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**COMMISSION ON HUMAN RIGHTS  
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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF  
DISAPPEARANCES AND SUMMARY EXECUTIONS**

**Extrajudicial, summary or arbitrary executions**

**Report of the Special Rapporteur, Philip Alston**

**Addendum**

**Summary of cases transmitted to Governments and replies received\* \*\***

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

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

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## **Introduction**

1. This report contains a comprehensive account of communications sent to Governments up to 1 December 2005, along with replies received up to the end of January 2006. It also contains two additional categories of communication: (1) those sent after 1 December 2005 to which responses were received in time for inclusion, and (2) 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:
4. Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment (“Death penalty safeguards”)
5. 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”)
6. 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”)
7. 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”)
8. 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”)
9. 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”)

10. Expulsion, refoulement, or return of persons to a country or a place where their lives are in danger (“Expulsion”)
11. Impunity, compensation and the rights of victims (“Impunity”)
12. The short versions contained in parentheses are used in the tabulation of communications.

### **B. Subject(s) of appeal**

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

### **C. Character of reply**

14. 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:
15. “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.
16. “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.
17. “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.
18. “Receipt acknowledged” denotes a reply acknowledging that the communication was received but without providing any substantive information.
19. “No response”.
20. 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 “UN 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**

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

#### **II. TABULATION OF COMMUNICATIONS AND REPLIES**

22. To provide an overview of the activities of the mandate in the past year, this report also contains a table, that contains the following information:

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

23. 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. “No. and category of individuals concerned”**

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

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

25. This column lists the number of communications containing allegations of a particular category. (See Section I (1) above)

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

26. See Section I (3) above.

## ANNEX

<b>Country</b>	<b>Communications sent</b>	<b>Government responses received</b>	<b>No. and category of individuals concerned</b>	<b>Alleged violations of the right to life upon which the Special Rapporteur intervened</b>	<b>Character of replies received</b>
Afghanistan	2 (2 UA, 1 AL)	0	1 female 7 males	Death penalty safeguards (2)	No response (2)
Algeria	1 (UA)	1 (UA)	General	Impunity (1)	Cooperative but incomplete response (1)
Australia	1 (AL)	1 (AL)	1 male (ethnic minority)	Death in custody (1)	Largely satisfactory response (1)
Bangladesh	4 (2 UA, 2 AL)	2 (1 UA, 1 AL)	2 females (1 journalist) 1 male 4 persons of unknown sex (persons exercising their freedom of opinion or expression)	Death threats (1) Death in custody (1) Death penalty safeguards (1) Excessive force (1)	Largely satisfactory response (1) Receipt acknowledged (1) No response (2)
Barbados	1 (UA)	0	1 male	Death penalty safeguards (1)	No response (1)

Brazil	4 (1 UA, 3 AL)	1 (AL)	2 females (2 HRD) 3 males (2 HRD, 1 lawyer) 8 persons of unknown sex (7 minors)	Impunity (2) Death threats (2) Attacks or killings (1)	Largely satisfactory response (1) No response (3)
Burundi	1 (UA)	0	General	Death penalty safeguards (1)	No response (1)
Chad	1 (UA)	0	19 males	Death penalty safeguards (1)	No response (1)

China	6 (3 UA, 3 AL)	6 (3 UA, 3 AL)	<p>1 female (member of religious minority, person exercising right to freedom of opinion and expression)</p> <p>8 males (2 members of ethnic minority, 1 member of religious minority)</p> <p>Group of persons (members of religious minority, persons exercising right to freedom of opinion and expression)</p>	<p>Death penalty safeguards (4)</p> <p>Deaths in custody (2)</p>	<p>Largely satisfactory response (3)</p> <p>Cooperative but incomplete response (1)</p> <p>Translation awaited (2)</p>
Colombia	5 (2 UA, 3 AL)	5 (2 UA, 3 AL)	<p>6 females (3 minors, 1 HRD)</p> <p>18 males (8 minors, 2 HRD)</p>	Attacks or killings (5)	<p>Largely satisfactory response (1)</p> <p>Cooperative but incomplete response (4)</p>
Democratic Republic of the Congo	2 (2 AL)	0	<p>1 male (HRD)</p> <p>Over 30 persons of unknown sex</p>	Attacks or killings (2)	No response (2)



Côte d'Ivoire	1 (UA)	1 (UA)	2 males (HRD)	Death threats (1)	Allegations rejected but without adequate substantiation (1)
Egypt	3 (3 AL)	2 (2 AL)	1 female 2 males 27 persons of unknown sex (refugees and migrants; persons exercising right to freedom of opinion and expression)	Death in custody (1) Attacks or killings (1) Excessive force (1)	Allegations rejected but without adequate substantiation (2) No response (1)
Ethiopia	1 (UA)	0	26 persons of unknown sex (persons exercising right to freedom of opinion and expression)	Excessive force (1)	No response (1)
Haiti	2 (2 UA)	0	12 males (2 journalists)	Deaths in custody (1) Death threats (1)	No response (2)
India	3 (3 AL)	0	3 females (2 minors) 33 males (1 minor) 2 persons of unknown sex General	Death in custody (1) Impunity (1) Excessive force (1) Attacks or killings (1)	No response (3)

Indonesia	1 (UA)	1 (UA)	3 males	Death penalty safeguards (1)	Cooperative but incomplete response (1)
Islamic Republic of Iran	17 (12 UA, 5 AL)	11 (9 UA, 2 AL)	12 females (2 minors, 4 juvenile offenders)  34 males (3 minors, 7 juvenile offenders, 1 refugee, 22 members of ethnic minority, 2 persons killed for their sexual orientation)	Death penalty safeguards (15)  Attacks or killings (1)  Excessive force (1)	Largely satisfactory response (5)  Cooperative but incomplete response (5)  Allegations rejected but without adequate substantiation (1)  No response (recent communication) (1)  No response (5)
Iraq	5 (2 UA, 3 AL)	2 (1 UA, 1 AL)	16 males (1 journalist, 2 lawyers)  General	Death penalty safeguards (2)  Deaths in custody (1)  Violations of right to life in armed conflict (1)	Cooperative but incomplete response (2)  No response (3)

				Impunity (1) Attacks or killings (1)	
Ireland	1 (AL)	1 (AL)	3 males (1 minor)	Deaths in custody (1)	Cooperative but incomplete response (1)
Israel	2 (2 AL)	1 (AL)	38 males (13 members of ethnic minority)	Impunity (1) Attacks or killings (1)	Cooperative but incomplete response (1) No response (recent communication) (1)
Jamaica	1 (AL)	1 (AL)	1 female 1 male	Attacks or killings (1)	Cooperative but incomplete response (1)
Japan	1 (AL)	1 (AL)	1 male	Death penalty safeguards (1)	Allegations rejected but without adequate substantiation (1)
Kenya	1 (AL)	0	Persons exercising their right to freedom of opinion and expression, incl. 1 female (minor) and 4 males (2 minors)	Excessive force (1)	No response (recent communication) (1)
Kyrgyzstan	1 (AL)	1 (AL)	1 male	Death in custody (1)	Largely satisfactory response (1)

					response (1)
Lebanon	1 (UA)	0	1 male	Death penalty safeguards (1)	No response (1)
Libyan Arab Jamahiriya	1 (AL)	0	1 male (journalist)	Attacks or killings (1)	No response (1)
Morocco	1 (AL)	0	8 males (1 minor, 8 migrants or refugees)	Excessive force (1)	No response (1)
Mauritania	1 (AL)	0	1 male	Death in custody (1)	No response (1)
Mexico	1 (UA)	1 (UA)	1 male (journalist)	Death threats (1)	Allegations rejected but without adequate substantiation (1)
Myanmar	2 (2 AL)	1 (AL)	9 females (2 minors) 3 males (1 person exercising his right to freedom of opinion and expression)	Death in custody (1) Attacks or killings (1) Disappearances (1) Death threats (1)	Allegations rejected but without adequate substantiation (1) No response (1)
Nepal	10 (6 UA, 4 AL)	10 (6 UA, 4 AL)	13 females (6 minors) 36 males (1 minor, 2 journalists) 23 persons of unknown sex (1 journalist)	Death threats (3) Attacks or killings (6) Deaths in custody (2)	Cooperative but incomplete response (5) Allegations rejected but without adequate substantiation (5)

Nigeria	1 (AL)	1 (AL)	20 males	Deaths in custody (1)	Allegations rejected but without adequate substantiation (1)
Pakistan	10 (3 UA, 7 AL)	10 (3 UA, 7 AL)	19 females (3 minors, 18 persons killed in the name of honor)  22 males (3 persons killed in the name of honor, 1 minor, 3 juvenile offenders, 2 refugees)	Death penalty safeguards (4)  Deaths in custody (2)  Attacks or killings (3)  Disappearances (1)  Impunity (1)	Largely satisfactory response (5)  Cooperative but incomplete response (5)
Papua New Guinea	1 (AL)	0	3 males (minors)	Excessive force (1)	No response (1)
Peru	1 (UA)	0	1 male	Death threats (1)	No response (1)
Philippines	4 (1 UA, 3 AL)	2 (1 UA, 1 AL)	1 female	Death penalty safeguards (1)	Largely satisfactory response (1)
Russian Federation	1 /UA)	0	1 female	Death threats (1)	No response (1)
Saudi Arabia	4 (4 UA)	1 (UA)	2 females	Death penalty	Cooperative but incomplete response (1)

			4 males (1 minor, 1 juvenile offender)	safeguards (4)	No response (3)
Serbia and Montenegro	1 (AL)	1 (AL)	1 male	Death in custody (1)	Cooperative but incomplete response (1)
Singapore	2 (2 UA)	2 (2 UA)	2 males	Death penalty safeguards (2)	Allegations rejected but without adequate substantiation (2)
Spain	1 (AL)	1 (AL)	9 males (migrants or refugees)	Excessive force (1)	Largely satisfactory response (1)
Sri Lanka	7 (2 UA, 5 AL)	4 (2 UA, 2 AL)	45 males (1 journalist, 29 members of ethnic minority, 1 minor, 1 lawyer)  General	Attacks or killings (1) Deaths in custody (3) Death threats (2) Death penalty safeguards (1) Impunity (1)	Largely satisfactory response (2) Cooperative but incomplete response (2) No response (recent communication) (1) No response (2)
Sudan	1 (UA)	0	1 male (minor, juvenile offender)	Death penalty safeguards (1)	No response (1)
Syrian Arab Republic	1 (AL)	1 (AL)	42 persons of unknown sex (members of an ethnic minority, more than 2 minors)	Excessive force (1)	Cooperative but incomplete response (1)
United Republic of Tanzania	1 (AL)	1 (AL)	General	Death penalty safeguards (1)	Largely satisfactory response (1)

of Tanzania				safeguards (1)	response (1)
Thailand	2 (2 AL)	1 (AL)	87 persons of unknown sex (persons exercising their right to freedom of opinion and expression)  General	Excessive force (1)  Deaths in custody (1)  Impunity (1)	Largely satisfactory response (1)  No response (1)
Trinidad and Tobago	1 (UA)	0	1 male	Death penalty safeguards (1)	No response (1)
Tunisia	2 (2 AL)	1 (AL)	2 males	Deaths in custody (2)	Cooperative but incomplete response (1)  No response (1)
Turkey	1 (AL)	1 (AL)	2 males (1 minor)	Attacks or killings (1)	Cooperative but incomplete response (1)
United Kingdom of Great Britain and Northern Ireland	3 (3 AL)	2 (2 AL)	3 males (1 lawyer)	Impunity (2)  Excessive force (1)	Largely satisfactory response (2)  No response (1)
United States of America	2 (2 AL)	0	2 males (1 journalist)	Violations of right to life in armed conflict (1)	No response (2)

				Attacks or killings (1)	
Uzbekistan	6 (4 UA, 2 AL)	5 (3 UA, 2 AL)	22 males  Hundreds of people (persons exercising their right to freedom of opinion and expression)	Death penalty safeguards (4)  Excessive force (1)  Deaths in custody (1)	Cooperative but incomplete response (1)  Allegations rejected but without adequate substantiation (4)  No response (1)
Venezuela (Bolivarian Republic of)	3 (2 UA, 1 AL)	3 (2 UA, 1 AL)	1 female  6 males (1 journalist)	Death threats (3)  Impunity (1) ;Attacks or killings (1)	Largely satisfactory response (2);Cooperative but incomplete response (1)
Viet Nam	1 (UA)	1 (UA)	1 male	Death penalty safeguards (1)	Largely satisfactory response (1)
Yemen	4 (4 UA)	3 (3 UA)	1 female (juvenile offender)  3 males (1 minor, 1 juvenile offender)	Death penalty safeguards (4)	Largely satisfactory response (1)  Allegations rejected but without adequate substantiation (1)  Translation awaited (1)  No response (1)
Zimbabwe	1 (AL)	1 (AL)	6 females (3 juveniles)  5 males (2 juveniles)	Excessive force (1)	Allegations rejected but without adequate substantiation (1)



<b>Other</b>	<b>Communications sent</b>	<b>Responses received</b>	<b>No. and category of individuals concerned</b>	<b>Alleged violations of the right to life upon which the Special Rapporteur intervened</b>	<b>Character of replies received</b>
Liberation Tigers of Tamil Eelam	1 (AL)	0	General	Violations of right to life in armed conflict (1)	No response (recent communication) (1)
Palestinian Authority	1 (UA)	0	General	Death penalty safeguards (1)	No response (1)
United Nations Stabilization Mission in Haiti (MINUSTAH)	1 (AL)	1 (AL)	23 persons	Excessive force (1)	Largely satisfactory response (1)

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### **Afghanistan: Death of Amina**

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

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

**Character of reply:** No response

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

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

**Allegation letter sent on 10 May 2005** with the Special Rapporteur on violence against women, its causes and consequences

A 29 year old woman, known as Amina, who was beaten to death by members of her family following the issuance against her of a fatwa for adultery by the council of Mullahs of Spingul, in the province of Badakhan. It appears that the man she was having illicit relations with, known as Karim, was sentenced to eighty to one hundred lashes by the same council in accordance with Sharia law. He was reportedly released afterwards.

This killing, reported as being the first execution of a woman for committing adultery since the removal of the Taleban regime in 2001, is of grave concern to us. First of all, it is our understanding that the council of mullahs had absolutely no authority nor legitimacy to issue or enforce any such fatwa. Consequently, it is very important to prevent the reoccurrence of any similar execution in the future. In this context, we urge your Government to exercise due diligence in the investigation, prosecution and punishment of all individuals who took part in this killing, whether it may be at the decision or implementation level. In this connection, we welcome your Excellency's Government's public statement according to which all perpetrators of Amina's crime will be brought to justice. Furthermore, we would like to express satisfaction at the reported detention of eight male members of Amina's family as well as the arrest of the mullahs involved in issuing the fatwa and we are confident that they will soon be indicted.

It is our understanding that Mawlawi Yusef, who bears primary responsibility in issuing the fatwa, has been detained in Argu. We would respectfully request that your Excellency's Government ensure that Mr. Yusef is held accountable for the crimes he has perpetrated.

Finally, we invite your Excellency's Government to take all necessary measures in order to prevent any council of Mullahs to issue fatwas resulting in any form of

execution or cruel punishment and to ensure that sentences should only be issued by an authorized court following a fair trial.

### **Afghanistan: Death Sentences of Seven Men**

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

**Subject(s) of appeal:** 7 males

**Character of reply:** No response

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

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

### **Urgent appeal sent on 31 August 2005**

Urgent appeal concerning the situation of M. Sharifullah (surname unknown), aged 35, Mr. Habib al-Rahman, Mr. Zalmai (surname unknown), Mr. Neyaz Mohammad, Mr. Tila Mohammad (known as Telgai), Mr. Mohammad Rafiq, and Mr. Omar Khan who have reportedly been sentenced to death by a court in Kabul for crimes against internal and external security.

According to the information received, Sharifullah was sentenced to death on 17 August 2005 for the kidnapping of three foreign election workers in October 2004. The election workers were released unharmed after nearly a month of captivity, after a ransom was reportedly paid for their release. A Taliban group claimed they were holding the workers at the time. I have been informed that the trial of Sharifullah was held in a closed court, due to concerns for the safety of those involved in the case. The judge reportedly stated that Sharifullah confessed to the kidnapping saying that the purpose was to seek ransom and release of colleagues held by Afghan authorities. Sharifullah also reportedly said that he had no connection with the Taliban group, and established contact with them only in an attempt to sell them the hostages.

Reports further indicate that Habib al-Rahman, Zalmai, Neyaz Mohammad, Tila Mohammad, Mohammad Rafiq and Omar Khan were sentenced to death by the same court in a separate case, for committing a series of highway robberies. They are also believed to have confessed to the crimes.

It is not known under which circumstances the above men allegedly made their confessions. It not known either whether any of them had access to legal representation or if they are appealing their death sentences that will have to be approved by the President before they can be carried out.

It is my understanding that a moratorium on executions ended on 20 April 2004 when President Karzai authorised the execution of militia commander Abdullah Shah, who was the subject of a communication sent to the Government of your Excellency on 2 June 2004. In October 2002, my predecessor, who had observed Abdullah Shah's trial

proceedings, observed that: "The lack of capacity in the domestic judicial system has time and again been pointed out and indeed been observed by me during a well-publicized trial. I am concerned that the safeguards and restrictions according to international standards for imposing capital punishment cannot be observed at this stage. I therefore urge that the punishment of death penalty be suspended and a moratorium on executions be implemented until such standards can be met." (See E/CN.4/2003/3/Add.4)

In 2003, the United Nations Commission on Human Rights called on the Afghanistan Transitional Administration to "declare a moratorium on the death penalty in the light of procedural and substantive flaws in the Afghan judicial system." (Situation of Human Rights in Afghanistan, CHR Res. 2003/77).

Concerns have been expressed that Afghanistan has yet to meet the international standards of due process required inter alia by the International Covenant on Civil and Political Rights. Although it is not yet clear whether your Excellency's Government will carry out any further executions, I have been informed that at least 50 individuals are under sentence of death issued by various courts and are awaiting a decision by President Karzai.

Although capital punishment is not prohibited under international law, it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Therefore, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences. These include the right to an adequate defence and the right to appeal the death sentence.

The Commission on Human Rights has consistently requested the Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of all standards relating to the imposition of capital punishment. I would therefore like to highlight the following standards:

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;

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);

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

Without in any way pre-judging the accuracy of the information I have received, I would respectfully request Your Excellency's Government to provide me with:

a) the relevant details of the trials of the above-mentioned individuals, with a view to establishing whether the proceedings complied with international standards relating to the imposition of capital punishment;



- b) information as to whether the accused were given the right to formal representation by a lawyer;
- c) information as to whether the hearings at which they were condemned were held in public;
- d) information about what possibilities of appeal were available to them and what was the outcome of any appeal lodged.

### **Algeria: Charte Pour la Paix et la Réconciliation Nationale**

**Violation alléguée:** Impunité

**Objet de l'appel:** General

**Caractère de la réponse:** Réponse cooperative mais incomplète

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

Le Rapporteur Spécial remercie le Gouvernement de l'Algérie pour les renseignements qu'il lui a fournis. Le Rapporteur Spécial souhaite réitérer que, conformément aux traités relatifs aux droits de l'Homme auxquels l'Algérie est partie, les auteurs d'exécutions extrajudiciaires, ou d'autres crimes de gravité similaire, doivent être poursuivis, jugés et condamnés à des peines appropriées. Le Rapporteur apprécie l'assurance donnée par le Gouvernement selon laquelle les textes juridiques qui seront pris en application de la Charte pour la paix et la réconciliation nationale respecteront les obligations en matière des droits de l'Homme prises par l'Algérie. Le Rapporteur demandera à ce que ces textes lui soient communiqués.

**Appel urgent envoyé le 27 Avril 2005** avec le Rapporteur Spécial sur l'indépendance des juges et des avocats et Président Rapporteur du Groupe de Travail sur les Disparitions forcées ou Involontaires

«A cet égard, nous souhaitons attirer votre attention sur l'annonce faite par le Président Abdelaziz Bouteflika d'une proposition d'amnistie générale s'appliquant aux personnes responsables de violations des droits de l'Homme commises depuis 1992 lors du conflit interne qu'a connu l'Algérie. Bien qu'aucun projet de loi n'ait été rendu public à ce jour, nous avons été informés que le président Bouteflika a annoncé que celui-ci sera soumis à referendum populaire et exemptera de poursuites les membres des groupes armés, des milices armées par l'Etat et des forces de sécurité pour les exactions dont ils sont responsables. Par ailleurs, il a été porté à notre attention que la commission consultative sur les droits de l'homme a rendu le 31 mars 2005 son rapport à la présidence de la République. Il apparaît que son président, M. Ksentini, recommande que les familles de victimes reçoivent une indemnisation. D'après certaines sources qu'il ne nous a pas été possible de vérifier, les familles qui refusent cette option pourraient recourir à la justice. M. Ksentini aurait également déclaré que 6146 cas de disparitions de civils seraient le « fait d'agents de l'Etat » et constitueraient autant de « dérives individuelles ». Il aurait par ailleurs ajouté que la responsabilité pénale des supérieurs hiérarchiques desdits agents et leur poursuite en justice ne pourrait être engagée car ceux-ci devraient bénéficier de l'amnistie à venir.

Nous tenons tout d'abord à saluer le progrès significatif que cette première reconnaissance officielle de milliers de disparitions perpétrées par des agents de l'Etat constitue. Dans ce contexte, nous vous saurions gré de bien vouloir nous faire parvenir une copie du rapport et des recommandations de la commission présidée par M. Ksentini.

Toutefois, au vu de la magnitude et de la gravité des violations des droits de l'Homme perpétrées pendant cette période (on dénonce en effet quelque 200 000 victimes, dont une grande majorité de civils, ayant trouvé la mort au cours d'attaques violentes, de disparitions, ou à la suite de torture en détention), nous saurions gré au Gouvernement de votre Excellence de bien vouloir nous indiquer la façon dont il va mettre en conformité sa proposition de loi d'amnistie avec ses obligations de droit international pertinentes en la matière, telles que:

- Pacte International relatif aux Droits Civils et Politiques, (article 2 paragraphe 3 a) selon lequel « les Etats s'engagent à (...) garantir que toute personne dont les droits et libertés reconnus dans le présent Pacte auront été violés disposera d'un recours utile, alors même que la violation aurait été commise par des personnes agissant dans l'exercice de leurs fonctions officielles ».

- Commentaire Général numéro 20 du Comité des droits de l'Homme, (paragraphe 15) selon lequel les lois d'amnistie s'appliquant aux violations des droits de l'homme sont généralement incompatibles avec le devoir de l'Etat partie d'enquêter sur de telles violations et de garantir qu'elles ne se reproduisent. Ces obligations sont également reflétées dans les observations finales du Comité des Droits de l'Homme reflètent (El Salvador, 22 Août 2003, CCPR/CO/78/SLV, paragraphe 6 ; Pérou, 15 novembre 2000, CCPR/CO/70/PER, paragraphe 9 ; et Chili, 30 mars 1999, CCPR/79/Add.104, paragraphe. 7

- Déclaration sur la protection de toutes les personnes contre les disparitions forcées, article 18, conformément auquel les auteurs de telles disparitions « ne peuvent bénéficier d'aucune loi d'amnistie spéciale ni d'autres mesures analogues qui auraient pour effet de les exonérer de toute poursuite ou sanction pénale ».

**Communiqué de presse publié le 19 septembre 2005** avec le Président-Rapporteur du Groupe de travail de la Commission sur les disparitions forcées ou involontaires :

«À la veille du référendum du 29 septembre prochain portant approbation du projet de Charte pour la paix et la réconciliation nationale, le Rapporteur spécial sur les exécutions sommaires, arbitraires ou extrajudiciaires, M. Philip Alston, et le Président-Rapporteur du Groupe de travail sur les disparitions forcées ou involontaires, M. Stephen J. Toope, saluent la volonté politique du Gouvernement algérien scellant la paix pour l'ensemble de son peuple après plus d'une décennie de violences qui ont coûté la vie à des milliers de victimes.

Le Rapporteur spécial et le Président-Rapporteur du Groupe de travail regrettent toutefois que le projet de Charte ne mentionne pas la responsabilité de l'Armée nationale populaire et des Services de sécurité de l'État pour les violations des droits de l'homme dont certains de leurs membres sont présumés responsables, y compris pour les cas de disparitions forcées.

MM. Alston et Toope notent avec satisfaction les mesures mises en place par ce texte visant à octroyer des compensations aux familles de victimes des personnes disparues. Ils rappellent cependant que celles-ci ne peuvent exonérer les autorités algériennes de leur devoir d'enquêter sur de telles violations afin d'éviter qu'elles ne se reproduisent pas et de garantir un droit de recours aux victimes, conformément à leurs obligations en la matière en vertu du droit international.

Le Rapporteur spécial et le Président-Rapporteur du Groupe de travail soutiennent le principe inscrit dans la Charte selon lequel «les massacres collectifs, viols et attentats à l'explosif dans les lieux publics» sont trop graves pour faire l'objet d'une amnistie. Ils déplorent cependant qu'en soient omis les auteurs d'exécutions extrajudiciaires, les actes de torture et les disparitions forcées qui, au vu de la gravité de leurs crimes, doivent être poursuivis, jugés et condamnés à des peines appropriées. Ils rappellent que la disparition forcée reste un crime aussi longtemps que ses auteurs dissimulent le sort réservé à la personne disparue et le lieu où elle se trouve, et que les faits n'ont pas été élucidés.

Par ailleurs, le Rapporteur spécial et le Président-Rapporteur du Groupe de travail notent avec inquiétude que le texte ne mentionne pas par quel mécanisme les auteurs de «massacres collectifs, viols et attentats à l'explosif dans les lieux publics» seront exclus de l'amnistie.

Dans l'hypothèse où elle est approuvée par le peuple algérien, la «Charte pour la paix et la réconciliation nationale» constituera le cadre fondamental de nouvelles mesures visant à en concrétiser les dispositions générales. Dans ce contexte, MM. Alston et Toope tiennent à rappeler qu'aucun plan de paix, même soutenu par un processus démocratique, ne peut ignorer le droit à la vérité et à la pleine réparation des victimes de violations graves des droits de l'homme. Ils comptent sur le Gouvernement de la République algérienne pour respecter ses obligations en vertu du droit international en la matière et adopter à l'avenir des lois d'application conformes à ces principes ».

### **Réponse du Gouvernement de l'Algérie du 28 septembre 2005**

Lors des divers meetings organisés à travers les différentes villes du pays pour expliquer le projet de Charte pour la Paix et la Réconciliation Nationale (Chlef, le 1er septembre 2005, Ouargla, le 04 septembre 2005, Oran, le 08 septembre 2005, Tizi Ouzou, le 19 septembre 2005, Batna, le 20 septembre 2005, Constantine, le 22 septembre 2005, Alger, le 26 septembre 2005), le Président de la République, S.E. Abdelaziz Bouteflika, n'a cessé d'affirmer :

- Qu'il ne propose pas une amnistie générale « Je ne suis pas venu ... vous demander de vous prononcer sur l'amnistie générale, c'est une entreprise qui nécessite une plate forme politique, juridique et procédurale » . . . « peu nombreux sont qui saisissent l'ampleur des conséquences néfastes pouvant découler de cette voie » ;
- Que les personnes qui se sont impliquées dans des crimes seront présentées à la Justice ;

- Que les disparus sont un dossier « sensible et douloureux qu'il faudra traiter dans toute sa complexité et ses ramifications en tant que tragédie nationale » .... « Ce qui est aujourd'hui important est de se pencher sérieusement sur ce dossier pour le résoudre d'une manière définitive ». Le Président de la République s'est engagé par ailleurs, à prendre en charge toutes les victimes de la tragédie nationale, estimant que l'Etat est responsable et tendra la main à tous ceux qui se sont rendus aux autorités ;
- La résolution de la crise « doit se faire progressivement » et qu' « il n'y a pas une autre issue que celle de la réconciliation nationale »

La Charte étant un document politique, c'est seulement par l'analyse des textes juridiques qui seront pris en application de celle-ci (lois, décrets et arrêtés) que pourra être appréciée leur compatibilité avec les traités internationaux ratifiés par l'Algérie.

### **Australia: Death in Custody of Mulrunji**

**Violation alleged:** Death in custody

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

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur appreciates the detailed information provided by the Government of Australia on its investigation of Mulrunji's death. The SR will request the results of these investigations and information on any penal or disciplinary sanctions that are imposed.

**Allegation letter sent on 21 December 2004** with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

On 19 November 2004 around 10am, Cameron Doomadgee, a 36-year-old aboriginal man was arrested for public drunkenness and locked up as a "public nuisance" in a cell at the Palm Island police station, 70km north of Townsville. At 11am, he was found dead in his cell. The first autopsy found that he had four broken ribs, a ruptured liver and spleen, and that he died from internal bleeding. It is alleged that Mr Doomadgee's injuries were not consistent with a fall on concrete steps at the Palm Island police station, as stated by the police."

#### **Response of the Government of Australia dated 26 April 2005**

Question 1: On 19 November 2004, a 36 year-old Aboriginal man, Cameron Doomadgee (Mulrunji)', died in police custody on Palm Island following his arrest that day for creating a public nuisance.

The Queensland State Coroner ordered a post-mortem examination into the death of Mulrunji, and released the results to his family. The autopsy showed that Mulrunji died with four broken ribs, a ruptured spleen and liver and that the injuries were consistent with falling on steps.

Following requests from Muirunji's family and consistent with the Coroner's own view that a second autopsy would be valuable, the Coroner agreed to a second autopsy which was observed by a pathologist on behalf of the family. The results of the second autopsy have not yet been publicly released.

Question 2: The Queensland Government has received one formal complaint from a Palm Island resident relating to policing on Palm Island which, despite a lack of detail, gave rise to a suspicion of official misconduct. In December 2004, the Director-General of the Queensland Department of the Premier and Cabinet notified the Queensland Crime and Misconduct Commission (CMC) of the allegations raised by the Palm Island resident.

The CMC is an independent commission, established under the provisions of the *Crime and Misconduct Act 2001 (Queensland)*, and it operates to combat major crime, raise public sector integrity and to protect witnesses. A major function of the CMC is to investigate police misconduct and misconduct by other Queensland government officials. Under Section 38 of the *Crime and Misconduct Act 2001*, the CMC is required to be notified of any allegations which may give rise to a suspicion of official misconduct.

Members of the public may complain directly to the CMC. However, at this stage, the CMC has not made the Queensland Government aware of any further complaints relating to recent events on Palm Island.

Question 3: The Queensland Police Service (QPS) is required to notify the CMC of "significant events" that have occurred involving a police officer. The types of incidents that constitute a significant event include police pursuits and deaths in custody. The CMC liaises with the QPS about the circumstances surrounding the incident to determine whether it is a matter that the CMC should formally investigate, such as an incident that raises a suspicion of misconduct on the part of a police officer.

In the case of the death in custody of Mulrunji, the QPS notified the CMC of the death in accordance with the notification protocol. After consultation with the CMC it was resolved that the Ethical Standards Command (ESC) of the QPS and regional police from Townsville, Queensland would conduct the investigation into the circumstances surrounding Mulrunji's death whilst at the same time reporting back to the CMC on developments in the matter. The objective of the investigation was to investigate whether there was any police misconduct associated with the arrest and detention of Mulrunji and his death in police custody.

As a result of concerns which were raised as to the role of the QPS in the investigation a decision was made for the ESC and the CMC to conduct the investigation jointly and for the QPS regional officers to withdraw from the investigation.

On 24 November 2004, the CMC and the ESC traveled to Palm Island to commence their inquiries.

On 26 November 2004, a public unrest occurred on Palm Island following the public release of the first autopsy report on the cause of death of Mulrunji. Following this incident, and the concerns expressed by the community about QPS involvement in the investigation, the CMC assumed sole responsibility for the investigation.

Because Mulrunji died in police custody, the Queensland State Coroner has a statutory obligation to conduct an investigation and inquest into his death. Rather than conduct parallel investigations, the Coroner and the CMC agreed to cooperate with one another in the investigation into the circumstances and cause of death of Mulrunji. The CMC will provide a report on its investigations to the Queensland State Coroner.

It is expected that the police officers involved in the arrest and detention of the deceased will be called as witnesses before the inquest. The Queensland State Coroner has power to compel witnesses to be called and to give evidence (with appropriate safeguards). An officer from the CMC will also give evidence concerning the CMC's investigation.

The inquest will also serve to inform the CMC about issues relating to the conduct of the police involved in the matter.

The coronial inquest began on 8 February 2005 and has not been completed. The Coroner will hear evidence on Palm Island and in Townsville.

With the assistance of Legal Aid Queensland, Mulrunji's family will be represented by the Queensland Deputy Public Defender. In addition, the Australian Human Rights and Equal Opportunity Commission sought and was granted leave by the Coroner to appear at the inquest. It is understood that the Commission intends to make submissions on systemic issues surrounding arrest and detention as they affect Indigenous people.

If the Coroner reasonably suspects a person has committed an offence, this information must be provided to the Queensland Director of Public Prosecutions, who will then determine whether to charge the person with an offence. The Queensland Attorney-General and Minister for Justice, the Queensland Police Commissioner and the Queensland Minister for Police and Corrective Services must also be provided with a copy of the findings or any comments made by the Coroner about the investigation of the death in custody. They will then consider any further appropriate action.

In addition, a Coroner may give information about police misconduct to the CMC which will then determine whether any disciplinary action should be taken. Even if the Coroner does not provide such information the CMC will still consider whether disciplinary action should be taken based on evidence gathered during its investigation and the evidence given at the inquest.

Question 4: As stated above, none of the investigations into Mulrunji's death are complete and no prosecutions have been undertaken.

Question 5: No compensation has been paid to the family of the deceased

However, Mulrunji's family has been granted legal assistance from Legal Aid Queensland for representation at the coronial inquest. This assistance will be provided by Legal Aid Queensland in-house, with the Queensland Deputy Public Defender appearing on behalf of the family in the proceedings.

### **Bangladesh: Attack on Journalist Sumi Khan**

**Violation alleged:** Death threats and fear of imminent extrajudicial execution

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

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of Bangladesh on its prosecution of the attack on Sumi Khan. The SR will request information on the outcome of this case and on the measures taken to ensure Khan's personal security.

**Urgent appeal sent on 5 May 2004** with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on human rights defenders

Sumi Khan, a journalist and Chittagong correspondent of the magazine Weekly 2000, was reportedly stabbed and critically wounded in the Nandan Kanan area (Chittagong) on 27 April 2004 by three men in an auto-rickshaw who attempted to drag her into their vehicle. The assailants threatened that she would be killed if she did not stop writing. Reports indicate that three policemen stood by while the attack was taking place. The victim has filed a complaint with the police but at the time of writing, no-one had been arrested. Sumi Khan wrote articles on human rights violations suffered by the Hindus and on the alleged involvement of local politicians and religious groups in attacks on members of this community. In recent weeks, she had been receiving several anonymous threatening telephone calls, warning her not to "defame" people in her reports.

**Response of the Government of Bangladesh dated 7 May 2004 acknowledging the letter of the Special Rapporteur**

**Response of the Government of Bangladesh dated 18 April 2005**

The Government informed that the communication was transmitted to the concerned authorities in Bangladesh. It was learnt that, on 27 April 2004, at about 10.30 pm, Ms. Sumi Khan was traveling by rickshaw at Nandan Kanan, Kotwali, Chittagong. Suddenly, she was attacked by about three or four persons, who snatched away her handbag and also stabbed her. The next day, Ms. Khan lodged a written complaint in Kotwali Police Station, CMP, Chittagong, which led to the recording of Kotwali P.S. case No. 48 dated 28/04/2004, u/s 341/323/324/379/427/506/34 Bangladesh Penal Code (BPC). Sub-Inspector Jahangir of Kotwali Police Station was assigned the task of investigating the case. Four persons were arrested, for suspicion of having been involved in the incident, and were produced before the Court. The interrogation of the accused provided the basis for further investigation. In the meantime, all attempts have been made for the personal security of Ms. Khan. The case is proceeding under the laws of Bangladesh.

**Bangladesh: Death in Custody of Anisur Rahman**

**Violation alleged:** Death in custody

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

**Character of reply:** No response

**Observations of the Special Rapporteur**

The Special Rapporteur regrets that the Government of Bangladesh has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Allegation letter sent on 21 December 2004**

Mr. Anisur Rahman, aged 27, a Dhaka City Corporation Contractor and a ward level leader Jatiyatabadi Chhatra Dal (JCD), from Mohammaddpur area, Dhaka, Bangladesh died after being beaten by members of the Rapid Action Battalion (RAB) on 4 October 2004. It is alleged that a team of Rapid Action Battalion (RAB) arrested Anisur Rahman and his friends Rubel and Jahangir in front of Chhata Mosque near the victim's house at Rayerbazar, Mohammadpur of Dhaka city at 2:30 a.m. on 1 October 2004. Members of RAB reportedly took Anisur Rahman and his friends to their Mohammadpur office where they were allegedly beaten up. It is reported that Anisur Rahman's legs and arms were broken. On 2 October 2004, Anisur Rahman was taken to another RAB office located in Mirpur area in Dhaka city. It is further reported that RAB men beat him there again, damaging his kidneys. The victim was brought to the Dhaka Medical Collage Hospital (DMCH) at 5:45 p.m. on 2 October 2004. Sub-Inspector Ali Hossain of Rab-4 said that Anisur Rhaman fell unconscious because of fear. The victim died 53 hours after his admission to the hospital, on 4 October 2004. Allegations indicate that Anisur Rahman was killed as a settling because he had won the last Dhaka City Corporation elections.

**Bangladesh: Death Sentence of Anjali Devi**

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

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

**Character of reply:** No response

**Observations of the Special Rapporteur**

The Special Rapporteur regrets that the Government of Bangladesh has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Urgent appeal sent on 31 August 2005**

Urgent appeal sent regarding the situation of Ms. Anjali Devi, alias Manju Devi, a twenty-four-year old Indian national. She was reportedly sentenced to death on 15 June 2005, by a Special Trafficking Tribunal in Western Pabna. She was found guilty of being a member of an inter-state child-trafficking gang after she attempted to traffic a four-year-old boy out of the country in 2002.



I have been informed that The Suppression of Violence Against Women and Children Act 2000, adopted in 2000 and amended in 2003, outlaws trafficking for prostitution and other forms of unlawful exploitation. It is my understanding that it came into force in February 2000 and was intended to address the need for more effective prosecution of perpetrators of violence against women and children. It also makes provision for the compensation of victims by those found guilty of trafficking. Pursuant to the Suppression of Violence against Women and Children Act of 2000, persons found guilty of child trafficking can be sentenced to death or life imprisonment.

I wish to emphasize that the scourge of trafficking is of the utmost concern and that my inquiry in relation to the death penalty is in no way intended to question the importance of strong measures in response to trafficking. Nevertheless, I would like to remind your Excellency that such efforts should be made within the framework of recognized international human rights law standards. In this connection, I would like to remind the Government of your Excellency that, in accordance with Article 6(2) of the International Covenant on Civil and Political Rights, “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes”. In its General Comment No. 6, the United Nations Human Rights Committee has stated that “the expression “most serious crimes” must be read restrictively to mean that the death penalty should be a quite exceptional measure”.

Without in any way pre-judging the accuracy of the information I have received, I would respectfully request your Excellency’s Government to provide me with:

- (a) a detailed description of the crimes Ms Anjali Devi has been found guilty of, including the circumstances that motivated the court to impose the most serious sentence in her case;
- (b) a description of the process followed in the trial of Ms Anjali Devi, so as to enable us to assess whether the proceedings complied with international standards relating to the imposition of capital punishment
- (c) information as to whether Ms Devi was given the right to formal representation by a lawyer;
- (d) information as to whether the proceedings were open to observers, including representatives of the Government of India; and
- (e) information as to whether there was a right to appeal the imposition of the death sentence.

