. Kadyrov**, born in the town of Andijan on 10 March 1975, was under investigation. He was arrested on 15 October 2008 and charged with an offence under article 159-4 of the Criminal Code of the Republic of Uzbekistan (Attempt to overthrow the constitutional order of the Republic of Uzbekistan).

On 6 November 2008 H. Kadyrov was admitted to Tashkent hospital facility UY-64/18 with the diagnosis “acute cardiac insufficiency and a gastric ulcer complicated by a stomach haemorrhage”. Despite comprehensive treatment, the complications worsened and, on 9 November 2008, H. Kadyrov died.

H. Kadyrov was not subjected to torture or other forms of irregular treatment at the hands of the administration or staff of the facility.

2. **M. Artykov**, born in Andijan on 2 September 1975, had been found guilty on 14 November 2005 by the Criminal Division of the Supreme Court of Uzbekistan under article 97-2 (a) (Intentional homicide) and article 132-2 (Demolition, destruction and damage to historical and cultural monuments) of the Criminal Code, and sentenced to 17 years deprivation of liberty.

He was serving his sentence in facility UY 64/65 in Zangiot settlement in Tashkent province. His state of health in March 2008 caused him to be transferred to Tashkent hospital facility 64/18 for treatment.

While in the hospital ward, the convicted offender Artykov began appropriate treatment, which was however complicated by secondary infections.

As a consequence, the convicted offender Artykov died on 7 September 2008. The diagnosis was “infiltrative, disseminated and fibrous-cavernous pulmonary tuberculosis, chronic hepatitis and chronic pyopneumothorax”, complicated by pulmonary-cardiac insufficiency.

3. **A. Kuchkarov**, born in Andijan on 8 November 1971, was found guilty on 21 November 2005 by the Syrdaryo provincial court under article 244-2-1 of the Criminal Code (Production or distribution of material posing a threat to public security and public order), and sentenced to six years deprivation of liberty.

He was serving his sentence in facility UY-64/3 in Tavaksai settlement, Tashkent province.

Owing to his state of health, in May 2008 he was transferred to Tashkent medical facility UY-64/18 for hospital treatment.

While in hospital the convicted offender Kuchkarov commenced appropriate treatment.

On 27 March 2008, the convicted offender Kuchkarov died. The diagnosis was a bladder stone and chronic liver insufficiency.

Forensic investigations were carried out into all three deaths of convicted offenders, and they were investigated by the staff of the procuracy.

In view of the foregoing, the Ministry of Internal Affairs of the Republic of Uzbekistan decisively rejects all the allegations by so-called human rights defenders of “torture and other violations of offenders’ rights”. Facility staff operate within the framework of their official duties, observing legal norms and the rules for the treatment of offenders.

The material which has been published is yet another attempt to discredit staff of the Central Penal Correction Department and of the law enforcement agencies of Uzbekistan in general. Moreover, the distribution of communications of this sort via electronic media is intended to create an artificial stir around the question of human rights observance in Uzbekistan.

### **Viet Nam: Arbitrary killings of indigenous Degar individuals**

**Violation alleged:** Deaths due to the attacks or killings by security forces of the State; Impunity, compensation and the rights of victims

**Subject(s) of appeal:** 6 males (3 demonstrators)

**Character of reply:** Cooperative but incomplete response

### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the response of the Government of Viet Nam with respect to two of the deaths alleged in this communication, but regrets that the Government has not investigated or provided a response with respect to the four other cases.

**Allegation letter dated 29 August 2008**, sent with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

In this connection, we would like to bring to your Government’s attention information we have received **concerning several incidents of allegedly arbitrary killings of indigenous Degar individuals by your Government’s security forces.**

According to the information received:

On 14 April 2008, **Y-Cung Nie**, born in 1982, from the village of Buon Cuor Hdang, district of Cu Mgar in Daklak province, took part in a demonstration at the commune of Ia Knuec to demand the release of three Degars arrested on 9 April. Not long after he arrived home on the same day, security police from the district of Cu Mgar arrested him in his home and took him into a nearby wooded area. Soon thereafter, the security police returned to the village and told Y-Cung Nie’s parents and family that they had killed him and wanted the family to go pick up his corpse and bury it.

The security police threatened the family not to tell anyone about Y-Cung Nie's death, particularly not Degars living in the United States. They said that they would come back and kill them all if they did. When the family went to pick up the corpse, they saw that he had been beaten beyond recognition. His face and body were covered with blood, his skull was fractured and his entire body was bruised. The security police watched the family while they cleaned and dressed the corpse and stayed until the burial had taken place on 16 April 2008 to prevent pictures of the corpse from being taken.

**Y-Song Nie**, a 24-year-old man from Buon Pok village, commune Ea Ken, district Krong Pac in Daklak province, married with children, and **Y-Huang Nie**, aged 23, from Buon Kreh village, commune Ea Ken, district Krong Pac in Daklak province, married with children, also took part in the same demonstration on 14 April 2008. They were on their way back to their villages from Ia Knuoc when they were detained by security police. The security police broke both men's legs, both their hands and cracked their skulls. The security police then returned the remains to the families and ordered them to bury the corpses. They gave each of the families one 100 kg bag of rice and one million dong (corresponding to 66 USD). The security police also told the families: "If anyone of you reports this incident to the international community or to Kok Ksor [President of the Montagnard Foundation, Inc.], we will come and kill all of you."

On 22 June 2008, **A Lat**, aged 61, and **A Brin**, aged 46, two men from Plei Kuk Gyer village, commune of An Thanh, Dak Bo district in Gialai province, were among a group of approximately 35 Degar Catholics trying to cross a lake in canoes to reach a sacred place near Ploi Hamong Katu village, as they would do twice a month. When they approached the other side of the lake security police ambushed them and began throwing heavy rocks at the canoes. A Lat and A Brin were hit by rocks on their heads, fell into the lake and drowned. The families wished to bury their dead at the sacred site, but the security forces forced them to carry the corpses back to their village for burial.

On 9 August 2008, **Y-Phit Kbuor** and his two sons encountered soldiers on the road back to their village Buon Tri after fishing at the river of Ea Kin about 20 km from the village. The soldiers stopped them and ordered them to raise their hands. However, while they were raising their hands, the soldiers opened fire at them. Y-Phit Kbuor died on the spot, while his two sons escaped and returned home to their village. Many villagers accompanied the family to pick up the corpse of Y-Phit Kbuor. At the site of the incident, they found the soldiers still there. The soldiers apologized, said that they had made a mistake, and paid the family ten million dong (approximately \$660 USD) for the coffin and the cost of the burial ceremony.