### **Bangladesh: Killing of Civilians During Protest**

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

**Subject(s) of appeal:** 4 persons (persons exercising their freedom of opinion and expression)

**Character of reply:** Receipt acknowledged

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

The Special Rapporteur looks forward to receiving a substantive response concerning the events that took place on or about 20 October 2005.

#### **Allegation letter sent on 28 November 2005**

I am writing about an incident that reportedly took place on or about 20 October 2005 in southern Bangladesh, in which police allegedly fired on approximately 1,000 people, killing four of them and injuring four others. The crowd had apparently gathered outside the police station in Kompanyanj town to protest the failure to properly investigate the robbery of a jewellery store. According to information that I have received, the demonstrators had become violent, for instance, by throwing bricks at the station building.

In this connection, I would like to draw the attention of your Excellency's Government to the Basic Principles on the Use of Firearms by Law Enforcement Officials, which provide that in the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and to the minimum extent necessary (§14); even in those circumstances, lethal force may only be used when strictly unavoidable in order to protect life (§9); furthermore, a clear warning of the intention to use firearms must be provided (§10). Finally, §7 of the Basic Principles states that the arbitrary or abusive use of firearms by law enforcement officials must be punished as a criminal offence. These principles are entailed in the legal duty to respect the right to life enshrined in Article 6(1) of the International Covenant on Civil and Political Rights.

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Commission, I would be grateful if your Excellency's Government would provide the following:

- (i) information about any steps taken to investigate the actions of the police officers in this case;
- (ii) the report of any such investigation; and
- (iii) whether a decision was taken to prosecute and, if so, the outcome of this prosecution.

#### **Response of the Government of Bangladesh dated 6 December 2005**

The Government informed the Special Rapporteur that the content of the communication had been duly noted and forwarded to the concerned authorities in Bangladesh for necessary inquiry and actions.

#### **Barbados: Death Sentence of Frederick Atkins**

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

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

**Character of reply:** No response

**Observations of the Special Rapporteur**

The Special Rapporteur regrets that the Government of Barbados has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Urgent appeal sent on 11 February 2005**

Mr. Frederick Atkins, aged 36, is scheduled to be executed by hanging early on the morning of 14 February 2005. Mr. Atkins was sentenced to death in 2000 for the murder of 20-year-old Sharmaine Hurley. If the sentence is carried out, he would be the first person to be executed in Barbados since 1984. I have been informed that a previous death warrant issued to him in June 2002 was stayed by the Judicial Committee of the Privy Council. However, a new death warrant was issued by the Barbados authorities on 9 February 2005. It has been brought to my attention that, on 3 September 2004, Frederick Atkins's lawyers submitted an appeal against his death sentence to the Inter-American Commission on Human Rights. It is my understanding that the Inter-American Commission on Human Rights has not set a date to hear Frederick Atkins's appeal. His lawyers have reportedly requested the Commission to grant precautionary measures in order to prevent his execution prior to completion of the hearing. However, in view of the rescheduling of his execution by the Barbados authorities, fears have been expressed that the authorities may carry out his death sentence before the Inter-American Commission on Human Rights has considered his case and therefore in breach of the State's obligations under international law. As I had previously mentioned to your Excellency, I have further been informed that the death penalty in Barbados is imposed as a mandatory measure for murder and treason, thus making it impossible to take into account any mitigating or extenuating circumstances and eliminating any individual determination of an appropriate sentence. I would like to reiterate that such arbitrariness is incompatible with the international obligations of Barbados under various instruments. I am aware that the Privy Council upheld the constitutional validity of the mandatory death penalty law in its judgment of July 2004 in the case of *Boyce and Joseph v. The Queen*. I note, however, that the majority opinion carefully limited the grounds for its finding to the issue of constitutional interpretation. The Court expressly observed, however, that the maintenance of the mandatory death penalty 'will ... not be consistent with the current interpretation of various human rights treaties to which Barbados is a party' (Judgment of the Lords of the Judicial Committee of the Privy Council, Privy Council Appeal No. 99 of 2002, Judgment of 7 July 2004, para. 6). In the minority judgment in that case, signed by four Law Lords, the same conclusion is expressed in the following terms: 'the jurisprudence of the Human Rights Committee, the Inter-American Commission and the Inter-American Court has been wholly consistent in holding the mandatory death penalty to be inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment. ... The appellants submitted that "No international human rights tribunal anywhere in the world has ever found a mandatory death penalty regime compatible with international human rights norms," and this assertion has not been contradicted.' (para. 81(3)). Since the mandatory death penalty

is clearly in violation of international law and thus of the norms applicable in relation to Barbados, it follows that the execution of Mr Atkins on the basis of a mandatory death sentence provision would constitute a failure by Barbados to comply with its obligations under international law. It would thus amount to an extrajudicial, summary or arbitrary execution. 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.

### **Brazil: Killing of Human Rights Defender Dorothy Stang**

**Violation alleged:** Impunity; Death threats and fear of imminent extrajudicial execution

**Subject(s) of appeal:** 1 female (human rights defender)

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur appreciates the detailed information provided by the Government of Brazil on its investigation of Dorothy Stang's death, on the prosecution of those responsible, and on the measures that were taken to prevent future violations.

**Allegation letter sent on 4 March 2005** with the Special Representative of the Secretary General on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers

Sister Dorothy Stang, an environmentalist, human rights defender and member of the Pastoral Land Commission (Comissão Pastoral da Terra), an organization of the Catholic Church which works to promote and defend the rights of rural workers and land reforms in Brazil was shot on 12th February 2005 at approximately 9.00am. She was shot several times, resulting in her death, as she walked to attend a meeting in the town of Anapu, Pará. The early morning attack came less than a week after Sr. Dorothy had met with the Brazilian Human Rights Minister, Secretary Nilmário Miranda, to report that four local farmers had allegedly received death threats from loggers and landowners. Sister Dorothy had received a number of awards for her work as a human rights defender, including the "Human Rights Award" from the Bar Association of Brazil (*OAB - Ordem dos Advogados do Brasil*), which she received on 10th December 2004. It is also reported that the OAB had included Sister Dorothy on a list of human rights defenders who faced possible murder. On 22 October 2004, Sister Dorothy met with the Special Rapporteur on the Independence of judges and lawyers in Belém during his mission to Brazil. It is feared that Sister Dorothy Stang was killed as a direct result of her human rights work, in particular her work to denounce violations landowners and ilegal loggers in the state of Pará.

The Special Representative would like to commend the Brazilian government for the swift action it has taken to bring those responsible to justice and the steps adopted to address the climate of vulnerability experienced by human rights defenders in the state of Pará. The Special Representative, however, remains concerned for the life and

safety of human rights defenders in this area, especially those individuals who have interacted with UN mechanisms. Her concerns are heightened by the fact that the killing of Sister Dorothy Stang constitutes the third case of such reprisals in Brazil against human rights defenders who have interacted with UN mechanisms. In particular, she refers to her letter dated 17 October 2003 concerning the killings of Flávio Manoel da Silva, a key witness for investigations into the actions of extermination groups operating in the cities of Itambé and Pedras de Fogo, and of Gerson Jesus Bispo. Both men had provided information to the Special Rapporteur on extrajudicial, summary or arbitrary executions during her country mission to Brazil in September 2003. In view of her planned visit to Brazil, the Special Representative calls on the Government of Brazil to explore appropriate measures to ensure the protection of those individuals who interact with the United Nations, in particular Special Rapporteurs and Representatives of the Commission on Human Rights

### **Response of the Government of Brazil dated 29 March 2005**

Born in the United States of America and naturalized Brazilian, Sister Dorothy Stang was shot dead in the morning of 12 February 2005 at a village 40 km from the Municipality of Anapu, in the western region of the State of Pará, on the edges of the Transamazonica Route. Immediately after the assassination of Sister Dorothy Stang, the Federal Government has taken the following measures:

- On 12 February the Special Secretary for Human Rights, Minister Nilmario Miranda, traveled to the Municipality of Altamira, in the State of Pará, whence he left for the Municipality of Anapu; The Minister of Environment, Mrs. Marina Silva, who was in the State of Pará on the same day went to the place where the conflict had occurred; Federal Policemen that were accompanying the Minister of Environment in a event in the State of Pará, went to the place of the crime in order to initiate the necessary procedures, to take the body, to preserve the crime site (to collect evidences) and to provide police protection to the witnesses. Federal Policemen belonging to the Regional Superintendence of belem were also sent to the local;
- The Federal Police has opened an inquiry and , in partnership with the Civil Police of the State of Pará, is carrying out investigations to clear the crime;
- On 13 February, the Attorney-General of the Republic, the National Land Ombudsman (“Ouvidor Agrario Nacional”) and the President of the INCRA (“National Institute for Colonization and Land Reform”) traveled to the State of Pará in order to help the investigations;
- On 13 February, the Justice of the State of Pará issued an order of preventive arrest of four people suspected of being involved in the assassination of Sister Stang. The arrest order refers to the two alleged executioners of the crime, to the person who supposedly has given the order to kill Sister Stang and to a fourth person, who allegedly had made the intermediation between them;
- On 15 February, it was convened a meeting in Brasilia, at the Cabinet of Presidential Chief of Staff with the participation of the Ministers of Environment, Justice, Agrarian Development, National Integration and Human Rights to discuss the conflicts in the State of Pará;

- The President of the Republic has ordered that 2000 militaries of the Army, supported by airplanes of the Air Force, be dislocated to the crime site;
- on 19 February, Amair Frejoli da Cunha, nicknamed "Tato" who is suspected of having intermediated the process, has presented himself in the Police Station Specialized in Crimes Against Women in the Municipality of Altamira;
- On 20 February, Rayfran das Neves Sales, nicknamed "Fogoio", who is accused of being one of the executioners, was preventively arrested by the Civil Police of the State of Pará with the help of the Army;
- On 21 February, the Federal Police arrested Clodoaldo Carlos Batista, who supposedly is the second executioner of the crime;
- So far, the farmer Vitalmiro Gonçalves de Moura, nicknamed "Bida", who is accused of having planned the crime is the only fugitive from justice. However, Moura's presentation to the authorities has been treated as high priority;
- In the context of measures taken to identify and punish those that are liable for the murder of Sister Stang, the Federal Government of the State of Pará has acting with a view to strengthening the structures of the administration and of police in order to fight against deforestation and promote the economic and ecologic zoning, land regularization and sustainable settlements;
- The Government has also taken measures to strengthen and guarantee the protection of human rights in the region. On 21 February, a Working Group was created in the Special Secretary for Human Rights of the Presidency of Republic to monitor the situation in the State of Pará. One of the most important measures to be taken is the protection of people threatened in the region. Accordingly, the Working Group will present suggestions of actions to be taken by federal and state officials in order to fight the violation of human rights. The Brazilian Government reiterates its commitment to all efforts to punish those responsible for the death of Sister Dorothy Stang.

### **Response of the Government of Brazil dated 17 May 2005**

In an additional response dated 17 May 2005, the Government of Brazil informed the Special Rapporteurs that by decree No 66 and 89/2003 it has established a working group to elaborate a National Programme for the Protection of Human rights Defenders that was launched on 26 October 2004 at the Parliamentary Commission on Human Rights. Members of the Government and the civil society have participated to this new initiative. The National Congress has approved a budget of one million two hundred thousands reais to finance this programme. The Congress is also currently working on a draft law N03616/2004 including a chapter for the protection of victims and witnesses of human rights violations under threat. Within this Protection Programme, a database compiling all human rights violations as well as threats against human rights defenders is being set up in nine pilot-States, namely Paraíba, Pará, Rio Grande do Norte, Pernambuco, Bahia, Espírito Santo, São Paulo, Mato Grosso et Paraná. Further efforts are being made in Espírito Santo, Pará and Pernambuco to establish a methodology and standards of emergency procedures for the protection of Human Rights Defenders. The Protection Programme in the Pará

State was established in February 2005. The killing of Sister Stang has triggered the implementation of an emergency programme. Lists of human rights defenders under threat were constituted, investigations of suspected military and civilian police officers were carried out. Similar programmes are being established in the States of Espirito Santo, Pará, and Pernambuco.

### **Response of the Government of Brazil dated 25 January 2006**

The justice of the State of Pará, on 10 December 2005 sentenced the two executioners of the crime of Sister Stang, Mr. Rayfan de Neves Sales, nicknamed Fogoió, to 27 years of imprisonment, and Mr. Clodoaldo Carlos Batista, nicknamed Eduardo, to 17 years of imprisonment. The two farmers who supposedly had given the order to kill Sister Stang, Mr. Vitalmiro Bastos and Mr. Rogivaldo Galvao, and the one who is suspected of having intermediated the process, Mr. Amair Frajoli da Cunha, nicknamed Tato, will face trial next year.

The Brazilian Government hailed the trial of the executioners of Sister Stang as an important, but initial, step toward ending impunity in the State of Pará. The trial showed the commitment of the Federal and the State Government and the State Justice to all efforts to punish those responsible for the death of Sister Dorothy Stang and revealed a good pattern of cooperation among these instances of the Brazilian Government.

The Brazilian Government reiterates its commitment to the defence, promotion and protection of human rights and attaches the utmost importance to the cooperation with international human rights mechanisms.

### **Brazil: Death Threats Against Human Rights Defenders**

**Violation alleged:** Death threats and fear of imminent extrajudicial executions

**Subject(s) of appeal:** 1 female (human rights defender); 2 males (lawyers)

**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 he has been given by the United Nations Commission on Human Rights.

**Urgent appeal sent on 13 April 2005** with the Special Rapporteur on the question of torture

Urgent appeal concerning: Francisco Lúcio França, José de Jesus Filho, both lawyers, and Isabel Peres, Coordinator of the Brazilian branch of Action by Christians for the Abolition of Torture (ACAT-Brazil). According to the allegations received:

They have been involved in the prosecution of two police officers, Maurício Miranda and Silvio Ricardo Monteiro Batista, who are accused of severely beating and murdering Anderson do Carmo, aged 16, and Celso Gioelli Magalhães Júnior, aged

20, between 27 September and 5 October 2002. The two officers were dismissed from the Military Police and charged with the killings. The trial took place in Mongagúa municipality from 21 to 23 March 2005. The officers were acquitted at the end of the trial and the public prosecutor's case has lodged an appeal.

At the end of the first day of the trial, two black cars followed Francisco Lúcio França and José de Jesus Filho to the place where they were staying. On 25 March 2005, Francisco Lúcio França was approached in a shopping centre in the centre of São Paulo by a man, who identified himself as a police officer called "Lúcio", and told him that he should drop the case or he will die. On 26 March, a black car followed Isabel Peres to the place where she was staying. Key witnesses to the murder are believed to be in particular danger.

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Articles 3 and 6 of these instruments, respectively, provide that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life.

We would also like to refer your Excellency's Government to the following norms and principles which are particularly relevant to the above allegations:

- 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. In particular, principles 4 and 9 to 19 oblige 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. A thorough, prompt and impartial investigation of all suspected cases of any such executions or death threats must be carried out and its results shall be made public. Persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under the State's jurisdiction shall be brought to justice.

In this context, we would also like to refer your Excellency's Government 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. “

Finally, we would like to draw your Excellency's attention to the Principles on the effective investigation and documentation of torture and other cruel, inhuman or



degrading treatment or punishment (UN General Assembly resolution 55/89 of 4 December 2000, Doc. A/55/89, Annex), also known as the Istanbul Protocol, which states that "alleged victims of torture, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any form of intimidation that may arise pursuant to the investigation." (Para. 3 (b)).

We urge your Government to take all necessary measure to guarantee that the rights of the aforementioned persons are respected and accountability of any person guilty of the alleged violations ensured. 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 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 such 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? If not, in order to refute these allegations, please provide details of any inquiries carried out.
2. Has a complaint been lodged? If so what action has been taken in response?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place or if they have been inconclusive please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal or disciplinary sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the victim or the family of the victim.

### **Brazil: Summary Executions in Pernambuco**

**Violation alleged:** Deaths due to attacks or killings by death squads.

**Subject(s) of appeal:** 8 persons (7 minors)

**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 he has been given by the United Nations Commission on Human Rights.

### **Allegation letter sent on 20 April 2005**

Allegation letter sent in relation to several cases of executions allegedly committed by military police members of death squads operating in the State of Pernambuco in 2003 and 2004. To date, reports indicate that the investigation and prosecution of these homicides has failed to produce any positive outcome.

According to the allegations received, José Arnaldo Didier Leite, a land owner living in the town of Sanharó (Pernambuco State) who was shot dead on 15 August 2003 in Fazenda Lajedo by four individuals, among whom were two police agents nicknamed “Noronha” and “J. André”, believed to be military police members of a death squad from Belo Jardim, a nearby town. It is alleged that Mr. Didier Leite was murdered because his son, Ricardo Alexandre Galvão Didier, a town councilor, was politically opposed to the city’s mayor. I have further been informed that despite the official complaints to the police by the victim’s family as well as its many inquiries with the Public Prosecutor’s office, the police investigation has not been able to identify the perpetrators as, to date, the three consecutive police inspectors appointed to work on the case since August 2003 have not yet been able to realize the reconstruction of crime scene.

Furthermore, on 27 April 2004, six children and one young adult were found dead with shots in the head with their hands tied in the localities of Itapissuma and Igarassu. According to the information received, Otavio Jose Da Silva (18) Acla Macedo Da Costa (16), Angélica Maria Silva de Andrade (16) Moises Das Neves de Souza (16), were found by the road to Engenho Pasmado in the locality of Itapissuma. Some three kilometers away, Levi Vieira Paula Dos Santos (16) was also found dead in similar circumstances. Finally, reports indicate that the bodies of Gessica Maria Conçeição da Silva (15) and Marcemildo Rodrigues da Silva (17) were found by the road to Nova Cruz, next to the locality of Igarassu, also murdered according to the same method. The youngsters were reportedly on their way to a party in the same taxi when their car got stopped by the police who ordered them to leave their vehicle. According to the information received, the perpetrators remain at large.

### **Brazil: Killing of Human Rights Defender Paulo Henrique Machado**

**Violation alleged:** Impunity

**Subject(s) of appeal:** 1 male (human rights defender)

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of Brazil has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Communication sent on 3 August 2005** with the Special Representative of the Secretary-General on the situation of human rights defenders

Communication concerning Paulo Henrique Machado, a 35-year-old Brazilian priest who was reportedly shot dead on or around 25 July 2005. He was reportedly shot at least five times while in his car in the Nova Iguaçu area of Rio de Janeiro.

Concern has been expressed that he was killed in retaliation for his campaigning for the families of 29 people who were allegedly killed by rogue police officers on 31 March 2005. Indeed, Paulo Henrique Machado headed a support group for victims of the so-called Nova Iguaçu massacre which led to charges against eight police officers. The massacre began when gunmen opened fire on a crowd at a street-corner bar killing 17 people, before they drove to the Queimados neighborhood where they killed another 12 people in two separate shootings.

It is our understanding that the police have initiated an investigation into the killing of Mr. Machado with a view, inter alia, to determine if his death was linked to the above-mentioned massacre.

### **Burundi: Législation Relative à la Peine de Mort**

**Violation alléguée:** Non respect des normes internationales relatives à l'imposition de la peine de mort.

**Objet de l'appel:** Général

**Caractère de la réponse:** Pas de réponse

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

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

#### **Appel urgent du 22 Décembre 2004:**

Un projet de loi adopté par le Conseil des ministres, le 16 novembre 2004, proposerait que les auteurs de crimes violents, notamment les meurtres, vols à main armée et viols, pris «en flagrant délit ou réputé flagrant» soient soumis à une procédure judiciaire accélérée allant à l'encontre des normes internationales d'équité procédurale. Il m'a été rapporté que le dit projet de loi, présenté comme une réponse à l'accroissement du nombre de crimes violents au Burundi, pourrait être soumis à l'Assemblée nationale sous peu. Si ce projet de loi était définitivement approuvé, il pourrait favoriser la multiplication des cas d'imposition de peines capitales à l'issue de procès inéquitables et de longues peines d'emprisonnement pourraient également être prononcées sans possibilité de libération conditionnelle. En effet, selon l'information qui m'a été communiquée, la peine de mort serait mentionnée à de nombreuses reprises dans le corps du projet de loi ainsi que dans son introduction qui énonce que «la peine capitale est de moins en moins appliquée, ce qui fait perdre à la peine de mort son caractère éliminatoire et dissuasif. L'article 25 de la loi actuelle remédie à cette situation en fixant la date d'exécution à sept jours maximum de l'annonce du verdict définitif, sauf en cas de grâce accordée.» Ce projet de loi

reflèterait plusieurs déclarations récentes du président de la République ainsi que d'autres hauts responsables du gouvernement exprimant leur volonté de voir les criminels «sévèrement punis» et «de faire des exemples» et laissant présager que le gouvernement envisageait une reprise des exécutions après une interruption de sept ans. L'ensemble de la procédure accélérée envisagée par cette loi, à savoir de l'arrestation jusqu'à l'exécution du coupable, prendrait moins de quarante jours, même en cas de nouveau procès, et pourrait même être réduite à des délais encore plus courts. L'accent mis sur la rapidité et la suppression arbitraire de certains points au niveau de l'enquête de police, de l'instruction et de la procédure judiciaire, comme par exemple la réduction à vingt-quatre heures du délai pour faire appel d'une décision d'un tribunal de grande instance, incite à douter fortement de l'équité d'une telle procédure. Bien que le texte précise que le droit à la défense sera garanti, il est à craindre que celui-ci ne puisse être assuré en de telles circonstances. De même, le temps imparti limiterait la possibilité pour les tribunaux d'examiner de manière complète et approfondie les éléments de preuve qui leur sont soumis afin de rendre un jugement équitable et juste. Dans ce contexte, il semble souhaitable que le Gouvernement de votre Excellence revoie le projet de loi de façon à le rendre conforme aux normes applicables du droit international des droits de l'homme. Devant cette situation, 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. De plus, les articles 10 et 11 de la Déclaration universelle stipulent le droit à un procès équitable, y compris le droit de bénéficier d'une assistance judiciaire, et consacrent le principe de non-rétroactivité des infractions criminelles. De même, les articles 6(2), 14 et 15 du Pacte international relatif aux droits civils et politiques stipulent qu'une sentence de mort ne peut être prononcée que pour les crimes les plus graves, conformément à la législation en vigueur au moment où le crime a été commis, et en vertu d'un jugement définitif rendu par un tribunal compétent.

### **Chad: Condamnation à Mort de 19 Bergers Nomades**

**Violation alléguée:** Non respect des normes internationales relatives à l'imposition de la peine de mort.

**Objet de l'appel:** 19 hommes

**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 la Commission des Nations Unies pour les Droits de l'Homme.

#### **Appel urgent envoyé le 11 Février 2005 :**

19 bergers nomades auraient été condamnés à mort le 30 juillet 2004 par le tribunal pénal de N'Djamena et leur exécution serait imminente. Ainsi, Adelin Abdel Ali (h),

Mahamat Zele Abdel Ali (h), Abdel Ali Matman (h), Djamal Alhabo (h), Mado Ahmat (h), Ousmane Belil (h), Ammadis Khamis (h), Assanin Albeshir (h), Alfadil Ali (h), Alhabo Brahim (h), Azele Saleh (h), Fadoul Albachar (h), Ahmat Izzo (h), Mahamat Arabi (h), Izzo Adelil (h), Alfadil Abdulkarim (h), Soumain Khamis (h), Koursi Youssouf (h), Ammour Idriss Fadoul (h), auraient été reconnus coupables de meurtre, complot criminel, possession illégale d'armes à feu et vol à main armée suite à la mort le 21 mars 2004 de 21 paysans de Maïbogo, dans le canton de Yomi. D'après les renseignements dont je dispose, des doutes subsistent sur la culpabilité des 19 prévenus dont la grande majorité auraient été arrêtés par la police alors qu'ils se trouvaient au domicile du meurtrier présumé afin de lui présenter leurs condoléances pour la mort de son frère. Par ailleurs, au regard de la gravité et de l'inéluctabilité des peines appliquées, des réserves ont été émises sur le déroulement expéditif du procès de ces 19 personnes qui n'a duré en tout que trois jours, du 28 au 30 juillet 2004. Par ailleurs, il semble que les voies de recours ouvertes contre des condamnations à mort ne garantissent pas le droit des condamnés à un véritable appel contre leur déclaration de culpabilité et leur peine. En effet, le tribunal pénal étant une formation de la Cour d'appel dont les décisions prises par un jury populaire ne peuvent être contestées, la seule voie de recours ouverte est le pourvoi en cassation contre la Cour Suprême. Or, il constitue une voie de recours extraordinaire obéissant à des conditions de recevabilité très strictes portant sur des erreurs flagrantes concernant la procédure ou les faits. A ce titre, même si les 19 condamnés ont formé un pourvoi en cassation devant la Cour Suprême, celui-ci ne peut être considéré comme répondant aux critères relatifs au droit de recours par une juridiction supérieure énoncés à l'article 14 paragraphe 5 du Pacte International relatif aux droits civils et politiques auquel le Tchad est partie. De même, j'ai été informé que le moratoire sur les exécutions, en vigueur depuis huit ans au Tchad, a pris fin en novembre 2003 sans que ce changement dans ce qui semblait une politique durable, ne soit accompagné par la mise en évidence de procédures détaillées ayant pour objectif de prévenir des erreurs judiciaires et d'assurer leur conformité avec les normes internationales pertinentes relatives à la peine de mort. De plus, au vu du fait que les exécutions de novembre 2003 ont été contestées par diverses organisations d'observation des droits de l'homme car elles ne satisfaisaient pas aux normes susmentionnées, j'invite le Gouvernement de votre Excellence à suspendre l'exécution de la mise à mort de ces 19 personnes, afin de revoir les procédures suivies dans chacun de ces cas, et de préciser dans quelle mesure les procès accordés à chacune d'entre elle sont conformes au droit international applicable en l'espèce (annexé à la présente lettre).

### **China: Death Sentences of Two Nepalese Men**

**Violation alleged:** Non-respect of international norms and standards for the imposition of capital punishment

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

**Character of reply:** UN translation awaited for response of the Government of China received 12 May 2005

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

82. Urgent appeal, 8 July 2004. Two Nepalese citizens, Ishwori Kumar Shrestha and Rabi Dahal, were sentenced to death in the Tibet Autonomous Region (TAR), People's Republic of China, on 30 May 2004, on drug-related charges and could face execution at any time. The two men were appointed a lawyer, but it is not clear whether a Nepali-Chinese interpreter was provided, or whether the two were able to fully understand the process of their charge and trial. It was reported that their families had not heard from them for four months. They were not officially informed of their sentence, but read about it in a Kathmandu newspaper.

### **China: Death Sentence of Tenzin Deleg Rinpoche**

**Violation alleged:** Non-respect of international norms and standards for the imposition of capital punishment

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

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur appreciates the information provided and would appreciate updated information on the situation of Tenzin Deleg Rinpoche.

**Urgent appeal sent on 19 October 2004** with the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on freedom of religion or belief, and the Special Rapporteur on torture, reproduced from E/CN.4/2005/7, para. 93

Tenzin Deleg Rinpoche, a 54 year old Buddhist religious leader was at imminent risk of execution, following a conviction based on a confession obtained under torture. He was arrested on 7 April 2002 following a bombing incident in Chengdu, Sichuan Province on 3 April 2002. He was found guilty on 29 November 2002 in a secret trial by the Kardze (Ganzi) Intermediate People's Court in the Kardze Tibetan Autonomous Prefecture, Sichuan Province, for "causing explosions" and "inciting separatism". On 2 December 2002 he was sentenced to death with a two-year suspension of execution, which was set to expire on 2 December 2004. Tenzin Deleg Rinpoche was reportedly held incommunicado for eight months and was reportedly tortured in detention. His conviction was upheld on 26 January 2003 by the Sichuan High People's Court, and he was moved to a secret location afterwards.

### **Response of the Government of China dated 31 December 2004**

Basic Facts:

A'an Zhaxi (Tenzen Delek Rinpoche) is a Tibetan male born on 22 September 1950; prior to his arrest he was a monk at the Wutuo monastery in Honglong village, Yajian county, Sichuan Province. On 2 December 2002, the Intermediate People's Court of the Tibetan Autonomous Prefecture of Kardze, as court first instance, sentenced him in an open hearing to death, deferred of two years, and deprived him of his political rights for life for the crime of causing explosions. He was also sentenced to 14 years of imprisonment and 3 years deprivation of political rights for the crime of

separatism. Under the principle of the joinder of punishment for multiples crimes, it was determined that he should receive the death penalty, deferred for two years, and deprivation of political rights. After the sentencing by the court of first instance, A'an Zhaxi rejected the verdict and filed an appeal. On 23 January 2003, the Sichuan Province Supreme People's Court found that the facts of the original case were clear, the evidence was conclusive and sufficient, the judgment had been accurate, the severity of the penalty was appropriate and the proceedings had been conducted in accordance with the law; accordingly, it upheld the original verdict. A'an Zhaxi is currently serving his sentence in the Chuandong prison in Sichuan Province; the court-ordered deferral of his death sentence expires on 23 January 2005.

#### Explanatory remarks

(1) Article 50 of the Constitution of the People's Republic of China stipulates that if a person sentenced to death with a suspension of execution does not intentionally commit a crime during the period of suspension, his sentence shall be reduced to life imprisonment upon the expiration of the two-year period; if he demonstrates meritorious service, his sentence shall be reduced to not less than 15 years and not more than 20 years of fixed-term imprisonment upon the expiration of the 2-year period. It has in fact been observed in recent years that 99 per cent of all criminals sentenced to death ultimately avoid the death penalty and have their sentences commuted to life or fixed-term imprisonment. This system significantly reduces the number of persons actually put to death. In China there are no extrajudicial, summary or arbitrary executions.

(2) In the course of a trial, particularly in cases in which the death penalty may be imposed, China's judicial authorities scrupulously respect the defendant's right to a defence; they ensure that defendants obtain the prompt and effective services of a defence lawyer and fully respect defendants' procedural rights. Throughout this case all trial-related procedures were conducted in accordance with the law: during the trial A'an Zhaxi had a lawyer to ensure his defence; after the initial verdict was issued he lodged an appeal, pursuant to the Criminal Appeals Act; after the court of second instance rejected his appeal, he delivered materials relating to his new appeal to the prison authorities, who transmitted them to the Sichuan Supreme People's Court and the Investigations Office of the Sichuan People's Procuratorate. It can thus be seen that there were no legal or procedural irregularities, such as the alleged violation of the defendant's right to a public trial or his right to have a lawyer of his own choosing.

(3) China was one of the first States to become a party to the Convention against Torture, and the consistent position of the Chinese Government has been to ban torture and other cruel, inhuman or degrading treatment or punishment. Legislation such as the Criminal Code and the Police Act contain stringent provisions banning torture with a view to preventing and punishing the use of torture and other cruel, inhuman or degrading treatment or punishment by State employees, particularly those working in the justice system. While A'an Zhaxing was in prison he was treated fairly; at present his health is excellent, and the allegation that he was tortured while in detention so that a confession could be extracted is groundless.

## **China: Deaths in Custody of Falun Gong Members**

**Violation alleged:** Deaths in custody

**Subject(s) of appeal:** Group of persons (members of a religious minority; persons exercising their right to freedom of opinion and expression)

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

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

The Special Rapporteur is not in a position to evaluate the allegations made by the Government in relation to Falun Gong. He notes, however, that insofar as any individual adherents of that group have been killed, and especially if such deaths have been linked to their exercise of their rights to freedom of expression and belief, a full investigation designed to determine responsibility is required to be undertaken. The Special Rapporteur regrets that the response provided by the Government does not address that issue.

**Allegation letter sent on 15 October 2004** with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the right to everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on torture, and the Special Rapporteur on violence against women, reproduced from E/CN.4/2005/7 Add. 1, para. 90

The Special Rapporteurs expressed their concern at increasing reports, over the past five years, of systemic repression against the Falun Gong and other “heretical organizations” (“xiejiao zuzhi”). The Special Rapporteurs are concerned that reports of arrest, detention, illtreatment, torture, denial of adequate medical treatment, sexual violence, deaths, and unfair trial of members of so-called “heretical organizations”, in particular Falun Gong practitioners, may reflect a deliberate and institutionalized policy of the authorities to target specific groups such as the Falun Gong.

### **Response of the Government of China received 31 December 2004**

The Chinese Government has carefully investigated the matters referred to in this letter and wishes to make the following reply:

Falun Gong is a cult that developed in various places in China in the early 1990s that has the illegal accumulation of wealth as its objective. Its founder is Li Hongzhi, who initially claimed that the self possesses a supernatural “energy” and that this “energy” can be used to “heal diseases”; he has used this ruse to fraudulently obtain wealth. He later claimed that as long as persons practised Falun Gong as invented by him and followed his theories, they would never get sick, and all followers would become “spirits” or “buddhas”. In order to convince people of his twisted reasoning and heretical talk he has also threatened that the Earth will explode and the world will be destroyed, at which time all those who do not believe his theories, including those who have abandoned Falun Gong, will perish forever. He requires all Falun Gong practitioners to buy his books, recordings and various kinds of exercise equipment.



Through these methods Li Hongzhi exerts mind control over Falun Gong practitioners and carries out numerous illegal criminal acts in China.

The most outstanding crimes perpetrated by Falun Gong violate human rights and harm lives. While under the mind control of Li Hongzhi, more than 1,000 Falun Gong practitioners suffering from all types of illness have refused treatment and medicine and even died because they followed Li's precepts, while hundreds have injured themselves or committed suicide. More than 30 innocent persons have been killed by Falun Gong fanatics. Many practitioners run away from home. For example, one Falun Gong practitioner, Zhang Zhiqin, suffered from diabetes; once she began to practise Falun Gong she refused to take any medication, preferring to rely instead on reading works by Hong Lizhi that were given to her by other practitioners and listening to recordings of lectures by Hong Lizhi on the curing of illnesses. Her health worsened and in January 1999 she died. On 23 January 2001 seven Falun Gong members, following Li's request to "put down life and death" and "attain perfection", set themselves on fire in Beijing's Tiananmen Square; two persons died and three were seriously injured. The two who died were both women and the group included a girl under 12. In the one-month period from 25 May to 26 June 2003 a Falun Gong member from Zhejiang Province, Chen Fuzhao, poisoned 15 beggars and one Buddhist in an effort to increase the potency of his "vital energy". Many Falun Gong victims are women and persons with low levels of education.

Another crime perpetrated by Falun Gong is the serious violation of the public's rights. One example of this is the flouting of international standards by attacks on civil communication satellites; according to incomplete statistics, since 23 June 2003 the Falun Gong organization has attacked China's communications satellites 128 times, causing more than 70 hours' disruption. A second violation is the damaging of public facilities, illegally interrupting television broadcasts; since 2002 Falun Gong members have cut into television broadcasts on the Chinese mainland some 76 times. The Falun Gong web site contains many documents relating to the sabotaging of television by Falun Gong members. A third violation is the carrying out of large-scale telephone harassment and threats, and the use of the Internet to send junk e-mail. Falun Gong has set up "telephone groups" for this purpose, and the organization's web site claims that telephone calls have already been made to more than 10 million residents of mainland China; in January and February 2004 alone they reached 8 million people. Incomplete statistics indicate that, on average, Falun Gong junk e-mail originating outside China exceeds 30 million messages a month. One Falun Gong practitioner, Li Xiangchun, an American, was sentenced by the Chinese courts for having engaged in criminal activities that damaged television broadcasting facilities in Yangzhou, Jiangsu Province, in October 2002. Li Xiangchun confessed his crime in court.

Falun Gong also deliberately attacks any scholars and groups that disagree with its views. When journalists, scientists, educators and religious leaders in China have exposed both the mind control exercised by Li Hongzhi over Falun Gong practitioners and the cult's illegal activities after Falun Gong practitioners have met unusual deaths, Falun Gong has slandered, attacked and harassed them. In the years before Falun Gong was banned, the organization repeatedly targeted the news media all over China. When attacking the publishers of the Chongqing Daily, Falun Gong went as far as to issue a "warning": if an apology was not forthcoming, Falun Gong

practitioners would collectively cause the press to be inundated by floods, causing the premature destruction of the Earth. Today on the Falun Gong web site one can see a long “list of evil persons”, or blacklist, that includes many eminent scholars, including the scientists Zhuang Fenggan, Pan Jiazheng and He Zuoxiu, and religious leaders such as Fu Tieshan and Sheng Hui. All have had their human rights violated because they criticized Falun Gong: they have been subjected to telephone harassment and threats and their physical safety has been threatened.

In view of the fact that Falun Gong has carried out many illegal, criminal acts, the Chinese Government has, in accordance with the law and pursuant to the relevant national legislation, sought to protect the basic human rights and freedoms of the masses by banning the Falun Gong cult. In 2003 China’s Shaanxi Province conducted a one-time survey, which yielded the following results: 99.39 per cent of those surveyed thought that Falun Gong was a cult and 98.75 per cent supported the banning of the organization. The Chinese Government shows great concern and care for the vast majority of Falun Gong practitioners; it recognizes that they have been duped and that they, too, are victims. Its policy toward them has been one of unity, education and assistance. All of society has shown great patience in helping the vast majority of former Falun Gong practitioners to see that the Falun Gong organization is a cult, to throw off the mind control of Li Hongzhi and to resume normal lives. As for the extremely small number of Falun Gong diehards who engage in illegal criminal acts, China’s judicial authorities will punish them, in accordance with the law, not because they practise Falun Gong but because they engage in illegal criminal acts that violate criminal law.

In order to conceal its criminal activities, the Falun Gong organization has fraudulently obtained the sympathy of a number of public figures who are unaware of the truth and has disseminated many untrue allegations abroad, claiming that it is “persecuted” in China. In order to successfully set off such false alarms, the Falun Gong organization even invents incidents that are not true. One flagrant example is the allegation that Wei Xingyan, a female researcher at Chongqing University, was raped by the police. Falun Gong claims that a female researcher at Chongqing University named Wei Xingyan was arrested and then gang-raped by police officers while in detention because she was a Falun Gong practitioner. In fact, Chongqing University does not have any female researcher named Wei Xingyan, and no so-called gang rape ever occurred. An investigation has revealed that this incident was made up by several Falun Gong members in Chongqing in response to a request from abroad posted on Falun Gong’s Clear Wisdom web site. Several Falun Gong members who were under suspicion have in fact confessed. The Clear Wisdom web site is full of brazen appeals for members to damage public facilities, make up and spread false allegations, collect vast quantities of private information about individuals and reveal it, and use e-mail and the telephone to harass average citizens, all in order to control the execution of criminal activities. Falun Gong propaganda outside China, in the form of e-mail messages and even letters from eminent persons belonging to international organizations or political circles as well as literary and artistic propaganda such as “torture exhibits” and art exhibits, are all full of such lies.

Today Falun Gong styles itself outside China as a “spiritual movement” that seeks “perfection” and reflects traditional Chinese culture, thus concealing its true nature. However, this is a case in which facts speak louder than words, and the preachings of

Li Hongzhi to his more than 20 million practitioners and criminal acts that are perpetrated by Falun Gong in China cannot be denied. All countries opposed to prejudice and all upright individuals hold objective facts in esteem and support action taken in accordance with the law to deal with cults that engage in illegal activities and to protect and guarantee human rights.

### **China: Death Sentence of Kuerban Tudaji**

**Violation alleged:** Non-respect of international norms and standards for the imposition of capital punishment

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

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur appreciates the information provided and would appreciate updated information on the situation of Kuerban Tudaji.

#### **Allegation letter sent on 15 July 2004**

Kuerban Tudaji, an alleged Uighur "separatist" in the Xinjiang Uighur Autonomous Region (XUAR) of China, was sentenced to death on 30 June after being convicted of "manufacturing explosives, firearms and ammunition", "attempting to split the country" and "organising terrorist training" between 1998 and 2000. Reports indicate that he had declared a jihad or "holy war" against China. There is no clarity as to the evidence brought against him or whether he had access to a lawyer.