While we do not wish to prejudge the accuracy of these reports, we would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights ("ICCPR"), to which Viet Nam is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6). In particular, Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved.

We would also like to bring to your Government's attention that your Government has a duty to investigate, prosecute, and punish all violations of the right to life. 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), though not in themselves binding law, provide an authoritative and convincing interpretation of the obligations descending from the right to life and Article 6 of the ICCPR in particular. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences (Principle 1). There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions (Principle 9). Persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction shall be brought to justice (Principle 18). Superiors and other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts (Principle 19).

With regard to witnesses and family members of victims, Principle 15 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions provides that complainants, witnesses, and their families shall be protected from violence and any other form of intimidation. Those potentially implicated in extra-legal 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. Families of the deceased should be informed about the investigation, and the findings of the investigation should be made public (Principles 16 and 17). The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation (Principle 20).

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

Moreover, we would like to call the attention of your Government to the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people of 27 February 2007, in which he observed that "The criminalization of social protest, and the repression practiced by the security forces ... are still regularly denounced by indigenous and civil society organizations" (A/HRC/4/32, para. 53). In this context, the Special Rapporteur recommended that "these people's legitimate demands in respect of their legitimate rights should not be criminalized". (para. 57).

In addition, we would like to draw the attention of your Government to the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly on 13 September 2007, and in particular to Article 2, which states that "Indigenous peoples and

individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular based on their indigenous origin or identity”.

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

1. Are the facts alleged in the above summary accurate? Please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to the above killings. Please explain the steps taken to ensure that these investigations comply with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
3. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanders, for the killing of **Y-Song Nie, Y-Huang Nie, Y-Cung Nie, A Lat, A Brin and Y-Phit Kbuor**.
4. Please provide the details of any measures taken to ensure that complainants, witnesses and family members of the victims are not subject to any intimidation or retaliation, as provided in the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

#### **Response from the Government of Viet Nam dated 29 October 2008**

In reply to your letter under the reference code AL G/SO 214 (67-14) G/SO 214 (33-24) Indigenous (2001-5) VNM 2/2008, dated 29 August 2008, I have the honour to convey to you the following information regarding the cases mentioned in your above said letters:

1. When receiving your above said letter, the professional agencies of Viet Nam carried out an investigation on the alleged cases mentioned in your letter. They found out that in Gia Lai province, there is no village named after Plei Kuk Gyer, no district named after Dak Bo, but there is a district named after Dak Po. They also found out that there were no men named after A Lat and A Brin who were drowned in a lake on 22 June 2008. They found a report saying that two persons were drowned on 25 June 2008. These two persons were Dinh Lak, born in 1948 and Dinh Prin, born in 1961. They together with eight persons of ethnic minority are residing at Kuk Kon village, An Thanh commune, Dak Po district, Gia Lai Province. When hearing the news that Virgin Mary would appear at Dak Mon commune, Dak Ha district, Kon Tum province, they went to this place (Dak Mon commune) to participate in their religious activity on 25 June 2008. On the way back, their boat was upturned, causing the drowned death of Dinh Lak and Dinh Prin. Therefore, the information mentioned in your letter that A Lat, aged 61 and A Brin, aged 46, from Plei Kuk Gyer village, An thanh commune, Dak Bo district, Gia Lai province, were drowned by the security forces, was untrue.

2. The results of the investigation showed that all alleged cases mentioned in your letter were wrong, thus causing great difficulties for and took the investigators much time to verify the cases. Moreover, investigations of wrong cases waste a lot of resources while Viet Nam is still poor and needs scarce resources for her socio-economic development programmes in general and for the development of the ethnic communities in particular.

On this occasion, may I kindly request you and through you, request the Working Group on Communications to verify individual's name and geographic name(s) of any case before sending to us to facilitate our investigation.

### **Viet Nam: Killing of Y-Ben Hdok and Mup**

**Violation alleged:** Death in custody owing to torture, neglect, or the use of force; Deaths due to the attacks or killings by security forces of the State; Impunity, compensation and the rights of victims

**Subject(s) of appeal:** 2 males (2 indigenous)

**Character of reply:** Largely satisfactory response.

### **Observations of the Special Rapporteur**

The Special Rapporteur appreciates the response of the Government of Viet Nam with respect to the deaths of Y-Ben Hdok and Mup.

**Allegation letter dated 16 October 2008**, sent with the Special Rapporteur on freedom of religion or belief

We would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary killing of indigenous Christian Degar men, **Y-Ben Hdok** and **Mup**, by your Government's security forces. In this connection, we would like to recall that on 29 August 2008, a communication was addressed to your Government regarding similar allegations of arbitrary killing of six Degar men.

According to the information recently received:

On 28 April 2008, Y-Ben Hdok, a Christian Degar man from Buon Dung village, commune of Cu Ebur, town of Buonmethuot in the province of Daklak, was invited to drink coffee by a friend, a police officer (his name is on record with the Special Rapporteurs). When Y-Ben Hdok arrived at the restaurant, eight security police (the Special Rapporteurs have been provided a list with their names) apprehended him, handcuffed him and took him to a secluded location. There they struck him repeatedly with their police batons and kicked, punched, and stomped on him until he fell down unconscious. The police officers then placed a rope around his neck, tied it to a police jeep and dragged him around until he was dead. Finally, the police took his corpse to the hospital and called his family, informing them that Y-Ben Hdok had committed suicide.

When the corpse was brought to Y-Ben Hdok's home, the police prevented the family from taking pictures. They also prevented relatives and friends from entering the house and viewing the body, which bore clearly visible marks of ill-treatment, including broken bones in both legs and arms. On 4 May 2008, the day of the burial, around 200 security police escorted the family to the burial grounds where numerous other security police were also stationed to prevent foreigners from interviewing the family and to prevent villagers from demonstrating. The security forces also warned the family and community not to report Y-Ben Hdok's death to the Degar community in the United States.

Mup, a Christian preacher in Ploi Rong Khong village, district of Dak Doa, Gia Lai province, had been summoned three times by the security police to come to their headquarters to be heard on his religious activities. Because he feared the police, Mup had failed to follow these summonses. On 25 August 2008, Mup left his village to attend the funeral of a relative in Ploi Bla village. When he returned to his village that evening, Mup was approached by officials and spoke to them. This was the last time his fellow villagers saw him alive. In the morning of 26 August 2008, his lifeless body was found about 100 meters from the village gate, bearing the traces of beating.

While we do not wish to prejudge the accuracy of these reports, we would like to refer your Government to the relevant principles of international law. The International Covenant on Civil and Political Rights ("ICCPR"), to which the Socialist Republic of Viet Nam is a party, provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. As a consequence, when an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a "thorough, prompt and impartial investigation" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions) into the causes and circumstances of death. This principle was reiterated by the Human Rights Council as recently as at its 8th Session in Resolution 8/3 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), stating that all States have "to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions".

The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions Persons further state that those identified by the investigation as having participated in extra-legal, arbitrary or summary executions shall be brought to justice (Principle 18). Superiors and other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts (Principle 19).

With regard to witnesses and family members of victims, Principle 15 provides that complainants, witnesses, and their families shall be protected from violence and any other form of intimidation. Those potentially implicated in extra-legal 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. Families of the deceased should be

informed about the investigation, and the findings of the investigation should be made public (Principles 16 and 17). The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation (Principle 20).

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 articles 18 of the Universal Declaration on Human Rights as well as of the International Covenant on Civil and Political Rights.

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

1. Are the facts alleged in the above summary accurate? Please share all information and documents proving their inaccuracy.
2. Please provide the details, and where available the results, of the investigations, and judicial or other inquiries carried out in relation to the above killings. Please explain the steps taken to ensure that these investigations comply with the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.
3. Please provide the details of any disciplinary measures imposed on, and criminal prosecutions against persons found to be responsible, as perpetrators or as responsible commanders, for the killing of Y-Ben Hdok and Mup.
4. Please provide the details of any measures taken to ensure that complainants, witnesses and family members of the victims are not subject to any intimidation or retaliation, as provided in the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

### **Response from the Government of Viet Nam dated 31 December 2008**

With reference to your letter under the reference code AL G/SO 214 (56-20) G/SO 214 (33-24) dated 16 October-2008 regarding alleged cases of arbitrary killing, I have the honour to convey to you the following reply:

- Y-Ben H'Dok (other name is Ama Way) was born in 1979; native village: Buon Mbre Village, Hoa Phu Commune, Buon Ma Thuot Town; residence: Buon Dung Village, Cu Bur Commune, Buon Ma Thuot Town, Dak Lak Province. Due to his activities of law violation, on 28 April 2008, he was summoned by the Agency for Investigation of Buon Ma Thuot Town at the Police Headquarters of Tan An Wart. On 30 April 2008, according to a decision of the People's Procuracy, the Agency for Investigation of Buon Ma Thuot Town provisionally detained him for investigation. He confessed that he had conducted activities of law violation. On 1 May 2008, he was found dead (he committed suicide by hanging with his shirt) in the detention house of Tan An Wart. The Police of Dak Lak Province in collaboration with other concerned agencies carried



out investigation of the scene, decided to send his dead body to the general hospital of Dak Lak Province for a post-mortem to find out reasons of his death, but his family did not agree with a post-mortem examination on his dead body. His family voluntarily wrote a paper of guarantee, pledging to take his dead body to his village for burial. Therefore, the reasons of his death could not be identified. In fact, the professional agencies of Viet Nam are facing with difficulties in sending a dead body for a post-mortem. The local people believe that a post-mortem breaks their traditional custom. They don't want a dead body to be operated.

- Mup was born in 1962, residing at Rkhuong Village, Kdang Commune, Dac Doa District, Gia Lai Province. On 26 August 2008, the People's Committee of Kdang Commune invited him to its Office to identify his activities contrary to law provisions. When he finished his declaration he was allowed to go home. On 27 August he committed suicide by hanging in a garden behind his house. When his family member saw him, he was already died. Local people said that he had symptoms of mental disease. In the past, he committed suicide for many times, but he were discovered and timely cured. His family certified that he died because he committed suicide by hanging himself. His family asked for permission to bury his dead body, refused a post-mortem examination on his dead body and did not complain about his death.

Through the above information and clarification I hope that you have a better understanding about those two cases and see that the allegations mentioned in your letter are untrue, distorted.

May I take this opportunity to inform you that in Viet Nam the right of complainants and denunciators are guaranteed by laws. In fact, there is a strong legal framework to protect complainants and denunciators. Article 74 of the 1992 Constitution stipulates that citizens have the right to lodge with any competent State authority a complaint or denunciation regarding transgressions of the law by any State agencies, economic or social organisations, people's armed force units or any individual; retaliation against complainants or denunciators is strictly prohibited.

Stipulations for dealing with wrong doings of individuals who take responsibility to settle complaints, denunciations and dealing with Heads of competent agencies, organisations that do not apply necessary measures to prevent wrong doings of his/her employees are provided in the following law provisions:

- Article 132, 298, 299 and 309 of the Penal Code;
- Section 1 of article 3-26-and-Section 1 of article 335 of the 2003 Criminal Procedures Codes;
- Paragraph 1 of Section 2, and Section 3 of Article 13, Section 6 of Article 66 and Section 1 of Article 399 of the Civil Procedures Code;
- Article 5, 16, 57, 77, 96, 100 of the Complaints and Denunciations Law;

- Section 3 of Article. 38 of Government Decree No. 136/2006/ND-CP dated 14 November 2006, detailing and guiding the implementation of a number of Articles of the Complaints and Denunciations Law;
- Government Decree No. 53/2005/ND-CP dated 19 April on dealing with individuals who have activities of intimidation, suppression or retaliation towards the complainants, denunciators and dealing with persons who violate citizens' right to lodge a complaint or denunciation.

Some following measures are applied by professional agencies (People's Court, People's Procuracy ...) to protect complainants and denunciators:

- To friendly receive complainants and denunciators, to dialogue with them to find out prompt solutions;
- To guide the professional agencies at the lower levels to strengthen their cooperation in dealing with complaints, denunciations;
- The People's Procuracy in collaboration with the People's, Court and other professional forces of the Ministry for Public Security guarantee the safety of complainants and denunciators.

**Yemen: Death sentences of Ismail Lutef Huraish and  
Ali Mussara'a Muhammad Huraish**

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

**Subject(s) of appeal:** 2 males

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Urgent appeal dated 24 October 2008**

I would like to draw the attention of your Government to information I have received concerning the situation of Mr. **Ismail Lutef Huraish**, a 49-year-old deaf man, and his cousin Mr. **Ali Mussara'a Muhammad Huraish**, aged 39, 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.

On 8 December 2005, I wrote to your Government and expressed concerns regarding the fairness of the proceedings in which they were sentenced to death. These concerns related to

reports that the authorities did not provide Ismail Lutef Huraish access to sign-language interpretation and that the conviction of both men was based on statements made by Ali Mussara'a Muhammad Huraish during police interrogation and during their trial.