#### **Response of the Government of China dated 11 November 2004**

##### *Section .01 Basic facts*

Kuerban Tudaji is a 26-year-old ethnic Uighur male. From 1998 to 2002 he belonged to an ethnic separatist organization in Urumqi and took part in the organization's underground training activities. He also actively recruited members for the separatist organization, conducted separatist propaganda and advocated violence. To this end, he trained separatists, dug tunnels and established measures for maintaining secrecy and organizational discipline. He also purchased firearms from a number of different places, collected instructions for manufacturing explosives, poison gas and toxic substances, purchased the materials needed to make explosives and toxins, and actually made ammunition and toxins. In all, he purchased a Type 64 pistol, a revolver and 154 rounds of ammunition; he also bought five bombs and made 35 more as well as 40 bomb casings. He stole a vibration-type bomb and purchased large quantities of materials needed to make ammunition and toxic substances; he also produced three bottles of poison. On 10 June 2003 the People's Intermediate Court in Kezilesukerkezi Autonomous Prefecture, Xinjiang Uighur Autonomous Region, issued its verdict, sentencing Kuerban Tudaji to life imprisonment and deprivation of political rights for life for the crime of separatism, and sentencing him to death and deprivation of political rights for life for the crime of illegally manufacturing, buying,

selling and transporting firearms and ammunition and explosive devices. The Court ruled that the death penalty and deprivation of political rights for life should be imposed. The defendant did not file an appeal or counter-appeal within the time limits prescribed by law. On 10 June 2004 the Xinjiang Supreme Court issued a ruling approving the imposition of the death sentence in respect of Kuerban Tudaji.

*Section .02 Explanatory remarks*

Engaging in ethnic separatist activities and illegally manufacturing, buying, selling and transporting firearms and ammunition are serious crimes that are punishable by law in any country. Article 103 of the Chinese Criminal Code stipulates that any person who organizes, plots or acts to split the country or undermine national unification shall be sentenced to life imprisonment or not less than 10 years' fixed-term imprisonment if that person is the ringleader or if the crime is grave. Article 125 of the Code stipulates that any person who illegally manufactures, trades, transports, mails or stockpiles firearms, ammunition or explosives shall be sentenced to not less than three years' but not more than 10 years' imprisonment, or to not less than 10 years' imprisonment, life imprisonment or death if the consequences are serious. The sentencing of Kuerban Tudaji by China's judicial authorities was fully consistent with the law.

China's judicial authorities had abundant evidence with which to convict Kuerban Tudaji, including such material evidence as firearms and ammunition, the conclusions of experts, the report of the crime scene investigation and the testimony of witnesses. The defendant also confessed his crime. In the course of the proceedings the People's Court appointed Saimi Aizimu, a lawyer with the Xiyuan legal services bureau in Xinjiang, as his defence attorney, and counsel's duties were discharged conscientiously. Kuerban Tudaji also spoke in his own defence. One may say that this defendant's legitimate rights were fully guaranteed in the course of his trial.

**China: Death in custody of Jiang Zongxiu**

**Violation alleged:** Death in custody

**Subject(s) of appeal:** 1 female (member of religious minority; person exercising right to freedom of opinion and expression)

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur**

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

**Allegation letter sent on 26 November 2004** with the Special Rapporteur on freedom of religion and belief, reproduced from E/CN.4/2005/7, at para. 94

Ms. Jiang Zongxiu, aged 34, was arrested on 17 June 2004 while she and her mother-in-law were distributing some Christian texts and Bibles in a local market place. Both of them were sentenced to 15 days administrative detention for their suspected activities of "spreading rumours and disturbing the social order." On 18 June around 2pm at the Public Security Bureau of Tongzi County, in Guizhou province, she was

beaten to death during an interrogation. No steps have been taken to investigate the case. An autopsy result issued by the local government claimed that Ms. Jiang died of heart failure.

### **Response of the Government of China dated 16 June 2005**

Receipt is acknowledged of communication AL G/SO 214 (56-18) G/SO 214 (53-19) CHN 54/2004, dated 26 November 2004, from the Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on freedom of religion or belief and Special Rapporteur on freedom of expression and opinion of the United Nations Commission on Human Rights. The Chinese Government has carefully examined the matters referred to in the communication and wishes to submit the following response.

#### I. Basic circumstances

On 17 June 2004, the villagers Jiang Zongxiu (female, aged 34) and her mother-in-law Tan Dewei (female, aged 61) from Baishi village in Ganshui township, Qijiang county, Chongqing city, were conducting activities in the hawkers' market in Tongzi county, Zunyi city, Guizhou province, which seriously disrupted commercial operations in the market. Acting in accordance with the provisions of article 19, paragraph 2, of the Rules on Penalties for Offences against Law and Order and pursuant to the law, the public security authorities held Tan and Jiang in public order detention for 15 days. On 18 June at 2 p.m. Jiang suddenly fell ill while in the administrative detention facility of the Tongzi county public security bureau and was promptly transferred to a nearby hospital where efforts to save her life failed and she died. On 27 June, the Tongzi county public security bureau, together with members of Jiang Zongxiu's family, entrusted the Forensic Science Centre of Zunyi Medical School in Guizhou province to carry out a forensic enquiry into the causes of Jiang's death, to be conducted in the presence of members of the deceased's family. The conclusions of the forensic enquiry ruled out the possibility of mechanical asphyxia, mechanically induced death or poisoning, and clearly established that the deceased suffered sudden death due to lipocardiac causes (because of the excessive build-up of fat in her heart, a condition which at any time can cause sudden death).

Following careful investigation it was verified that, at all times throughout the period of Jiang's administrative detention, the public security authorities had acted in strict compliance with the law, had duly respected all Jiang's lawful rights, and had never applied any form of torture or other inhuman treatment against her. When Jiang fell ill, she received prompt attention to save her life. The allegations in the communication which we have received that Jiang was beaten to death in the public security bureau during her interrogation is not consistent with the facts.

#### II. Explanatory remarks

(a) The Chinese Constitution and Chinese law clearly establish that citizens shall enjoy the freedom of religious belief. Article 36 of the Chinese Constitution stipulates that citizens of the People's Republic of China enjoy the freedom of religious belief. The measures taken by Chinese judicial authorities against Jiang were consistent with the law and were applied because the latter had conducted activities which seriously

disrupted commercial operations in the market and had nothing to do with any issue of freedom of religious belief.

(b) China was one of the very first States to ratify the United Nations Convention against Torture, and firmly prohibits torture and other forms of cruel, inhuman or degrading treatment or punishment. Chinese law clearly stipulates that persons taken into custody enjoy extensive rights. The Chinese Criminal Code, the Chinese Code of Criminal Procedure and many other laws and statutes clearly stipulate that verbal and physical abuse, corporal punishment and other forms of ill-treatment are strictly forbidden. Confessions which have been obtained through the use of torture, by force, with inducements, by deception or through any other unlawful means, even if they are proved to be true, have no legal force. In China, the moment a case arises where a detainee's rights have been infringed, the persons responsible are invariably penalized.

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

### **China: Death Sentences of Four Men**

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

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

**Character of reply:** UN translation awaited for response of the Government of China dated 12 January 2006

**Urgent appeal sent on 10 October 2005** with the Special Rapporteur on the question of torture

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

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

However, the Intermediate Court once again sentenced the men to death on 18 November 2004, reportedly without considering the torture allegations. The four men

remain under sentence of death, and it is unclear why their executions have not yet been carried out. It is possible that the Jiangxi High People's Court is continuing to refuse to approve the verdict.

If these allegations are correct there would be ground for serious concerns. While we acknowledge the serious nature of crimes involved we would recall that "in capital punishment cases, the obligations of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights admits of no exception". (Little v. Jamaica, communication no. 283/1988, Views of Human rights Committee of 19 November 1991, para. 10). This standard embraces the right not to be found guilty on the basis of a forced confession.

We would also recall Commission on Human Rights resolution 2005/39 which urges States to ensure that any statement which is established to have been made as a result of torture shall not be invoked in any proceedings. This principle is an essential aspect of the right to physical and mental integrity.

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

We would urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Huang Zhiqiang, Fang Chungping, Cheng Fagen, and Cheng Lihe are respected. Under the circumstances this would include an official investigation of the allegations before any further action is taken.

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

### **Colombia: Muerte de Omaira Fernández**

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

**Persona objeto del llamamiento:** 1 mujer, menor

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

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

El Relator Especial agradece el Gobierno de Colombia por su respuesta.

**Carta de alegación mandada el 5 de mayo de 2004** con el Relator Especial sobre la tortura, la Representante Especial del Secretario General sobre la situación de los

defensores de los derechos humanos, el Relator Especial sobre la situación de derechos humanos y libertades fundamentales de los indígenas, la Relatora Especial sobre la violencia contra la mujer, reproducido desde E/CN.4/2005/7/Add.1 al para. 159 y primera respuesta del Gobierno de Colombia del 31 de agosto de 2004.

Omaira Fernández, una menor de 16 años de edad, quien estaba embarazada, habría sido violada y asesinada el 5 de mayo de 2003 por miembros del ejército nacional, en la inspección de policía de Betoyes, del municipio de Tame, Arauca. También habrían sido ejecutados los indígenas Daniel Linares Sánchez, Nilson Delgado y Samuel Linares Sánchez. Asimismo, Marcos López Díaz y Narciso Fernández habrían sido heridos; Maribel Fernández y dos niñas más habrían sido violadas. Los presuntos autores de los hechos serían miembros del Batallón Navas Pardo, adscrito a la Brigada XVIII del Ejército Nacional

### **Respuesta del Gobierno de Colombia del 4 de mayo de 2005**

En su primera respuesta, el Gobierno dio cuenta de sus varias investigaciones y reveló que los diversos hechos violentos acontecidos fueron producto del paso de las Autodefensas por Betoyes al combatir con guerrilleros. En su segunda respuesta, el Gobierno informó que la Fiscalía especializada de Cúcuta, Unidad de Apoyo a la Unidad Nacional de Fiscalías de derechos Humanos y Derecho Internacional Humanitario, se abstuvo de abrir investigación penal por los hechos según los cuales miembros del Ejército Nacional habrían cometido conductas de homicidio agravado, violación en contra de la menor Omaira Fernández y desplazamiento forzado en contra de las comunidades indígenas Parreros Velasqueros, Julieros y Genaderaos en el Departamento de Arauca. Según lo determinó la Fiscalía, previo análisis de las pruebas recaudadas, las conductas denunciadas contra el ejército no existieron. Se localizó a la presunta víctima, Omaira Fernández, quien fue localizada por el fiscal luego de arduas labores en la población de Betoyes- TAME. Declaró que jamás fue agredida, ni violada y que su pequeño hijo tiene a la fecha dos años, situación que pudo ser corroborada por los investigadores. También declaró que por consejo del Gobernador del Cabildo Indígena de los Parreros, de nombre Macario Parada, cambió su nombre en la registraduría del estado civil de TAME, por el de Doris Vargas Tarazona debido a las denuncias y la investigación de la Fiscalía. Otros miembros de la comunidad fueron entrevistados: la prima de Omaira Fernández, la menor Maribel Fernández, también declaró que nunca ha sido violada y que sus padres no fueron desaparecidos. Declaró “el ejército no nos atropella, realmente a nosotros los Parreros no nos han maltratado ni nos han hecho nada”. La señora Heriberto Fernández, madre de Omaira, informó que de su comunidad la única persona muerta violentamente de los presuntos hechos fue Nilson Delgado, esposo de su hija, y que ningún miembro de su comunidad resultó perjudicado “de los julieros y velasqueros tampoco tengo conocimiento que hayan matado personas de esas comunidades”. Además, la Fiscalía resolvió continuar la investigación en su etapa previa con relación a la muerte de Nilson Delgado, miembro de la comunidad indígena Genareros, ocurrida el 31 de diciembre de 2002.

### **Colombia: Muerte de Teresa Yarse**

**Violación alegada:** Muertes a consecuencia de ejecución por grupo paramilitar



**Persona objeto del llamamiento:** 1 mujer, defensor de los derechos humanos

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

**Observaciones del Relator Especial:**

El Relator Especial agradece el Gobierno por su respuesta. En caso de que las investigaciones sobre dichos homicidios hayan sido terminadas, el Relator Especial agradecería información precisa sobre los resultados alcanzados así como sobre posibles sanciones contra los responsables de la muerte de la señora Yarse.

**Carta de alegación mandada el 19 de octubre de 2004** con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, reproducido desde E/CN.4/2005/7/Add.1 at para. 175

Teresa Yarse, líder de la asociación de Mujeres de las Independencias (AMI), organización que trabaja en favor de los derechos de la mujer y contra la pobreza en Medellín, Departamento de Antioquia, habría fallecido el 6 de octubre de 2004 al recibir tres tiros cuando se encontraba en una cancha deportiva cerca de su casa supuestamente por paramilitares que controlan el barrio Comuna 13. La muerte de Teresa Yarse podría estar directamente relacionada con su trabajo de defensora de derechos humanos en dicha comunidad y en particular con su intento de reprimir confrontaciones armadas entre guerrilla y paramilitares. Se alega que la muerte puede ser atribuida a los paramilitares que controlan el barrio Comuna 13.

**Respuesta del Gobierno de Colombia del 22 de diciembre de 2005.**

De acuerdo la Dirección de Asuntos Internacionales de la Fiscalía General de la Nación, el 31 de enero de 2005, se avoca conocimiento de las diligencias, en razón de la reasignación a la Unidad de Derechos Humanos y DIH, a órdenes del Fiscal 35 adscrito a esa Unidad en la ciudad de Medellín. El 2 de febrero de 2005 se expide resolución de pruebas asignada a la Policía judicial de esa unidad. El 21 de abril de 2005 se recibe informe por parte de la Policía Judicial. El 14 de Abril de 2005, se expide nueva resolución de pruebas, tendientes al esclarecimiento de los hechos. El 26 de abril de 2005, se anexa el radicado 747394 sobre amenazas, denuncia instaurada en su momento por la fallecida. En relación con el protocolo de necropsis 2004P-02012, se establece que la muerte fue producida por consecuencia natural y directa de laceraciones encefálicas causadas por heridas en el cráneo por proyectiles de arma de fuego. A la fecha, no se ha constituido parte civil. Asimismo, es importante mencionar que el caso de la señora Ana Teresa Yarse también se encuentra denunciado ante la Comisión Interamericana de Derechos Humanos. Adicionalmente, el Gobierno de Colombia seguirá atento al resultado de las investigaciones que se adelanten, respeto de lo cual informará oportunamente a su Excelencia.

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

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

**Persona objeto del llamamiento:** 2 hombres

**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 los asesinatos de Alfredo Correa de Andreis and Edward Ochoa Martínez. El Relator Especial preguntará información sobre los resultados de las investigaciones mencionadas en la respuesta del Gobierno.

**Llamamiento urgente del 17 de enero de 2005**

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

**Respuesta del Gobierno de Colombia del 31 de marzo de 2005**

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

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

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

## **Colombia: Muertes en la Comunidad de Paz de San José de Apartadó**

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

**Persona objeto del llamamiento:** 5 hombres, incluso 2 defensores de los derechos humanos, 2 menores, 3 mujeres incluso 1 menor

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

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

El Relator Especial aprecia la información preliminar proporcionada por el Gobierno de Colombia relativo al caso y lamenta que no todavía no se haya sido posible conducir una investigación eficaz. Sin embargo, a la luz de lo precedente, el Relator Especial considera que las conclusiones afirmando que existen “serios indicios que señalarían a las FARC como presuntos responsables del hecho” faltan credibilidad. El Relator Especial agradecería recibir pruebas concretas sosteniendo dichas conclusiones así como resultados suplementarios conforme adelante la investigación.

**Carta de alegación mandada el 10 de marzo de 2005** con el Relator Especial sobre la promoción y protección 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.

Alegación enviada relativa a la supuesta muerte de ocho habitantes de la Comunidad de Paz de San José de Apartadó, entre ellos dos defensores de derechos humanos y dirigentes de dicha comunidad, Luis Eduardo Guerra Guerra y Alfonso Bolívar Tuberquia Graciano. La Representante Especial envió anteriormente dos comunicaciones, el 3 de diciembre de 2003 y el 10 de febrero de 2004, con respecto a la seguridad de los habitantes de la Comunidad de Paz de San José de Apartadó.

Según la información recibida, el 21 de febrero de 2005, hacia las once de la mañana, Luis Eduardo Guerra, uno de los dirigentes de la Comunidad de Paz; su compañera Bellanyra Areiza Guzmán; su hijo de 11 años, Deiner Andrés Guerra; y un testigo, habrían sido secuestrados por un grupo de hombres armados que se habrían identificado como miembros del ejército colombiano en Mulatos, una comunidad perteneciente a la Comunidad de Paz de San José de Apartadó. De acuerdo con los informes recibidos, los hombres habrían dicho que se llevaban a los cuatro para matarlos. Se informa que el testigo consiguió escapar. El 22 de febrero, según indican los informes, ese mismo testigo habría visitado la granja de Alfonso Bolívar Tuberquia Graciano, otro dirigente de la Comunidad de Paz. Se informa que al llegar, habría encontrado manchas de sangre en la casa y restos humanos fuera de ella, lo cual habría denunciado a las autoridades. El 25 de febrero, funcionarios de la Fiscalía General y la Procuraduría General viajaron a la zona para investigar la situación. Según los informes, habrían hallado cinco cadáveres desmembrados en dos fosas cerca de la granja, que fueron identificados como los de Alfonso Bolívar Tuberquia Graciano; su compañera Sandra Milena Muñoz; sus hijos Santiago Tuberquia Muñoz y Natalia Andrea Tuberquia Muñoz; y otro habitante de la zona, Alejandro Pérez. Además, ese mismo día, se habría hallado otra fosa con los cadáveres de Luis Eduardo Guerra Guerra, Bellanyra Areiza Guzmán y Deiner Andrés Guerra, entre

Mulatos y La Resbalosa, otra comunidad perteneciente a la Comunidad de Paz de San José de Apartadó. Se informa que las autoridades desconocen aún quiénes fueron los responsables.

Se teme que estos homicidios puedan estar relacionados con el trabajo de los dirigentes de la Comunidad de Paz de San José de Apartadó en defensa de dicha comunidad y que además puedan coincidir con el regreso planeado de varias familias, para el 23 de marzo de 2005, al poblado abandonado de La Esperanza, en San José. Según la información recibida, un intento previo de repoblar La Esperanza habría coincidido con la muerte de varios habitantes de la Comunidad de Paz en abril de 1999.

### **Respuesta del Gobierno de Colombia del 28 de marzo de 2005.**

“Una vez puesto en conocimiento de las autoridades competentes este lamentable y execrable hecho, el Gobierno Nacional a través del Programa Presidencial para los Derechos Humanos, dispuso la creación de una comisión judicial de investigación, compuesta por delegados de la Unidad de Derechos Humanos de la Fiscalía General de la Nación y de la Procuraduría Delegada para los Derechos Humanos y Asuntos Etnicos, con el propósito coordinar las acciones tendientes a esclarecer las circunstancias que rodearon el hecho.

Dicha Comisión—que contó con el apoyo en seguridad de la fuerza pública—se desplazó a la región el 24 febrero de 2005, y al día siguiente efectuó el levantamiento de los cadáveres en el sitio conocido como “La Resbalosa”, y el día 27 del mismo mes, en el Río Mulatos.

En ejercicio de sus labores, la Comisión consideró necesario adelantar algunas indagaciones en el casco urbano de la zona, por lo que el 2 de marzo se desplazó hacia Apartada—trayecto en el que fue víctima de una emboscada perpetrada, al parecer, por miembros de las FARC, resultando varias personas heridas y un agente de escolta de la Policía Nacional muerto—infortunadamente, dicha Comisión no obtuvo la colaboración requerida por parte de la población, la cual se negó insistentemente a hablar con los investigadores.

De acuerdo con las primeras pesquisas y con el trabajo preliminar adelantado por la Dirección de Fiscalías de Antioquia, existen serios indicios que señalarían a las FARC como presuntos responsables del hecho. No obstante, el caso viene siendo investigado en el marco del Comité Especial de Impulso a las Investigaciones por Violaciones a los Derechos Humanos, en cuya coordinación tienen asiento la Vicepresidencia de la República, el Ministerio del Interior y de Justicia, la Fiscalía y la Procuraduría General de la Nación, así como la participación de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos como invitado permanente.

De acuerdo con la información suministrada por el Ministerio de Defensa Nacional, en la zona de los hechos no había unidades militares al momento de su acaecimiento, circunstancia esta que desvirtúa algunas afirmaciones, según las cuales, al parecer habrían sido miembros del Ejército Nacional los presuntos responsables de la masacre.

De otra parte, conviene destacar el estricto seguimiento efectuado por el Gobierno Nacional frente a la implementación de las medidas provisionales decretadas por la Corte Interamericana de Derechos Humanos a favor de la Comunidad de Paz de San José de Apartado. Dicho seguimiento, ha tenido como base el diseño y la ejecución de acciones concertadas con la comunidad y sus representantes, a fin de proteger a sus miembros de eventuales violaciones a los derechos humanos, las cuales derivan tanto de las visitas in situ efectuadas por delegados del Gobierno en la zona, como de las reuniones interinstitucionales llevadas a cabo, periódicamente, a nivel central.

En agosto y octubre de 2004, el señor Vicepresidente de la República visitó la zona y se reunió con organizaciones de derechos humanos que trabajan en el área, entre ellas Brigadas Internacionales de Paz. En este escenario se discutieron las dificultades que se han presentado y el Vicepresidente reiteró, una vez más, que el Gobierno Nacional ha brindado y seguirá brindando las garantías necesarias para que las organizaciones puedan adelantar su labor, siempre y cuando esta se lleve a cabo dentro del marco de la ley y la sostenido reuniones periódicas en Bogotá con los líderes de la comunidad, con el propósito de hacer seguimiento directo de la situación y concertar las medidas de protección pertinentes. En el marco de estas reuniones, el Gobierno Nacional propuso la instalación de un puesto de Policía en el casco urbano del corregimiento, e invitó a los líderes de la comunidad a participar en la capacitación de los miembros que se destacarían allí, y reiteró en la necesidad de que al mismo concurren los órganos de control, la Gobernación de Antioquia y la Alcaldía Municipal simultáneamente.

El Gobierno colombiano continuará atento al desarrollo y resultado de las investigaciones, sobre lo cual informará oportunamente a los(as) Honorables Representantes y Relatores.

### **Colombia: Muertes en Buenaventura**

**Violación alegada:** Muertes a consecuencia de ataque por fuerzas de seguridad

**Persona objeto del llamamiento:** 11 hombres, 6 menores, 1 mujer, menor.

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

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

El Relator Especial agradece el Gobierno por su respuesta. En caso de que las investigaciones hayan sido terminadas, el Relator Especial agradecería información precisa sobre los resultados alcanzados y en particular sobre las desapariciones de las once personas mencionadas por el Gobierno.

**Llamamiento urgente del 11 de mayo de 2005** 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 los Sres/as. Javier Borja, de 15 años de edad; Concepción Rentería Valencia, de 16 años de edad; Carlos Arbey Valencia, de 17 años de edad; Pedro Paulo Valencia Aramburo, de 17 años de edad; Rubén Darío Valencia Aramburo, de 18 años; Pedro Luis Aramburo Cangá, de 18 años;

Alberto Valencia, de 18 años; Mario Valencia, de 19 años; Víctor Alfonso Angulo, de 20 años; Leonardo Salcedo García, de 20 años; Iver Valencia, de 21 años, y, Jhon Jairo Rodallegas (cuya edad no se conoce hasta el momento). De acuerdo a las alegaciones recibidas:

En fecha 19 de abril del 2005 un grupo de 24 personas pertenecientes a los barrios Punta del Este, Santa Cruz y Palo Seco, situados en la Comuna 5 de Buenaventura, fue conducido por un hombre que conducía una motocicleta a Puerto Dagua con el pretexto de organizar un partido de fútbol y bajo la promesa de recibir la suma de 200.000 pesos en caso de ganar el partido. El día 21 de abril 12 de ellos, cuya identidad ha sido señalada previamente, fueron encontrados muertos en la Comuna 12, Barrio el Triunfo, Vereda las Vegas, que se encuentra bajo la vigilancia de la Infantería de Marina del Ejército Nacional. Los cuerpos amordazados de los fallecidos presentaban signos evidentes de haber sido torturados a través de métodos tales como el uso de ácido, o la extracción de los ojos para finalmente recibir el tiro de gracia. Se desconoce el paradero de los 12 restantes que continuarían a día de hoy desaparecidos. En las alegaciones remitidas se hace mención a la difícil situación que atraviesa la comunidad afro-colombiana de la cual formaban parte las víctimas señaladas y en concreto la Familia Aramburu-García 3 de cuyos miembros se encuentran entre las víctimas y que ha venido siendo objeto de ataques y actos de hostigamiento desde el año 2000.

La información contenida en las alegaciones constituye un motivo serio de preocupación por un lado respecto a la integridad física y mental de las personas cuyo paradero se desconoce, y por otro respecto a la clarificación de los hechos que resultaron en el asesinato de las personas mencionadas."

#### **Respuesta del Gobierno de Colombia del 5 de diciembre de 2005.**

En su carta relativa al asesinato de 12 personas y la presunta desaparición de otras 12 personas en la ciudad de Buenaventura, el Gobierno informa que de acuerdo con datos suministrados por el Departamento Administrativo de Seguridad (DAS), en la Unidad Investigativa de Policía Judicial del Grupo Gaula de Buenaventura se instauraron el 19 de abril de 2005, dos denuncias por la desaparición de once personas en el barrio de punta del Este, Comuna 5 de la ciudad de Buenaventura, las cuales –según información suministrada por los denunciantes- habrían sido instadas, por individuo que se movilizaba en una moto, a participar en un juego de fútbol, a cuyo propósito abordaron un vehículo que los conduciría a un campo de juego. No obstante, y de acuerdo con los resultados de la investigación, este vehículo hizo contacto con un grupo de hombres que, después de amarrar a sus víctimas, procedió a dar muerte a Pedro Luis Aramburo Canga, Ruben Darío Valencia Aramburo, Carlos Arvey Valencia García, Luis Mario García Valencia, Hugo Armando Mondragón, Rofolfo Valencia Benítez, Carlos Javier Segura, Manuel Concepción Rentería, Manuel Jair Angulo Mondragón y Leonel García. Es preciso señalar que, de este grupo de víctimas, solamente las primeras cuatro concuerdan con los nombres suministrados por el Relator en su denuncia del 11 de mayo de 2005. Asimismo, junto con este grupo de víctimas se halló el cadáver de otro joven del que aún se desconoce su identidad. Con esto, investigadores de la Unidad de derechos humanos de la fiscalía general de la nación adelantaron una serie de allanamientos en los barrios Viento Libre, R-9, El Laguito, San Francisco y 12 de abril de la ciudad de Buenaventura, a

fin de dar con el paradero de los responsables, y de cuya diligencia resultaron capturadas cinco personas. A la fecha, los hechos y las circunstancias del caso dan cuenta de dos denuncias referidas a la desaparición de once personas, y no de veinticuatro como se haya consignado en la denuncia del Relator. Actualmente la investigación se encuentra en etapa de instrucción, habiendo capturado a 10 personas, de la cuales nueve se encuentran privadas de libertad.

### **Democratic Republic of the Congo: Massacre de Civils à Ntulumamba**

**Violation alléguée:** Morts dues à des attaques ou meurtres par des groupes paramilitaires coopérant avec l'Etat ou tolérées par celui-ci.

**Objet de l'appel:** Plus d'une trentaine de personnes

**Caractère de la réponse :** Pas de réponse

### **Observations du Rapporteur Spécial**

Le Rapporteur Spécial regrette que le Gouvernement de la République Démocratique du Congo n'ait pas coopéré avec le mandat qui lui a été conféré par la Commission des Nations Unies pour les Droits de l'Homme.

**Communication envoyée le 21 juillet 2005** avec la Rapporteuse Spéciale chargée de la question de la violence contre les femmes, y compris ses causes et ses conséquences et Expert Indépendant sur la situation des droits de l'homme en République Démocratique du Congo.

Nous avons reçu des renseignements concernant le massacre de plus de 30 civils, en majorité des femmes et des enfants.

Selon l'information reçue, dans la nuit du 9 au 10 juillet 2005, le village de Ntulumamba, situé à 70 kilomètres au Nord-Ouest de Bukavu, près de Kalonge dans le Sud du Kivu, aurait été attaqué par un groupe d'hommes armés. Plus de 30 personnes auraient été tuées et environ 50 autres blessées. Les assaillants auraient d'abord rassemblé les femmes et les enfants du village à l'intérieur de leurs huttes avant de les brûler vifs. Les hommes du village seraient toutefois parvenus à s'enfuir.

On aurait attribué cette attaque aux membres des Forces Démocratiques de Libération du Rwanda (FDLR), un groupe de combattants présent dans la région du Parc de Kahuzi Biega. Le groupe serait en effet soupçonné d'avoir commis ces meurtres en guise de représailles contre les villageois afin de punir ceux-ci pour leur récente collaboration avec les Forces armées de la République démocratique du Congo (FARDC) et la MONUC. On rapporte en effet que les FARDC auraient mené une opération contre les positions des FDLR dans ce même parc la semaine précédente. La MONUC aurait également conduit plusieurs opérations de contrôle dans cette région récemment.

Le Président des FDLR aurait nié toute implication de son mouvement dans cette attaque et aurait plutôt attribué la responsabilité de celle-ci à un groupe communément appelé les « rastas ».

Nous prions votre Gouvernement de prendre toutes les mesures nécessaires pour assurer la protection des droits et des libertés des individus mentionnés, de diligenter des enquêtes sur les violations perpétrées et de traduire les responsables en justice. Nous prions aussi votre Gouvernement d'adopter toutes les nécessaires pour prévenir la répétition des faits mentionnés.

**Democratic Republic of the Congo: Mort de Pascal Kabungulu Kibembi**

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

**Objet de l'appel:** 1 homme, défenseur des droits de l'homme

**Caractère de la réponse:** Pas de réponse

**Observations du Rapporteur Spécial:**

Le Rapporteur Spécial regrette que le Gouvernement de la République Démocratique du Congo n'ait pas coopéré avec le mandat qui lui a été conféré par la Commission des Nations Unies pour les Droits de l'Homme.

**Communication envoyée le 3 août 2005** avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme

Communication envoyée sur la situation de M. Pascal Kabungulu Kibembi. Selon les informations reçues :

Le 31 juillet 2005, aux environs de 3 heures du matin trois hommes armés en uniforme et cagoulés se seraient introduits par effraction dans la résidence de Pascal Kabungulu Kibembi à Bukavu. Ils l'auraient traîné hors de sa chambre et exécuté de sang froid après lui avoir dit « on t'a cherché et aujourd'hui c'est le jour de ta mort ». Les hommes auraient également proféré des menaces à l'encontre de ses enfants et emporté l'ordinateur portable de M. Kabungulu.

M. Kabungulu était un défenseur des droits de l'homme connu en RDC. En particulier, il avait été pendant plusieurs années le Secrétaire Exécutif de l'organisation "Héritiers de la Justice", basée à Bukavu et le Vice Président de la Ligue des droits de la personne dans la région des grands lacs, une organisation régionale.

**Côte d'Ivoire: Menaces de Mort à l'Encontre de Amourlaye Touré et Mamadou Fofana**

**Violation alléguée:** Menaces de mort

**Objet de l'appel:** 2 hommes, défenseurs des droits de l'Homme

**Caractère de la réponse:** Allégation rejetée sans preuve adéquate

**Observations du Rapporteur Spécial**



Le Rapporteur Spécial remercie le Gouvernement pour les renseignements qu'il lui a fournis mais il regrette qu'aucune enquête efficace desdites allégations n'ait été conduite. La Rapporteur Spécial note qu'aucune circonstance ne peut justifier la profération de menaces de mort. Par ailleurs, eu égard à l'observation selon laquelle une des personnes menacées "n'a pas jugé utile de déposer une plainte auprès des autorités compétentes pour qu'une enquête soit diligentée selon les règles", le Rapporteur Spécial note que l'obligation d'un Etat d'enquêter de manière efficace sur des violations des droits de l'Homme dérive de son obligation générale en tant que garant du droit et ne dépend pas d'une requête de la part de la victime

**Appel Urgent envoyé le 2 juin 2004** avec le Rapporteur Spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et la Représentante Spéciale du Secrétaire-Général sur la situation des défenseurs des droits de l'Homme, reproduit de E/CN.4/2005/7 Add. 1, para. 183

Amourlaye Touré et Mamadou Fofana, tous deux membres du Mouvement ivoirien pour les droits de l'homme (MIDH), seraient soumis à des actes d'intimidation et à des menaces de mort. Selon les informations reçues, Amourlaye Touré, président par intérim du MIDH, aurait récemment reçu des menaces de mort alors qu'il se trouvait à Genève, où il participait à des réunions organisées dans le cadre de la session annuelle de la Commission des droits de l'homme des Nations Unies. Mamadou Fofana serait quant à lui entré en clandestinité après avoir été la cible d'actes d'intimidation les 25 et 26 avril, lorsqu'un groupe de civils se serait présenté à son domicile en l'accusant de «vendre la Côte d'Ivoire aux étrangers». Ces menaces et intimidations pourraient être liées à la publication par le MIDH, le 28 avril 2004, d'un rapport sur des violations des droits humains commises à Abidjan à la suite d'un défilé organisé le 25 mars, au cours duquel les forces de sécurité auraient recouru à une force excessive pour disperser les manifestants pacifiques et non armés.

### **Réponse du Gouvernement de la Côte d'Ivoire reçue le 11 March 2005**

Le Gouvernement informe que le 22 juin 2004, Monsieur Toure Amourlaye, Président du Mouvement Ivoirien des Droits Humains (MIDH) a été entendu par les autorités menant l'enquête. Il en ressort que Monsieur Toure, de passage à Paris, en provenance de Genève où il a pris part aux travaux de la 60<sup>e</sup> session de la Commission des de l'Homme, des informations faisant état de menaces contre sa vie lui seraient parvenues depuis la Côte d'Ivoire. Après les avoir vérifiées en contactant notamment Monsieur Zoro Bi Ballo Ephiphane, ancien président fondateur du MIDH en Belgique, il se serait rendu compte du sérieux et de la gravité desdites menaces. Il a alors saisi, selon lui, Amnesty International et la Fédération Internationale de la Ligue des droits de l'Homme (FIDH), des éléments en sa possession tout en prenant soin de différer son retour en Côte d'Ivoire. Le Gouvernement précise que Monsieur Toure a finalement regagné Abidjan le 6 juin 2004 et exerce actuellement ses activités sans aucune entrave. Jusqu'à présent, il n'a pas jugé utile de déposer une plainte auprès des autorités compétentes pour qu'une enquête soit diligentée selon les règles. Monsieur Toure a par ailleurs révélé que monsieur Amadou Fofana est un militant du MIDH qui est actuellement en rupture de ban avec ledit mouvement. Il a expliqué qu'en violation des règles régissant le MIDH, Monsieur Mamadou Fofana a divulgué dans les colonnes d'un journal français, avant qu'ils ne soient rendus publics, les résultats d'une enquête menée par ledit mouvement après les événements des 25 et 26 mars

2004. Suite à cette publication, des personnes non identifiées se seraient mises à la recherche de Monsieur Mamadou Fofana qui, alerté, aurait rallié la ville de Man située à l'Ouest du pays, dans la zone contrôlée par les rebelles. Aux dernières nouvelles, selon monsieur Toure, Monsieur Fofana serait revenu à Abidjan où il ferait le tour des ambassades accréditées en Côte d'Ivoire et la cour aux responsables de l'opération des Nations Unies en Côte d'Ivoire (ONUCI), pour l'obtention d'un visa et d'un asile politique en Europe.

**Réponse supplémentaire du Gouvernement datée du 3 Mai 2005** par laquelle le Gouvernement a transmis copie de la lettre du 6 Avril 2005 du Ministre de la sécurité

« En réponse à votre demande d'informations consécutive à des allégations de violations des Droits de l'Homme subies singulièrement par le Président de Mouvement ivoirien des Droits de l'Homme (MIDH), j'ai l'honneur de vous assurer de l'étroitesse des contacts entre le MIDH et moi-même, ancien Président de la Ligue ivoirienne des Droits de l'Homme (LIDHO). D'ailleurs, le Président ainsi que les membres de ce mouvement ont toujours été satisfaits des mesures prises à leur profit.

Je puis vous réaffirmer mon entière disponibilité à le recevoir et à envisager, en accord avec lui, des dispositions appropriées eu égard à la nouvelle donne. »

### **Egypt: Death in Custody of Nafisa al-Marakbi**

**Violation alleged:** Death in custody

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

**Character of reply:** Allegations rejected but without adequate substantiation

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

The Special Rapporteur appreciates the autopsy results provided by the Government of Egypt. However, the SR remains concerned at the lack of a thorough investigation into the allegations regarding the death of Nafisa al-Marakbi. A finding that Nafisa al-Marakbi died due to toxic shock is consistent with sexual mistreatment, and the SR regrets that a broader investigation was not conducted. The SR finds it especially troubling that interviews were not conducted with the other detainees and members of the security forces who were potential witnesses.

**Allegation letter sent on 22 March 2005** with the Special Rapporteur on torture and the Special Rapporteur on violence against women

Ms. Nafisa Zakaria Mohammed al Marakbi, aged 38, Sarando village died on 14 March 2005. She was among a group of women arrested by security forces and detained in a house in the village that they had converted into a makeshift detention centre. The police removed her face veil and fondled her breasts and abdomen while making sexual threats. Other women in the group were subjected to similar treatment. The police took each woman separately outside of the house for a period of time. When Ms. al Marakbi was released at 3am, her physical and psychological state was very poor. Medical officials at Damanshour General Hospital reported that she was in a coma when she was brought in by her family at 9pm. Efforts to revive her continued

until 6am on 15 March, when she was pronounced dead. No autopsy was performed on the body, which security officials returned to the family and which was buried the same day. Moreover, villagers told a delegation of human rights experts on 16 March that prior to their visit police had threatened them with arrest if they spoke to the delegation, and that shortly before the delegation's arrival the majority of the police present in the village were moved inside large police transport vehicles in an apparent attempt to hide their presence."

### **Response of the Government of Egypt dated 6 April 2005**

2. Death of Nafisa al-Marakbi: The Department of Public Prosecutions received Damanhour administrative report No. 219S5/2005 submitted by nine human rights associations and centres: the Centre for Social and Political Justice; The Hisham Mubarak Law Centre; the Nadim Centre for Rehabilitation of Victims of Violence; the Human Rights Legal Aid Association; the Arab Human Rights Information Network; the Egyptian Centre for Human Rights; the Egyptian Association Against Torture; The Centre for Socialist Studies; the Freedom Committee of the Bar Association and the Land Centre for Human Rights. The report stated that the above-mentioned centres and associations had been informed that Nafisa Zakariya Mohamed al-Marakbi, a citizen of Sarando village, had died after being kicked by a police officer and detained at a house on 13 March 2005 before being released at dawn the following day. She had allegedly become paralysed that evening and had been taken to hospital. She had allegedly been buried by the security forces without the knowledge or involvement of her family.