Your Excellency's Government replied twice to my urgent appeal. On 1 June 2006 your Government informed that the guilt of both defendants was established in a fair trial and that both of them were represented by a lawyer. As to communication with the deaf defendant, Ismail Lutef Huraish, your Government explained that he does in fact not communicate in the sign language of any community of deaf people, but in a sign language and can only be understood by his close friends and family members. The reply stated 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". A second letter by your Government of 2 July 2007 informed that the case had been submitted for retrial to the first instance court.

I have now received reports that Ismail Lutef Huraish and Ali Mussara'a Muhammad Huraish have exhausted all their appeals and that their death sentences were ratified by the President, which puts them at imminent risk of execution.

In addressing to your Excellency's Government another urgent appeal regarding this case, I acknowledge the careful responses provided in 2006 and 2007. In my view, they highlight the great difficulty, if not impossibility, of providing a trial that fully lives up to international standards to a person in the situation of Ismail Lutef Huraish. I accept that reasonable steps might have been undertaken to convey to Ismail Lutef Huraish what was happening at the trial and to allow him to state his version of the facts and arguments in his defence. Due to his disability, however, these efforts will hardly have been sufficient to ensure the rigorous observation of all the guarantees for a fair trial, including the right to be informed of the charges against him, to have proceedings conducted in a language which he understands, and to "examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him" (Article 14(3) of the International Covenant on Civil and Political Rights).

In the circumstances of this case, which clearly do not fit easily into the framework envisaged by the relevant international legal standards, I would attach the highest importance to the granting of clemency. In this respect, Article 6(4) of the Covenant expressly provides that "amnesty, pardon or commutation of the sentence of death may be granted in all cases."

It is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. While I acknowledge that your Government has provided information responsive to the questions I put in my letter of 8 December 2005, I would still be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged above accurate?
2. Please explain the grounds on which a re-trial was ordered in 2007.
3. Please provide details of the circumstances in which Ali Mussara'a Muhammad Huraish's confessions were obtained. Did he repeat his previous confessions at the re-trial in 2007?

### **Follow-up letter dated 13 March 2009**

In this connection, I would like to bring to your Excellency's Government's attention information I have received concerning two death penalty cases I have previously brought to the attention of your Excellency's Government. On 24 October 2008, I addressed an urgent appeal to your Excellency's Government regarding the death sentence imposed against **Mr. Ismail Lutef Huraish** and **Mr. Ali Mussara'a Muhammad Huraish**. On 3 February 2009, I addressed an urgent appeal to your Excellency's Government regarding the death sentence imposed against **Bashir Sultan Mohamed al-Ja'fari**.

In both urgent appeals I urged your Excellency's Government not to proceed with the executions on the ground that they would appear not to be compatible with your Government's obligations under international law. Regrettably, your Government has not replied to either of my communications (your Excellency's Government had replied twice, in 2006 and 2007, to a previous communication concerning the case of Ismail Lutef Huraish and Ali Mussara'a Muhammad Huraish).

In the meantime, I have received reports that Ismail Lutef Huraish and Ali Mussara'a Muhammad Huraish were executed on 29 October 2008. Bashir Sultan Mohamed al-Ja'fari was reportedly executed on 7 February 2009.

In carrying out my mandate as Special Rapporteur, I take no position either for or against the death penalty but act only when it seems clear that restrictions on the use of the death penalty enshrined in international law, applicable to countries which have not abolished the death penalty, might have been violated. This would appear to have been the case in the two cases at hand.

Ismail Lutef Huraish was a deaf man. Your Government explained that he did not communicate in the sign language of any community of deaf people, but in a sign language that could only be understood by his close friends and family members. At trial, his statements were translated by his co-accused, Ali Mussara'a Muhammad Huraish. As I argued in my communication of 24 October 2008, your Government's careful responses provided in 2006 and 2007 highlighted the great difficulty, if not impossibility, of providing a trial that fully lives up to international standards to a person in the situation of Ismail Lutef Huraish. I accepted that reasonable steps might have been undertaken to convey to Ismail Lutef Huraish what was happening at the trial and to allow him to state his version of the facts and arguments in his defence. Due to his disability, however, these efforts will have been insufficient to ensure the rigorous observation of all the guarantees for a fair trial, including the right to be informed of the charges against him, to have proceedings conducted in a language which he understands, and to "examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him" (Article 14(3) of the International Covenant on Civil and Political Rights).

Bashir Sultan Mohamed al-Ja'fari, a soldier, was reportedly found guilty of having unintentionally killed a fellow soldier and sentenced to death for this offence by a military court. As I explained in my letter, pursuant to Article 6(2) of the International Covenant on Civil and Political Rights, to which Yemen is a party, "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". This means

that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill (A/HRC/4/20, para. 53). If the reports that Mr. al-Ja'fari was found guilty of an unintentional killing were correct, the imposition of the death sentence in his case would not have been compatible with the obligations of your Government under international law.

It is my responsibility under the mandates provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your observations on the following matters (which reiterate, in part, the unanswered questions in my previous communications):

1. Is it accurate that Ismail Lutf Huraish and Ali Mussara'a Muhammad Huraish were executed on 29 October 2008, and that Bashir Sultan Mohamed al-Ja'fari was executed on 7 February 2009?
2. What was the finding of the courts with regard to the intentionality of the killing committed by Bashir Sultan Mohamed al-Ja'fari?
3. Please indicate which offences carry the death penalty in Yemen.

#### **Yemen: Death sentence of Bashir Sultan Mohamed al-Ja'fari**

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

**Subject(s) of appeal:** 1 male (soldier)

**Character of reply:** No response

#### **Observations of the Special Rapporteur**

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

#### **Urgent appeal dated 3 February 2009**

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the death sentence imposed against **Bashir Sultan Mohamed al-Ja'fari**, aged 23, a soldier in the Yemeni army. The execution is reportedly imminent and could take place as early as tomorrow, 4 February 2009.

According to the information received:

In August 2006, a military court found Bashir Sultan Mohamed al-Ja'fari guilty of having unintentionally killed a fellow soldier and sentenced him to pay diya (compensation) to the victim's family. In November 2007, however, a military appeals court changed the sentence to death. The Military Division of the Supreme Court upheld the death sentence in March 2008. The death sentence was ratified by the President of Yemen in October 2008.

Bashir Sultan Mohamed al-Ja'fari is detained in the military prison in Sana'a. His execution was scheduled to be carried out on 28 January 2009 but was postponed for one week. It could now be carried out as early as tomorrow, 4 February 2009.