The Department of Public Prosecutions launched an investigation on 16 March 2005 and obtained a copy of her medical notes. It questioned the doctor who had examined her upon arrival at the hospital at 9.35 p.m. on 14 March 2005. The doctor told them that the woman had died of heart and respiratory failure and that he suspected that she had been suffering from toxic shock as a result of a bacterial infection in the blood. He also said that he had found no signs of injury or foul play. The examining physician and the director of the hospital were questioned and gave the same version of events. At interview, the husband and the brother of the deceased denied that the woman had been assaulted and said that she had died of natural causes. However, the body was exhumed under orders from the Department of Public Prosecutions and a three-person panel of pathologists was asked to perform an autopsy to determine the cause of death. The procedure was carried out in the presence of the husband and the brother of the deceased, and the report concluded that the body showed no signs of injury, criminal violence or a struggle, and that the death had been due to a previous condition.

### **Egypt: Killing of Alaa Mahmoud Abdel Latif and Mohamed Adly**

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

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

**Character of reply:** No response

**Observations of the Special Rapporteur**

The Special Rapporteur regrets that the Government of Egypt has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

### **Allegation letter sent on 11 November 2005**

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

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

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

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

### **Egypt: Death of 27 Sudanese Migrants**

**Violation alleged:** Excessive use of force by security forces

**Subject(s) of appeal:** 27 persons (refugees and migrants; persons exercising their freedom of opinion and expression)

**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 Egypt. However, the SR regrets that the Government's response consists of conclusory denials that lack the factual substantiation that would be provided by investigations and medical examinations.

**Allegation letter sent on 11 January 2006** with the Special Rapporteur on the human rights of migrants

According to the information received, on 30 December 2005, the Egyptian Security Forces evacuated by force about 1500 Sudanese migrants and refugees who were settled in Moustafa Mahmoud Square in front of UNHCR Headquarters in Cairo. They had requested to be relocated to third countries since 29 September 2005. Early in the morning, reportedly some 2000 police officers surrounded the improvised encampment, fired water cannons into the crowd and beat individuals with clubs in order to end the sit-in. At least 27 individuals are said to have died and many others

were injured following the Egyptian Security Forces' attack. Numerous persons were also arrested by police forces and detained in unknown location. Reports indicate that the Interior Ministry laid blame for the violence exclusively on the migrants. It claims that twenty-three police officers were wounded in an attack incited by migrant leaders against the police. No clear information is available neither on the number and the situation of wounded persons nor on the location of numerous persons arrested by the police forces.

Information received also indicate that on 3 January your Excellency's Government announced that it intended to forcibly return up to 650 Sudanese nationals who have been involved in the same peaceful protest since September 2005 in front of UNHCR Headquarters in Cairo. Some would be at risk of torture if returned to Sudan. We understand that this deadline was subsequently extended.

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

We would also like to appeal to your Excellency's Government to ensure that all deaths that occurred in connection with the operation of 30 December 2005 are promptly, independently and thoroughly investigated in accordance with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

It is 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 my 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 accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations and judicial or other inquiries carried out in relation to the killings of Sudanese migrants in Cairo.
3. Assuming that those responsible for the shootings have been or will be identified, please provide the full details of any prosecutions which have been undertaken, and of any other penal, disciplinary or administrative sanctions imposed in this connection.

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

Finally, we would like to appeal to the Government of Your Excellency to make sure that there is full public accountability for the actions of the State and of its security forces by ensuring that the resulting report of the investigation is made public.

#### **Response of the Government of Egypt dated 8 February 2006**

1. The sit-in demonstration of the Sudanese nationals began on 29 September 2005 in a park close to the Regional Office of the United Nations High Commissioner for Refugees (UNHCR) in Cairo, which is located in a highly populated neighborhood. The demonstrators demanded UNHCR to resettle them in third countries of their choice, despite the fact that their continued presence in Egypt was never jeopardized.
2. The number of Sudanese nationals participating in the sit-in demonstration amounted to over 2500, including refugees, asylum seekers and illegal immigrants.
3. The Egyptian Government exerted all possible efforts in cooperation with the regional office of UNHCR and the Sudanese authorities for a period of more than three months to bring the sit-in protest to a peaceful end. Extensive efforts were undertaken to verify the status of those individuals and to address their claims and demands, Representatives of UNHCR, the Egyptian and Sudanese governments, civil society and the Sudanese nationals took part in these efforts.
4. On 15 December 2005, the Regional Office of UNHCR in Cairo informed the Egyptian Foreign Ministry that no progress had been made in ending the situation and that the Sudanese nationals have been shown very little willingness to work constructively with UNHCR towards a realistic solution. The Office expressed its extreme concern about the increasingly deteriorating situation of these nationals as a result of their living conditions as related to health and sanitation, in particular women and children.
5. On 22 December 2005, the Regional Office of UNHCR in Cairo called on the Government of Egypt to take as a matter of urgency all appropriate measures to resolve the situation through peaceful means.
6. The exercise of patience and restraint by the Egyptian authorities for a period of more than three months is all the more witness of Egypt's full commitment to its legal obligations with respect to the rights of refugees in its jurisdiction, and the great importance it attaches to settling such situations by peaceful means. However, the continuation of the sit-in protest in direct violation of the 1951 Refugee Convention which requires refugees to respect the laws and regulations of the host country, and the lack of willingness of the demonstrators to engage constructively in achieving realistic solutions (as repeatedly attested by UNHCR itself) led to the Egyptian authorities making, on 30 December 2005, a last attempt to persuade the participants in the sit-in to vacate the area.
7. These peaceful efforts to convince the demonstrators to vacate the area were met with aggression on the part of the harline elements who attacked the police and

prevented other demonstrators from leaving. This situation led to Egyptian police intervening to establish order and assist those demonstrators trying to leave the area.

8. While it is sad and unfortunate that casualties resulted on both sides during the intervention to resolve the situation, it is noteworthy that the loss of life resulted from the chaos and the stampede invoked by the extremist leaders of those demonstrators, and not by any means caused by use of excessive force or firearms on the part of the police.

9. The Egyptian authorities allowed UNHCR access to Sudanese detainees in order to identify their legal status. The Egyptian authorities have also released all those proven to be refugees or asylum seekers (holders of blue and yellow cards), those originating from the Darfur region, and those having valid entry visas or residential permits in Egypt. Moreover, the Egyptian authorities have provided suitable accommodations for those Sudanese detainees whose status was under review. It is also worth noting the reports in the press indicating that no Sudanese detainees would be deported.

10. Egypt's response to the needs of refugees in general and Sudanese refugees in particular has always been generous. Moreover, the two million Sudanese living legally in Egypt have always fully enjoyed their rights.

### **Ethiopia: Killing of Demonstrators Following Elections**

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

**Subject(s) of appeal:** 26 persons (persons exercising their right to freedom of opinion and expression)

**Character of reply:** No response

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

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

**Urgent appeal sent on 10 June 2005** with the Special Rapporteur on Freedom of Expression and the Special Rapporteur on Torture

We would like to draw the attention of your Government to information we have received regarding the incommunicado detention of approximately 1500 demonstrating students, the killing of 26 persons, the wounding of 100 others and the arrest and harassment of various journalists including Helen Mohammed, Temam Aman and Bereket Teklu working for Voice of America, and Tadesse Engidaw and Assegedech Yiberta working for Deutsche-Welle, as well as human rights defender Chernet Tadesse, 31, investigator for the Ethiopian Human Rights Council, and United Kingdom-based former deputy mayor for Addis Ababa, Andargachew Tsige. According to information received:

On 15 May 2005, the Ethiopian Parliamentary elections were carried out in a peaceful climate. However, the decision of the National Elections Board to postpone the announcement of the official results to 12 July, because of the more than 100 contested results, led to agitation amongst the population, particularly amongst students and members of the opposition who fear that results will be manipulated.

In defiance of the Prime Minister's ban on demonstrations for a month after elections, since 6 June 2005, students carried out sit-ins and mainly peaceful protests, even if there were some reports of violence on the part of demonstrators, at colleges and universities and in the streets of Addis Ababa and surrounding towns. On 6 June 2005 at the two main Addis Ababa University campuses, several hundred peaceful demonstrating students were beaten with batons and rifle butts by police. The students were protesting the announcement of the provisional results of the 15 May 2005 Parliamentary elections indicating a majority for Prime Minister's Meles Zenawi's ruling party the Ethiopian People's Revolutionary Democratic Front, (EPRDF). The students were also supporting the political opposition's demands for an investigation into alleged voting irregularities, including reported arrests and beating of opposition candidates in approximately 300 out of 547 constituencies. Other students protesting in Kotebe Teacher's College, the AAU's Commercial College and Technical College in Addis Ababa, were also beaten and arrested on 6 and 7 June 2005. At Kotebe, it is reported that, in response to the students throwing stones at the police and burning government vehicles, police opened fire, particularly on those who blocked police vehicles which were carrying arrested students. A female student, Shebray Delelagne, was killed; six others were wounded.

It is reported that approximately 2000 students, as well as journalists were arrested. Around 500 students have been released, but the others remain incommunicado in police and military camps, including the Sendafa police training college, 40km north of Addis Ababa. It is reported that 26 persons have been killed as a result of security forces opening fire on the demonstrators.

Moreover, opposition party members, particularly members of the UEDP Medhin party, which is part of the Coalition for Unity and Democracy (CUD), who were accused, by the Government, of instigating the student protests and inciting violence, were reportedly beaten and detained for a short period. Lidetu Ayalew, the leader of the opposition party CUD, was kept under house arrest for 30 hours in his office, incommunicado, and without food or water. He was then allowed to go home where he is also being kept under house arrest and incommunicado.

Furthermore, on 2 June 2005, six journalists from the Amharic-language private weeklies Abay, Addis Zena and Menlik were called by the Criminal Investigations Department (CID); they were held for questioning for several hours about articles they published during the election period. They were then released without charge. Moreover, on 6 June, police confiscated the cameras belonging to reporter Anthony Mitchell and photographer Boris Heger, working for the Associated Press, while they were covering the student protests. When they arrived at the police station to recover their equipment, they were prevented from leaving for seven hours, and when finally released, they found that the memory cards of their cameras had been erased. Finally, on 7 June 2005, the Information Ministry revoked the accreditation of five Ethiopian journalists working for Voice of America and Deutsche-Welle. Their work permits,



which also serve as identification, were also confiscated. The Information Ministry accused them of unbalanced reporting concerning the elections and warned them that legal action could be brought against them if they continued reporting; the threat was also directed generally to any other journalists found to report in a similar unbalanced and false manner.

### **Haiti: Morts en Détention au Pénitencier National de Port au Prince**

**Violation alléguée:** Mort en détention

**Objet de l'appel:** 10 hommes

**Caractère de la réponse:** Pas de réponse

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

Le Rapporteur Spécial regrette que le Gouvernement de Haïti n'ait pas coopéré avec le mandat qui lui a été conféré par la Commission des Nations Unies pour les Droits de l'Homme

**Appel Urgent envoyé le 23 décembre 2004** avec le Rapporteur Spécial contre la Torture.

Appel urgent relatif à la situation des prisonniers du pénitencier national de Port-au-Prince.

Plusieurs détenus auraient exprimé des craintes pour leur sécurité et redouteraient des représailles de la part des autorités pénitentiaires suite à la mutinerie du 1er Décembre 2004. A cette occasion, une dizaine de prisonniers auraient été tués par balles et une quarantaine d'autres blessés. D'autres prisonniers auraient également été battus par les forces de l'ordre. Les prisonniers auraient protesté contre leurs conditions de détention et contre le fait qu'ils n'auraient jamais été déférés en justice. Les autorités pénitentiaires auraient alors ouvert le feu sur les détenus, tuant une dizaine d'entre eux. Selon les autorités, les détenus se seraient insurgés en refusant d'être transférés, brûlant des matelas et se servant d'ustensiles, de tuyaux et de briques pour agresser les gardiens de la prison. Selon le bilan annoncé par les autorités, le nombre de victimes s'élèverait à 7 et celles-ci auraient été tuées à l'arme blanche par d'autres détenus. Le 6 décembre 2004, le directeur de la Police Nationale haïtienne aurait annoncé la tenue d'une enquête. Depuis, la liste des victimes n'aurait pas encore été rendue publique.

### **Haiti: Menaces de Mort à l'Encontre de Journalistes**

**Violation alléguée:** Menaces de mort et craintes pour la sécurité

**Objet de l'appel:** 2 hommes, journaliste

**Caractère de la réponse:** Pas de réponse

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

Le Rapporteur Spécial regrette que le Gouvernement de Haïti n'ait pas coopéré avec le mandat qui lui a été conféré par la Commission des Nations Unies pour les Droits de l'Homme

**Appel urgent envoyé le 3 mars 2005** avec le Rapporteur Spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression.

M. Makenson Remy et de M. Raoul Saint-Louis, deux journalistes travaillant à la radio Megastar de Port-au-Prince. Selon les informations reçues, le 18 février dernier, Mr. Remy aurait été menacé de mort par des policiers alors qu'il rentrait chez lui en voiture. Il aurait été arrêté à un feu rouge dans le quartier Nazon à Port-au-Prince quand huit policiers qui étaient à bord d'un véhicule le suivant auraient encerclé sa voiture et l'auraient sommé de descendre. Les policiers l'auraient alors accusé de tenir des propos en faveur de l'ancien président Aristide à la radio, l'auraient battu et menacé de le tuer s'il persistait à travailler à la radio Megastar. Les policiers auraient également affirmé qu'ils l'auraient tué s'il avait fait nuit.

Les craintes pour la vie de M. Remy sont d'autant plus vives qu'un autre journaliste à la radio Megastar, Mr. Raoul Saint-Louis, aurait été l'objet d'une tentative d'assassinat le 4 février dernier. Celui-ci se serait fait tirer dessus alors qu'il était dans les locaux de la station de radio en présence de sa femme et d'autres collègues et aurait été blessé à la main. Depuis cet attentat, il aurait été contraint de mettre un terme à sa carrière de journaliste et aurait déménagé, craignant pour sa vie et celle de ses proches. Peu avant l'attentat, Mr. Saint-Louis aurait reçu des menaces de mort par téléphone après avoir critiqué le gouvernement à l'antenne. Dans ce contexte, et au vu de la gravité des menaces qui pèseraient sur M. Remy et M. Saint-Louis, nous invitons le Gouvernement de votre Excellence à procéder à une enquête de manière à vérifier ces allégations et à identifier les éventuels coupables, conformément aux instruments internationaux cités en annexe. De même, dans la mesure où ces allégations s'avéraient fondées, nous encourageons votre Gouvernement à mettre en place des mesures visant à protéger la sécurité et l'intégrité physique de M. Remy et de M. Saint-Louis, ainsi que de leur famille.

### **India: Death in Custody of Abhijnan Basu**

**Violation alleged:** Death in custody

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

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of India has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Allegation letter sent on 10 December 2004** with the Special Rapporteur on Torture

On the morning of 12 November 2004, Abhijnan Basu, aged 40, an inmate of the Presidency Jail, Kolkata, West Bengal was taken to MR Bangur Hospital before being

taken to the SSKM Hospital, Kolkata, where he remained for eight days in critical condition, with burns to 90 per cent of his body. He died on 19 November. Before his death he affirmed to hospital officials that three prison wardens were ordered by a prison official to douse him with diesel fuel and set him on fire. The prison authorities claim he committed suicide. It is reported that Abhijnan Basu believed that the prison authorities sought to silence him for the complaints he made regarding the poor quality of the prison food. Though an investigation has been launched and not yet completed, the Inspector General (Prisons) has reportedly confirmed to the media the account of the prison officials.

### **India: The Armed Forces (Special Powers) Act of 1958**

**Violation alleged:** Impunity; Deaths due to the excessive use of force by security forces

**Subject(s) of appeal:** General; 2 females (minors); 32 males (1 minor); 2 persons of unknown sex

**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 he has been given by the United Nations Commission on Human Rights.

### **Allegation letter sent on 24 August 2005**

Allegation letter sent concerning the *Armed Forces (Special Powers) Act, 1958* (AFSPA), a law reportedly applicable in “disturbed areas”, including large parts of the Northeast region of India as well as in Jammu and Kashmir, where a variant of the Act was reportedly brought into force in 1990.

Concern has been expressed that the Act violates non-derogable provisions of international human rights law and has facilitated the perpetration of grave human rights violations including extrajudicial executions by granting extensive powers to the armed forces in areas where it is in force. Concern is heightened by reports that the Act has also enabled impunity for alleged perpetrators.

It is my understanding that a large number of armed groups who operate in the areas where the Act is in force are responsible for gross human rights abuses, including torture, hostage taking, extortion and killings of civilians. I recognise that it is the duty of the State to protect their citizens against such acts. However, any such measures must be undertaken within a legal framework which is consistent with applicable international human rights as well as humanitarian law norms.

In this regard, I am cognisant of the concerns expressed by the Human Rights Committee in response to India’s third and most recent periodic report in July 1997. The Committee expressed its concern “at the continued reliance on special powers under legislation such as the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious

human rights violations, in particular with respect to articles 6, 7, 9, and 14 of the Covenant, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups." (See CCPR/C/79/Add.81, para 18).

More specifically, concern has been expressed that the AFSPA empowers security forces not only to arrest and enter property without warrant but also gives them power to shoot to kill in circumstances where members of the security forces are not necessarily at imminent risk. This conclusion seems to follow from Section 4 (a), (c) and (d) of the AFSPA.

In this connection, I would like to refer Your Excellency's Government to Article 6 of the *International Covenant on Civil and Political Rights (ICCPR)* which provides that every individual has the right to life and security of the person, that this right shall be protected by law and that no one shall be arbitrarily deprived of his or her life.

In its General Comment on Article 6, the Human Rights Committee has observed "that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

Both Article 4(2) of the *ICCPR* and Principle 8 of the *Basic Principles on the Use of Firearms by Law Enforcement Officials* provide that exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any derogation from the right to life and security of the person. Besides, Article 3 of the *Code of Conduct for Law Enforcement Officials* provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Concern has further been expressed that the Act in fact 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. Section 6 of the AFSPA specifies that, "No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act". 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.

While some action has reportedly been taken in recent years to bring perpetrators of human rights violations in the concerned areas to justice, it is alleged that the AFSPA has enabled many perpetrators to escape punishment. For instance, it is reported that, while the State government of Manipur has ordered numerous inquiries into the alleged extrajudicial executions, none of them ultimately reached any meaningful conclusions. In this respect I would be grateful if Your Excellency's Government could provide me with a copy of the reports of any inquiries undertaken within the past three years in Manipur.

Reports further indicate that, in the few cases when it is available, redress is slow and resource intensive for the complainant. For instance, it is alleged that, in Jammu and Kashmir, police were directed not to file a First Information Report (FIR) about an alleged crime against security forces or record accusations of misconduct by security forces in their daily logs. Remedy and redress are reportedly further limited by section 19 of the Protection of Human Rights Act (PHRA) which prohibits the National Human Rights Commission and state human rights commissions from investigating allegations of human rights violations by members of the armed or paramilitary forces.

It has been brought to my attention that, in November 2004, the Government of India appointed a five-member committee to review the AFSPA. The Prime Minister reportedly promised that the "government would consider replacing the Act with a more 'humane' law that would seek to address the concerns of national security as well as rights of citizens". It is my understanding that the Review Committee has recommended retention of the AFSPA although with some amendments. It has been reported to me that the Committee has called for submissions on whether it should recommend to the government of India to "(i) amend the provisions of the Act to bring them in consonance with the obligations of the Government towards protection of Human Rights; or (ii) replace the Act by a more humane legislation."

I have further been informed that, in November 1997, the Supreme Court of India had limited the powers granted to the military by the AFSPA, in particular by ruling that a declaration under Section 3 of the AFSPA, which relates to the determination of "disturbed areas", is to be reviewed every six months, by strengthening the safeguards for the rights of arrested persons and by determining that a list of pre-existing "Do's and Don'ts" were legally binding.

While I am pleased to learn about these developments, I would like to urge your Excellency's Government to consider either repealing the AFSPA or ensuring that it and any other such future legislative measures comply fully with international human rights and humanitarian law treaties to which India is a state party, especially the ICCPR and the four Geneva Conventions. In the interpretation of these obligations full account should be taken of the detailed standards included in the *UN Code of Conduct for Law Enforcement Officials*, the *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, principles 9 to 19 of which oblige Governments to conduct a thorough, prompt and impartial investigation of all suspected cases of extra-judicial, arbitrary or summary executions, to make public the results of these inquiries and to ensure that persons identified by the investigation as having participated in such executions in any territory under their jurisdiction are brought to justice and the *UN Declaration on the Protection of All Persons from Enforced Disappearances*.

Finally, I should like to take this opportunity to bring to your Government's attention allegations I have recently received and which refer to violations that took place in areas where the AFSPA is in force, namely Manipur, and Jammu and Kashmir. I have included the cases in an annex to this communication.

While I do not wish to prejudge the accuracy of these allegations, it is my responsibility under the mandate provided to me by the Commission on Human

Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Commission I would be grateful for your cooperation and your observations on the following five matters:

1. Are the facts alleged in the summary of the cases accurate? If not, in order to refute these allegations, please provide details of any inquiries carried out, including any autopsies performed.
2. If a complaint has been lodged, 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 this case.
4. Please provide the full details of any prosecutions which have been undertaken.
5. Please indicate whether compensation has been provided to the families of the victims.

I undertake to ensure that your Government's response to each of these questions is accurately reflected in the report I will submit to the Commission on Human Rights for its consideration.

#### Annex

##### Manipur

On 10 July 2003, Seikholen Kipgen alias Sesen was reportedly killed by Assam Rifles personnel in an alleged fake encounter in K Songtun under Sadar Hills, Manipur. He was reportedly arrested by personnel of the 14th Assam Rifles while visiting his in-laws. Reports indicate that he was subjected to several forms of torture and that he was attacked by an army sniffer dog before he was allegedly dressed up in a combat uniform and shot dead by the Assam Rifles personnel.

On the morning of 14 September 2003, Thatkhokam Hangsing s/o Thatkhoseh Hangsing, aged 37, Seigin Khongsai s/o Nehlal Khongsai, aged 40 and Letkhomang Hangsing s/o Lamkhojang Hangsing, aged 35, three Kuki villagers of Tingpibung in Sadar Hills, were allegedly shot dead by personnel of the 25th Assam Rifles. A report issued in the Press Information Bureau (PIB), Defence Wing on 15 September 2003 and that claimed that three KRA activists were gunned down by the troops of the 25th Assam Rifles near Sanakeithel village under Ukhrul district was reportedly contradicted the next day by the village elders who asserted that the victims were in fact civilians that were killed while in custody of the security personnel. It is indeed alleged that the three above-mentioned persons were arrested by the 25<sup>th</sup> Assam Rifles personnel in the early morning of 13 September 2003 and were later taken to Senakeithel Tangkhul village, where they were allegedly electrocuted before they were shot dead.

On 22 July 2003, at around midnight, Jamkholun Haokip, a 33-year-old woodcutter, was reportedly arrested from his home in Twinkul village in the Kangchup area under Lamsang police station, by the Gorkha Rifles. It is alleged that the Army personnel,

who came in a civilian canter bearing a Nagaland registration, broke into his house and forcibly took him away. Some gunshots were heard subsequently and the Army personnel came back to the house at around 3:30 am asking for Mr. Haokip. A statement issued by the PIB reportedly stated that the encounter occurred during a search operation by the Gurkha Rifles personnel in the area. It is further alleged that the army personnel called out the village chief Hekhup Hangsing and forced him to inform the Lamsang Police Station about the death.

On 13 December 2003, Ahanthem Sanjoy, aged 29, was allegedly killed by the army personnel who reportedly took him from his residence in Khurai Thoidingjam without issuing an arrest warrant. His father, A Pakchao Singh, reportedly lodged a complaint the next day with the Porompat Police Station. Mr. Sanjoy's death was only known on 18 December 2003, when a local language daily newspaper issued the news of the discovery of a body in Senjam Khunou near Leimakhong area. It is reported that the army personnel registered a First Information Report No. 82 (12) 2003 at Sekmai Police Station.

On 2 March 2004, at about 3 pm, Mr. Irungbam Samananda s/o Ramdho, aged 30, of Pungdong-bam Awang Leikai at Nongpok Sanjenthong, was reportedly shot dead by the Assam Rifles personnel about 8 kilometers south of the Lamlai Police Station in Imphal. The security forces allegedly took him from his residence on the night of 29 February 2004, at about 11 pm, without issuing any arrest warrant despite repeated insistence by his family. When the local Meira Paibis protested and tried to stop the security personnel from taking Mr. Samananda away, the troops reportedly took off with the youth through another road. Although a complaint was lodged with the Lamlai Police Station, his whereabouts remained unknown until the Assam Rifles reported to the police of having killed an alleged underground activist in an encounter. While the Assam Rifles claimed that one 9 mm pistol, one hand grenade and one WT set had been recovered in his possession, his family members strongly contended that Mr. Samananda was in fact killed in a fake encounter. Besides, although he was reported to have been wearing a loin cloth and being bare-footed at the time of his arrest, his dead body was found wearing army boots.

On 10 March 2004, at 5 a.m., Khwairakpam Ratan Singh, aged 20, was reportedly shot dead by the Assam Rifles personnel near his house at New Sekmai under the Sekmai Police Station. The Assam Rifles allegedly claimed that some militants had fired at them in the area and that Ratan Singh was killed in the gunfight. They also claimed to have found one 9 mm pistol and three live rounds of ammunition with him. However, his family members reportedly rejected these claims by reporting instead that Mr. Ratan Singh was arrested from his house shortly before he was shot dead near his house.

On 10 March 2004, at around 12.30 a.m., Khundrakpam Tejkumar, a 22-year-old third year BA student of D M College of Arts in Imphal was reportedly taken from near his residence at Uripok Khoisnam Leikai area in Imphal West district by the Assam Rifles personnel. He was participating in a Holi sports meeting. His body was allegedly found with bullet marks near a college in Naoremthong area of Imphal West, two kilometers from where he was picked up. While the Assam Rifles reportedly claimed that Mr. Tejkumar was killed in an encounter, the Uripok area residents accused the Assam Rifles personnel of killing him.

On 15 March 2004, Khumanthem Ajitkumar alias Naoba, 20-year-old son of Kh Nagor Singh of Karang Mamang Leikai, under the Patsoi Police Station, was allegedly shot dead by army personnel. Reports indicate that, at about 1 a.m. that night, the army personnel forced open the main door of his house and started beating up his younger brother Dilip Kumar and father Nagor Singh. Awakened by the turmoil, Naoba went to the room where he was then also beaten up before the army personnel took him along with them. He was first asked to change from his *Khudei* and wear a pant. Naoba was then requested to lead the security personnel to the residence of one Mayanglambam Mani at Kachikhul Mamang Leikai but the latter was not at home. Thereafter he was taken to his elder sister, Romita's residence at Taokhong Lamkhai, where the army personnel allegedly physically assaulted her before taking Naoba's brother-in-law Romen to the road where he was ordered to run. When Romen pleaded with an officer of the security personnel to save his life and refused to run, one of them told him in Manipuri to go back to his house. Romen then allegedly heard the gunmen starting to beat up Naoba before they shot him dead.

On 16 March 2004, at around 4.45 a.m., Kamag Khongsai, aged 21, son of late Lalkholhao Khongsai of Chalwa village, was reportedly shot dead by the jawans of the 14th Assam Rifles posted at Kangpokpi at the IT Road in Turibari, 2 kilometers north of the Kangpokpi Police Station in Senapati district. According to the information received, Mr. Khongsai was shot dead when he, along with another militant, tried to flee from the security forces during an operation launched upon receiving specific information about the presence of militants in the village. It is alleged that the two militants lobbed a hand grenade and fired at the security personnel injuring one Assam Rifles officer and that he was therefore killed in retaliatory fire, while the other managed to escape. The security forces identified him as a Kuki Revolutionary Army militant, and handed the body over to the Kangpokpi Police Station. One 9 mm pistol, one magazine, ammunition, fired cases, incriminating documents and cash of Rs 11,890 were also reportedly recovered from his possession. However, family members alleged that he was shot dead after he was arrested by the security forces from Turibari around 11.30 a.m. on 15 March 2004. Besides, although it is reported that he was carrying a sum of Rs 10,000, he was found dead with empty pockets.

On 25 May 2004, the Assam Rifles personnel reportedly shot dead Thangkhopao Khongsai s/o Lengsai, a 26-year-old carpenter, and Lalengthang Kipgen s/o (late) Khaijangul Kipgen, a 25-year-old farmer, from South Changoubung. According to the information received, the PIB stated that the two were killed in an encounter with the Assam Rifles personnel. The statement indeed declared that, after receiving specific information, Assam Rifles troops launched an operation at Changoubung. At about 4.30 am, two persons moving away from the village were challenged and asked to stop. However they started running away and fired at the security forces, slightly injuring one AR *jawans*. They were then killed in retaliatory fire. Two 9 mm pistols and assorted ammunition were reportedly recovered from them. However, family members of the deceased reported that they were in fact killed after they were arrested from their respective residences. The family reportedly refused to take back the bodies from the Regional Medical Institutes' morgue in Imphal.

On the morning of 31 May 2004, Pheiroijam Sanajit, aged 32, of Nongada under the Lamlai Police Station in Imphal East district was reportedly shot dead by the security



forces belonging to the 19th Rajput Rifles. His body was found at Mahajon corner situated between Senjam Chirang and Phumlou, about 8 kilometers south west of the Sekmai Police Station. While the security forces maintained that the victim was a militant who was killed in an encounter, the deceased's family members alleged that he was killed after he was arrested. It is indeed alleged that Mr. Sanajit was in fact arrested without any warrant and taken from his residence by security personnel at about 1 am on 31 May 2004. It is further alleged that, although he was wearing a *Khudei* (loin cloth) at the time of the arrest, his family found him in a camouflage uniform that did not even fit him at the morgue of the Regional Institutes of Medical Sciences in Imphal. He reportedly suffered multiple bullet wounds on the chest and stomach. The Joint Action Committee against the killing of Mr. Sanajit submitted a memorandum to the Chief Minister on 31 May 2004, demanding the lifting of the Armed Forces Special Powers Act from Manipur, an ex gratia of Rs 5 lakh, payment of Rs 5,000 each month to his family and also a judicial inquiry into the killing. No response has been received to this complaint. Finally, his family was allegedly pressured by the local police to perform his last rites at the local crematorium.

On 6 June 2004, the 38th Assam Rifles personnel reportedly gunned down two alleged Kuki National Front (Military Council) cadres identified as sergeant major Hekho Haokip, aged 32, of Molphei Tampak and Haopu, aged 27, of Churachandpur town. The Assam Rifles authorities, in an official release, claimed that the two were killed in encounter at Bungte Chiru village in the morning of 6 June 2004. It is however alleged that the troops entered the Bungte Chiru village on 6 June 2004 and cordoned the entire village. The troops then called out all male persons of the village to the village playground and conducted verification. After singling out the two KNF (MC) cadres, the troops shot them later in the morning at around 9.15 near the village.

On 10 June 2004, Thokchom Doren, alias Naba, aged 27, was reportedly killed by the personnel from the 33rd Assam Rifles in an alleged fake encounter. According to the information received, Mr. Doren was arrested in the evening of 9 June 2004 from Lamjao and was found dead the next morning. Members of the Meira Paibis asserted that Doren was innocent and had no connection whatsoever with any underground group. A Joint Action Committee (JAC) against the killing of Thokchom Doren was constituted on 11 June 2004. The JAC reportedly submitted a memorandum to the CM demanding a magisterial enquiry into the killing, payment of ex-gratia and absorption of a family member in a government job. It is also alleged that the post mortem of the deceased was done without informing the family.

On 27 June 2004, at about 3.45 a.m., Nameirakpam Mohon alias Kuber, aged 36, son of N Khambaton, was allegedly shot dead by the security forces belonging to the 12th Grenadier who took him from his residence in Leingangpokpi. Family members of the deceased accused the army of staging a fake encounter. They claimed that the victim had in fact been picked up from his home at around 2:30 am of the same day on the assurance that he would be released soon as they only needed him as a guide. The family members also claimed that Mr. Mohon had no connection with any underground outfit. The Manipur police, on the other hand, claimed that Mr. Mohon had close connection with the underground activists though he himself might not have been a member of any underground organisation. According to the reports provided by the army to the Jiribam Police Station, underground activists fired at the Army personnel while they were conducting operation at Leingangpokpi area at about 3.45

a.m. on 27 June 2004. The army claimed that Mr. Mohon was killed in retaliatory fire. His body was handed over to his family members after a post-mortem was conducted. There were reportedly five bullet marks on his body, one each on his right shoulder, chest and stomach and two others on his left thigh.

On 8 July 2004, Pastor Jamkholet Khongsai of Saichang village, Manipur, was reportedly arrested by Assam Rifles after he had gone to his field. His bullet-ridden body was later found buried in the nearby jungle.

On 18 January 2005, Thokchom Puspa Devi, aged 11, daughter of late Thokchom Bimjaou, Mr. Lourembam Maipak, aged 55, son of Lourembam Moirangningthou Singh, and two other unidentified civilians, all residents of Wangoo Nungai Sabal Nongyaikhong Mapal Leikai, Thoubal District in Manipur, were reportedly shot dead by the Central Reserve Police Force (CRPF). According to the information received, the CRPF was patrolling the Wangoo Nungai Sabal Noyaikhong Mapal area when they were allegedly fired at by unidentified gunmen. Reports indicate that the two unidentified victims were youths who were just passing by when they were fired at in the backyard of Rajkumar Dhinesana. At that time, Ms Thokchom Puspa Devi was feeding pigs in her courtyard when she heard the gun shots. She got hit by a bullet while running inside her house. Mr. Lourembam Maipak also tried to run for cover when he was stopped by security personnel. They reportedly forced him to hold a wireless set and took a picture of him to sustain that he was a rebel supposedly communicating with the armed rebel groups. The CRPF personnel then reportedly killed him.

#### Jammu and Kashmir

On 6 June 2004, Shabir Ahmad Khan, aged 16, son of Pori Rehman Khan, and Zahida, aged 15, daughter of Mohammad Maqbool, from Chunti Mohalla Bandipora in Baramullah, were grazing their cattle Gujar Pati Bandipora when members of the 14 Rashtriya Rifle troops fired shells at them, killing them on the spot.

On 9 September 2004, Rizwan Ahmad Paul from Chitrgan Dangerpora Shupain in Pulwama was reportedly killed by members of the 55 Rashtriya Rifle who ambushed the Chitrgan villagers and fired upon them. Following the incident, villagers protested and one of the protesters, Muzzafar Ahmad Ghana was reportedly shot dead by security forces. Other protesters were injured.

On 27 November 2004, Zahoor Ahmad War, aged 22, Tazeem-ul-Haq War, aged 21, students from Hundwara Kupwara, Zahoor Ahmad Najjar, aged 21, a student from Batyar Alikadel Srinagar and Ahmad Hajam Bashir, aged 22, a student from Selkote Kupwara were reportedly killed by members of the Special Operation Group and the Central Reserve Police Force. It is alleged that they were taken by the security forces to the foreshore road of Nishat in the outskirts of Srinagar and fired upon. According to the information received, local authorities refused to lodge a First Investigation Report.

On 29 November 2004, Mohammad Ismail and Ghulam Hussan Mughloo, aged 21, both from Hasharu Chatroo Bugdam were reportedly killed by members of the 35 Rashtriya Rifle Division who had cracked down on the Hasharu Chatroo Bugdam village. After villagers began to protest, the security forces started firing upon them.

According to the information received, local authorities refused to register a First Investigation Report.

On 13 December 2004, Mr. Ghulam Qadir Waza, from Pahallan Pattan Baramullah was passing by Palahan Wusan road when members of the 29 Rashtriya Rifle Division, who had discovered a mine, arrested him and forced him to dig the mine out. The mine reportedly exploded and Mr. Ghulam Qadir Waza died the day after. It is alleged that the authorities refused to lodge a First Investigation Report.

On 6 February 2005, Zahoor Ahmad Bhat, aged 25, from Maisunar Srinagar and two of his friends were traveling in a vehicle when they were reportedly stopped at Magam Tangmarg Baramullah and fired upon by military personnel. Zahoor Ahmad Bhat died while his friends were injured. It is further alleged that no investigation has been carried out by the local authorities concerning the incident.

On 30 April 2005, Mr. Ahmad Sheikh Mushtaq, a 22-year-old labourer from Harnag Kandiwara Islamabad, Kashmir India, was reportedly arrested from his home by section 9 of the Rashtriya Rifles Indian Army and killed the next day at Dewsar Pahloo. His family was reportedly unable to obtain any information about his arrest from their local police station. Besides, it is alleged that no investigation has been undertaken into his death.

### **India: Killing of Zahida Dar in Kashmir**

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

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

**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 he has been given by the United Nations Commission on Human Rights.

**Allegation letter sent on 2 September 2005** with the Special Rapporteur on violence against women, its causes and consequences

Letter of allegation sent concerning Ms. Zahida Dar, 19, a Muslim from Kashmir, India.

According to information received, on 1 July 2005 in the Islamabad area of Kashmir, troops belonging to the 49 Rashtriya Rifles, carried out a search operation. Members of these troops visited Zahida Dar, inquiring after her father. One of the members of these troops, by the name of Baljinder Singh, reportedly made obscene comments to her and on 13 July 2005 at around 11.15 p.m. he returned to her house where he attempted to force himself on her and then stabbed her to death. A report was filed with the Dooru Police Station, reference no. 87.05 on 14 July 2005. We have no information concerning action by the authorities in reaction to this report.

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

We are furthermore concerned that Zahida Dar might have been targeted especially as a female of Kashmiri origin. In this respect, we would also like to draw your Excellency’s attention to the Declaration on the Elimination of Violence against Women, which was adopted by the United Nations General Assembly and which stipulates that all States should exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons (Art. 4 (c)).

We urge your Government to take all necessary measures to guarantee that accountability of any person guilty of the murder of Zahida Dar. We also request that your Government adopts effective measures to prevent the recurrence of killings such as the above-described.

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. 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 killing of Zahida Dar. If no inquiries have taken place or if they have been inconclusive please explain why.
3. In the event that the alleged perpetrator has been identified (i.e. that the information regarding his identity provided to us proves correct), please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrator or any other person responsible?
4. Please indicate whether compensation has been provided to the family of the victim.

### **Indonesia: Death Sentences of Three Men**

**Violation alleged:** Non-respect of international norms and standards for 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 by the Government of Indonesia. The SR accepts that the Government may not be in possession of information that would confirm the veracity of the allegation that Sakak bin Jamak was tortured. However, the SR would note that the State's obligation to effectively investigate human rights abuses derives from its general obligation to ensure rights and is not dependent on the provision of a detailed dossier by a complainant or his attorney. Therefore, the SR requests that the Government of Indonesia conduct an investigation into the allegation that Sakak bin Jamak's confession was extracted through torture. The SR would also note that it would in no way interfere with the independence of the judiciary for the Government to transmit to it this communication, especially inasmuch as the international responsibility of the State may be engaged by any of its organs.

**Urgent appeal sent on 31 May 2005** with the Special Rapporteur on torture and the Special Rapporteur on the independence of judges and lawyers

Mr. Sakak bin Jamak, a 50-year-old illiterate farmer from South Sulawesi, and two males known only as Mr. Sahran, aged 52 and Mr. Sabran, aged 45, who are reportedly at risk of imminent execution, according to a recent announcement from the Attorney General's office.

According to the information received, the three men were sentenced to death in May 1995 after they were found guilty of the premeditated murder of a family of three. Fears have been expressed that they were sentenced after trials that may have fallen short of international fair trial standards.

Concern has been expressed that, during his interrogation at the police station, Sakak bin Jamak was tortured for several days in order to extract a confession from him. For instance, it is alleged that he was once immersed in water for a period of around two hours. The police also allegedly beat him with sticks and whips and burned his feet, leading him to ultimately confess to the crime. He has reportedly been claiming his innocence since.

Concern is heightened by reports according to which Mr. Jamak didn't have access to legal representation during the investigation as well as at the pre-trial stage. It is indeed reported that the State provided him with legal representation only when the trial started. Besides, it is alleged that he was not informed of his right to appeal the sentence, and there is concern that he may not have understood his right to do so.