In this connection, I would like to recall that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights, to which Yemen is a party, provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes".

As observed in a recent report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

The information I have received in the present case suggests that the trial court found that Bashir Sultan Mohamed al-Ja'fari had not committed the killing of his fellow soldier intentionally. If that was correct, the imposition of the death sentence in this case would not be compatible with the obligations of your Government under international law, specifically Article 6(2) of the Covenant.

I urge your Excellency's Government to take all necessary measures to guarantee that Bashir Sultan Mohamed al-Ja'fari's rights are respected. Considering the irremediable nature of capital punishment, this can only mean suspension of the execution until the issue of intent has been clarified and, should it be confirmed that the courts had found that the killing was not intentional, commutation of the death sentence. 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 Bashir Sultan Mohamed al-Ja'fari in compliance with its international legal obligations.

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

1. Are the facts alleged in the above summary of the case accurate? What was the finding of the courts with regard to the intentionality of the killing committed by Bashir Sultan Mohamed al-Ja'fari?
2. Please indicate which offences carry the death penalty in Yemen.

#### **Follow-up letter dated 13 March 2009**

In this connection, I would like to bring to your Excellency's Government's attention information I have received concerning two death penalty cases I have previously brought to the attention of your Excellency's Government. On 24 October 2008, I addressed an urgent appeal to

your Excellency's Government regarding the death sentence imposed against **Mr. Ismail Lutef Huraish** and **Mr. Ali Mussara'a Muhammad Huraish**. On 3 February 2009, I addressed an urgent appeal to your Excellency's Government regarding the death sentence imposed against **Bashir Sultan Mohamed al-Ja'fari**.

In both urgent appeals I urged your Excellency's Government not to proceed with the executions on the ground that they would appear not to be compatible with your Government's obligations under international law. Regrettably, your Government has not replied to either of my communications (your Excellency's Government had replied twice, in 2006 and 2007, to a previous communication concerning the case of Ismail Lutef Huraish and Ali Mussara'a Muhammad Huraish).

In the meantime, I have received reports that Ismail Lutef Huraish and Ali Mussara'a Muhammad Huraish were executed on 29 October 2008. Bashir Sultan Mohamed al-Ja'fari was reportedly executed on 7 February 2009.

In carrying out my mandate as Special Rapporteur, I take no position either for or against the death penalty but act only when it seems clear that restrictions on the use of the death penalty enshrined in international law, applicable to countries which have not abolished the death penalty, might have been violated. This would appear to have been the case in the two cases at hand.

Ismail Lutef Huraish was a deaf man. Your Government explained that he did not communicate in the sign language of any community of deaf people, but in a sign language that could only be understood by his close friends and family members. At trial, his statements were translated by his co-accused, Ali Mussara'a Muhammad Huraish. As I argued in my communication of 24 October 2008, your Government's careful responses provided in 2006 and 2007 highlighted the great difficulty, if not impossibility, of providing a trial that fully lives up to international standards to a person in the situation of Ismail Lutef Huraish. I accepted that reasonable steps might have been undertaken to convey to Ismail Lutef Huraish what was happening at the trial and to allow him to state his version of the facts and arguments in his defence. Due to his disability, however, these efforts will have been insufficient to ensure the rigorous observation of all the guarantees for a fair trial, including the right to be informed of the charges against him, to have proceedings conducted in a language which he understands, and to "examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him" (Article 14(3) of the International Covenant on Civil and Political Rights).

Bashir Sultan Mohamed al-Ja'fari, a soldier, was reportedly found guilty of having unintentionally killed a fellow soldier and sentenced to death for this offence by a military court. As I explained in my letter, pursuant to Article 6(2) of the International Covenant on Civil and Political Rights, to which Yemen is a party, "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". This means that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill (A/HRC/4/20, para. 53). If the reports that Mr. al-Ja'fari was found guilty of an unintentional killing were correct, the imposition of the death sentence in his case would not have been compatible with the obligations of your Government under international law.

It is my responsibility under the mandates provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your observations on the following matters (which reiterate, in part, the unanswered questions in my previous communications):

1. Is it accurate that Ismail Lutf Huraish and Ali Mussara'a Muhammad Huraish were executed on 29 October 2008, and that Bashir Sultan Mohamed al-Ja'fari was executed on 7 February 2009?
2. What was the finding of the courts with regard to the intentionality of the killing committed by Bashir Sultan Mohamed al-Ja'fari?
3. Please indicate which offences carry the death penalty in Yemen.

### **Zimbabwe: Violence in the aftermath of elections**

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

**Subject(s) of appeal:** Unknown

**Character of reply:** Allegations rejected but without adequate substantiation

### **Observations of the Special Rapporteur**

The Special Rapporteur notes the response of the Government of Zimbabwe with respect to the post-election violence. He looks forward to receiving from the government detailed information about investigations into the six alleged murders referred to by the Government.

**Urgent appeal dated 22 April 2008**, sent with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

In this connection, we would like to draw the attention of your Government to information we have received regarding **reports of intimidation, violence and torture as a form of retribution or victimization in the aftermath of recent elections.**

According to the information received:

Between 29 March and 14 April 2008, 160 cases of injury resulting from organized violence and torture have been treated by various doctors with many of the patients still remaining in hospital. One third of the patients were women. A fifth of the victims were members of the opposition Movement for Democratic Change (MDC) and another 20%



were involved in the elections for the Zimbabwe Electoral Commission (ZEC). Nine patients sustained fractures (broken bones), reportedly typical of “defence injuries”, resulting from the victim raising his or her hands and arms to protect the face and upper body from assault.

At least two politically motivated murders, 15 abductions of women, 288 cases of homes destroyed through politically motivated arson subjecting 175 families and 14 persons to displacement, and 48 cases of assault took place during this period. The majority of persons displaced are said to be women and children. About 70 MDC members have been arrested in the last few days.

The above-described violence has been perpetrated by police officers, soldiers and members of the ruling Zanu PF party as part of a retributive and reprisal campaign mainly in rural areas, where people have voted for opposition candidates. In many instances victims were told that they were being victimized because they support the opposition; they were accused of “celebrating the MDC victory”, “of selling the country to the whites” and/or “of being responsible for the rigging of elections in favour of the MDC”.

Reports also indicate that the authorities are targeting the independent local and foreign media, attempting to impede reporting on the current situation and the aftermath of the election, by resorting increasingly to police harassment and the arrest and detention of journalists; the deportation of one foreign journalist has been reported.

In parallel, the State-controlled media is reportedly airing programmes and songs encouraging violence, such as “Mr Government” by Man Soul Jah, which celebrates the Government’s land seizures and calls for the decimation of perceived political sell-outs (the song says: “We are living like squatters in the land of our heritage... give me my spear so that I can kill the many sell-outs in my forefathers’ country.”) and a well known song encouraging people to take up arms and fight for their freedom aired by ZTV. Moreover, reports have appeared that there are plans to entrust the distribution of food aid to the military in order to control the population through the politicization of food distribution.

While we do not wish to prejudge the accuracy of these allegations, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the allegations above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

We would also like to recall that human rights law protects every individual’s inherent right to life and security (Article 6, International Covenant on Civil and Political Rights (ICCPR); Article 3, Universal Declaration of Human Rights (UDHR)). Article 6 of the ICCPR provides that the right to life and security shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. Your government has a due diligence obligation to protect the lives of persons within your territory and jurisdiction from attacks by other persons within your territory (*Jiménez Vaca v Colombia*, UN Human Rights Committee, 25 March 2002, paragraph 7.3). We would also like to bring to your Government’s attention the duty to thoroughly, promptly and impartially investigate killings, and to prosecute and punish all

violations of the right to life. As reiterated by the 61st Commission on Human Rights in Resolution 2005/34, all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”, and “to identify and bring to justice those responsible”.

We would also like to refer your Excellency’s Government to Commission on Human Rights resolutions 1993/77 and 2004/28 on forced evictions, which stated that “Forced evictions are a gross violation of human rights, in particular the right to adequate housing”, as well as to Commission resolution 2004/21 entitled ‘Adequate Housing as a component of the right to an adequate standard of living’ which calls upon States to “protect all persons from forced evictions.... and to provide legal protection and redress for such forced evictions”.

As your Excellency may be aware, the Special Rapporteur on adequate housing has repeatedly drawn the attention of the International Community 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 Human Rights Council (A/HRC/4/48) aiming at assisting States in developing policies and legislation to prevent forced evictions at the domestic level.

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 all 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 provides that “ Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

We also deem it appropriate to make reference to Article 20 of the International Covenant on Civil and Political Rights which provides that:

[...]

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

We wish to reiterate our understanding that, whilst recognizing the need to ensure a balance between efforts to combat racism, discrimination, xenophobia and intolerance, on the one hand, and ensuring the protection of the right to freedom of opinion and expression, on the other hand, we consider harmful and dangerous all forms of expression which incite or otherwise promote racial hatred, discrimination, violence and intolerance.

We would also like to bring to Your Excellency’s attention Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop or have available 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, inform women of their rights in seeking redress through such mechanisms.

In the event that your investigations support or suggest the above allegations to be correct, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of all persons concerned by the violence described above are respected and accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopt effective measures to prevent the recurrence of these acts.

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

Moreover, it is our responsibility under the mandates provided to us by the Commission on Human Rights 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, when relevant to the case under consideration:

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

#### **Response from the Government of Zimbabwe dated 11 June 2008**

The Government of Zimbabwe provided the following information.

It is indeed true that some isolated and localised cases of violence have occurred in the country during the post-election period, but nothing to the scale painted by the MDC-T in its current diplomatic and information offensive. There is overwhelming evidence which points to the fact that the MDC-T premeditated and planned this violence well ahead of the March 29<sup>th</sup> 2008 Harmonised Elections as part of its grand strategy aimed at inviting foreign intervention. Zimbabwe has been enduring vicious and sustained machinations from Britain

and her allies in pursuit of 'regime change' since 2000, in reaction to the Land Reform Programme. This is the root of the present challenges in the country, including the political polarisation that is producing the current violence. Without this adversity, Zimbabwe has the political will and experience to resolve its own internal problems.

### *Contextual overview*

It is unfortunate that the esteemed Rapporteurs have not proffered any immediately actionable specific information, such as names, dates, times and particular circumstances of each case as reported to them; this would have facilitated the work of concerned authorities and helped them in their research of the truth. In the past, MDC-T has made several false claims, in their objective to use the media and diplomatic circles, in order for the international community to maintain pressure on the Government of Zimbabwe, and not the welfare of the alleged victims. Thus, the statistic regarding the violence that occurred in the pre-election period and the Election Day are exaggerated and have been set out to mislead and stampeded the world into intervening in a situation that, by world standards, does not at all warrant the attention that it is being accorded.

Some revelations testified to the MDC-T's clear mission of deceit. The MDC-T's Transitional Strategy Document dated 15 March 2008 clearly testifies to premeditation and forward planning for a campaign of violence if things did not go according to the MDC-T's plan in the March 29<sup>th</sup> Harmonised Elections. Several arrests made by the law enforcement agencies in connection to the above mentioned violence have confirmed the implication of organised units of the MDC-T's. They attacked ZANU-PF supporters, notably in remote rural areas. The real motive behind the MDC's forays that ferry its casualties in certain areas is the convenience of the proximity of these suburban hospitals to the major western embassies. From there, it is easier to parade these 'victims' of violence and 'internally displaced people' to the media and selected western embassies. Unfortunately, western countries tend to believe these false allegations and to prejudge of Zimbabwe actions. Some NGO's also do the same, when they don't spread false information themselves.

### *Responses to specific questions raised*

The Government of the Republic of Zimbabwe does not condone or espouse violence in all its forms, real or imagined, as a political tool. It pursues a policy of zero tolerance for violence, as many high ranking members of the Government and the Police repeatedly declared. Without dignifying the MDC-T's litany of lies, Government submits that all cases that have been reported to the police are the subject of investigations as part of the due processes of the law. In Zimbabwe, as would be the case in all other democracies, a report by an aggrieved party or reasonable suspicion of a crime having been committed or about to be committed is a critical step in launching this due process of the law. Once reported, the ZRP would then exercise its mandate to arrest, open a docket, investigate and bring suspects before the courts of law for prosecution and, ultimately, judgement. Where no report has been made to the police, as appears to be the case regarding the 31 politically motivated murders claimed by the MDC-T as having occurred since 29<sup>th</sup> March 2008, the Police would find it impossible to take the initial steps to launch the due process described above, bearing in mind that at Zimbabwean law, a person is presumed innocent until proven guilty.