If these allegations are correct there would be grounds for serious concern. We would therefore be grateful if your Excellency's Government could provide us with information indicating whether or not the defendant in this case was given the right to formal representation by a lawyer, and providing details of any such access. Finally, we would like to receive information as to the nature of any right to an effective appeal which was applied in this case.

Moreover, in the absence of any indication that the allegations of torture have been adequately reviewed by the authorities, we would respectfully request your Excellency's Government to suspend the implementation of the death penalty of Sakak bin Jamak, to review the procedures followed in his case, and to ensure that his trial complied with all applicable international standards and principles.

Finally, we have not been provided with detailed information on the trials of Mr. Sahran and Mr. Sabran, who were convicted for the same crime as Mr. Jamak.

Without in any way wishing to draw any conclusions based on the information received so far, we would respectfully request your Excellency's Government to provide us with the details of the above-mentioned individuals' trials, with a view to establishing whether the proceedings complied with international standards relating to the imposition of capital punishment. In addition, we would like to receive information as to the nature of any right to an effective appeal which was applied in these cases.

### **Response of the Government of Indonesia dated 14 November 2005**

Mr. Sakak bin Jamak, aged 50, Mr. Sahran aged 52 and Mr. Sabran aged 45, all from the Riau province in Central-eastern Sumatra, were found guilty of the premeditated murder of a family of three and sentenced to death in May 1995. They have since been in custody and awaiting the decision of the court as to whether or not their executions will take place.

On the question of extrajudicial, summary and arbitrary executions, the Permanent Mission of the Republic of Indonesia would like to state at this point that contrary to any such allegations, Mr. Sakak bin Jamak, Mr. Sabran bin Jamak and Mr. Sahran bin Jamak were, under court ruling No. 158/G/200; tgl 2/8/2000, all sentenced to death for murder under article 370 of the Indonesian Criminal Code (KUHP). They were also sentenced for arson on May 17, 1995 by Tambilahan District court, in Riau. All three men have been in custody since 1995 and have been humanely treated during their incarceration on death row in Cipinang Prison. Their lawyers have sought to appeal the court ruling during their incarceration and subsequently requested presidential clemency in 1995 under clemency letter (Keppres) No. 03/Grasi/1995/PN.TBH. However their appeal was rejected in 2002.

On the question of the independence of the judges and lawyers, it is our understanding that the due process of law was applied to the court case for all the above mentioned individuals, and they received legal assistance during the trial and for their appeal. Their subsequent sentencing was within the boundaries of the legal norms of Indonesia's judicial process and does not fall contrary to international legal standards. It is within the norms of national law to determine whether the severity of their crimes carries with it the death penalty. Indonesia therefore, resents accusations that they were not provided with the necessary legal assistance or that due process of law was not applied and their habeas corpus was denied or infringed.

It is important to point out that Indonesia has an independent judiciary that functions under its own auspices. The decision of the court therefore- as is generally the case in most democratic countries- is not subject to outside intervention, including the government. Also their decision-making process is mandated under law No. 14/1970

and completely independent of the Executive. This independence has been safeguarded since the outset of national reforms. Similarly, it is within the jurisdiction of the court to determine the appropriate laws that applies and the requisite sentencing to be handed down for each individual case.

On the question of torture, Indonesia is opposed to torture as a signatory to the United Nations Convention against torture and other cruel, inhuman and degrading treatment or punishment, it has made provisions in its national law whereby freedom from torture is considered a non-derogable right under article 4 of law No. 39 of 1999 on Human Rights. Articles 9 and 39 of Law No. 26 of 2000 on the Human Rights Court guarantees that any violations of such rights will be brought to justice. In the case of Mr. Sakak bin Jamak, father of six children from South Sulawesi, he alleged that he never committed the crimes and was in fact the victim of torture while in police custody. We have no information to indicate the veracity of this allegation. However, he was arrested in November 2004 and taken to Reteh Police sector (Polsek), Indragiri Hilir District in Riau. He, like the two others accused of the crime, was given legal representation by the State during the trial and also had the right to seek legal advice and benefit from a legal defence.

Under Indonesia law, the death penalty is only applicable for murder if it was committed with deliberate intent and premeditation. Even then, it is not irrevocable verdict as normal procedure allows for a person who has been sentenced to death in a lower court to appeal to the relevant high court and then to the Supreme Court. An appeal for clemency can only be sought once, except in cases where more than two years have passed since a clemency decision was rejected, in which case a new appeal may be lodged. Normally, those accused then have the right to seek judicial review from the Supreme Court and appeal for clemency under Law No. 3/1950 from the President.

Having said this, the Government of Indonesia wishes to clearly state that executions are not the inevitable consequence of a criminal sentence of this nature. In fact, they are rarely carried out and require the stringent application of various procedures before it can take place. It is a difficult process that is often long and fraught with various complexities requiring that the facts of each case be meticulously scrutinized before the final verdict can be upheld. Since 1945, there have been approximately 15 executions, as most of those convicted of the various crimes against the State receive instead a commuted lighter sentence, either a fifteen year sentence or a life imprisonment sentence. In Indonesia, as in many other countries, we must reiterate that capital punishment is strictly imposed for the most serious crimes and only upheld after all the legal avenues have been exhausted. In this regard, Indonesia opposes any assertion to the contrary.

#### **Islamic Republic of Iran: Execution of Juvenile Offender Atefeh Rajabi**

**Violation alleged:** Non-respect of international norms and standards for the imposition of capital punishment.

**Subject(s) of appeal:** 1 female (minor; juvenile offender)

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur appreciates the additional information provided by the Government of the Islamic Republic of Iran in response to his earlier request. E/CN.4/2005/7/Add.1, para. 342. However, the SR has not received sufficient information to enable a clear conclusion as to the age of Atefeh Rajabi and regrets that she was executed despite claims of mental illness, indications that she might have been a juvenile at the time of the offence and for an offence (“acts incompatible with chastity”) that cannot be considered to be one of the “most serious crimes” for which the death penalty is permitted.

**Allegation letter sent on 17 September 2004** with the Special Rapporteur on Torture, reproduced from E/CN.4/2005/7/Add.1, para. 340

340. Allegation, sent with the Special Rapporteur on torture, 17 September 2004. Atefeh Rajabi, a 16-year-old girl, was reportedly publicly hanged on 15 August 2004 on a street in the city centre of Neka, in the northern Iranian province of Mazandaran. She was sentenced to death, approximately three months before, by a lower court in Neka, for “acts incompatible with chastity”, following an alleged unmarried sexual relationship. The case reportedly attracted the attention of the Head of the Judiciary for the Mazandaran province, who allegedly ensured that the case be promptly heard by the Supreme Court which upheld the death sentence. It is alleged that she was mentally ill both at the time of the crime and during her trial proceedings. It is further reported that she was not represented by a lawyer at any stage of her trial and that she consequently had to defend herself. Although her national ID card stated that she was 16 years old, the Mazandaran Judiciary announced at her execution that she was 22. Her co-defendant, whose name is not known to the Special Rapporteurs, was reportedly sentenced to 100 lashes and released after the sentence was carried out.

**Response of the Government of the Islamic Republic of Iran dated 21 October 2004** at E/CN.4/2005/7/Add. 1, para. 341

**Response of the Government of the Islamic Republic of Iran dated 22 September 2005**

Ms. Rajabi had legal counsel throughout the proceedings and introduced herself as being 22 years of age.

#### **Islamic Republic of Iran: Death Sentence of Juvenile Offender Jila Izadi**

**Violation alleged:** Non-respect of international norms and standards for the imposition of capital punishment.

**Subject(s) of appeal:** 1 female (minor; juvenile offender)

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur**



The Special Rapporteur appreciates the information provided by the Government of the Islamic Republic of Iran regarding the case of Jila Izadi and welcomes the information that she has been acquitted and is not under sentence of death.

**Urgent appeal sent on 20 October 2004** with the Special Rapporteur on violence against women and the Special Rapporteur on freedom of religion and belief, reproduced from E/CN.4/2005/7/Add.1, para. 351

351. Urgent appeal, sent with the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on torture, and the Special Rapporteur on violence against women, 20 October 2004. Jila Izadi, aged 13, was reportedly sentenced to death by stoning in Marivan for adultery and was at risk of imminent execution. According to the information received, she was raped by her 15 year old brother and gave birth to her baby in early October. It is reported that Jila Izadi will not have the possibility to appeal the sentence which is said to be carried out in the coming days. Her brother was sentenced to 100 lashes in accordance with Islamic laws. He is currently in prison in Tehran awaiting his punishment.

**Response of the Government of the Islamic Republic of Iran dated 22 September 2005**

Ms. Izadi was acquitted of her charges and the sentence to death by stoning is categorically denied.

**Islamic Republic of Iran: Death Sentence of Fatemeh Haghghat-Pazhouh**

**Violation alleged:** Non-respect of international norms and standards for the imposition of capital punishment

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

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

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the additional information provided by the Government of Iran regarding the case of Fatemeh Haghghat-Pajouh and welcomes the review of her case by the local judicial authority and the likelihood of a clemency order from the Head of the Judiciary. The SR would appreciate information on the outcome of both of these processes.

**Urgent appeal sent on 12 October 2004** reproduced from E/CN.4/2005/7 at par. 348

348. Urgent appeal, 12 October 2004: Ms. Fatemeh Haghghat-Pajouh was sentenced to death for the murder of her husband in 1997, who allegedly tried to rape her then 15 year old daughter. Fatemeh Haghghat-Pajouh reportedly did not have access to adequate legal assistance in the course of her trial. Reports indicate that the lawyer initially appointed to defend her case was replaced at the last minute and that as a result of this change the new lawyer had neither sufficient information nor adequate time to prepare for the trial.

**Response of the Government of the Islamic Republic of Iran dated 21 October 2004**

349. Response dated 21 October 2004: The Government informed that “the execution verdict of Ms. Fatemeh Haghighat-Pajouh has been put on hold by direct order of the head of the judiciary of the Islamic Republic of Iran”.

**Response of the Government of the Islamic Republic of Iran dated 27 May 2005**

Information received from the Judiciary of the Islamic of Iran. The death sentence of Ms. F. Haghighat-Pazhouh was deferred by direct order of the Head of the Judiciary to allow for further investigations. The case was then referred to an appellate court of the Tehran local judicial authority to reinvestigate deficiencies of the case and it is under consideration for a final decision, including a probable clemency order by the Head of the Judiciary.

**Islamic Republic of Iran: Death Sentences of Hajiej Esmaeelvand and Juvenile Offender Rouhollah Maseouili Gargari**

**Violation alleged:** Non-respect of international norms and standards for the imposition of capital punishment

**Subject(s) of appeal:** 1 female; 1 male (juvenile offender)

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

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of the Islamic Republic of Iran concerning Hajiej Esmaeelvand’s request for a pardon and would appreciate receiving the outcome of that request. The SR would also appreciate information on the allegations concerning Rouhollah Maseouili Gargari.

**Urgent appeal sent on 3 December 2004** with the Special Rapporteur on religious intolerance, the Special Rapporteur on violence against women, and the Special Rapporteur on torture

Ms. Hajieh Esmaeelvand, aged 35 and mother of two, and Rouhollah Maseouili Gargari, aged 22, from the town of Jolfa are at risk of imminent execution. On 16 January 2000, Hajieh Esmaeelvand was sentenced to death by hanging by the 3rd Branch of the Public Court of Jolfa for adultery, and five years' imprisonment with corporal punishment for assisting in the premeditated killing of her husband. Then aged 17, Rouhollah Maseouili Gargari was sentenced to hanging for his role. The 37th Branch of the Supreme Court of Justice later amended the verdict against Hajieh Esmaeelvand to stoning, and it was scheduled to be carried out on 1 September 2004. Following an appeal, the Supreme Court of Justice upheld the sentence of stoning for Hajieh Esmaeelvand. The sentences are expected to be carried out within the next three weeks.

**Response of the Government of the Islamic Republic of Iran received 24 January 2005**

Miss Hajieh Esmaelvand was charged as an accomplice to her husband's murder and was sentenced to death. Upon rejection of her appeal by the Supreme Court, she has requested to be pardoned. Her request is under consideration and therefore the sentence has been put on hold.

**Islamic Republic of Iran: Death Sentence of Juvenile Offender Leyla M.**

**Violation alleged:** Non-respect of international norms and standards for the imposition of capital punishment

**Subject(s) of appeal:** 1 female (juvenile offender)

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

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of the Islamic Republic of Iran concerning the death sentence imposed on Leyla M. The SR would appreciate receiving the outcome of the Supreme Court's consideration and information on the consideration given to issues raised in the SR's urgent appeal sent on 13 December 2004.

**Urgent appeal sent on 13 December 2004** with the Special Rapporteur on religious intolerance, the Special Rapporteur on violence against women, the Special Rapporteur on torture

Leyla M is facing imminent execution for "morality-related" offences. The death sentence is said to have been passed to the Supreme Court for confirmation. She is to be flogged before she is executed. Concern has been expressed that she was sentenced to death for crimes she would allegedly have committed while she was under 18 years old. On 28 November 2004, she was sentenced to death by a court in Arak, while she was 18, on charges of "acts contrary to chastity", including controlling a brothel, having intercourse with blood relatives and giving birth to a child out of wedlock. It is reported that IQ tests have revealed that she has the mental age equivalent to that of an eight year-old. However, she has apparently never been examined by the court-appointed doctors, and was sentenced to death solely on the basis of her explicit confessions, without consideration of her background or mental health. She was reportedly forced into prostitution by her mother at the age of eight, bore several children as a result. She was also repeatedly raped, sold into marriage, and subsequently forced into prostitution by her respective spouses.

**Response of the Government of the Islamic Republic of Iran dated 4 February 2005**

Miss Leila Moafi had been sentenced to death. The verdict was challenged and therefore sent to the Supreme Court for further consideration. On this basis, the sentence is not considered as final. In addition to the reconsideration of the Supreme

Court, there are provisions of extraordinary appeal offered to the accused, should the sentence be confirmed.

### **Islamic Republic of Iran: Death Sentence of Juvenile Offender Ali**

**Violation alleged:** Non-respect of international norms and standards for the imposition of capital punishment

**Subject(s) of appeal:** 1 male (minor; juvenile offender)

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

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

The Special Rapporteur appreciates the information provided by the Government of the Islamic Republic of Iran. The SR welcomes the information that the death sentence of Ali has been put on hold and reiterates that, pursuant to the treaty obligations of the Islamic Republic of Iran, his sentence must be permanently commuted. The SR will also continue to request a comprehensive review of the cases of individuals who have been sentenced to death for crimes committed when they were less than eighteen years of age, even if such sentences have not yet been confirmed by the Supreme Court.

### **Urgent appeal sent on 9 February 2005**

A 16 year old student named Ali was sentenced to death in June 2004 by the Karaj General Court for the murder of another student – Mazdak Khodadadian- at his high school. According to the information received, Ali (whose surname is unknown), a 16 year old- student and his classmate Milad (surname also unknown) were responsible for keeping discipline among their fellow pupils at their high school. The victim, Mazdak Khodadadian, arrived late at school one day and had an argument with Ali and Milad. During the fight that ensued, Ali stabbed Mazdak who was eventually transferred to hospital where he died from his injuries. The case was reportedly tried at the Branch 122 of the Karaj General Court where the head of the Special Court for Children sentenced Ali to death. Milad was sentenced to 3 years' imprisonment for his participation to the incident. The Branch 27 of the Supreme Court has reportedly upheld Ali's sentence. It is believed that Ali remains in detention, awaiting execution. If this sentence, which I understand has already been confirmed by the Supreme Court, is carried out, it would be difficult to reconcile with the very welcome commitment given on behalf of Your Excellency's Government in January 2005 at the session on the Committee of Right of the Child in Geneva, to stay all executions of juveniles pending the adoption by the Council of Guardians of the Bill on the Establishment of Juvenile Courts, which abolishes the death penalty on persons who committed a crime before the age of 18. Your Excellency has previously informed me of the pending nature of this Bill in response to earlier inquiries. The execution of this person would be incompatible with the international obligations of Iran under various instruments which I have been mandated to bring to the attention of Governments (see attached). I have also been informed that at least 30 other individuals under the age of 18 have been sentenced to death and are currently detained in juvenile detention centres (Kanoun-e Eslah va Tarbiyat) in Tehran and Raja'I Shahr, a nearby town. In order to avoid extended correspondence in relation to

each case I would respectfully request Your Excellency's Government to provide me with a comprehensive and detailed indication of the details of individuals who have been sentenced to death for crimes committed when they were less than eighteen years of age, even if such sentences have not yet been confirmed by the Supreme Court. I would also ask that any such planned execution be stayed pending the adoption of the Bill on the Establishment of Juvenile Courts, in order to ensure that Iran complies with its obligations under international law.

### **Response of the Government of the Islamic Republic of Iran dated 8 March 2005**

"Ali" has been accused of murder and accordingly sentenced to death, however this verdict has been put on hold, like all other death sentences for those aged under-18. It is worth noting that the moratorium on the death sentence for those aged under-18 has been incorporated into the draft Bill of the Juvenile Court which is before parliament for ratification.

### **Islamic Republic of Iran: Death Sentences of Five Women**

**Violation alleged:** Non-respect of international norms and standards for the imposition of capital punishment

**Subject(s) of appeal:** 5 females

**Character of reply:** No response

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

The Special Rapporteur regrets that Iran has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Urgent appeal sent on 11 February 2005 with** the Special Rapporteur on independence of lawyers and judges, the Special Rapporteur on violence against women and the Special Rapporteur on torture

Women who are currently sentenced to death and are awaiting execution in Evin Prison, Tehran, have not had a fair hearing. Following their arrest they were not given prompt access to a lawyer; were forced to answer questions and participate in interrogations without their lawyer being present; evidence, such as confessions, is obtained through torture and ill-treatment. We would like to draw your Governments attention to the following individual cases:

Azam Qara Shiran, aged 37. She is scheduled to be executed by hanging this week. She was sentenced to death 5 years ago for being an accomplice to the murder of her husband. Ms. Shiran, who was forced by her father to marry when she was 15 years old, was forced into prostitution by her husband. Ms. Shiran had requested a divorce on three occasions but each time the court denied her request. Following many years of abuse she ran away with her boyfriend. Her husband found her after one year and he was killed during a quarrel with her boyfriend. During the preliminary investigation, Ms. Shiran confessed to being an accomplice to the murder but later retracted it saying that she was not in the room when it happened. Throughout the investigative process and during her confession, she reportedly did not have access to

legal counsel. The court found her guilty of being an accomplice to murder and sentenced her to death.

Akram Gharivel, aged 29. In self-defence, she killed a man who forcibly entered her home and attempted to rape her. The police noted in their report that the intruder had damaged the door when entering the house. She was convicted of murder and sentenced to death. Her argument of self-defence was ignored by the court.

Tayebeh Hojati, aged 25. She was convicted of the murder of her husband's daughter. In February 2004, after the child went missing, Ms. Hojati was held in incommunicado detention for 16 days by the Shapoor Agahi police (homicide division), Tehran. During interrogations she was tortured, sexually abused, threatened with rape and forced to watch the torture of her brother. The police also threatened to detain and torture her other relatives unless she agreed to sign a confession that she had killed her husband's child. Once the confession was signed she was told what to say before the court hearing. Throughout the investigative process and during her confession, she did not have access to legal counsel. It is reported that important elements of the case were not investigated or considered in her trial, including forensic evidence that the girl had been killed at a time when Ms. Hojati was already in police custody. She has been sentenced to death and is currently detained in Evin prison, Tehran awaiting execution.

Shahla Jahed, aged 35. She was convicted of murder of her boyfriend's wife. For one year she was held in incommunicado detention by the Agahi police (homicide division) and also in Evin Prison, Tehran. During this period she was tortured to make her confess to the murder. She was beaten, tied up in painful positions and verbally insulted. She has scars on her left hand and right arm from the treatment. Throughout the investigative process, including when making the confession, she did not have access to legal counsel. Exculpatory forensic evidence, including that the murder victim was raped prior to death, was not considered.

Ms. Fatimeh Pajouh was sentenced to death for the murder of her husband. It is reported that she killed her second husband because he was raping her daughter. The first time she saw her lawyer was at the trial, when the judge apparently asked legal counsel to sit next to her. It is reported that her argument that she killed her husband whilst defending her daughter was not taken into consideration. She is currently detained in Evin prison, Teheran. An urgent appeal was sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions on her behalf on 12/10/2004. The Government replied on 21/10/04 stating that a temporary stay of execution by direct order of the head of the judiciary had been granted whilst this case is reviewed. The Special Rapporteurs welcome the cooperation of the Government in this regard and would like to be kept informed as to the outcome in this case.

**Islamic Republic of Iran: Death Sentences of Juvenile Offenders Abbas Hosseini and Rasoul Mohammadi**

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

**Subject(s) of appeal:** 2 males (2 juvenile offenders; 1 minor; 1 refugee)

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

#### **Urgent appeal sent 21 April 2005**

I would like first of all to recall that, in earlier correspondence sent on 9 February 2005, I had brought to your Excellency's attention information I had received according to which at least 30 individuals under the age of 18 had been sentenced to death and were then being held in juvenile detention centres in Tehran and Raja'I Shahr. I had respectfully requested your Excellency's Government to provide me with a comprehensive and detailed indication of the details of individuals who have been sentenced to death for crimes committed when they were less than eighteen years of age, even if such sentences have not yet been confirmed by the Supreme Court. Finally, I had also asked that any such planned execution be stayed pending the adoption of the Bill on the Establishment of Juvenile Courts, in order to ensure that Iran complies with its obligations under international law. As Your Excellency is aware, I have received no response yet to that communication.

The principal purpose of my present note is to raise two additional and related cases. The first concerns a recent report that I have received regarding the situation of Abbas Hosseini, a 19-year-old registered Afghan refugee who is scheduled to be executed on 1 May 2005 for a murder that he committed while he was 17 years old. Reports indicate that, in July 2003, he stabbed a man once with a knife after the man allegedly made sexual advances to him. Abbas Hosseini reportedly confessed to the crime, although claiming that he had acted in a moment of insanity. He was transferred to the central prison in Mashhad six months after his arrest and charged with murder. On 3 June 2004, he was sentenced to death by verdict No.13/277 of Branch 43 of the Mashhad Special Court. The sentence was upheld by Petition No. 41/246 of Branch 41 of the Supreme Court of Mashhad on 28 October 2004 and subsequently by his Excellency Ayatollah Shahrudi, Head of the Judiciary of the Islamic Republic of Iran. I have been informed that an appeal for clemency for Abbas Hosseini has been sent to his Excellency Ayatollah Seyyed Ali Khamenei by the United Nations High Commissioner for Refugees which has reportedly been following the legal proceedings in the case closely.

I would also like to bring to your Excellency's attention a second situation, involving Rasoul Mohammadi, aged 17, who was reportedly scheduled to be executed on 16 April 2005, but who was granted a stay of execution because of uncertainties about his age. It is reported that Rasoul Mohammadi and his father Mousa Ali Mohammadi, aged 46, were both sentenced to death by a court in Esfahan for abducting 40 young girls, stealing their jewellery and raping at least four of them. They reportedly confessed to the charges during their interrogation. Mousa Ali Mohammadi was reportedly hanged in a central square in the city of Esfahan on 16 April 2005.

In this connection, I wish to draw your Excellency's Government's attention to the fact that the execution of these above-named persons would be incompatible with the

international obligations of Iran under various instruments which I have been mandated to bring to the attention of Governments. The right to life of persons below eighteen years of age and the obligation of States to guarantee the enjoyment of this right to the maximum extent possible are both specifically expressed in article 6 of the Convention on the Rights of the Child. More explicitly, article 37(a) provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

In this connection, I would respectfully urge the Government of your Excellency to take all measures necessary to comply with international law. These measures were, in my view, accurately reflected in the recommendations issued by the United Nations Committee on the Rights of the Child, which called on Iran in January 2005 to “immediately suspend the execution of all death penalties imposed on persons for having committed a crime before the age of 18, to take the appropriate legal measures to convert them to penalties in conformity with the provisions of the Convention and to abolish the death penalty as a sentence imposed on persons for having committed crimes before the age of 18, as required by article 37 of the Convention.” (See CRC/C/15/Add. 254, 28 January 2005, at par. 30)

In light of the above review of relevant legal standards and in view of the irreversibility of the punishment, it is imperative that your Excellency’s Government takes all steps necessary to prevent executions which are inconsistent with accepted standards of international human rights law.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons, in accordance with the State Party’s relevant obligations under international law.

### **Islamic Republic of Iran: Death Sentence of Kobra Rahmanpour**

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

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

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur appreciates the information provided by the Government of the Islamic Republic of Iran concerning the death sentence imposed on Kobra Rahmanpour. The SR would appreciate receiving updated information on her situation.



**Urgent appeal sent on 26 April 2005** with the Special Rapporteur on violence against women and the Special Rapporteur on the independence of judges and lawyers.

Ms. Kobra Rahmanpour who was the subject of a joint urgent appeal sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on violence against women, its causes and consequences on 30 April 2004. According to the information received:

Ms. Kobra Rahmanpour remains on death row. On 21 June 2004 the Head of the Judiciary referred her case to the Arbitration Council, which has reportedly scheduled two meetings between the victim and the victim's heirs. At the first meeting (24 October 2004), the victim's heirs did not appear and at the second meeting (5 March 2005), it is reported that the victim's heirs not only refused to forego Ms. Rahmanpour's punishment, but insisted that she be executed without further delay. Although there have been reports that a third and final meeting will take place, it is not clear whether that meeting will be scheduled.

The information received alleges that the referral to the Arbitration Council has no basis in Iran's existing laws to decide such judicial issues and that any solution arrived at by the Arbitration Council which succeeds in convincing the victim's heirs to forego the execution will not adequately address the harms that Ms. Rahmanpour has suffered during her years of detention. It is emphasized that the Head of the Judiciary is the only person with the legal authority to revoke the conviction based on errors of law and refer the case for a re-trial. However, thus far, the Head of the Judiciary has refused to undertake such action.

According to the information received, Ms. Rahmanpour has been detained for 4 and a half years, having been convicted of intentionally murdering her mother-in-law. Ms. Rahmanpour claims that she acted in self defense. There is concern that the arrest and trial of Ms. Rahmanpour violated internationally recognized standards of due process and fair trial.

### **Response of the Government of the Islamic Republic of Iran dated 9 May 2005**

1. Ms. Kobra Rahmanpour was accused of the first degree murder of her mother-in-law. Following the exercise of due process of law in the competent court with full access to the legal counsel of her choice, she was sentenced to execution by verdict No. 756, issued by General Court, Branch 1608. This verdict was upheld by verdict No. 189/7 of Branch 7 of the Supreme Court. Nevertheless, the sentence has not yet been carried out based on the direct order of the Head of the Judiciary to allow for further considerations, including consultations between the accused and victim's heir. As far as the legal proceedings are concerned, this case does not represent any instances of extra judiciousness or arbitrariness.

2. The system of justice must protect the rights of the perpetrator, and also those of the victim, who, in this case, was deprived of her most essential right of all, that is her right to life. Par. 2 of Resolution 1994/45 of the Commission on Human Rights entitled "Question of integration of the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women" endorses sub

article c, article 4 of the Declaration of Elimination of Violence against women which reads "... to punish acts of violence against women and to take appropriate and effective action concerning acts of violence against women, whether those acts are perpetrated by the State or by private persons...".

3. According to Article 7 of "Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty", contained in ECOSOC resolution 1984/50, Ms. Rahmanpour has the right to seek pardon or commutation of sentence. She has done so and the Judiciary of Iran, according to Article 8 of the same guidelines, has refrained from carrying out the sentence, "pending appeal or other recourse or other proceeding relating to pardon or commutation of the sentence".

### **Islamic Republic of Iran: Death Sentences of Hojjat Zamani and Esmail Mohammadi**

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

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

**Character of reply:** Allegations rejected but without adequate substantiation

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

The Special Rapporteur appreciates the information provided by the Government of the Islamic Republic of Iran concerning the death sentence imposed on Esmail Mohammadi. However, the assertion that Esmail Mohammadi's conviction and death sentence were arrived at pursuant to "due legal process" fails to address the particular allegations made concerning that process. The SR later received credible information that Esmail Mohammadi has been executed; however, he will continue to seek clarification regarding the case of Hojjat Zamani.

#### **Urgent appeal sent on 12 May 2005 with the Special Rapporteur on torture**

In this connection, we would like to draw the attention of your Government to information we have received regarding two men at imminent risk of execution after having been allegedly tortured in pre-trial detention.

The case of Hojjat Zamani, aged 29, currently detained in Raja'i Shahr prison, Karaj, was the subject of a communication by us to your Excellency's Government on 24 September 2004 (E/CN.4/2005/62/Add.1, para. 844). In that communication, we expressed the concern that Hojjat Zamani might have been sentenced to death following a trial in which his right to effective counsel was denied, in particular because judicial officials did not cooperate with his appointed lawyer. Hojjat Zamani was put on trial after he was forcibly returned to Iran from Turkey in November 2003, having fled Iran in August 2003. He was reportedly tortured in Evin Prison to confess to the terrorism-related offences he now stands convicted of both before his flight to Turkey and before his 2004 trial. We received no response to our letter. According to information recently received, Hojjat Zamani is now at imminent risk of execution following the recent decision of the Supreme Court to uphold the death sentence passed by Branch Six of Tehran's Revolutionary Court in July 2004.

The case of Esmaeil Mohammadi, aged 38, from Boukan, currently detained in Urumiya Prison, was the subject of an urgent appeal we sent you on 8 September 2004 (E/CN.4/2005/62/Add.1, para. 843). In that communication, we brought to your Excellency's attention allegations that his death sentence was based on a confession extorted by torture. We received no response to our letter.

While we are fully aware of the most serious nature of the crimes these two men have been found guilty of, we respectfully remind your Excellency that "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the (International Covenant on Civil and Political Rights) admits of no exception" (Little v. Jamaica, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the cases at issue, these guarantees include the right not to be compelled to confess guilt and the right to adequate time and facilities for the preparation of one's defence.

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

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Hojjat Zamani and Esmaeil Mohammadi are respected. This can only mean suspension of the capital punishment against the two men 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 Hojjat Zamani and Esmaeil Mohammadi to torture is ensured.

#### **Response of the Government of the Islamic Republic of Iran dated 24 May 2005**

Upon receipt of an urgent appeal regarding the legal case of Mr. Esmaeil Mohammadi, a thorough investigation has been carried out by the local judiciary authorities in Western Azerbaijan province. The results of the investigation are as follows: Mr. Esmaeil Mohammadi was a member of the banned terrorist group "Komele", which was stationed in Northern Iraq for terrorist operations against Iran. In 2001, he, along with three other armed members of this group infiltrated Iranian Kurdistan province and gunned down one of their opponents. Following an extensive operation by law enforcement authorities, they were arrested in 2002 with large stocks of arms and ammunitions.

Mr. Mohammadi was sentenced to death by the Revolutionary Court of the above-named province based on numerous articles of Islamic Penal Code. However, due to an appeal by his defence, the case was referred to the Supreme Court, where the

sentence was upheld. Nevertheless, the sentence has not been yet carried out for further consideration.

### **Response of the Government of the Islamic Republic of Iran dated 8 August 2005**

According to information from the Judiciary of the Islamic Republic of Iran Mr. Esmail Mohammadi has been charged with terrorist activities in cooperation with the Komelech armed group resulting in the murder of Mr. Ebrahim Badeh Bedast. After the due legal process he was sentenced to death on one count of his charges. Nevertheless, the sentence has been put on hold after further consideration.

#### **Islamic Republic of Iran: Executions of Three Juvenile Offenders**

**Violation alleged:** Non-respect of international standards of application of capital punishment

**Subject(s) of appeal:** 3 males (1 minor; 3 juvenile offenders)

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

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

The Special Rapporteur appreciates the information provided by the Government of the Islamic Republic of Iran concerning the ages of Mahmoud Asgari and Ayaz Marhoni. He would appreciate clarification in the case of Ali Safarpour Rajabi as well. The Special Rapporteur will also continue to request a comprehensive review of the cases of individuals who have been sentenced to death for crimes committed when they were less than eighteen years of age, even if such sentences have not yet been confirmed by the Supreme Court.

**Communication sent on 7 August 2005** with the Chairperson of the Committee on the Rights of the Child

While we take note of the efforts made to halt the executions of Mr. Abbas Hosseini and Mr. Rasul, we are concerned about information according to which, on 19 July 2005, two young men, Mahmoud Asgari, 16, and Ayaz Marhoni, 18, were publicly hanged in Edalat Square in the city of Marshhad, in north east Iran after their sentences were confirmed by the Supreme Court. Concerns have been expressed that they were both under 18 years of age at the time of their arrest. They were reportedly convicted of abducting a 13-year-old boy and raping him at knife-point and sentenced to death by Court No. 19. Prior to their execution, they were held in prison for 14 months and were reportedly given 228 lashes each for theft, disturbing public order, and consuming alcohol.

We have further been informed that, on 13 July 2005, Ali Safarpour Rajabi, aged 20, was hanged for killing Hamid Enshadi, a police officer in Poldokhtar. Reports indicate that his death sentence was passed in February 2002, when he was 17 years old. He is believed to have committed the crime when he was 16 years old.

If these allegations are correct, there would be grounds for serious concerns. Therefore, while we do not wish to prejudge the accuracy of these allegations, we

would like to draw your attention to the fact that the execution of these above-named individuals, and any further executions of juvenile offenders, are incompatible with the international legal obligations of the Islamic Republic of Iran. The right to life of persons below eighteen years of age and the obligation of States to guarantee the enjoyment of this right to the maximum extent possible is specified in the *Convention on the Rights of the Child*, which your Government ratified on 13 July 1994. Article 37(a) expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the *International Covenant on Civil and Political Rights*, ratified by your Government on 24 June 1975, provides that the death penalty shall not be imposed for crimes committed by persons below 18 years of age.

In this connection, we would also remind your Excellency of the discussions of this issue that took place between your Government and the Committee on the Rights of the Child in January of this year, in which the delegation stated that all executions of persons who had committed crimes under the age of 18 had been halted. This was reiterated in a note verbale from the Permanent Mission of the Islamic Republic of Iran on 8 March 2005 to the Office of the High Commissioner for Human Rights in which it was stated:

“In recent years the enactment of the death penalty for individuals aged under 18 has been halted and there has been no instance of such punishments for the category of youth. The legal ban on under-aged capital punishment has been incorporated into the draft Bill on Juvenile Courts, which is at present before parliament for ratification.”

We would respectfully urge the Government of the Islamic Republic of Iran to take all necessary measures to comply with international human rights law. These measures were outlined in the recommendations issued by the United Nations Committee on the Rights of the Child, which called on Iran in January 2005 to “immediately suspend the execution of all death penalties imposed on persons for having committed a crime before the age of 18, to take the appropriate legal measures to convert them to penalties in conformity with the provisions of the Convention and to abolish the death penalty as a sentence imposed on persons for having committed crimes before the age of 18, as required by article 37 of the Convention.” (See CRC/C/15/Add. 254, 28 January 2005, at para. 30)

Furthermore, we respectfully request a comprehensive and detailed indication of the details of individuals who have been sentenced to death for crimes committed when they were less than eighteen years of age, even if such sentences have not yet been confirmed by the Supreme Court. These requests were contained in previous communications of the Special Rapporteur on extrajudicial, summary or arbitrary executions dated 9 February and 21 April 2005, in relation to the situation of at least 30 individuals under the age of 18 who were reportedly sentenced to death and were held in juvenile detention centres in Tehran and Raja’i Shahr. It is regrettable that no response has yet been received.

**Response of the Government of the Islamic Republic of Iran dated 8 August 2005**

According to information received from the Judiciary of the Islamic Republic of Iran neither Mahmoud Asgari nor Ayaz Marhouni were aged under 18 at the time of their crimes. This mission has also been notified by the Judiciary that both cases followed the appropriate legal proceeding and therefore the cases do not represent any arbitrariness.

In relation to Ali Safarpour Rajabi, further investigations are underway and the special mechanism will be informed of the conclusion accordingly.

### **Islamic Republic of Iran: Killing of Shivan Qaderi**

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

**Subject(s) of appeal:** 1 male (member of ethnic minority)

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

#### **Allegation letter sent on 10 August 2005**

Communication sent on 10 August 2005 concerning the killing of Mr. Shivan Qaderi, also known as Sayed Kamal Astam, or Astom, a Kurdish opposition activist, by Iranian security forces. According to the information received:

On 9 July 2005, Shivan Qaderi and two other Kurdish men (whose names are not known to me), were shot by officers from the State Security forces in the town of Mahabad. Shivan Qaderi may have tried to escape and was shot again, this time lethally. The security forces then tied Shivan Qaderi's body to a Toyota jeep and dragged him in the streets. The local authorities have confirmed that a person of this name, "who was on the run and wanted by the judiciary", was indeed shot and killed by security forces at this time, purportedly while trying to evade arrest. Shivan Qaderi's body was subsequently returned to his family in a coffin.

In this connection, I 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”. The Commission added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to ... prevent the recurrence of such executions”.

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

1. Are the facts alleged in the above summary accurate? Please state the names of the two men allegedly shot at during the incident that resulted in Shivan Qaderi’s death, their connection to the incident, and whether they were lethally wounded. Please elaborate on the criminal proceedings pending against Shivan Qaderi at the time of the incident, and about the efforts undertaken by the security forces to arrest him. Please also add details as to the reasons that motivated the security forces to tie Shivan Qaderi’s dead body to a car and drag him through the streets of Mahabad (assuming that allegation is well-founded).
2. Please provide the details, and where available the results, of any police investigation, medical examination (autopsy), and judicial or other inquiries carried out in relation to this case. Please include information regarding the guarantees for independence and impartiality of the investigating and adjudicating authorities. If no inquiries have taken place, or if they have been inconclusive, please explain why.

### **Islamic Republic of Iran: Killing of Civilians During Protests in Kurdistan Province**

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

**Subject(s) of appeal:** 17 males (members of ethnic minority)

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

### **Allegation letter sent on 14 September 2005**

Allegation letter sent on 14 September 2005, concerning the killing, by Iranian security forces, of 17 civilians during protests in the Iranian province Kurdistan. According to the information received:

Subsequent to the killing of Shivan Qaderi in Mahabad on 9 July 2005, protests erupted in several cities and towns in the province of Kurdistan, Iran. Protestors demanded that the government apprehend Qaderi's killers and put them on trial. Some of the protests involved attacks on government buildings and offices.

On 26 July 2005, Revolutionary Guard units surrounded the protestors and shot at them, killing three: Omar Amini, Jamileh Khezri, and Bayazid Ali Hassan. In Baneh, on 30 July 2005, Revolutionary Guard Units killed two persons, Hakim Soor and Loghman Nasrallahi, under similar circumstances. On 2 August 2005, in Sardesht, the Revolutionary Guards shot at protestors and killed a man named Hussein Balani. In Saqqez, on 3 August 2005, Special Units (*Yiganhay-e Vizhe*) of the Revolutionary Guards moved towards the protestors while shooting directly at them in an effort to disperse the crowds. The following 11 persons lost their life: Abbas Ramezanzadeh, Behzad Rahimi, Obeid Kamali, Kaveh Vakili, Rahman (no last name, a vegetable vendor), Mohammad Shariati, Farzad Mohammadi, Afshin Morovati, Kaveh Hijazi, Shadian Mohammadi, and Nasser Nilofar.

According to other reports I have received, the following three additional persons were killed by security forces in Kurdistan during the same time period: Heydar Abdullahzadeh, Kamal Esfram, and Hassan Ahmedi.