According to the ZRP records, ZNU-PF was accused of 6 murders, 17 malicious damage to property, 30 assaults, 4 kidnappings, 1 attempted murder, 2 threats of violence and 1 intimidation. The MDC-T was accused of 2 murders, 34 malicious damage to property, 29 assaults, 3 kidnappings, 3 attempted murder, 3 threats of violence, 6 other offences and 1 public violence. The esteemed Commission would note that the 8 murders officially attributed to the two sides fall far below the 31 claimed by MDC-T. It is impossible to verify the MDC-T's claims, particularly because it appears to be complaining to the press before reporting them to the police. Even then, of the 6 murders allegedly committed by ZANU-PF supporters, subject to ongoing investigations which may find otherwise, at least two do not seem to have been politically motivated. One of these was the case of Clemence Dube, who MDC-T's Antony Chamisa claimed to have been murdered in Shurugwi by a ZANU-PF supporter on 27 April 2008. According to established facts, however, Dube died of immuno-suppression and tuberculosis at Mpilo Hospital, Bulawayo, on 27 April 2008. Incidentally, on 11 April 2008, he had fought with a ZANU-PF supporter at a local township over money, but eye witnesses say the two later went their separate ways. In the other case, the alleged victim, a teacher in Muzarabani area, has turned out to be alive. He has actually denounced the MDC-T for using his name to justify 'dubious statistics'. It seems, from these two cases alone, that the MDC-T is fabricating and exaggerating its tally of victims in order to give substance to its claims that there is a raging civil war in Zimbabwe. The same goes for all the statistics in the other categories of violence that it claims to have occurred.

Some of the alleged crimes in the MDC-T's tally, such as politically motivated rape, are completely alien and unheard of in Zimbabwe's political culture. The MDC-T is extrapolating these terms from foreign environments, to foist them upon the Zimbabwe situation simply because they resonate with their target audiences in the international community. Government finds absurd the concerns that have also been raised over the arrests of polling officials on suspicion of tampering with the ballots, because this is the rule of law at work. As a result of the ongoing investigations pertaining to Electoral Fraud, close to 100 arrests have been made. Time must be allowed for the law to take its course. Government would like to appeal to the international community, the esteemed Human Rights Council included, to avoid applying unusually intrusive oversight standards on Zimbabwe to a point where it becomes impossible to effectively police or defend the country.

Regarding questions of compensation for alleged victims which are also raised in the communication, Government submits that the victims are receiving the usual basic assistance from the Civil Protection Department and the resident humanitarian agencies in the country. However, contrary to the over 5000 'IDPs' that the MDC-T claims to have registered, the Government, with the support of non-partisan civil society, are attending to no more than 100 households comprising 700 people. There are no new cases. Besides, it is still too early to start talking about long-term resettlement support at this stage when the problem is still being quantified, the victims screened and registered according to their needs. The Government also disregard allegations of hate propaganda. If anything, the MDC-T is the guilty when it comes to the use of hate language.

*The human rights framework in Zimbabwe*

Human rights and fundamental freedoms are enshrined in the Constitution of Zimbabwe. Zimbabwe has an independent Judiciary. It upholds the freedom of expression and association as demonstrated by the existence of a substantial private media and the practice of political pluralism. The State also ratified legal instruments regarding the rights of children and women.

The Government wishes to make it categorically clear that it has always discharged its sovereign constitutional mandate without fear or favour. There is no cataclysmic explosion of violence in Zimbabwe, there is no escalation, there is no war and whatever has happened is well within the Government's resource capacity to handle and remedy without external assistance. No Zimbabwean want to go through another war; therefore, it urges the ZANU-PF not to instigate or execute a campaign of violence.

**Zimbabwe: Violence surrounding the presidential election**

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

**Subject(s) of appeal:** 60 males (2 minors); 10 females

**Character of reply:** No response

**Observations of the Special Rapporteur**

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

**Urgent appeal dated 27 June 2008**, sent with the Special Rapporteur on the question of torture and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

In this connection, we would like to bring to your Government's attention information we have received concerning the following cases:

Mr. **Michael Dubem** (Shurugwi district), died on 01 May 2008 after being assaulted by Zanu PF supporters, Mr. **Tapiwa Meda**, Mr. **Alex Chiriseri** and Mr. **Joseph Madzuramhende** (Centenary district), died on 05 May 2008 after being assaulted by a youth gang and a soldier, Mr. **Crispen Taero** (Mt Darwin district), died in April 2008 after having been attacked by a members of the Central Intelligence Organization and Zanu PF supporters, Mr. **Biggie Zhuwawo** (Muzarabani district), died in April 2008 after being abducted by Zanu PF youths), Mr. **Crispen Chiutsi** (Guruve district), died in April 2008 after being attacked by Zanu PF youths), Ms. **Tatenda Chibika** (Mutoko district), died on April 2008 after being beaten by Zanu PF youths and war veterans, Mr. **Tapiwa Mbwanda** (Hurungwe district), died on 05 April 2008 after an attack by Zanu PF youths, Mr. **Marunde Tembo** (Mudzi district),