I am aware that Your Excellency's Government has stated that the unrest was started by "hooligan and criminal elements" and that "public and state-owned buildings, including banks, were damaged", denying that government forces had fired on protestors. In this connection, I would like to refer Your 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). This was further elaborated in the 1990 U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Principle 14 provides with specific regard to the policing of violent 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." Those conditions include that "[l]aw enforcement officials shall [only] use firearms against persons ... when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

In 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”. The Commission added that this obligation includes the obligation “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to ... prevent the recurrence of such executions”.

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

1. Are the facts alleged in the above summary accurate? Please provide a full list of persons deceased during the protests in Kurdistan since 10 July 2005.
2. Please provide the details, and where available the results, of any police investigation, medical examination (autopsy), and judicial or other inquiries carried out in relation to these cases. Please include information regarding the guarantees for independence and impartiality of the investigating and adjudicating authorities. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Principle 2 of the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials reads: “Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. ...” Where the security forces dealing with the protesting crowds in Oshnavieh, Baneh, Sardasht, and Saqqez equipped with non-lethal incapacitating weapons? If so, why did they have recourse to lethal ammunition? If they were not equipped with non-lethal incapacitating weapons, why not?

**Islamic Republic of Iran: Death Sentence of Mehdi Gharib Khanian Ghamroudi**

**Violation alleged:** Non-respect of international norms and standards for 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 notes the information provided by the Government of the Islamic Republic of Iran.

**Urgent appeal sent on 15 September 2005**

Urgent appeal sent on 15 September 2005, concerning the situation of Mr. Mehdi Gharib Khanian Ghamroudi, aged 22, who is reportedly scheduled to be executed in

the city of Ahvaz, south western Iran, on or around 18 September 2005. His death sentence was upheld by the Supreme Court in Tehran. I understand that the Supreme Leader of Iran, Ayatollah Sayed 'Ali Khamenei, has the power to grant clemency at this stage. Mehdi Gharib Khanian Ghamroudi was reportedly arrested by the security forces in December 2004. The precise reasons for his arrest as well as the specific charges on which he was found guilty and sentenced to death have not been made available to me. Concern has been expressed that he was sentenced to death following a trial that may have fallen short of international fair trial standards. He was reportedly denied access to legal representation and was not able to appeal against his sentence.

Although the death penalty is not prohibited under international law, I would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Therefore, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences. This includes the right to an adequate defence and the right to appeal the death sentence.

The Commission on Human Rights has consistently requested me and my predecessors as Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of all standards relating to the imposition of capital punishment.

At present, I would like to highlight the following standards relating to the imposition of the death penalty:

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);

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);

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

Without in any way pre-judging the accuracy of the information I have received, I would respectfully request Your Excellency's Government to provide me with:

a) the details of the trial proceedings of Mehdi Gharib Khanian Ghamroudi, including the specific charges against him, with a view to establishing whether the proceedings complied with international standards relating to the imposition of capital punishment;

b) information as to whether he was given the right to formal representation by a lawyer;

- c) information as to whether the hearings at which he was condemned were held in public;
- d) information as to whether he has been allowed to appeal against his conviction and sentence, as required by Article 14 (5) of the International Covenant on Civil and Political Rights and what was the outcome of any appeal lodged.

**Response of the Government of the Islamic Republic of Iran dated 5 January 2006:**

The Government informed that according to the information received from the Judiciary of the Islamic Republic of Iran no record of Medhi Gharibkhanian Ghamroudi has been found in the local judiciary of Khuzestan province.

**Islamic Republic of Iran: Death Sentences of Four Men**

**Violation alleged:** Non-respect of international norms and standards for the imposition of capital punishment

**Subject(s) of appeal:** 4 males (members of ethnic minority)

**Character of reply:** No response

**Observations of the Special Rapporteur**

The Special Rapporteur regrets that the Government of the Islamic Republic of Iran has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Urgent appeal sent on 15 September 2005**

Urgent appeal sent on 15 September 2005 concerning the situation of Mr. Abu Baker Mirza'i Qaderi, Mr. Othman Mirza'i Qaderi, Mr. Qader Ahmadi and Mr. Jahangir Badouzadeh, four Kurdish men held in Oroumiye Prison in western Iran, who appear to be at risk of imminent execution.

According to the information received Abu Baker Mirza'i Qaderi, Othman Mirza'i Qaderi and Qader Ahmadi, from Bokan in West Azerbaijan province, were captured by the Kurdistan Democratic Party of Iran (KDPI) in 1984 and later released because they were of Kurdish origin. They went into hiding shortly afterwards, but reportedly returned to their home town of Bokan in early 2005. I have not received any information about the specific charges on which they were found guilty and sentenced to death. It has been alleged that the reason for the charges was the fact that they were accused of working for the KDPI.

In addition, I have received reports that a fourth Kurd held in Oroumiye Prison, Mr. Jahangir Badouzadeh, is also at risk of imminent execution. Details of the charges against him and of his trial have not been made available to me.

Although the death penalty is not prohibited under international law, I would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Therefore, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences. This includes the right to an adequate defence and the right to appeal the death sentence.

The Commission on Human Rights has consistently requested me and my predecessors as Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of all standards relating to the imposition of capital punishment.

Without in any way pre-judging the accuracy of the information I have received, I would respectfully request Your Excellency's Government to provide me with:

- a) the details of the trial proceedings of the above-mentioned individuals, including the specific charges against them, with a view to establishing whether the proceedings complied with international standards relating to the imposition of capital punishment;
- b) information as to whether the accused were given the right to formal representation by a lawyer;
- c) information as to whether the hearings at which they were condemned were held in public;
- d) information as to whether they have been allowed to appeal against their convictions and sentences, as required by Article 14 (5) of the International Covenant on Civil and Political Rights and what was the outcome of any appeal lodged.

#### **Islamic Republic of Iran: Executions of Mokhtar N. and Ali A.**

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

**Subject(s) of appeal:** 2 males (persons killed for their sexual orientation)

**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 sent on 25 November 2005**

Allegation concerning the situation of Mr. Mokhtar N., aged 24 and Mr. Ali A., aged 25, who were reportedly hanged publicly on or around 13 November 2005, in the Shahid Bahonar Square of the town of Gorgan.

According to the information I have received, both men were sentenced to death for the crime of "lavat" which is reportedly defined by Iran's Shari`a-based Penal Code as encompassing penetrative and non-penetrative sexual acts between men.

These would not appear to be isolated cases. Indeed, I have been informed of other recent cases of execution of men in Iran on the basis of their private, consensual sexual conduct. For instance, on 15 March 2005, it was reported that the Tehran Criminal Court sentenced to death two men, whose names have not been made known to me, following the discovery of a video showing them engaged in homosexual acts and based on the confession of one of them.

The information I have received also indicated that, late last year, the Special Protection Division, a new institution that empowers volunteers to police moral crimes in neighbourhoods, mosques, offices and any place where people gather, was formed by the Iranian Judiciary. Concern has been expressed that the Special Protection Division functions as an intrusive surveillance system that promotes prosecution of citizens for entirely private and victimless behaviour. In this connection, I would recall the importance of the right to privacy and the strict limits that should apply to interference by governmental authorities and by those acting on their behalf in relation to private conduct.

I would like to remind your Excellency's Government that the death penalty must be regarded as an extreme exception to the fundamental right to life and that it must therefore be applied in the most restrictive manner. Accordingly, it is crucial that all fair trial and other protections provided for in international human rights law are fully respected in proceedings relating to capital offences.

The Commission on Human Rights has consistently requested me and my predecessors as Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of all standards relating to the imposition of capital punishment.

It is my understanding that the death penalty applies in Iran for a wide range of crimes, some of which would not appear to fall within the internationally recognised category of "the most serious crimes". Iranian law reportedly punishes all penetrative sexual acts between adult men with capital punishment. Non-penetrative sexual acts between men are punished with lashes until the fourth offence, when they are punished with death. Sexual acts between women, which are defined differently, are punished with lashes until the fourth offence, when they are also punished with death.

In this connection, I would like to highlight that, in accordance with Article 6(2) of the *International Covenant on Civil and Political Rights*, "in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes", 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). In its General Comment No. 6, the United Nations Human Rights Committee has stated that "the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure". In practice, the Committee has made

it clear that the death penalty should not be imposed for offences such as the commission of a homosexual act.

It is my responsibility under the mandate provided to me by the Commission on Human Rights to seek to clarify all cases brought to my attention. Without in any way wishing to pre-judge the accuracy of the information received, I would be grateful for a reply to the following questions:

1. Are the facts alleged in the above summary accurate?
2. Please provide a detailed description of the crimes of which Mokhtar N. and Ali A. have been found guilty;
3. Please also provide the details of the trial proceedings of Mokhtar N. and Ali A., with a view to establishing whether the proceedings complied with international standards relating to the imposition of capital punishment;
4. Please provide information as to whether they were given the right to formal representation by a lawyer and whether they were allowed to appeal against their sentences;
5. Please provide statistics as to the number of persons executed for the commission of homosexual acts in the past three years.
6. Finally, please also provide information as to the specific powers attributed to the Special Protection Division and to the measures designed to ensure that human rights are respected in the framework of their activities.

#### **Islamic Republic of Iran: Death Sentence of Juvenile Offender Delara Darabi**

**Violation alleged:** Non-respect of international standards of application of capital punishment

**Subject(s) of appeal:** 1 female (juvenile offender)

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur welcomes the information that the death sentence of Delara Darabi has been placed on hold and would appreciate updated information concerning her situation.

### **Urgent appeal sent on 9 January 2006**

In this connection, I would like to draw the attention of your Government to information I have received regarding Delara Darabi, aged 19, who is at risk of execution for a murder which took place when she was 17 years old which she denies having committed.

According to the information I have received, Delara Darabi and a 19-year-old man named Amir Hossein broke into a woman's house to commit a burglary. Amir Hossein allegedly killed the woman during the burglary. Delara Darabi initially confessed to the murder, but has since retracted her confession. She claims that Amir Hossein asked her to admit responsibility for the murder to protect him from execution, believing that as she was under the age of 18, she could not be sentenced to death.

Delara Darabi was sentenced to death by a lower court in the northern city of Rasht. The sentence has reportedly been upheld by the Supreme Court. She maintains her innocence, and has claimed that she was under the influence of sedatives during the burglary. Amir Hossein has reportedly received a prison sentence of 10 years for his involvement in the crime. It is my understanding that at this stage, the Judiciary has the power to order a stay of execution and a review of the case.

As your Excellency will recall, I have addressed the issue of execution of juvenile offenders on a number of occasions in the course of 2005. I issued a press statement on December 9th 2005 affirming that the practice is clearly incompatible with the international human rights obligations of the Islamic Republic of Iran. In view of the urgency of the matter and of the irreversibility of the punishment, I respectfully request your Excellency's Government to suspend the execution of Ms. Delara Darabi in order to review the case and to provide me with a response on the initial steps taken to safeguard Ms. Darabi's rights in compliance with applicable international human rights standards.

Finally, I appeal yet again to your Excellency's Government to set the dates for the visit to your country which was agreed to in principle a very long time ago. If I have not heard from your Excellency's Government by 23 January 2006 I shall have no alternative but to bring this matter very clearly to the attention of the Commission on Human Rights and request it to take the appropriate steps.

### **Response of the Government of the Islamic republic of Iran dated 17 January 2006**

With reference to the Special Rapporteur's letter regarding Ms. Delara Darabin, the Government informed that according to information received from the judiciary of the Islamic republic of Iran legal counsels of Ms. Darabi appealed to the Supreme Court and raised the issue of her age at the time of the crime. On this basis, the Supreme Court has overturned the sentence and has referred it to the Juvenile Legal Center for due consideration. Therefore the sentence has been put on hold.

### **Iraq: Death Sentences of Four Men**

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

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

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of Iraq has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights. The SR has since received credible information that Ahmad al-Jaf, ‘Uday Dawud al-Dulaimi, and Jasim ‘Abbas have been executed. However, he reiterates his urgent appeal with respect to Tahsin ‘Ali Mattar.

#### **Urgent appeal sent on 31 May 2005**

Mr. Ahmad al-Jaf, aged 30, Mr. ‘Uday Dawud al-Dulaimi, aged 25, Mr. Jasim ‘Abbas, aged 44 and Mr. Tahsin ‘Ali Mattar who were reportedly sentenced to death in two separate trials in Iraq. If their sentences are ultimately carried out, they may be the first people to be executed by the new Government.

According to the information received, on 22 May 2005, Ahmad al-Jaf, ‘Uday Dawud al-Dulaimi and Jasim ‘Abbas were sentenced to death by a criminal court in al-Kut, about 170 kilometres southeast of Baghdad, following a trial alleged to have lasted only a few hours. The three accused are alleged members of the armed group *Ansar al-Sunna*. I understand that they were found guilty of kidnapping, killing of policemen and rape of women, although no information on the details of the charges has been made available to me. The Court reportedly announced that the sentences would be carried out “within 10 days” of the pronouncement of the verdict. It is not currently known if the case would be referred to a Court of Appeal.

It is further reported that, on 25 May 2005, a criminal court in Babil, south of Baghdad, sentenced Tahsin ‘Ali Mattar to death after finding him guilty of “terrorist activities”. He and another defendant, who received a 15-year prison term, have reportedly been given 10 days to appeal of the decision. No further information in relation to this case has been brought to my attention.

Without in any way wishing to prejudge the accuracy of this information, I would respectfully request Your Excellency’s Government to provide me with the details of the trials of the above-mentioned individuals, with a view to establishing whether the proceedings complied with international standards relating to the imposition of capital punishment.

It is my understanding that, on 8 August 2004, the interim government reinstated the death penalty in Iraq for certain crimes such as murder, drug trafficking and kidnapping. The reimposition of capital punishment was justified as a measure to deal with the deteriorating security situation. More specifically, I understand that Prime Minister Ibrahim al-Jaafari has recently announced that the death penalty would



be implemented as a way to control ongoing violence and insurgency. I do not wish to under-estimate the challenges posed by this insurgency and I am aware that armed groups opposed to the presence of foreign troops and to the Iraqi Government have carried out very serious crimes including kidnapping and killing of civilian hostages, as well as indiscriminate suicide and bomb attacks that have left hundreds of civilians dead. I understand that *Ansar al-Sunna* has allegedly claimed responsibility for many of these abuses.

I would nevertheless stress that, while I recognise the responsibility of Governments to protect their citizens against the excesses of non-State actors or other authorities as well as the crucial need to bring the perpetrators of such abuses to justice, efforts in that sense must be undertaken within a framework clearly governed by international human rights law.

Although the death penalty is not prohibited under international law, I would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Therefore, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences. This includes the right to an adequate defence and the right to appeal the death sentence.

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. I shall underline that the right to life as provided for in article 6 of the International Covenant on Civil and Political Rights is non-derogable (See Article 4(2) of the Covenant). Besides, Articles 6(2), 14 and 15 of the ICCPR provide that the death penalty may only be imposed for the most serious crimes, in accordance with the law in force at the time of the commission of the crime, and pursuant to a final judgement rendered by a competent court.

### **Iraq: Inquiry Regarding the Death Penalty**

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

**Subject(s) of appeal:** General

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

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

The Special Rapporteur reiterates that the Commission on Human Rights has requested him to monitor the implementation of all standards relating to the imposition of capital punishment and that his communication of 29 August 2005 was designed to further that end by requesting particular factual and legal information from the Government of Iraq. The SR regrets that the Government's response deals

solely with the question of whether the death penalty should be abolished, a question that was not raised by the SR, since it does not fall within his mandate.

### **Urgent appeal sent on 29 August 2005**

Urgent appeal sent concerning recent reports according to which 48 individuals sentenced to death since the reinstatement of capital punishment in Iraq on 8 August 2004 have had their appeals against their death sentences rejected. They are therefore reportedly at risk of imminent execution. The sentences are reported to have been referred to the Presidential Council, made up of President Jalal Talabani and his two deputies, 'Adil 'Abdul Mahdi and Shaikh Ghazi al-Yawar, for ratification. I have neither been informed of the names of these 48 persons or of the charges on which they were convicted, nor have I been informed of any details of their trials.

I understand that, since the new Iraqi government was formed in early May 2005 under Prime Minister Ibrahim al-Ja'afari, at least 50 people have been sentenced to death. No executions are known to have been carried out.

Your Excellency will recall that, on 31 May 2005, I sent a communication regarding the situation of M. Ahmad al-Jaf, aged 30 M. Jasim 'Abbas, aged 44 and M. 'Uday Dawud al-Dulaimi, aged 25 and M. Tahsin 'Ali Mattar who had been sentenced to death in two separate trials in Iraq. I have recently been informed that M. Ahmad al-Jaf, M. Jasim 'Abbas, and M. 'Uday Dawud al-Dulaimi, could now be at risk of imminent execution, following a reported declaration by Prime Minister Ibrahim al-Ja'afari that: "The President has signed three death sentences, and the next few days will see the first executions in al-Kut." M. Tahsin 'Ali Mattar reportedly appealed against his death sentence but the result of his appeal is not known.

As I had indicated in my previous correspondence, it is my understanding that, on 8 August 2004, the interim government reinstated the death penalty in Iraq for certain crimes such as murder, drug trafficking and kidnapping. The reintroduction of capital punishment was justified as a measure to deal with the deteriorating security situation. More specifically, I understand that Prime Minister Ibrahim al-Jaafari had announced that the death penalty would be implemented as a way to control ongoing violence and insurgency. I do not wish to under-estimate the challenges posed by this insurgency and I am aware that armed groups opposed to the presence of foreign troops and to the Iraqi Government have carried out very serious crimes, including kidnappings and killings of civilian hostages, as well as indiscriminate suicide and bomb attacks that have left hundreds of police officers and civilians dead.

I would nevertheless stress once more that, while I recognize the responsibility of Governments to protect their citizens against the excesses of non-State actors or other authorities as well as the crucial need to bring the perpetrators of such crimes to justice, efforts in that sense must be undertaken within a framework clearly governed by international human rights law.

Although the death penalty is not prohibited under international law, I would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. The Commission on Human Rights has consistently requested me and my predecessors as Special Rapporteur on extrajudicial, summary or arbitrary

executions to monitor the implementation of all standards relating to the imposition of capital punishment.

At present, I would like to highlight the following standards relating to the imposition of capital punishment:

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);

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);

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

Without in any way pre-judging the accuracy of the information I have received, I would respectfully request Your Excellency’s Government to provide me with details of the trials of the above-mentioned offenders, with a view to establishing whether the proceedings complied with international standards relating to the imposition of capital punishment. In this regard, please provide the full names of the 48 above-mentioned individuals whose appeals have allegedly been rejected, details of the charges of which they were convicted and dates of their initial trials and their subsequent appeals.

In order to carry out the mandate entrusted to me by the Commission on Human Rights, and to be able to effectively monitor the implementation of the relevant standards, I would be grateful if you would provide me with the following information:

(a) For which offences does the law currently provide for the imposition of the death penalty?

(b) Which courts can impose the death sentence? What appeals and extraordinary remedies are available to a person sentenced to death?

(c) 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 used by them as well as those still available to them.

(d) Please also provide a list of the currently pending criminal cases in which the prosecution has sought the death sentence.

**Response of the Government of Iraq dated 10 November 2005**

**Section .03 Position of the Government of Iraq on the reinstatement of the death penalty**

The Government of Iraq should like to point out that the death penalty was originally introduced under the Iraqi Penal Code No. 111 of 1969, as amended, as a punishment for certain serious crimes. The penalty was temporarily suspended pursuant to Order No. 7 of 10 June 2003, issued by the Transitional Coalition Authority, and was subsequently reinstated by Council of Ministers Order No. 3 of 8 August 2004. The aforementioned penalty is confined to crimes against the internal security of the State, crimes that constitute a threat to the public, the use of bacteriological substances, criminal attacks upon the safety of transport and communications, premeditated murder with aggravating circumstances, drug-trafficking offences under the Drugs Act, and the kidnapping offences enumerated in the Penal Code.

To revoke the death penalty in our country at the present time would be to undermine our policy on crime, since we are facing some of the worst and reprehensible crimes of organized and non-organized terrorism, as well as organized crime, offences designed to destabilize institutions or democratic processes, and acts of violence motivated by racial, sectarian, ethnic or religious factors and committed in an unstable security situation. It is therefore necessary to retain the death penalty, albeit in modified form. This penalty is imposed only for the most serious crimes, including those already enumerated. The judiciary, through the courts and public prosecution service, makes sure that the death penalty is only applied in respect of the offences for which it is prescribed and of culprits who are proven to constitute a serious threat to society, who cannot be reformed or reintegrated into society, and who are highly likely to commit the same offence again. There must be powerful evidence to show, beyond any shadow of doubt, that the accused person is guilty and cannot possibly be innocent; otherwise, the court must make use of extenuating factors to avoid imposing this penalty. The Head of State can use the power vested in him by the Constitution to grant a special pardon to stop this penalty from being enforced in circumstances that do not conflict with the interests of society.

We can conclude by saying that the death penalty is the only penalty which guards against the commission of serious crimes in the current circumstances, and that the basic factor behind its adoption is public deterrence, i.e. warning members of society of the consequences of committing capital offences. This penalty has a huge psychological impact on persons who are hesitant about committing serious crimes. Thus, the death penalty is one of the most important ways of preventing crime, a function which depends on the circumstances of each society and the types of crimes committed.

In conclusion, the Government of the Republic of Iraq should like to commend the United Nations and non-governmental organizations, including Amnesty International, for providing a full range of material and moral support to guarantee the sovereignty of Iraq and to bring security, stability and prosperity to its people, pending the restriction and abolition of the death penalty.

**Iraq: Container Killing of Nine Men**

**Violation alleged:** Deaths in custody

**Subject(s) of appeal:** 9 males

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

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the response provided by the Government of Iraq and looks forward to receiving the results of the investigation.

**Allegation letter sent on 14 September 2005**

Allegation letter sent concerning the death of nine men in Baghdad on 10 July 2005. The names of the men, as reported to me, are Wa'ail Abbas Salim, Umer Anaid Ahmed, Dhiaa' Muhammed Ahmed, Riadh Muhammed Ahmed, Mushtaq Turkey Salih, Sabah Zekm Ali, Hussain Ali Talib, Taha Hessen Medlol, and Nafia' Salem Abbas. According to the information received:

On 10 July 2005 Iraqi police forces arrested twelve men at a hospital in Baghdad's Shuala district. According to statements by the authorities they were members of an armed group who had engaged in an exchange of fire with US or Iraqi forces. According to other sources eleven of the men were part of a group of bricklayers working in the al-'Amariya district. One of them sustained gunshot injuries during a firefight between armed fighters and police. His colleagues took him to a hospital in the Shuala district of Baghdad where he was pronounced dead. A police commando then arrived at the hospital and proceeded to arrest the remaining eleven men, along with one other man who was there accompanying his pregnant wife. The suspects were taken to the police headquarters in the Jihad neighbourhood in western Baghdad. There they were beaten and otherwise tortured by the police officers and then locked into a police van or container for 14 hours. Due to the extreme temperatures and the lack of fresh air, nine of the twelve men died in the container. Medical staff at Yarmouk hospital in Baghdad, where the bodies of those who died were taken to on 11 July 2005, have confirmed that some of the men bore signs of torture, including electric shocks.

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

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

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

2. Please provide the details, and where available the results, of any police investigation, medical examination (autopsy), and judicial or other inquiries carried out in relation to the death of Wa'ail Abbas Salim, Umer Anaid Ahmed, Dhiaa' Muhammed Ahmed, Riadh Muhammed Ahmed, Mushtaq Turkey Salih, Sabah Zekm Ali, Hussain Ali Talib, Taha Hessen Medlol, and Nafia' Salem Abbas. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide the full details of any disciplinary action and prosecution undertaken with regard to the persons responsible of the death of Wa'ail Abbas Salim, Umer Anaid Ahmed, Dhiaa' Muhammed Ahmed, Riadh Muhammed Ahmed, Mushtaq Turkey Salih, Sabah Zekm Ali, Hussain Ali Talib, Taha Hessen Medlol, and Nafia' Salem Abbas.
4. Please indicate whether compensation has been provided to the families of the victims.

### **Response of the Government of Iraq dated 16 December 2005**

The Government informed the Special Rapporteur that the Iraqi concerned authority has convened an investigation committee concerning the information mentioned in the letter and would inform the Special Rapporteur of the Investigation results as soon as received.

### **Iraq: Death of Journalist Waleed Khaled**

**Violation alleged:** Violations of the right to life during armed conflicts contrary to international humanitarian law

**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 Iraq has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Allegation letter sent on 16 September 2005** 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 the United States, 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, both by your Excellency's Government and by the United States authorities, insofar as you are aware of such inquiries. Have penal, disciplinary or administrative sanctions been imposed in connection with this incident? If your Government has not undertaken any inquiries in this matter or if they have been inconclusive, please explain why.
3. Is your Excellency's Government aware of the rules of engagement or policies of the United States military forces operating in Iraq. Have such rules of engagement

or policies been agreed on with your Government? What safeguards do they contain 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.”

**Iraq: Killing of Lawyers Sadoum al-Janabi and Adel Muhammad al-Zubaidi**

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

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

**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 he has been given by the United Nations Commission on Human Rights.

**Allegation letter sent on 15 November 2005**

Allegation letter sent concerning the killing of Sadoum al-Janabi and Adel Muhammad al-Zubaidi. According to the information received, at least ten armed men abducted Sadoum al-Janabi from his office in Baghdad at around 10 p.m. on Thursday, 20 October 2005, and his body was found shortly thereafter with two bullet wounds to the head. Eyewitnesses were quoted as saying that the men who abducted Al-Janabi identified themselves as officials of the Interior Ministry. I am also aware that, in an October 26 interview with Al-Jazeera, your Government's Interior Minister, Bayan Jabr al-Zubaydi, stated that an investigation has been opened.

With respect to Adel Muhammad al-Zubaidi, the information I have received is that he was killed in a drive-by shooting on 8 November 2005. I have received multiple accounts. One is that the Interior Ministry reports that either three or four men in an Opel sedan pulled up alongside Al-Zubaidi's car and opened fire with automatic weapons. According to another account, Thamer al-Khuzai, who was riding with al-Zubaidi, had noticed that the car carrying the gunmen was followed by a police car.

The apparent pattern in these killings is especially troubling. Al-Janabi and Al-Zubaidi were both lawyers representing persons being tried by the Iraqi Special Tribunal (IST). Al-Janabi was the attorney for Awad Hamed al-Bander, and Al-Zubaidi was the attorney for Taha Yassin Ramadan. Both lawyers represented their clients in court on the first day of their trial, October 19, and both were killed shortly thereafter.

As you are aware, under human rights law, States have a legal duty to ensure as well as respect the right to life in all circumstances. (*International Covenant on Civil and*



*Political Rights*, Arts. 2, 4, 6). States are legally responsible for extrajudicial executions that are committed by Government agents or that are committed by persons or groups operating with official knowledge or acquiescence. In addition, States are legally obligated to take all appropriate measures to deter, prevent and punish private persons and armed groups who commit extrajudicial executions. These obligations require States to investigate – with a view to prosecution – alleged violations of the right to life promptly, thoroughly and effectively through independent and impartial bodies. (CHR resolution 2004/37, paras. 4–6; Human Rights Committee, General Comment 31; E/CN.4/2005/7, paras. 65–76). The obligation to investigate extrajudicial executions is not a pro forma requirement. Depending on the manner in which it is conducted, an investigation either will play a critical role in ensuring the right to life in the face of violence or, instead, will contribute to impunity.

In light of the allegations received, I would like to call the attention of your Excellency's Government to two aspects in particular of the duty to investigate.

Human rights law requires investigations to be conducted by independent and impartial bodies. (CHR resolution 2004/37, para. 5; Human Rights Committee, General Comment 31, para. 15). In this connection, I would like to draw the attention of Your Excellency's Government to the standards provided by the *United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*. Principle 11 notes that normal investigative procedures may be inadequate when there are complaints regarding their impartiality and provides that in such circumstances, "Governments shall pursue investigations through an independent commission of inquiry or similar procedure". Regardless whether an investigation is conducted through established investigative procedures or through an independent commission of inquiry, interference by individuals who are potentially implicated must be prevented, the investigation's report must be made public, and the Government must bring to justice those found responsible. (Principles 15–18). It is important to emphasize that measures taken to ensure an investigation's independence and impartiality do not reflect any pre-judgment of the allegations received in a particular case. Independence and impartiality are required in all cases out of respect for the rule of law.

Human rights law also requires States to conduct investigations in a prompt and effective manner. (CHR resolution 2004/37, para. 6; Human Rights Committee, General Comment 31, para. 15). The timing and pattern of the killings of Al-Janabi and Al-Zubaidi suggest that the murders were in response to their work as defense attorneys before the Iraqi Special Tribunal. Without a prompt investigation leading to the apprehension of those responsible for their deaths, there is reason to fear that other attorneys may be killed in the future. In these circumstances, a prompt and effective investigation is necessary not only to vindicate the rights of Al-Janabi and Al-Zubaidi but also to protect the lives of the other defense attorneys before the Iraqi Special Tribunal. Moreover, continuing impunity threatens to contravene the State's obligation to ensure that Al-Bander and the other defendants receive a fair trial. (ICCPR, Arts. 14). The possibility is especially grave when the defendant faces the possibility of the death penalty.

I am, of course, aware of the parlous security situation in Baghdad and of the difficulty of undertaking investigations into every killing that occurs in such a setting. Nevertheless, I consider these cases to be particularly significant in terms of the broader efforts to institute the rule of law in Iraq and believe that a failure to undertake a convincing investigation will have major negative implications for these efforts.

It is my responsibility under the mandate provided to me by the Commission on Human Rights to seek to clarify all cases brought to my attention. Without in any way wishing to pre-judge the accuracy of the information received, I would be grateful for a reply to the following questions:

1. Are the facts alleged in the above summary accurate?
2. Please provide the details and, where available, the results of any investigation, medical examination (autopsy), and judicial or other inquiries carried out in relation to these cases.
3. Please provide details on how the impartiality and independence of these investigations is being ensured.
4. Given the allegations that officials of the Interior Ministry were involved in the killing, the seriousness of this crime, and its possible ramifications for a fair trial for the defendants before the Iraqi Special Tribunal, is international assistance in conducting the investigation required?
5. What steps have been taken to ensure the protection of other attorneys representing clients before the Iraqi Special Tribunal?

### **Ireland: Deaths in Custody**

**Violation alleged:** Deaths in custody

**Subject(s) of appeal:** 3 males (1 minor)

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

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

The Special Rapporteur appreciates the information provided by the Government of Ireland and welcomes the reforms made to the investigation and recording policies of the Garda Síochána. With respect to the case of Brian Rossiter, the Special Rapporteur will request the results of the inquiry into his death.

**Allegation letter sent on 30 September 2005**

Allegation letter sent concerning the failure by the Garda Síochána to keep accurate records of people who have died in Garda custody or who were taken ill and later died.

Two specific cases have been brought to my attention. The first concerns Brian Rossiter (14) who died after being in Clomel Garda station in September 2002. My understanding is that the circumstances of his death are subject to an enquiry by a Government appointed Senior-Counsel. The second concerns Thomas Mongon (who was in his late twenties) who died after being in custody in Mill Street Garda station in the same month. The cause of death apparently remains unexplained as the post-mortem found he suffered no injuries and did not die from foul play. Although both cases were given media attention, none appears in the Garda figures for deaths in custody. Lastly, Garda figures indicate that one man died on New Year's Eve of 2001 in Dungarvan Garda Station while it has been suggested that he actually died in May of that year.

It is my understanding that the Garda figures for deaths in custody are included in the Garda Síochána Annual Reports. Overall, they show that 13 people have died in, or after being in, Garda custody between 1997 and 2003. Although official records are not yet available for 2004 and 2005, reports indicate that another five persons died in Garda station during this period. To my knowledge, they do not name the individuals but just the circumstances of the deaths and the stations in which they died. Since the annual report is published at the end of each year, it does not include any inquest outcome if the inquest has not already occurred by the time of publication. It seems that information is not subsequently updated, as is suggested by the absence of Brian Rossiter's name from the list, even though his death has been highly publicized.

Without in any way pre-judging the accuracy of the information I have received, I would like to receive information from your Government in relation to the steps taken by the competent authorities to accurately record and investigate deaths that took place in Garda custody over the last five years. I would also appreciate information on the specific steps taken in response to the information provided above. Such information should relate both to the specific cases and to reforms in the overall system as a result thereof.

## **Response of the Government of Ireland dated 17 February 2006**

### Background

1. The Special Rapporteur raised three specific cases and related other matters concerning the recording of deaths in custody including recent reforms in the Irish system. He also requested other pertinent information. The relevant institutions of state have been consulted in preparing this reply.

### Specific Cases

2. The first case is that of Brian Rossiter who died in hospital on 13 September 2002, having been found in a collapsed state in Garda custody two days earlier. The circumstances surrounding Brian's death are currently the subject of a formal inquiry established by the Minister for Justice, Equality and Law Reform. This independent inquiry is being conducted by Mr. Hugh Hartnett (a Senior Counsel lawyer). Mr.

Hartnett, who was appointed on 14 September 2005, will submit the report of his inquiry to the Minister for Justice, Equality and Law Reform, who intends to publish it. The Special Rapporteur notes that this death was not included in the Garda Siochana annual report for 2002, even though such annual reports contain statistics on deaths in Garda custody. This matter is dealt with below.

3. The second case concerns Thomas Mongan, who was found in a collapsed state in Garda custody on 12 September 2002 and who was pronounced dead in hospital later that day. An inquest found that death was due to respiratory depression and cardiac arrest due to alcohol toxicity. Mr Alston notes that this death was not included in the Garda Siochana annual report for 2002. Again, this matter is dealt with below.

4. A third case raised by Mr Alston identifies a typographical error in the Garda Siochana annual report for 2001, where the death in Garda custody of Patrick Hayes was reported as having taken place on 31 December 2001. In fact it took place on 3 May 2001.

5. The Garda authorities report that in the cases of Brian Rossiter and Thomas Mongan, local Garda management, in compiling statistics on deaths in Garda custody and submitting them for publication in the annual report for 2002, took a literal interpretation of the meaning of this category and did not include these deaths as they had occurred in hospital rather than in a Garda station.

#### Recent Changes in Recording Practice

6. In order to address the confusion which has arisen over the definition of death in custody, the Garda authorities have clarified the definition for the 2005 annual report and subsequent such reports. The new definition encompasses a death which takes place after a person comes into the custody and control of a Garda medical doctor before leaving the custody and control of a Garda. Thus it includes, for example, a death at any time from the time of arrest, including the handing of a person into the care of a hospital for treatment, while under the control of a Garda. The position, therefore, is that Garda statistics on deaths in Garda custody will from now on include the death of any person in hospital who was transferred there from a Garda station and was still in Garda custody.

#### General Obligations

7. More generally, the Garda regulations on the treatment of persons in Garda custody place a clear statutory obligation on members of the Garda Siochana to ensure the safety of persons in custody, and in particular to summon medical assistance or remove a detained person to hospital where necessary.

#### New arrangements for investigation of complaints

8. Following the enactment of the Garda Siochana Act 2005 a new Garda Siochana Ombudsman Commission has been established. This body is tasked with independently investigating complaints relating to Garda conduct. The Ombudsman Commission is empowered to refer certain categories of complaint to the Garda Commissioner for investigation, but any complaint concerning the death of, or serious

harm to, a person as a result of Garda operations or while in the custody or care of the Garda Siochana must be investigated by the Ombudsman Commission itself.

9. In addition the Act will oblige the Garda Commissioner to refer to the Ombudsman Commission any matter that appears to the Garda Commissioner to indicate that the conduct of a member of the Garda Siochana may have resulted in the death of, or serious harm to, a person. In addition, the Ombudsman Commission may, of its own volition, even where there has been no complaint, investigate any matter that appears to indicate that a member of the Garda Siochana may have committed an offence or behaved in a manner that would justify disciplinary proceedings. The Minister for Justice, Equality and Law Reform may also ask the Ombudsman Commission to investigate any such matter.

10. The changes outlined above should help to clarify and improve Irish practice in the areas referred to in the correspondence from the Special Rapporteur.

### **Israel: Impunity for Deaths During October 2000 Riots**

**Violation alleged:** Impunity

**Subject(s) of appeal:** 13 males (members of ethnic minority)

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

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

The Special Rapporteur appreciates the information provided by the Government of Israel. The SR regrets that this information is responsive to only one of the five questions posed but appreciates the Government's commitment to transmit the results of the appeal from the decision not to prosecute any of the implicated police officers.

#### **Allegation letter sent on 27 September 2005**

Allegation letter sent regarding the recent decision by your Ministry of Justice to close all investigations into the killing of 13 men by police forces during riots in October 2000.

In this respect, I would like to recall that at the outbreak of these disturbances, on 3 October 2000, my predecessor as Special Rapporteur on extrajudicial, summary or arbitrary executions addressed an urgent appeal to your Excellency's Government, urging your Government "to ensure that government forces are immediately ordered to act with restraint and to respect international human rights standards when carrying out their duties" and reminding your Government that "under international human rights standards police and security forces may only resort to firearms and lethal force in extreme situations, when lives are in danger and other means prove ineffective". Finally, the then Special Rapporteur urged that "[a]ll incidents of alleged killings by government forces must be investigated without delay and the persons responsible ... be brought to justice". In its reply dated 10 October 2000, your Excellency's Government assured the then Special Rapporteur that "[u]tmost restraint exemplifies the conduct of the Israeli forces throughout these incidents, in conformity with international standards and even far beyond".

As mentioned above, my purpose in writing to you today, however, is to bring to the attention of your Excellency's Government concerns regarding the investigation of 13 instances of lethal police shooting that did occur during those days, and to receive information from the Government in this respect. On the basis of the information I have received, the relevant facts regarding investigations into the death of the 13 men may be summarised as follows:

On 2 October 2000, protests broke out in numerous locations in Galilee. These disturbances saw young men, Arab Israelis and Palestinians, hurling stones at the security forces. On several occasions, the police opened fire on the protestors, using both rubber bullets and live ammunition. The police killed 13 men, 12 Arab Israeli citizens and a Palestinian.

During the months from October 2000 to May 2001, the Police Investigations Department (PID) of the Ministry of Justice took some initial steps to investigate the deaths. Due also to the ongoing disturbances, the investigators did not go to the scene of several of the incidents before the evidence was destroyed, autopsies were carried out only in some of the cases, and many of the police officers involved in the clashes that had resulted in lethal shootings were not heard. This investigation came to a halt in May 2001, when the state prosecutor ordered the PID not to carry out a separate investigation during the hearings of the commission on inquiry that had in the meantime been set up by the Government.

On 8 November 2000, the Government had decided to appoint a commission of inquiry to investigate what occurred during the riots. The commission, headed by a member of the Supreme Court, justice Theodor Or, submitted its report in September 2003. It found that the police had repeatedly had recourse to excessive force in order to quell the riots. Among other findings, the commission concluded that the commander of the police's Northern District at the time and the former Amakim District police chief had issued directives to snipers to open fire on stone-throwing protesters in several instances. The commission also found that the Misgav police station commander could have prevented clashes with the rioters and that he used live fire without justification, causing the death of two civilians and the wounding of others. The commission recommended that the PID open criminal investigations into ten separate instances of shooting deaths during the riots.

After the publication of the commission report, the PID restarted its investigation. During this probe, hundreds of policemen and civilians who were present at the scene of the incidents were questioned. After close to two years of investigation, in September 2005 the PID has concluded that there is not sufficient evidence to indict anyone for the killings. In some of the cases identified as unjustified use of lethal force by the commission of inquiry, the PID concludes that in fact the use of lethal force was justified (e.g. on the ground of a different assessment of the risks faced by the police officers at the time of the shooting). In other instances, the PID concludes that the firing was illegal, but is unable to identify those responsible. The PID adduces numerous reasons for its inability to gather sufficient evidence to raise criminal charges, among them:

- Investigation teams did not reach the scenes soon enough after the incident and did not attempt to collect evidence shortly thereafter as the fierce violence during the riots would have endangered the investigators had they tried to do so.
- In some cases, investigators were unable to locate the police officers involved in the riots. In other instances, they were unable to determine which police officer was responsible for the gunfire that killed the rioters.
- The families of those killed did not cooperate with the investigation, in particular they did not agree to the PID's requests (made at the end of the year 2003) to disinter the victims to allow an autopsy.
- In reply to some of these arguments, it has been pointed out that:
  - it was the state prosecutor who ordered the PID to stop all investigations in May 2001, and allowed their resumption only in September 2003, three years after the killings;
  - the exhumation of the victims and the autopsies, while offensive to the feelings of piety of the victims' families, were unlikely to yield any results significant to the investigation. Some of those killed in October 2000 were hit by rubber bullets, which cannot be matched up with a specific gun. All were buried without coffins, and contact with the earth is liable to make also metal bullets useless for the purpose of laboratory tests. The PID itself admitted in court that any information obtained from the bodies was liable to be partial.
  - where an autopsy had been carried out immediately after the killing and the commission of inquiry concluded that charges should be raised, the PID decided nonetheless not to initiate criminal proceedings. The autopsy report on Musalah Abu Jarad of Umm al-Fahm, for instance, determines that he was killed on 2 October 2000 by a sniper's bullet. The commission of inquiry report identifies the source of the firing, noting that the commander of the Police's Northern District took responsibility for deploying snipers during the incident in which Musalah was killed. It also finds that the deployment of snipers and the orders to open fire were excessive. The PID, however, concludes that it is impossible to determine, with the level of certainty needed for a criminal proceeding, that the deployment of snipers and orders for opening fire were improper.
  - in other cases, exhumation was requested although it would appear that the available evidence is sufficient to raise charges. In the case of the shooting of Asil Asala, for instance, the Commission report notes that at the time of his death he was surrounded by three uniformed policemen, indicating their names. (My predecessor as Special Rapporteur sought clarification from your Government on this specific case in a letter dated 23 October 2000, which has remained without a reply to date).

To sum up, five years after the fatal shooting of 13 Arab men by Israeli police forces, and after a commission of inquiry set up by your Excellency's Government concluded that the use of force in these cases had been excessive, a decision has been taken by the Government not to hold anyone accountable for their deaths.

In this connection, I 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 obligation, affirmed also in the jurisprudence of the Human Rights Committee (*see, e.g. the Committee's views in Arhuacos v. Colombia*, Communication no. 612/1995, § 8.8.), is indeed part and parcel of the obligation to respect and protect the right to life enshrined in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights.

In the present case, it is undisputed that your Government has investigated at length whether the use of lethal force was proportionate to the requirements of law enforcement. However, one of the reasons adduced for the loss of evidence that would have been essential to issuing indictments is that the PID investigations were on hold from May 2001 to September 2003. The decision of the state prosecutor to order a halt to the investigations in May 2001 was reportedly intended to allow the various witnesses to share all the information at their disposal with the commission of inquiry without fearing a criminal investigation. The conclusion of the commission of inquiry that in some instances the use of lethal force was not justified, based on three years of inquiry and a report of more than 800 pages, is now disavowed by the PDI on the ground that it is no longer possible to determine whether the use of lethal force was disproportionate and, if so, who is responsible for that disproportionate use of lethal force. This outcome – and particularly the way in which the interplay of commission inquiry and PDI investigation have produced it – would appear to fall short of the international standards referred to above.

I therefore urge your Government to subject the decision of the Police Investigations Department to stringent review and to examine requests of or on behalf of the victims' families to reconsider this decision with the greatest attention and an open mind.

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

1. Are the facts alleged in the above summary accurate?
2. Is the Report of the commission of inquiry presided by justice Orr available in Arabic? Is it available in English? If so, please provide a copy thereof.



3. Observers of the case have noted that although the Police Investigations Department is part of the Ministry of Justice and thus institutionally independent of the Ministry of Security, it is composed of police officers and therefore does not offer the appearance of full impartiality in such a matter. Another report I have received states that the Minister of Internal Security and the Minister of Justice share ministerial responsibility over the Police Investigations Department. Please clarify the institutional location of the PID and the responsibility for this unit, as well as any further information relevant to its independence and impartiality.
4. Please explain the grounds on which the PID came to different conclusions from the commission of inquiry with regard to the proportionality of the use of lethal force and to the possibility to identify those responsible, commenting also on the criticism of the PID investigation summarized above.
5. Most importantly, please state whether your Excellency's Government now intends to take any steps to re-open the decision of the PID and how it will react to challenges to that decision by relatives of the victims or other interested parties.

#### **Response of the Government of Israel dated 18 January 2005**

The Government of Israel responded that on September 18, 2005 the head of the Department for Investigation of police officers decisions concerning the October 2000 incidents were released. The investigations resulted in lack of evidence and unknown offenders (and in regard to one injury, the finding of "no Offence". Following several requests for re-examination of the decisions, and based on the abovementioned and due to the high sensitivity of the issue, which deserves further examination, the Attorney General, the State Attorney and the director of the department reached the conclusion that it would be advisable to initiate an appeal process, which will be carried out by the deputy state attorney (special functions). This appeal is intended to re-consider a previous decision to close this file. I would like to underline that the appeal procedure is applied as an exercise of the right to criticism and reconsideration of the decisions of legal authorities. The results of this procedure will be transmitted to the Special Rapporteur when they are published.

#### **Israel: Targeted Killings in the West Bank**

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

**Subject(s) of appeal:** 25 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 sent on 28 November 2005**

Since assuming this mandate, I have received numerous reports concerning the killing of suspected terrorists by the Israeli Defense Force (IDF). In the annex to this letter you will find summaries of the information regarding ten such incidents, between 10 June 2004 and 25 January 2005. These summaries are based on affidavits signed by eye witnesses of the killings, as well as, in some cases, medical records of the deceased.

The eye witnesses and the organization presenting the affidavits to me allege that in all cases fire was opened by the Israeli forces without any warning and without any threat against them by the persons fired at. The description of the incidents and of the injuries suffered by the victims strongly suggests that the lethal outcome of the use of force was intended in all cases. In some of the cases, your Excellency's Government appears to claim that there was in fact an armed confrontation, while in others the source's version appears to be undisputed in this respect. The members of the Israeli special forces carrying out the killings were dressed in civilian clothes and traveling on civilian vehicles, while military vehicles mostly appeared on the scene once the killing had been completed. The victims of the killings described in the annex include both persons sought by the Israeli security forces because of a suspicion that they were engaged in terrorist acts and persons who would not appear to have been under such suspicion. Nonetheless, most of the persons falling in the latter group appear to have been killed intentionally, and not as unintended casualties.

The concern raised by the summarised reports (as well as in numerous other recent reports of analogous incidents) is heightened by information according to which your Excellency's Government, in the persons of the Prime Minister and the IDF Chief of Staff, recently (on 8 November 2005) confirmed its intention to continue carrying out such killings.

In drawing the attention of your Excellency's Government to this information and seeking clarification thereof, I am aware of the stance taken by your Government in proceedings in domestic and international fora with regard to targeted killings. I would therefore take your Government's statement to the Human Rights Committee of 25 July 2003 on this matter (CCPR/C/SR.2118, at para. 40) as basis for my queries.

1. As a preliminary matter, please state whether the attached summaries are accurate. If not so, please refer to the results of any investigation disproving their accuracy.
2. Your Excellency's Government insisted before the Human Rights Committee that the legal basis for such operations was to be found in the laws on armed conflict. It also stated that "Israel operate[s] only against legitimate targets, using legitimate methods of warfare while abiding by the rule of proportionality in accordance with international law." Please describe which rules of international humanitarian law, i.e. which treaties or rules of customary law, are taken as guidance to define legitimate targets and legitimate methods of warfare (inter alia concerning the identification of

Israeli combatants as such), as well as to assess the proportionality of attacks. Please explain on what basis the applicability of human rights law, in particular Article 6 of the ICCPR, is ruled out.

3. Your Excellency's Government stated that "[e]ven persons known to be terrorists were legitimate targets only if there was reliable evidence linking them directly to a hostile act. ... [Israel's] security forces were instructed by the Attorney-General, however, to attack unlawful combatants only when there was an urgent military necessity and when no less harmful alternative was available to avert the danger posed by the terrorists." Please describe the decision-making process and the procedural safeguards in place to ensure that the principles stated by your Government as a policy find application in each individual case. Your Excellency's Government stated that "[i]t would, of course, be preferable to arrest such persons [known to be terrorists], but in areas like the Gaza Strip, over which Israel had no control, his Government did not have that option." Please elaborate on why, in the cases summarized in the annex, arresting the suspected terrorists was not an option, considering that in several of the incidents your Government did in fact arrest several persons after killing others (e.g. on 8 August 2004 in Palestine Street, Jericho).
  
4. Your Excellency's Government stated that "under the rule of proportionality, which formed part of the laws of armed conflict and was integral to Israel's accepted values, [the security forces] were instructed to carry out such attacks only if they did not cause disproportionate harm to civilians. Consequently, at all stages of intelligence-gathering, operational planning and attacks on unlawful combatants, they always did their utmost to avoid injuring innocent persons." In at least one incident (not among those summarised in the annex), an inquiry of your Government found "shortcomings in the information available, and the evaluation of that information, concerning the presence of innocent civilians". (I refer to the 2 August 2002 communication of the IDF spokesperson regarding the findings of the inquiry into the death of Salah Shehadeh). These findings of an inquiry by the IDF and the Israeli Security Agency (ISA) refer to an incident on 22 July 2002 in which 16 persons, including nine children, were killed in addition to the targeted terrorism suspect when an IDF plane dropped a one ton bomb on a house in a densely populated area of Gaza. Please explain whether the findings of the inquiry were followed by any disciplinary or criminal proceedings, and, if not so, the reasons therefore. Please explain whether IDF inquiries were initiated into any other targeted killing cases with the aim to assess the proportionality of the force used, and what the outcome was.

Without prejudging your Government's replies to my queries, I would reiterate my concern that empowering Governments to identify and kill "known terrorists" places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative has been exhausted. (See E/CN.4/2005/7, at par. 41). In expressing this concern, I am cognizant of the fact that in the course of the last five years hundreds of Israeli

civilians have been killed in attacks carried out by terrorists using the Gaza strip and the West Bank as basis. I wish to stress that I fully acknowledge the responsibility of your Excellency's Government to protect its citizens against such attacks. Efforts to eradicate terrorism must, however, be undertaken within a framework clearly governed by international human rights law as well as by international humanitarian law.

### Annex

#### 1) 10 June 2004, 'Ein Nina, Jenin Governorate

Mr. Ma'moun Yousef Abu-al-Hasan was a militant of the Al-Aqsa Martyrs Brigades and a fugitive wanted by the Israeli Defence Force (IDF). On 10 June 2004, at around 1:30 a.m. he entered the house of his father, Mr. Husein Yousef Abu-al-Hasan, located in 'Ein-Nina of Jenin City. At 2 a.m. members of the IDF, who apparently had laid siege to the location, knocked at the door of the home and demanded that it be opened. Ma'moun Abu-al-Hasan shouted that he was coming to open the door, but instead attempted to escape from the back door of the house and managed to climb over a wall into the garden of the neighbouring house. There, however, he was spotted by IDF soldiers, who without warning opened fire and hit him with four bullets in the back of the head, top of the back and the feet (according to the medical report issued by Jenin Governmental Hospital). Ma'moun Abu-al-Hasan was not armed. The IDF acknowledged responsibility for the killing of Ma'moun Abu-al-Hasan.

#### 2) 14 June 2004, Balata Refugee Camp

On 14 June 2004, at 9:40 p.m., Mr. 'Awad Abu-Zeid was driving a taxi on the main street in the north part of Balata Refugee Camp in the Nablus Governorate, opposite Jacob's Well, with Messrs. Khalil 'Araysha and Muhammad Safwat as passengers. An IDF Apache helicopter fired two rockets at the car, one of them hitting the target. Mr. 'Araysha and 'Awad died on the spot, their bodies incinerated and Mr. 'Araysha's leg and hand amputated. Mr. Safwat sustained minor injuries and burns. Reportedly Mr. 'Araysha had recently become a leader of the al-Aqsa Martyrs Brigades. Mr. Abu-Zeid reportedly was his right hand man and often drove him in his taxi. The IDF acknowledged responsibility for the attack.

#### 3) 25 July 2005, Toulkarem

On 25 July 2004, at 7:00 pm, a white Volkswagen bus carrying a yellow (Israeli) registration plate entered a Southern neighbourhood of Toulkarem, where a group of young Palestinian men, some of them wanted by the IDF, was standing opposite of the Abu Nidal Restaurant for Popular Foods. When the van was at a distance of five metres from the young men it stopped and five men got out of the car. They were wearing civilian clothing and carrying machine guns. The five men immediately opened heavy fire towards six of the Palestinian men, aiming at the heads and abdomen and killing them on the spot. The six victims were:

1. Mr. Hani Yousef Muhammad 'Weida, a militant of the al-Aqsa Martyrs Brigades wanted by the IDF. He was armed at the time of the incident.

2. Mr. 'Abd-al-Rahman Hasan Mustafa Shadid, a militant of the al-Aqsa Martyrs Brigades wanted by the IDF. He was armed at the time of the incident.
3. Mr. Mahdi Rateb Na'im Tanbouz, a militant of the al-Aqsa Martyrs Brigades wanted by the IDF. He was armed at the time of the incident.
4. Mr. Said Jamal Nasser. It is not clear whether he was a militant of the al-Aqsa Martyrs Brigades as well, but he was not a fugitive (he used to sleep at home) and did not carry weapons.
5. Mr. Muhammad 'Adnan Shantir, a bystander who was not a member of any militant group and not wanted by the IDF.
6. Mr. Ahmad Nabil Barouq, a bystander who was not a member of any militant group and not wanted by the IDF.

The shooting also injured some passers-by, including Messrs. Muhammad 'Adnan Fathi Samaha, Khalil Zidan, and Ibrahim al-Jayyousi. Immediately after the shooting IDF support units arrived to the scene and stayed for at least an hour. Muhammad 'Adnan Fathi Samaha was arrested after the shooting and questioned about the identity of the targeted men. Thereafter he received medical treatment in an Israeli hospital.

The IDF acknowledged carrying out the operation, claiming that all the six men killed were militants of the al-Aqsa Martyrs Brigades.

4) 8 August 2004, Palestine Street, Jericho

On 8 August 2004, at about 9:30 pm, a number of young men from Ramallah living in Jericho had gathered in front of the Sara Net Café located on Palestine Street behind the Jericho football stadium. Several of the young men were wanted by the IDF, among them Mr. 'Amer 'Aydiyya, an activist of the al-Aqsa Martyres Brigades from the Al-Am'ari Refugee Camp, south of Ramallah, his brother Mr. Jaber 'Aydiyya, Mr. Hatem Abu-Halima from Ramallah, and Mr. Hamza Muhammad 'Abdallah al-Sheikh. At about 9:45 p.m., a white Volkswagen Caravelle stopped nearby. Without any notice or warning, the car's doors opened and a number of men in civilian dress got out of the car, aimed their automatic guns at the group of young men and without any warning fired at them (aiming at Mr. 'Amer 'Aydiyya) with live ammunition. Mr. 'Amer 'Aydiyya received several bullets in the chest and abdomen and died on the spot, while others were wounded, Mr. Hatem Abu-Halima and Mr. Jaber 'Aydiyya seriously. Immediately thereafter, Israeli soldiers came to the scene. They hand-cuffed those who had not been wounded, forced them to lie down on the ground, and subsequently led them inside the Net Café. Those wounded remained outside and received first-aid from the Israeli soldiers. After half an hour, the Israeli soldiers blindfolded the men, both those wounded and those unwounded, and took them in their cars to Benjamin Detention Camp in Bitouniya, northwest Ramallah. Mr. Hamza Muhammad 'Abdallah al-Sheikh was released after 13 days of detention. Mr. Jaber 'Aydiyya was transferred to Hadassa Hospital in East Jerusalem and then released (he continued his medical treatment at al-Sheikh Zayed Hospital in Ramallah).

5) 13 September 2004, Jenin, on the Jenin-Nablus road

On 13 September 2004 at 5:15 p.m., Mr. Mahmoud Asa'd Abu-Khalifa (22 years), Mr. Yamen Feisal Ayyoub (18 years), and Mr. Amjad Husni Ayyoub (23 years), three activists of the al-Aqsa Martyrs Brigades wanted by the IDF, were travelling in a civilian Mazda car near the Jenin Municipality on Jenin-Nablus road when a powerful explosion completely burned and destroyed the car. The three passengers were killed, their bodies dismembered and body parts strewn all over the site of the incident. The Israeli army admitted its responsibility for the operation through the Yediot Ahranot website in Arabic (ArabNet), attributing the explosion to an air-to-ground rocket fired on the car from a helicopter. The families of the victims and other residents of Jenin doubt the veracity of this account. They point out that there was no helicopter in the sky above Jenin at the relevant time that day. These persons rather believe that a bomb had been planted on the car and was set off by a reconnaissance plane of the Israeli armed forces that was soaring in the sky above Jenin that day.

6) 15 September 2004, Jenin industrial area

On 15 September 2004, at around 12:30 pm, an IDF Special Squad entered the industrial area of Jenin in two cars which bore no signs identifying them as being in use of Israeli security forces. The two cars parked in front of a car repair shop owned by Messrs. Fawwaz Zakarna and Abu Al-Abed Saba'na. Mr. Fawwaz Zakarna, Mr. Fadi Fakhri Zakarna, an activist of the Islamic Jihad Movement wanted by the Israeli army, and other young men were standing in front of the car repair shop. Fadi Zakarna was carrying a weapon. Without prior notice or warning, approximately eight persons in civilian clothes, two of them wearing masks covering their faces, got out the two cars and opened fire on the young men standing in front of the car repair shop with guns known "M-16 short". Firing continued for five to seven minutes, mostly directed at the group of young men, but also in other directions. Fadi Fakhri Zakarna received 20 bullets in his head, chest and different parts of his body. Fawwaz Fakhri Zakarna, neither an activist nor wanted, was killed with seven bullets in the chest and right foot. Mr. Mu'ath Muhammad Qatit, known for trading in stolen cars, neither an activist nor wanted, was killed inside Mr. Fawwaz's shop by four bullets in the chest. Mr. Shuja' Nathmi, an activist in Al-Aqsa Martyrs Brigades wanted by the Israeli army, escaped from the place of the incident with two members of the special forces running after him and firing at him. Three members of the Special Squad dragged Mr. Ibrahim 'Ata Mahmoud (a/k/a) Ibrahim "al-Sirisi"), who was neither an activist nor wanted by the IDF, into the car repair shop run by 'Arafat al-Sa'di, threw him on the ground, and opened fire on him from a distance of less than two metres. Three or four bullets hit his head and chest. After firing stopped, the IDF arrived at the scene to protect the members of the special forces, which departed from the area. The IDF left ten minutes later. According to an Israeli radio broadcast in Arabic, the Special Squad was fired at during the liquidation of a terrorist in Jenin and had to respond, resulting in the killing of three Palestinian young men.

7) 28 October 2004, Kufr-Saba neighborhood, Qalqiliya

Mr. Ibrahim Muhammad Fayed (a/k/a "Sheikh Ibrahim"), aged 48, was wanted by the Israeli security forces, who broke into his family's home several times in an attempt to find him. Israeli security forces had also on several occasions distributed statements to the citizenry warning against offering shelter to and otherwise assisting Sheikh Ibrahim. On 28 October 2004, at around 7.20 p.m., Sheikh Ibrahim was having coffee

with a friend nearby his home in the Kufr-Saba quarter in Qalqiliya, when he was shot at from a white Ford car standing at about 70 metres distance. Apparently, the weapon used was a silenced pistol with a laser aiming device. The gun shots were fired without any warning and the bystanders realised that Sheikh Ibrahim had been shot by seeing him fall over backwards. Sheikh Ibrahim's friend, who was armed, returned the fire when he realised what was happening, and the white car left. Sheikh Ibrahim was immediately taken to the Emergency Hospital in Qalqiliya city, where he died of the wounds in the chest and the head at around 8 p.m. the same evening.

8) 1 November 2004, al-Yasmina Quarter in the Old City of Nablus, Nablus Governorate

On 1 November 2004, around 9 p.m., Mr. Majdi Mir'i and Mr. Fadi Sarwan were talking in front of Mr. Sarwan's home in the al-Yasmina Quarter in the Old City of Nablus. Mr. Majdi Mir'i had been wanted by the Israeli security forces for two years and had escaped an assassination attempt on 15 September 2004. Mr. Fadi Sarwan had received a call on his cellular from an Israeli officer calling himself "Ghazal" a week before the present incident, telling him that he would soon be assassinated. At ten to fifteen metres from them another group of several young men was standing, among them Mr. Amjad Ghafri and Mr. Karim Ghazi 'Abd-al-Rahman Abu-'Isa. Three persons arrived on the scene, two of them in male civilian dress, the third dressed like a woman. Once they were close to the two groups of men, these three persons took off some of the clothes they were wearing, revealing that they were in fact three men armed with guns. Without any previous questions or warning, they opened fire on Mr. Mir'i and Mr. Sarwan, as well as on the other group of men.

Mr. Sarwan first fell to the ground. The men continued to shoot at him also when he was lying on the ground. Mr. Mir'i tried to escape, but interrupted his flight and lifted his hands after a few metres when IDF soldiers cut his way. He was approached by one of the men in civilian clothes who shot at him from a close range, and continued to fire at him also after he had fallen to the ground. Mr. Sarwan and Mr. Mir'i died on the spot of the wounds suffered. Karim Abu-'Isa was injured, while Amjad Ghafri was arrested.

9) 7 November 2004, Jenin-Nablus Road outside Jenin

On 7 November 2004 around 5:45 p.m., the following four men wanted by the Israeli security forces were killed:

1. Mr. Amin Jamal Muhammad Husein, an activist with the al-Aqsa Martyrs Brigades.
2. Mr. Fadi Khader Tawfiq Ighbariyya, an activist with Saraya al-Quds of the Islamic Jihad.
3. Mr. Muhammad Khaled Ahmad Masharqa, an activist with the al-Aqsa Martyrs Brigades.
4. Mr. Mahmoud Fahmi Salah-al-Din, an activist with al-Aqsa Martyrs Brigades.

The four Palestinian men were driving in a black jeep. They had filled the car at the

'Abd-al-'Afou Gas Station located on the Jenin-Nablus Road to the south towards Jenin City. As the jeep was about to take the road again, a grey Volkswagen, which had appeared at high speed, came to stop immediately in front of it, at a distance not exceeding a metre and a half. Without prior notice or warning, the persons in that bus opened heavy fire towards the jeep from a distance not exceeding one metre from the front side. Then five men in blue jeans, shouting in Hebrew, got out of the Volkswagen bus and continued to fire at the jeep. The fire continued for around one minute and was directed at the upper part of the Palestinian men's bodies. All four men sustained wounds in their heads and died on the spot. Subsequent examination of the jeep revealed that hundreds of bullets had been fired at the jeep.

The special forces soldiers gathered the weapons of the four Palestinian men in the jeep, which they had not been able to use due to the unexpected and sudden nature of the attack. Ten minutes after the attack, IDF support units arrived in eight to ten military jeeps and provided protection for the departure of the special forces in the Volkswagen bus. After the departure of the Israeli forces, the four Palestinian men were carried in Red Crescent Society ambulances to the Jenin Governmental Hospital, where their death was confirmed.

10) 26 January 2005, Qalqiliya

On 26 January 2005, around 3 p.m., Messrs. Maher Harb and Muhammad Khamis, two men wanted by the Israeli security forces because of their affiliation with the al-Aqsa Martyrs Brigades, and Mr. Yihiya Nazzal were slowly driving in a private car through the central part of the Kufr Saba Quarter in Qalqiliya. Their car was surrounded by three members of Israeli security forces in civilian clothes. These three men started firing into the car with M-16 guns while shouting, in both Hebrew and Arabic, "Stop the car and bring the weapons". One member of the security forces shot Mr. Harb in the neck from a distance of approximately two meters, possibly killing him immediately. Although the car slowed down as a result of the driver losing control, the three special forces soldiers continued to shoot at the passengers of the car. Eventually, the car crashed into a tree. The soldier on the right side of the car opened one of the car doors and fired two bullets at the driver and the person sitting next to him (Mr. Khamis). The third soldier shot Mr. Nazzal in the leg from a distance of about a metre and a half. Then the soldiers pulled out the driver, the man in the passenger seat, and the third man who was sitting in the back of the car, and dragged them for a distance of 12 metres inside a shop. The soldiers were then attacked by persons throwing stones at them, but kept the attackers at bay by firing their weapons (apparently without any casualties). After few minutes, several Israeli patrol cars arrived at the scene. Mr. Harb, Mr. Khamis and Mr. Nazzal were put into patrol cars and driven to an Israeli Liaison Office on the eastern side of Qalqiliya. There, a doctor examined them and established that Mr. Harb was dead. Mr. Muhammad Khamis had sustained serious injuries, and Mr. Yihiya Nazzal medium injuries. Mr. Khamis and Mr. Nazzal were taken by ambulance to the Belinson Hospital in Israel. Mr. Nazzal was transferred to the Emergency Hospital in Qalqiliya after five days.

**Jamaica: Killing of Gayon Alcott and Sandra Sewell**

**Violation alleged:** Death due to attacks or killings by law enforcement officials



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

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

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

The Special Rapporteur appreciates the detailed information provided by the Government of Jamaica and will request the investigation's results.

**Allegation letter sent on 16 November 2004** reproduced from E/CN.4/2005/7/Add.1, at para. 373

373. Allegation, 16 November 2004: On 19 September 2004, members of the Jamaican Defence Force allegedly killed Sandra Sewell and Gayon Alcott (aged 20) in August Town, St. Andrew. According to the information received, soldiers approached Mr. Alcott because he was smoking marijuana and shot him in the stomach. As he attempted to flee the soldiers shot him again. Another soldier reportedly shot Sandra Sewell in the back as she sought protection from the gunfire. The autopsy reveals that Sandra Sewell and Gayon Alcott were shot from a military weapon. These killings took place during a one month state of emergency declared on 10 September 2004 in reaction to the approaching hurricane "Ivan".

### **Response of the Government of Jamaica dated 21 April 2005**

The allegations provided in the case summary are not accurate. Following investigations carried out by the Bureau of Special Investigations of the Jamaica Constabulary Force, it was determined that:

1. At approximately 8h40 on 19 September 2004, a team of both police and military personnel were briefed as mobile and foot patrols to the August Town Community from the August Town Police Station. On patrolling a Lane leading to the August Town Road, a member of the foot patrol accosted Mr. Alcott who was making a marijuana cigar. Mr. Alcott tried to get away, a crowd covered in the lane and a man and a woman tried to take Mr. Alcott away from the patrol. The man was forcing himself between Mr. Alcott and the patrol member when an explosion was heard from the direction of the crowd.
2. At the sound of the explosion, Mr. Alcott ran away and pulled a gun at the patrolman who discharged three rounds of ammunition at Mr. Alcott who collapsed a few meters away.
3. Shots were then fired at the patrol from different directions, men were seen with high powered rifles and the patrol returned fire in retaliation.
4. After the shooting ceased, Ms Sewell was seen lying on the ground at the entrance of the Lane suffering from gunshot wounds. Ms. Sewell was taken to the University hospital where she was pronounced dead.
5. No complaint was made on behalf of Mr. Alcott and Ms. Sewell.

6. Investigations are currently carried out by the Bureau of Special Investigations of the Jamaica Constabulary force and the Police Public Complaints authority. The DPP will inform on the timetable for conclusion of investigations and will prosecute if necessary. The DPP may also rule that the Coroner will determine if anyone is criminally responsible for the death of Mr. Alcott and Ms. Sewell.

7. Autopsies carried out revealed that Mr. Alcott 's death was due to a gunshot wound to the chest.

8. Ms. Sewell's death was due to a gunshot wound to the neck (complete autopsy reports are enclosed)

9. The authorities do not have death certificates for Mr. Alcott and Ms. Sewell

10. There are no allegations to the effect that any extrajudicial, summary or arbitrary execution was carried out.

11. Investigations into the shootings have not been concluded and therefore no penal or disciplinary sanctions have been imposed. On the same basis, the issue of compensation has not yet arisen.

12. The DPP may rule that:

— one or more member of the aforementioned patrol be charged criminally for the death of Mr. Alcott and Ms. Sewell or for both.

— No criminal action be taken against any of the members of the patrol

— The matter be referred to the coroner for an inquest to be conducted

In relation to an inquest by the Coroner, any of the following decisions may be reached

— Some person(s) is/are responsible for the death of both persons

— No one is criminally responsible for the death of both persons.

### **Japan: Execution of Mamoru Takuma**

**Violation alleged:** Non-respect of international standards 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**

While the Special Rapporteur appreciates the response of the Government of Japan, its refusal to either confirm or deny the execution of Mamoru Takuma obstructs the SR's ability to clarify this case for the Commission on Human Rights. The SR

appreciates that the Government has explained its rationale for secrecy. He considers the reasons given to be problematic in terms of the relevant human rights considerations and hopes to continue a constructive dialogue with the Government on this issue.

### **Allegation letter sent on 28 February 2005**

Mr. Mamoru Takuma, aged 40, was reportedly hanged on 14 September 2004. Mr. Takuma was convicted of killing seven girls and one boy, aged 6 to 8, when he rampaged through a primary school in Osaka prefecture in 2001, injuring fifteen other people, including two teachers. He was sentenced to death in August 2003, with his sentence confirmed a month later. Mr. Takuma, who had reportedly previously received treatment for mental illness, never showed any remorse and allegedly asked for his sentence to be executed as quickly as possible. Reports indicate that the speed with which the sentence was carried out was unusual in the case of Japan. According to information I have received neither Mr Takuma nor his relatives were told of the impending execution until the day it took place. It is further reported that this is the general practice in all such cases and that the names of the persons executed are not made public in advance. Without wishing to prejudge the accuracy or otherwise of the facts as reported, I would request your cooperation in clarifying their accuracy and substance. I would also draw your attention in this regard to the observations relating to transparency in death penalty cases which are contained in my report to the Commission on Human Rights at its sixty-first session (E/CN.4/2005/7) an excerpt of which is attached.

### **Response of the Government of Japan dated 28 April 2005**

1. Facts regarding execution of the death penalty. The Japanese Government does not make facts regarding execution of the death penalty public either before or after the execution, except for the information that executions have taken place and that a certain number of persons sentenced to the death penalty have been executed on a certain day. Therefore, it is not possible to answer whether or not a specific person has been executed. Further, with regard to the two persons who were sentenced to the death penalty and were subsequently executed on 14 September 2004, as in all cases the Minister of Justice issues the order of execution of the death penalty under our legislation after careful examination of the judgment and the documents of the case, and consideration of the existence of grounds for staying execution. Therefore, it is clear that the Japanese Government complies with international standards in executing the death penalty and that the procedures of execution are far from “extrajudicial, summary or arbitrary”.

2. Reason why the notification of execution of the death penalty is made on the day the execution is to be carried out. With a view to considering the feelings of the family members of those who have been executed, Japan would like to refrain from providing information on specific cases of execution. In principle, an inmate whose death penalty becomes final is to be notified of his or her execution on the day the execution is to be carried out, owing to the fact that notifying the inmate on a day that precedes the date of execution will have a significant impact on the emotional state of the inmate, thereby making it difficult for the inmate to maintain a calm state of mind. Article 74 of the Prison Law and Article 178 of the Prison Law Enforcement

Regulations provide that the inmate's relatives should be notified of his or her death after execution of the death penalty and that the body or ashes should be handed over to the relatives or other specific persons upon their request. Except for the above provisions, there are no legal provisions concerning notification to the family of the inmate whose death penalty has become final. No outside persons, including family members, are to be notified in advance of the date of the execution. This practice results from the viewpoint that the family may experience unnecessary mental anguish if they are notified of the date of the execution beforehand. Further, if the inmate whose death penalty has become final were to learn of his or her date of execution during a meeting with family members who have been notified, as is the case if the inmate were to be directly notified, there would be a significant impact on the emotional state of the inmate, thereby making it difficult for the inmate to maintain a calm state of mind.

### **Kenya: Killing of Demonstrators in Kisumu**

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

**Subject(s) of appeal:** 1 female (minor); 4 males (2 minors); persons exercising their right to freedom of opinion and expression

**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 sent on 28 November 2005**

I would like to draw the attention of your Excellency's Government to information I have received regarding lethal force used against demonstrators. According to the information I have received, at least five have died and thirty were hospitalized with gunshot wounds due to the use of police force in the city of Kisumu during the weekend of October 29th. Police reportedly used live ammunition, batons and tear gas to disperse stone-throwing youths who were rallying against the draft constitution currently being debated. Among the four confirmed dead is 14 year-old Paul Limera, 17 year-old Hillary Ochieng, who was shot in the left leg and then allegedly clubbed to death by the police, 15 year-old Vincent Otieno, Mr George Ogada, a 32-year-old milk vendor, and Paul Mwela. These allegations are of particular concern to the extent that they suggest a pattern of lethal force used by police at political rallies, such as the reported recent use of live ammunition to suppress protesting youth at the Wajir rally on October 10th.

According to some reports, the police commissioner Hussein Ali cleared the police of blame, maintaining that live ammunition was used only at a police post where a mob was attempting to rescue a suspect arrested earlier in the day. However, other reports have stated that this report had been determined false.

While I do not wish to prejudge the accuracy of the allegations, I would like to draw the attention of your Excellency's Government to relevant principles of international law. The International Covenant on Civil and Political Rights (Article 6) provides that every individual has the right to life and security of the person, that this right shall be protected by law and that none shall be arbitrarily deprived of his or her life. The U.N. Basic Principles on the Use of Firearms by Law Enforcement Officials explain that to disperse violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and to the minimum extent necessary (§14); intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (§9); furthermore, a clear warning of the intention to use firearms must be provided (§10). Additionally, §7 of the Basic Principles states that the abusive use of firearms by law enforcement officials must be punished as a criminal offence. Indeed, these rules are entailed by the legal duty to respect the right to life recognized in Article 6(1) of the International Covenant on Civil and Political Rights.

In this context, I urge your Excellency's Government to take all necessary measures to investigate the allegations, adequately sanction officers found to have unlawfully resorted to lethal force, and take all necessary steps to ensure that police actions comply with international human rights law.

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

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any police investigation, and judicial or other inquiries carried out in relation to the death of the above-mentioned victims.
3. Please provide the full details of any disciplinary action and prosecution undertaken with regard to police officers found responsible.

### **Kyrgyzstan: Death in Custody of Tashkenbai Moidinov**

**Violation alleged:** Death in custody

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

**Character of reply:** Largely satisfactory response

#### **Observations**

The Special Rapporteur appreciates Kyrgyzstan's detailed response to the allegations concerning Tashkenbai Moidinov's death. The SR will request updated information on the results of investigations and on any criminal or disciplinary actions taken.

**Allegation letter sent on 15 December 2004** with the Special Rapporteur on torture

Tashkenbai Moidinov, aged 46 and his wife were stopped by a militia officer, Askar Beshbakov, in the midst of argument they were having in the street, and taken to the regional militia office, Bazar-Kurgan. The militia officer insisted that Mrs. Akmatova write a complaint against Mr. Moidinov stating that he applied force towards her during their quarrel, but she refused. She was released soon after, while her husband continued to be detained. Several hours later she and Mr. Moidinov's brother returned to the militia office and learned that Mr. Moidinov was dead. Militia officers on duty had called the medical centre and reported that a person hanged himself in the regional militia office. A nurse, who examined the body, reported fingerprints on Mr. Moidinov's neck, consistent with choking. The militia officers told Mr. Moidinov's relatives that during questioning his heart simply stopped. Mrs. Akmatova said that after she was informed of her husband's death she was again detained and required to write a complaint against her husband, stating that he had problems with his heart and that she had no complaints against the militia. The next morning she was released.

### **Response of the Government of Kyrgyzstan dated 7 February 2005**

According to the National Security Service and Office of the Procurator-General of the Kyrgyz Republic, T. Moidinov and his partner, Salima Akmatova, were taken by A. Beshbakov, an officer of the Bazar-Korgon district internal affairs department, to the local militia station because of a quarrel which had arisen between the two individuals (T. Moidinov and S. Akmatova) in a private taxi. The Bazar-Korgon district internal affairs department's duty officer, E. Mantybaev, found T. Moidinov to be in an intoxicated state, and established that the quarrel was of a domestic nature. During the proceedings, S. Akmatova asked for an ambulance to be called, complaining of a pain in the heart. After she had been given first aid, a statement was taken from her and she was allowed to go home.

At around 6 p.m., the duty officer found the dead body of T. Moidinov, hung with a fine knitted fabric from the iron partition of an administrative cell in the Bazar-Korgon district (Jalal-Abad oblast) temporary holding facility. The personnel of the ambulance called, noting the death of T. Moidinov, recorded a diagnosis of biological death.

On 25 October 2004 district forensic expert E. Mamatov, in the presence of the deceased's brother, E. Moidinov, as well as militia officers and staff members of the procurator's office, carried out an autopsy. The conclusion reached from the findings of the examination was that T. Moidinov's death occurred as a result of mechanical asphyxia affecting the upper respiratory tracts, as confirmed by the discovery of abrasions on the anterior and left lateral surface of the neck, bruising of the left lateral surface of the neck but with no haemorrhage, a direct fracture of the cornu of the thyroid cartilage on the right, venous plethora of internal organs, cerebral and pulmonary oedema. T. Moidinov's blood was in the forensic chemical examination found to contain ethyl alcohol, evidencing the consumption of alcoholic beverages by him shortly before his death.

However, ambulance assistant G. Toktobaeva and T. Moidinov's relatives unanimously point out that pink-coloured spots were noticeable on the deceased's neck in the area of the carotid artery and by the right kidney, which in their opinion were not duly studied during the expert examination conducted.

In this connection the Bazar-Korgon district procurator's office opened criminal case No. 166-04-261 on the basis of evidence of an offence under article 316.2 (dereliction of duty) of the Criminal Code of the Kyrgyz Republic, and the case file was transmitted on 29 October 2004 to the Jalal-Abad oblast procurator's office, where the necessary investigative measures are now being undertaken. A final legal evaluation of the actions of the officials of the Bazar-Korgon district internal affairs department and others will be made on the basis of the results of the examination of the criminal case. The investigation into the case is continuing.

### **Lebanon: Death Sentence of Nehmeh Naïm El Haj**

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

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

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of Lebanon has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Appel Urgent envoyé le 29 avril 2005** avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur spécial sur l'indépendance des juges et des avocats, et le Rapporteur sur la question de la torture

M. Nehmeh Naïm El Haj, résident du quartier Al Basatine à Ain Saadeh, arrêté le 25 novembre 1998 à la frontière libano-syrienne par les services de renseignements syriens et condamné à mort par le tribunal libanais de Baabda. Selon les informations reçues :

M. El Haj a été détenu au secret pendant plus d'un mois par les services de renseignements syriens dans un centre d'interrogatoire illégal situé à Anjar (au Liban). Accusé du meurtre de deux personnes au Liban, il y aurait régulièrement subi des tortures avant d'être remis aux autorités libanaises à Zahleh et transféré par la suite à Jounieh. N'ayant aucun contact avec l'extérieur, M. El Haj n'a pu bénéficier de l'assistance d'un avocat tout au long de son interrogatoire. Le 1er juillet 2004, le tribunal pénal libanais de Baabda a entériné les conclusions des services secrets syriens alors que ceux-ci n'étaient pas habilités à mener l'enquête et a condamné à mort M. El Haj. Il nous a été signalé que, pour ce faire, le tribunal de Baabda n'a aucunement tenu compte du fait que les familles des victimes avaient entre-temps retiré leur plainte et a maintenu son jugement. Dans l'hypothèse où le pourvoi en cassation de M. El Haj était rejeté, celui-ci pourrait être exécuté dans les jours à venir.