died in April 2008 after being assaulted by Zanu PF youths, Mr. **Moses Bashitiayo** (Mutoko district), died in April 2008 after being attacked by soldiers and Zanu PF youths, **Brighton Mabwera**, aged 4 years (Murehwa district), burnt in April 2008 after the parents were assaulted and their house was set on fire by Zanu PF supporters, Mr. **Manyimo Tennyson** (Muzarabani districted), was ill-treated as a result of which he died at Bakasa Base on 23 and 24 April 2008, Mr. **Tabitha Marume** (Makoni west district), was shot by government agents on 01 April 2008, Mr. **Moses Makewa** (Wedza district), died on 1 April 2008 after being attacked by Zanu PF supporters, Mr. **Peter Tom Butao** (Mudzi North district), died on 29 April 2008 after being tortured by Zanu PF members, Mr. **Sage Muza** (Hoyuyu 2 Mutoko district), died on 08 May 2008 after an attack by Zanu PF supporters, Mr. **Manuel Nelson** (Hopley/Harare), died on 09 May 2008 after an attack by Zanu PF youths, Mr. **Godfrey Jemedze** (Mazowe district), died on 09 May 2008 after being attacked by Zanu PF supporters and members of the army, Mr. **Elias Madzivanzira** (Kahari) (Shamva district), died on 11 May 2008 after an axe attack on him and his wife by Zanu PF supporters, **Temba Muronde** (Mudzi north), was abducted at Vhombozi river, taken to Magwada Base where he was given rat poison and pesticide and killed him with an axe after a week by Zanu PF youths and militia on 14 April 2008, Ms. **Ratidzai Dzenga** (pregnant) (Muzarabani district), died on 01 April 2008 after being heavily assaulted Zanu PF youth, Mr. **Better Chokururama**, Mr. **Cain Nyevehe** and Mr. **Godrey Kauzani** (Murehwa district), died on 14 May 2008 after an attack by Zanu PF supporters, Mr. **Abia Chaparira** (Mt Darwin district), died on 11 May 2008 after being assaulted and tortured by Zanu PF youths and war veterans, Ms. **Gloria Mukaiwa** (Centenary district), died on 17 May 2008 after being assaulted by Zanu PF youths, Mr. **Tonderayi Ndira** (Harare), killed in May 2008 after abducted from his home by an armed Zanu PF gang, Mr. **Manyuke Nyamukapa** (Murehwa district), died on 20 May 2008 after being abducted by Zanu PF youths, Ms. **Rosemary Maramba** (UMP district), died on 20 May 2008 after being assaulted by Zanu PF supporters, Mr. **Action Nyadedzi** (UMP district), died on 20 May 2008 after being abducted by Zanu PF youths, Mr. **Chitsungo** (Headman) (UMP district), died on 20 May 2008 after being abducted by Zanu PF youths, Mr. **Taurai Matanda** (Buhera district), died on 24 May 2008 after being shot by a soldier), Mr. **Edson Zaya** (Shamva district), died on 16 May 2008 after being assaulted by Zanu PF youths and war veterans, Mr. **Besta Bakari** (Shamva district), died on 16 May 2008 after being attacked by Zanu PF youths, Mr. **Phanuel Mubaira** (Mt Darwin district), died on 19 May 2008 after being abducted and ill-treated by Zanu PF, **Elias Madzivanzira** (Shamva district), was fatally assaulted with an axe by Zanu PF youths and war veterans on 11 May 2008, Ms. **Edna Lunga** (Kwekwe district), died on 11 April 2008 abducted and assaulted by Zanu PF youths, Mr. **Marera** (Mutoko district), died on 15 April 2008 after being abducted and beaten by Zanu PF youths and army members, Mr. **Wiseman Tapera** (Mutoko district), died on 08 April 2008 after being assaulted by Zanu PF youths and war veterans, Mr. **Lever Katsande** (Mudzi district), died on 27 April 2008 after being abducted and beaten by Zanu PF members, Ms. **Nancy Chidzidzi** and Mr. **Taurai Chihuri** (Mutoko district), died on 31 May 2008 after being shot by a government agent, Mr. **Mariseni Kasambarare** (UMP district) was killed on 13 May 2008 by Zanu PF supporters, Mr. **Norman Mabhoi** (UMP district), was killed on 28 May 2008 by Zanu PF supporters, Ms. **Patricia Matonganhau** (Mutoko district), was killed on 20 May 2008 by

Zanu PF supporters, **Gibson Nyandoro** (Zvimba Norton), was abducted by war veterans and Zanu PF youths and later found dead close to Norton, Mr. **Washington Nyangwa**, Mr. **Chrison Mbanu** (Zaka district, died on 04 June 2008 after an attack by soldiers on their MDC office at Jerera Growth point), Mr. **Owen Hativagone** (Marondera district), died on 16 May 2008 after being tortured for 2 days by Zanu PF supporters, Mr. **Blake Kanyemba** (Harare), died on 05 June 2008 after being attacked by Chipangano Zanu PF gang, Ms. **Pamela Guruve** (Dube) and her child **Mashoko**, aged 6 (Harare), burned on 8 June 2008 when their house was set on fire by Zanu PF supporters, Mr. **Farai Gambe** (Rusape district), died on 15 June 2008 after being shot by a soldier close range, Mr. **Daniel Nhende** (Epworth district), died on 08 June 2008 after being abducted and assaulted by Zanu PF youths, Mr. **Delite Mushonga** (Epworth district), died on 11 June 2008 after being beaten up by Zanu PF youths, **Fushirayi Dofu** (Mazowe), was assaulted and badly injured by local Zanu PF youths accompanied by members of the army in civilian clothes that he was admitted at Howard hospital where he died on 10 May 2008, **Dumihazani Hapazari** (Chiredzi) was abducted on 4 June by army members based in Chiredzi at buffalo range and found dead on 6 June 2008, **Kenedy Dube** (Mwenezi), kidnapped by a gang of Zanu PF supporters riding in Zanu vehicles and found dead on 14 June 2008, Ms **Sophia Chingozho** (Buhera), was beaten by a Zanu PF youth gang and war veterans in Buhera and died in hospital, Ms. **Dadirayi Chipiro** (Mhondoro district), died on 08 June 2008 after being mutilated and burned by Zanu PF members, Mr. **Victor Mungazi** (Magunje district), died on 14 June 2008 after being abducted by Zanu PF youths, Mr. **Simba Chikova** (Zaka district), died on 13 June 2008 after tortured to death by Zanu PF youths, Mr. **Elliot Machipisa** (Hurungwe district), died on 17 June 2008 after being abducted by Zanu PF youths, Mr. **Morgan Chishamba** (Harare), died on 19 June 2008 after an attack by Zanu PF supporters, **Simba Magetsi** (Gokwe), was abducted by local war veterans and Zanu PF youths and found dead on 19 June 2008, Mr. **Yuana Jenti**, Mr. **Archford Chipiyo**, Mr. **Ngoni Knight** and Mr. **Tyson** (Chitungwiza district), died on 19 June 2008 after being abducted by Zanu PF youths and State agents

In view of credible reports by numerous sources on the escalating level of violence in the wake of the second round of the presidential elections, we wish to express our strongest concern that the above mentioned cases appear to be part of a systematic and widespread campaign of violence against citizens seeking to express their democratic opinions and elect the Government of their choice.

In particular we wish to recall Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions which requires in unequivocal terms that a “thorough, prompt and impartial investigation” be undertaken. This principle was reiterated by the Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”. 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”.



We would also refer Your Excellency's Government to Article 7 of the International Covenant on Civil and Political Rights stipulating the absolute prohibition of torture. The Human Rights Committee has observed that it is the duty of the State "to afford everyone protection [...] against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity" (General Comment 20/44, para. 2). The absence of a prompt, impartial and thorough investigation constitutes a violation of the victim's right to an effective remedy as well as of the State's positive obligation to fulfill the protection from torture.

Furthermore, we would like to urge your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with the principles set forth in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We therefore urge your Government to initiate an inquiry into the circumstances surrounding the above mentioned cases and bring those responsible to justice.

It is our responsibility under the mandate provided to us by the Human Rights Council to seek to clarify all cases brought to our attention and to report on these cases to the Council. We would therefore be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Please indicate the nature of the relationship between your Government's security forces and the activities of the Zanu PF members and representatives of the war veterans' organization who are alleged to have participated in the abovementioned incidents.
2. Please provide the details, and where available the results, of any investigations and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
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 alleged victims.

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