Sans vouloir à ce stade nous prononcer sur les faits qui nous ont été soumis ni sur le caractère arbitraire ou non de la détention, nous faisons appel à votre gouvernement afin que les droits de la personne mentionnée soient respectés et qu'elle ne soit pas

privé arbitrairement de sa liberté et d'un procès équitable. Ces droits sont protégés par les articles 9 et 10 de la Déclaration universelle des droits de l'homme, ainsi que les articles 9 et 14 du Pacte international relatif aux droits civils et politiques.

Des craintes ont été exprimées quant au fait que la personne mentionnée précédemment puisse être l'objet de torture ou de cruels et mauvais traitements. Sans vouloir à ce stade nous prononcer sur les faits qui nous ont été soumis, nous souhaiterions néanmoins intervenir auprès de votre Excellence pour tirer au clair les circonstances ayant provoqué les faits allégués ci-dessus, afin que soit protégée et respectée l'intégrité physique et mentale de la personne précitée et ce, conformément aux dispositions pertinentes de la Déclaration universelle des droits de l'homme, du Pacte international relatif aux droits civils et politiques, de la Déclaration sur la protection de toutes les personnes contre la torture et autres peines ou traitements cruels, inhumains ou dégradants et de la Convention contre la Torture.

Au vu de la gravité et de l'irréversibilité de la sentence encourue par M. El Haj, nous invitons le Gouvernement de votre Excellence à suspendre l'exécution de sa mise à mort afin de revoir la procédure suivie depuis son arrestation jusqu'à sa condamnation, et de préciser dans quelle mesure elle se conforme au droit international applicable en l'espèce, (annexé à la présente lettre).

#### **Libyan Arab Jamahiriya: Killing of Journalist Daif al-Ghazal al-Shuhaibi**

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

**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 Libyan Arab Jamahiriya has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Allegation letter sent on 10 June 2005** with the Special Rapporteur on freedom of expression

Allegation sent concerning Daif al-Ghazal al-Shuhaibi, 31, a journalist who wrote for the UK-based newspaper *Libya Today*, and member of the Journalists and Editors' Syndicate in Libya.

According to information received, on 2 June 2005 his dead body was found in Kanfouda, in the eastern city of Benghazi. The autopsy report referred to extensive signs of torture and a gunshot to the head; most of his fingers were severed and his body was covered with bruises and stab wounds. Daif al-Ghazal al-Shuhaibi had been reported missing since midnight 21 May 2005 when he was kidnapped by two armed men claiming to be state security officers. His friend, who was with him when the men arrested Daif al-Ghazal al-Shuhaibi, was left unharmed.



The authorities are conducting investigations. Security officers have been questioned by the Benghazi Prosecutor's Office; they deny having arrested Mr. Daif al-Ghazal al-Shuhaibi. Several other people are being questioned.

According to report received, Daif al-Ghazal al-Shuhaibi had published articles on Libya Today which were very critical of Libya's Governing Party the Movement of Revolutionary Committee (MRC), particularly an article he published on 16 May 2005, where he reiterated that he had documents concerning corruption in Libya, which documents he would soon be making public. Moreover, he had worked with the MRC for ten years; he had also worked for the MRC-controlled newspaper, Al-Zahf Al-Akhdar (The Green March) for four years before leaving because of what he believed was widespread corruption within the MRC. In 2004 Daif al-Ghazal al-Shuhaibi had issued an appeal to intellectuals in Libya to form a civil society committee against corruption; this never materialised.

Concern is expressed that the killing of Daif al-Ghazal al-Shuhaibi could have been directly connected to his work as a journalist and to the manifestation of his right to freedom of opinion and expression, especially since he reported having received many threats following the publication of his article on 16 May 2005.

#### **Morocco: Deaths of Migrants Crossing to Melilla**

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

**Subject(s) of appeal:** 8 males (1 minor) (migrants or refugees)

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of Morocco has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Communication envoyé le 7 octobre 2005** avec le Rapporteur spécial sur les droits de l'homme des migrants

Dans le cadre de nos mandats, nous sommes chargés d'analyser les informations que nous recevons concernant des allégations de violations des droits de l'homme. Dans ce contexte, nous aimerions attirer l'attention de votre gouvernement sur des allégations reçues dans le courant du mois de septembre 2005 relatives à une série d'incidents au cours desquels plusieurs migrants d'origine subsaharienne seraient morts suite à des blessures par balle ou des mauvais traitements infligés par les forces de l'ordre que surveillent les frontières entre Ceuta et Melilla avec le Maroc.

Selon les informations reçues, le 29 août 2005, vers les 2 heures du matin un groupe d'environ cinquante migrants aurait tenté de traverser clandestinement la frontière qui sépare le Maroc et la ville autonome de Melilla (Espagne) en se divisant en trois groupes d'environ 16 personnes. La tentative aurait été violemment repoussée par des

membres de la garde civile espagnole qui aurait utilisé du matériel anti-émeute. Cependant, huit membres du groupe auraient réussi à traverser la frontière.

Selon les rapports reçus, des agents de la garde civile espagnole auraient battu les migrants restants avec la crosse de leurs fusils et avec des matraques électriques avant de les renvoyer en territoire marocain par une porte de service située entre les points « A7 » et « A8 » sur la frontière entre Melilla et le Maroc. Joseh Abunaw Ayukabang, un camerounais de 17 ans, aurait été transporté par ses compagnons vers un bosquet où il serait décédé à la suite des coups reçus.

Un d'entre eux, soutenu par d'autres membres du groupe, serait mort peu après son retour sur le territoire marocain. Le migrant mort aurait été identifié comme étant Joseph Abunaw Ayukabang, un citoyen camerounais de 17 ans. Le jeune aurait été victime de coups répétés au ventre infligés par un des membres de la garde civile, avant d'être expulsé par la porte de service de la frontière.

Des témoins auraient indiqué qu'ils auraient vu le corps sans vie de l'autre migrant blessé près de la barrière et que le cadavre aurait été récupéré par des membres de la gendarmerie marocaine. Cependant, ils n'auraient pas réussi à s'approcher suffisamment du corps pour l'identifier.

D'après les informations reçues, les autorités de l'hôpital de Nador auraient émis un communiqué confirmant l'existence d'un seul corps.

Nous avons également reçu des renseignements concernant la mort, survenue le 12 septembre 2005 à l'hôpital communal de Melilla, d'un migrant d'origine subsaharienne qui aurait été blessé par des agents des forces de l'ordre marocains le 8 septembre 2005. D'autres sources indiquent cependant que le migrant se serait blessé accidentellement le même jour.

Nous avons également été informé de la mort d'un migrant d'origine subsaharienne qui aurait été blessé à la gorge puis transféré le 15 septembre 2005 à l'hôpital communal de Melilla.

Enfin, cinq personnes seraient décédées à la suite de blessures par balle lors de la tentative de quelques 500 à 600 migrants de traverser en masse la frontière entre le Maroc et la ville de Ceuta le 29 septembre 2005. Par ailleurs, huit personnes auraient été transportées à l'hôpital de Tétouan pour des blessures par balles en caoutchouc, matériel anti-émeute qui serait utilisé par la garde civile espagnole. Il semble que lors de cet incident, des membres des forces de l'ordre marocaines se seraient alignées devant la frontière et auraient tiré sur les migrants avec des fusils.

Il est de notre responsabilité, en vertu des mandats qui nous ont été confiés par la Commission des droits de l'Homme et par les résolutions de l'Assemblée Générale des Nations Unies de solliciter votre coopération pour tirer au clair les cas qui ont été portés à notre attention. Dans l'obligation d'en faire rapport à la Commission des droits de l'Homme, nous serions reconnaissants au Gouvernement de votre Excellence de ses observations sur les points suivants :

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

2. Au cas où des plaintes ont été déposées, quelles suites leur ont été données ?
3. Veuillez fournir toute information, et éventuellement tout résultat des enquêtes menées, examens médicaux, investigations judiciaires et autres menées en relation avec les faits.
4. Veuillez fournir toute information sur les poursuites et procédures engagées.
5. Veuillez indiquer si les victimes ou leurs familles ont été indemnisées.

### **Mauritania: Mort en Détention de Mamadou Saliou Diallo**

**Violation alléguée:** Mort en détention

**Objet de l'appel:** 1 homme

**Caractère de la réponse:** Pas de réponse

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

Le Rapporteur Spécial regrette que le Gouvernement de Mauritanie n'ait pas coopéré avec le mandat qui lui a été conféré par la Commission des Nations Unies pour les Droits de l'Homme

**Lettre d'allégation envoyée le 13 juillet 2005** avec le Rapporteur spécial contre la torture

Lettre d'allégation envoyée concernant M. Mamadou Saliou Diallo, âgé de 58 ans, ressortissant guinéen. Selon les informations reçues,

M. Mamadou Saliou Diallo, aurait été arrêté par la police vers 11 heures le 21 juin 2005 à Nouakchott suite à une altercation avec un responsable de la collecte des ordures du quartier, qui avait déposé une plainte auprès de la police. Celle-ci aurait d'abord emmené M. Diallo au commissariat n. 2 de Dar Naïm, et vers 13 heures aux Urgences de l'Hôpital Cheikh Zaïd, où il serait décédé vers 13 heures 15.

La réquisition délivrée par le procureur contiendrait la mention «mort par suicide». Toutefois, aucun des huit médecins qui ont examiné sa dépouille ne se serait prononcé sur les causes de son décès. Aussi, le soir même, un scanner du cou de la victime réalisé au Centre Hospitalier National aurait révélé que ses deux vertèbres cervicales étaient brisées

### **Mexico: Amenazas de Muerte Contra Periodistas**

**Violación alegada:** Amenazas de muerte

**Persona objeto del llamamiento:** 1 hombre, periodista.

**Carácter de la respuesta:** Alegación rechazada pero sin prueba adecuada.

### **Observaciones del Relator Especial**

El Relator Especial agradece el Gobierno de México por la información proporcionada. Sin embargo, el Relator Especial considera que las conclusiones del Gobierno rechazando sus alegaciones faltan pruebas adecuadas.

**Llamamiento urgente enviado el 23 de Febrero de 2005** con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión

Emilio Gutiérrez Soto, corresponsal del “Diario de Juárez” en el pueblo de Ascensión, en la región de Chihuahua. De acuerdo con la información recibida, este periodista fue amenazado de muerte por parte de un oficial del Ejército Mexicano, cuyo nombre tenemos en nuestro conocimiento, el 8 de febrero de 2005 en horas de la noche. Las amenazas fueron proferidas en la vía pública cuando el periodista se presentó ante la convocatoria del oficial. A su llegada, el periodista fue rodeado por ocho soldados y amenazado de muerte. Se alega que la razón de esta amenaza reside en un artículo publicado por el periodista en el cual denuncia a un grupo de militares adscritos a la guarnición de la plaza fronteriza, quienes habrían asaltado un hotel en Puerto Palomas, presuntamente en estado de ebriedad. Gutiérrez Soto no denunció el hecho ante la policía, ni solicitó medidas cautelares. Sin embargo, las informaciones indican que una investigación sobre los hechos descritos habría sido ordenada de oficio por las autoridades militares. En este contexto, solicitamos al Gobierno de su Excelencia informarnos sobre la investigación de los hechos descritos y sobre los resultados de dicha investigación.

### **Respuesta del Gobierno de México del 23 de diciembre de 2005:**

Resultados de la investigación relacionada con la queja presentada por Emilio Gutiérrez Soto por el Relator Especial.

La Comisión Nacional de Derechos Humanos integró un expediente de queja, el cual concluyo en la vía de la amigable conciliación, mediante dos compromisos, consistentes en que el Organismo Interno de Control de la Secretaría de la Defensa Nacional (SEDENA), integre un procedimiento administrativo de investigación y gire una circular a fin de evitar actos que puedan constituir intimidación o interferencia con la libertad de expresión.

Respecto al primer compromiso, una vez sustanciado el procedimiento administrativo, se acreditó que son falsas las imputaciones que formuló en contra de personal militar el señor Gutiérrez Soto, determinado en consecuencia, que no se acredita responsabilidad de servidores públicos militares, y no obstante esta situación, el titular de la SEDENA, giró una directiva a todos los mandos territoriales del país, con el objeto de prevenir conductas de este tipo, en el sentido de que el personal militar que tenga relación con periodistas, deberá ser instruido para que lleve a cabo sus actividades con pleno respeto a su profesión y la libertad de expresión.

**Myanmar: Multiple Deaths Caused by Rapes and Other Attacks by Security Forces**

**Violation alleged:** Death due to attacks or killings by security forces; Disappearances; Death threats fear of imminent extrajudicial executions

**Subject(s) of appeal:** 9 females (2 minors); 3 males

**Character of reply:** Allegations rejected but without adequate substantiation

**Observations of the Special Rapporteur**

The Special Rapporteur accepts that many of the victims and villages no longer exist. However, the SR deeply regrets that the Government of Myanmar finds this to be a reason to deny that the alleged incidents occurred, given that the allegations are precisely that the deaths of the victims and the destruction of their villages were perpetrated by Government forces. The SR hopes that the Government will conduct good faith investigations into future allegations.

**Allegation letter sent on 21 September 2004** with the Special Rapporteur on Violence against Women, its causes and its consequences and the Special Rapporteur on Torture, reproduced from E/CN.4/2005/7 Add. 1 at par. 471-477:

471. Allegation sent with the Special Rapporteur on Violence against Women and the Special Rapporteur on torture, 21 September 2004. On 17 September 2003, Zaai Yi, aged 40 and originally from Nawng Hai village, Kho Lam village tract, but forcibly relocated to Kho Lam village relocation site in 1997, was taken away from his farm by a group of men believed to be State Peace and Development Council (SPDC) soldiers. Half an hour later, a patrol of approximately 50 SPDC troops from Infantry Battalion (IB) 246 came to the farm and interrogated his wife, Naang Kham, aged 30, about the whereabouts of her husband. When she told them that he had been abducted by unknown soldiers, she was accused of being the wife of a Shan soldier. She was reportedly beaten, kicked and gang-raped. She lost consciousness several times. After the troops left the farm, some villagers assisted her. As her condition worsened after this assault, she eventually fled to Thailand to receive medical treatment. She reportedly died on 29 March 2004 in Chiangrai provincial hospital, in Thailand. As far as the Special Rapporteurs have been informed, the whereabouts of her husband are still unknown.

472. Naang Seng and Naang Long, two 17-year-old girls from Saai Murng quarter in Ta-Khi-Laek town, were stopped by a group of three SPDC troops near Ta-Khi-Laek town on 22 August 2003. They were severely kicked and beaten by the troops. The two girls were later found unconscious by some villagers and taken to a hospital. Naang Seng died that same night. A complaint was lodged with the SPDC authorities at Ta-Khi-Laek township officer. As far as the Special Rapporteurs have been informed, no action has been taken to investigate the case.

473. Saang Zi-Na, a 45-year-old villager from Pang Sa, was shot dead by a patrol of SPDC troops from the 55th Division near Paang Sa village, Loi La village tract, Nam-Zarng township, on 23 August 2003, when he was fetching water on the bank of Nam Taeng river. On 26 August 2003, a column of the same SPDC troops arrested Naang

Non, his pregnant wife, in Paang Sa village and took her to Ta Zao Murng, a Nam Taeng river harbour. Another woman, Naang Zaam, found on their way, was taken with them. Once there, the two women were interrogated about boats in the area and severely beaten with bamboo sticks. They were also threatened with death. They were later released. As a result of the beatings, Naang Non suffered from internal injuries and had a miscarriage.

474. Ms. Naang Khin, aged 22, and her sister, Ms. Naang Lam, aged 19, were reportedly raped by a patrol of SPDC troops from Lai-Kha-based Light Infantry Battalion (LIB) 515 on 16 October 2003, when they were reaping rice at their farm in Wan Zing village tract. Their father was tied up to a tree. Afterwards, the two sisters were taken to a forest by the troops. Their dead bodies were found by villagers some days later dumped in a hole.

475. Ms. Naang Sa, aged 20, and her husband, Mr. Zai Leng, aged 23, both originally from Zizawya Khe village in Wan Thi village tract, but relocated to Lai-Kha township in 1997, were approached in their farm by about 40 SPDC troops from Co.3 of IB64 on 26 November 2003. Zai Leng was reportedly tied up outside the farm and Naang Sa gang-raped by the troops. She was later taken with them. Zai Leng and other villagers went to the base of IB64 to inquire about her but were not allowed to enter the base. Three days later, Naang Sa's dead body was found near the farm.

476. Ms. Pa Ong, a 40-year-old woman with mental disability, originally from Khur Nim village but who had been forcibly relocated to Maak Laang village was forcibly seized by SPDC troops from LIB515 in late 2003 and was gangraped by the soldiers. She reportedly died four days later.

477. Ms. Naan Zum, a 18-year-old woman living in the suburban area of Murng-Su town was forcibly taken away from her residence to a nearby forest on 25 April 2004 by about 15 State Peace and Development Council (SPDC) soldiers. She was allegedly gang-raped and stabbed to death by the soldiers.

### **Response of the Government of Myanmar dated 30 March 2005**

The Government of Myanmar indicated that after thorough investigations carried out by the authorities, it was found that the allegations were false. The regiments under reference were not even carrying out military operations in the area at the time of the allegations. In some allegations, the places mentioned are non-existent while in some, there were no such persons who lived at the place mentioned. For these reasons, these allegations were unsubstantiated and were merely based on false information. Since there were no incident that occurred as alleged, the authorities could not file any case.

Concerning the death of Ms. Naang Kham and her husband Zai Yi (parag 471): inquiry shows that no such person resided at Nawng Hai village. The Light Infantry Battalion (246) had not carried out any movement. The inquiry showed that the alleged incident did not occur.

Concerning the death of Ms. Naang Seng and Ms Naang Long (parag 472): There is no such village named Saai Murng in Lai Cha township. There is a village with the name Si-Moon or Si-Li-moon which the pronunciation is close to the name of the alleged village. No such person name Naang Seng or Naang Long lived in the village. There is no such report of shooting occurred over there. The Light Infantry Battalion 515 did not take any movement at Wan-San area. The inquiry showed that the alleged incident did not happen.

Concerning the death of Mr Sanng Zi-Na, wife Ms. Naang Non and Ms Naang Zaam (parag 473): The inquiry showed that starting from year 2000, Pang Sa village was rebuilt and there were 20 residents living there. However, those persons were not among the people who stayed there and no such report of shootings occurred over there. The inquiry found out that the alleged incidents did not happen.

Concerning the death of Ms. Naang Khin and Ms. Naang Lam (parag 474): The inquiry showed that Lai-Khai is in Lai-Cha township and there is only Wan-San village tract in that township. The name of Wan Zing village tract does not exist in that township. Naang Khin and Naang Lam do not live there. No such reports occurred. The Light Infantry Battalion 515 did not take any movement in that area. The inquiry show that the alleged incident did not happen.

Concerning the death of Ms. Naang Sa and husband Mr. Zaair Leng (parag 475): The inquiry showed that the infantry Battalion No 64 and Light Infantry Battalion 515 were not assigned in the alleged area of incidents. Moreover, the alleged Ms Naang Sa and Mr. Zaai Leng did not event live there and no such reports were realized there. The alleged incident did not happen.

Concerning the death of Ms Pa Ong (parag 476): The inquiry showed that there is no such Khur Nim village exists in Lai-Chai Township. There is only Maak Laang village, which exists, and the lady under the name of Ms Pa Ong does not stay there. The Light Infantry Battalion No 64 and Infantry Battalion no 515 did not take any movement during the alleged period in those areas. The alleged incident did not happen.

Concerning the death of Ms. Naan Zum (parag 477): The inquiry showed that there is no such village called Murn Su town in the whole area of Shan state. Since, the inquiry team found that Man Su Pagoda does exist at Lasho town, Shan state. The team went there and investigated the alleged incidents but found out that no such reports occurred. Moreover, the team even went to the town called Mang-Si, phonetically close with the name of the alleged town Murng-Su. No reports were filed as alleged.

### **Myanmar: Death in Custody of Ko Aung Hlaing Win**

**Violation alleged:** Death in custody

**Subject(s) of appeal:** 1 male (person exercising his right to freedom of opinion and expression)

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of Myanmar has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Allegation letter sent on 2 June 2005** with the Special Rapporteur on the question of torture and Special Rapporteur on the situation of human rights in Myanmar

Allegation letter sent concerning Ko Aung Hlaing Win, youth member of the National League for Democracy, from Hlaing township, Yangon. According to the allegations received:

On 1 May 2005, he was arrested without warrant by an unknown group of men who were assumed to be soldiers. The authorities did not inform his family of the reasons for his arrest and of his whereabouts.

On 10 May 2005, Lt. Col Min Naing, the commander of an interrogation centre, informed his family that Ko Aung Hlaing Win had died of a heart attack on 7 May 2005. Lt. Col Min Naing allegedly tried to give Mr. Win's family 100,000 kyats to use for the prayer ceremony. His family refused to take the money.

As soon as they learnt of his death, his family published an announcement where they stated that Ko Aung Hlaing Win had "passed away unexpectedly" or "for unknown reasons". However, the authorities forced them to change the announcement into "Ko Aung Hlaing Win passed away because of a general disease".

Concern has been expressed that Mr. Ko Aung Hlaing Win has died as a result of the torture he was subjected to during the investigation and that the authorities then disposed of his body without notification to his family.

### **Nepal: Threats to the Life of Raj Mon Ghole**

**Violation alleged:** Death threats and fear of imminent extrajudicial execution

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

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

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

The Special Rapporteur appreciates the information provided by the Government of Nepal. However, the SR notes that the response that the complainant was subjected to punishment does not clarify whether he was tortured and placed in fear for his life.

**Urgent appeal sent on 21 November 2003**, reproduced from E/CN.4/2004/7/Add.1, para. 337

On 21 November 2003, the Special Rapporteur sent an urgent appeal regarding Raj Man Ghole, a 28-year-old Assistant Sub-Inspector at the Police Headquarter of the



Central Special Task Force in Base Camp, Samakhusi, Kathmandu. According to the information received, Mr. Ghole was severely tortured by four police inspectors on 3 October 2003. On 4 November 2003, he was subjected to threats of further torture by police personnel. On the same day, he reportedly filed a complaint under the Torture Compensation Act and informed the Centre for Victim of Torture that police were continuing to threaten him with death. Still on the same day, relatives who tried to visit him were denied access to the police station. They reportedly managed to speak with him over the phone on 13 November 2003. Mr. Ghole reportedly told them that he was not allowed to come out of the police station. Although it has been reported that he has not been subjected to further torture, concern has been expressed for his physical and mental integrity in view of his alleged incommunicado detention and in view of the threats he has allegedly been receiving since he filed a torture complaint.

### **Response of the Government of Nepal dated 8 March 2005**

Raj Man Ghole: the government is waiting for a reply.

### **Response of the Government of Nepal dated 22 March 2005**

A police staff who was found highly intoxicated under the influence of alcohol on 4 October 2003 was subjected to punishment.

### **Nepal: Killings in Pokharichauri village**

**Violation alleged:** Death due to attacks or killings by security forces; Death threats and fear of imminent extrajudicial executions

**Subject(s) of appeal:** 3 females (minors); 1 male (minor)

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

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

The Special Rapporteur appreciates the preliminary information provided by the Government of Nepal with respect to the cases of Subhadra Chaulagain, Reena Rasaili, and Maina Sunuwar, and he will request the results of the investigations to which it refers. The SR also notes that he has received no clarification of the case of Tasi Lama.

**Urgent appeal sent on 3 March 2004** with the Special Rapporteur on torture and the Special Rapporteur on violence against women, reproduced from E/CN.4/2005/7/Add.1, paras. 483-484

483. Urgent appeal sent with Special Rapporteur on torture, and the Special Rapporteur on violence against women, 3 March 2004. According to the information received, residents of Pokharichauri village, Kavre District, have been raped, tortured, killed or taken to unknown locations by plainclothes army force who entered the village on 12 February 2003. Reena Rasaili (f), aged 18, was reportedly killed by security forces at around 5.00 a.m. It is believed that she had previously been kept for

five hours in a cow-shed where army personnel allegedly raped her. Her body, which was found naked, reportedly sustained bullet injuries to the head, breast and eyes and sustained injuries and scratches on the stomach and chest.

484. Subhadra Chaulagain (f), aged 17, was allegedly beaten up and killed by army personnel. Her body reportedly sustained injuries on the right cheek, stomach and below the right eye. Her father, Kedar Nath Chaulagain, was allegedly severely tortured. A young boy, Tasi Lama, was reportedly shot dead as well. According to the information received, on the following day the national radio reported that three terrorists, Reena Rasaili, Subhadra Cahulagain and Tasi Lama, had been shot dead during an encounter with the security forces in Pokharichauri village. Reports indicate that since the above-described incident, witnesses have been subjected to harassment. It is in particular reported that Maina Sunuwar (f), a 15-year-old relative of Reena Rasaili, was arrested by army personnel on 17 February 2004 while soldiers were actually looking for her mother, Devi Sunuwar. Maina Sunuwar's father was reportedly ordered to bring his wife, Devi Sunuwar, to the Lamidada army camp as a condition for Maina Sunuwar's release. It is further reported that on 18 February 2004, he went to the Lamidada Army camp together with Devi Sunuwar, the head master, the chair person of the Village Development Committee (VDC) and 28 other people from the village. However, the army authority reportedly denied the arrest and detention of Maina Sunuwar. In view of the alleged detention of Maina Sunuwar at an undisclosed location and the reports of recent violence against residents of Pokharichauri village by army personnel, serious fears have been expressed for her physical and psychological integrity. Concern has also been expressed for the safety of alleged witnesses of the abovementioned killings and acts of torture.

#### **Response of the Government of Nepal dated 8 March 2005**

Reena Rasaili was arrested on 12 February 2004 by security forces. She was killed but the case was reopened and is being reinvestigated by a central RNA Investigation team.

Subhadra Chaulagain was arrested on 12 February 2004 by security forces. The case was reopened and is being reinvestigated by a Central RNA Investigation team.

Maina Sunawar was killed while she tried to escape from Army Control on the way to Army Barrack at Panchkhal on 17 February 2004. However, the case was reopened and is being reinvestigated by a Central RNA Investigation team.

#### **Nepal: Death of Journalist Badri Khadka**

**Violation alleged:** Death in custody

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

**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 Nepal. The SR would appreciate information on the investigation into the case of

Badri Khadka and factual information substantiating the conclusion that he escaped from custody rather than died in custody. The SR also notes what appear to be inconsistencies in the multiple responses that he has received from the Government.

**Urgent appeal sent on 17 September 2004** with the Special Rapporteur on torture, reproduced from E/CN.4/2005/7/Add. 1, para. 491

491. Allegation sent with the Special Rapporteur on torture, 17 September 2004. Badri Khadka, a reporter for Janadesh Weekly, a weekly publication believed to be linked to the Communist Party of Nepal (CPN – Maoist) was arrested by security forces on 29 August 2004 in Birtnagar, Morang district, and later transferred to the Rangeli area. According to the information received, he died as a result of beatings and other forms of torture in Govindapur-7, in the Larikata area shortly afterwards. The security forces reportedly denied his arrest and said that he might have been killed during crossfire with CPN – Maoist.

#### **Response of the Government of Nepal dated 8 March 2005**

Badri Khadka, whose address is believed to be Dolpa, was arrested on 29 August 2004 by security forces in Podhara. He was later transferred to Gajuri Barracks. He escaped from detention on 14 November 2004.

#### **Response of the Government of Nepal dated 1 April 2005**

Badri Khadka, 17 Sept. 2004, Released on 23/03/04.

Badri Khadka, Reporter of Janadesh weekly, 29 Aug. 04 from Biratnagar, transferred to rangeli and allegedly killed. Detained by security forces. Escaped from detention on 04/11/2004.

#### **Nepal: Killings in Basikhora Village**

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

**Subject(s) of appeal:** 3 females (minors)

**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 Nepal. However, the Special Rapporteur notes that, inasmuch as it had been alleged that the account concerning an armed encounter was a fiction to cover-up an extrajudicial execution, the simple reassertion of that version of events does not serve to clarify the allegations. Moreover, the SR would note that, since the Government acknowledges that the victims were arrested on 3 September 2004, it is difficult to understand how they came to be killed in an armed encounter on 30 September 2004.

**Allegation letter sent on 30 September 2004**, reproduced from E/CN.4/2005/7/Add. 1, para. 493

493. Allegation, 30 September 2004 According to the information received, on 3 September 2004, a group of soldiers in plain-clothes (from the Royal Nepalese Army) went to Basikhora village in Bhojpur District. They went to the school, stopped students, checked their bags and interrogated them about the identity and whereabouts of Maoists. A student pointed out three girls, Hira Ram Rai, aged 15, Jina Rai, aged 16, and Indra Kala Rai, aged 16, reportedly members, possibly under coercion, of a Maoist cultural group that presents songs and dances for propaganda purposes. The soldiers followed them to a forested area at Lukbharan where they shot them dead without questioning them, even though they were reportedly unarmed. The soldiers then buried their bodies. It is alleged that the government radio later informed that the three girls had been killed in an armed encounter in another district. Three days later, the families exhumed the bodies from the forest and cremated them in accordance with religious tradition.

**Response of the Government of Nepal dated 8 March 2005**

Hira Ram Rai, Indra Kala Rai and Jina Rai were arrested on 3 September 2004 by security forces. The Government of Nepal is awaiting a reply.

**Response of the Government of Nepal dated 1 April 2005**

7. Hira Ram Rai, 30 Sept. 2004, Killed in an encounter with the Security Forces.

8. Indra Kala Rai, Idem.

**Nepal: Killing of Lalkaji Gurung**

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

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

**Character of reply:** Allegations rejected without adequate substantiation

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of Nepal. However, the SR would note that the location of Lalkaji Gurung's body near the site of an armed clash in no way contradicts the allegation that he was summarily executed following that clash.

**Allegation letter sent on 11 October 2004**, reproduced from E/CN.4/2005/7/Add. 1, para. 498

498. Allegation, 11 October 2004. On 17 August 2004 Lalkaji Gurung (m. aged 29) a Communist Party of Nepal-Unified Marxist-Leninists (CPN - UML) activist, was shot dead by security forces in Lwaghalel VDC, Ward No. 7, Kuiuwan, Saintikhola, Kaski District. The incident occurred after crossfire between Maoists and Security forces had ceased. During the crossfire, Lalkaji Gurung was hiding in a medical shop as he and other civilians present had been ordered to do by the soldiers. The firing

started at around 4 p.m. and went on for about 30 minutes. It is reported that once the firing has stopped, security forces called everybody out and started beating the people present. A soldier allegedly beat Lalkaji Gurung and, as he bowed down, the soldier shot him. Reports indicate that security forces forced witnesses to sign a document stating that M. Lalkaji Gurung died in the crossfire. The District Secretary of Kaski, Somnath Pyasi and Zonal Secretary of Gandaki, Khagaraj Adhikari, of CPN-UML, appealed for compensation for the victim's family to the Army Barrack, the District Administration Office as well as the Home Ministry, but no response was reported.

### **Response of the Government of Nepal dated 8 March 2005**

Lal Kaji Gurung was killed during a clash between security forces and Maoists at Saitighatta on 17 August 2004 by the Maoists fire as his body was found near the site of security forces.

### **Nepal: Threats to the life of Bimala B. K.**

**Violation alleged:** Fear of death in custody

**Subject(s) of appeal:** 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 Nepal. However, the SR notes that information that she is being held in detention does not necessarily address the concern that her life might be in danger.

**Urgent appeal sent on 14 October 2004** with the Special Rapporteur on torture, the Special Rapporteur on violence against women, and the Special Representative of the Secretary-General on the situation of human rights defenders, reproduced from E/CN.4/2005/7/Add. 1, para. 500

Bimala B. K. She was the subject of an urgent appeal (See appeal dated 7 July 2004 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture, the Special Rapporteur on violence against women, its causes and consequences and the Special Representative of the Secretary-General on the situation of human rights defenders) for which no response has been received. According to the allegations received, she was currently held in Kathmandu Prison, having been in custody for almost six months without charge, and subjected to torture. In view of the earlier allegations of torture, concern was expressed that she may continue to be at risk of torture or other forms of ill-treatment. Moreover, concern is heightened by recent reports confirming that Maina Sunuwar (who was the subject of an three urgent appeals dated 7 July, 3 March and 16 April 2004, for which no responses have been received), whose arrest and beating was witnessed by Bimala B. K., died in custody.

**Response of the Government of Nepal dated 8 March 2005**

Bimala B.K. is from a Maoist militia who was caught at Palanchowk, Kavre, on 22 January 2004. She is detained at Dillibazar Karagar Shakha from 16 February 2004.

**Response of the Government of Nepal dated 22 March 2005**

Bimala B.K. is being held in detention in Central Jail Jagannath Dewal, Kathmandu since 24 March 2004.

**Nepal: Killings in Dhanchabar Village**

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

**Subject(s) of appeal:** 6 males

**Character of reply:** Allegations rejected but without adequate substantiation

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of Nepal. The SR would appreciate information on the investigation conducted into the events of 6 September 2004 and factual information substantiating the conclusion that the victims were killed in combat rather than custody. The SR also notes that there appear to be inconsistencies between the responses of 8 March 2005 and 22 March 2005.

**Allegation letter sent on 18 October 2004**, reproduced from E/CN.4/2005/7/Add. 1, paras. 502–503

502. Allegation, 18 October 2004. Mohanchandra Gautam (member of the Maoist Central Committee), Sherman Kuber (Leader, Central Communist Party Maoist), Mohanchandra Gautam (Kumar Poudel, Shishir) and other party workers Ramchandra Karki (Umesh), Devendra Singh (Mukesh), Shailendra Yadav (Tarkeshwor), all residents of Sindhuli district Mahadevsthan VDC 6, were killed on 6 September 2004 at Dhanchabar village by Security Personnel. The operation was undertaken under the command of Suman Karki and Rajendra Raut of the Chowbar battalion. They first surrounded the village, before entering the house where they were having dinner. Sherman Kuber and Mohanchandra Gautam were primarily arrested and handcuffed while the others got away. The two leaders were taken around the village, and later to Purni Pokhari, a location at about 500 meters south of the village where they were shot at. Mr Gautam, Mr Karki, Mr Singh and Mr Yadav were later found by Security Personnel and received the same treatment. Authorities claim the incident happened during an encounter with the Security personnel. It is alleged that the victims had no weapons on them. A post mortem was performed on the bodies of Sherman Kuber and Mohanchandra Gautam and their bodies taken to Lahan. The remaining four were buried at the edge of Purni Pokhari.

503. Mr. Ram Prasad Yadav, 60- year-old, a Rastriya Prajatantra Party worker who was reportedly killed by 3 Maoists on 19 September 2004 at around 6:30 p.m. The incident occurred near Shiv Chowk, at Bidyanagar, Siraha. Mr Prasad Yadav was shot in the neck, while standing in the middle of the road. He was involved in politics and had held government positions. He had been nominated as regional member of the village development committee from No. 6. He had previously been kidnapped by the Maoists and forced to resign on 28 May 2004. Mr Prasan Yadav had been responsible for establishing the Village Security Committee in his village.

**Response of the Government of Nepal dated 8 March 2005**

Davendra Singh, Mohanchandra Gautam, Ramchandra Karki, Shailendra Yadav, Sherman Kruber were killed in an action when the security forces were in Search Operation from Sukhipur to Sitapur. The Maoists group opened fire and started escaping under fire cover. Security forces were then obliged to fire for self defense.

Ram Prasad Yadav: The Government is waiting for reply.

**Response of the Government of Nepal dated 22 March 2005**

Sherman Kruber was killed in an exchange of fire with the security forces that took place in Laxmipur VDC, Siraga on 5 September 2005

**Response of the Government of Nepal dated 1 April 2005**

Ram Chandra Karki (umesh), Sindhuli, 18 Nov. 2004. Killed in an encounter with security forces in Sitapur.

Ram Prasad Yadav, Siraha, 18 Nov. 2004. Killed by Maoist Commander Bikas in Bidhya Nagar, Siraha District, on 05/09/04.

**Nepal: Death Threats Against Journalist Rajendra Karki**

**Violation alleged:** Death threats and fear of imminent extrajudicial execution

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

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

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of Nepal and will request information regarding any disciplinary or criminal proceedings taken against the person believed responsible.

**Urgent appeal sent on 25 October 2004** with the Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression, reproduced from E/CN.4/2005/7/Add. 1, para. 505

505. Urgent appeal sent with the Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression, 25 October 2004. On 7 October 2004 in Jajarkot district, a group of police officers beat Mr. Rajendra Karki, a

journalist for the Kathmandubased daily "Rajdhani", as he was returning from work. One police officer, Mr. Krishna Bahadur Khatri, threatened to kill him if he "went on talking". Mr. Karki tried to register a complaint but the police officers refused to record it.

### **Response of the Government of Nepal dated 8 March 2005**

The Government is waiting a reply regarding Rajendra Karki.

### **Response of the Government of Nepal dated 1 April 2005**

Rajendra Karki, Journalist Rajdhani Daily, Threatened to kill by Police Krishnsa Bdr Khatri, Jajarkot, 7 Oct. 2004. Safe in his residence in Khalanga, Jajarkot.

### **Nepal: Killings in February 2004**

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

**Subject(s) of appeal:** 23 persons (1 journalist)

**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 Nepal. However, the SR is concerned that the information fails to clarify the allegations made. The SR would appreciate factual substantiation for the conclusory assertions that Parsuram Khanal and Padma Raj Devkota were killed in combat rather than executed. Similarly, the SR would also appreciate clarification and factual substantiation of the events that occurred in Bhimad, Makwanpur district and of the death of Hem Narayan Yadav.

**Urgent appeal sent on 24 March 2004**, reproduced from E/CN.4/2005/7/Add. 1, paras. 486–489

486. Allegation, 24 March 2004. Parsuram Khanal, alias Nabin, was reportedly shot dead on 2 February 2004 by members of the security forces in Gulariya Municipality-6, Balapur, Bardiya District, Nepal. According to the information received, around 100 members of the Bardiya District joint security personnel who were conducting an operation in Bhainsahi Village in Mohamadpur VDC began chasing Mr. Khanal, who first took refuge in the house of a stranger, but then reportedly surrendered with both arms raised. A member of the security forces allegedly opened fire on him, killing him instantly. The security personnel then allegedly tied his hands together and dragged his body along the road towards Guleriya. It is reportedly unknown what the security force did with the body. The next day, it is believed that the radio TV reported the event, declaring that a Maoist was shot dead along the bed of the Babai River in the Guleriya area, Banke district, and that the security forces seized a pistol, a "socket" bomb, NRs. 60,000 cash, and other materials from him. However, Mr.



Khanal did not reportedly have a pistol or bomb in his possession at the time of his death.

487. Hem Narayan Yadav, a member of the dissolved parliament and member of the Communist Party of Nepal-United Marxist Leninist (CPN-UML), was reportedly abducted near the Gagan River in Siraha district while on his way to attend a CPN-UML district committee meeting in Lahan on 2 February 2004. According to the information received, three people in plain clothes armed with sub-machine guns, believed to be security forces personnel, stopped him at a roadside checkpoint and forced him into a black van without a number plate. His body was found the next day on the banks of the Kamala River, some 30 kilometres away, with gunshot injuries to the head and back. According to a post-mortem report, the bullets were likely to have been fired from a sub-machine gun and a 7mm pistol. The site where the abduction took place is said to be one kilometre from the Joint Security Forces Headquarters at Indra Dhvaj Gan and next to a police station. It was further reported that security is very high in the area and that it would be difficult for armed Maoists or criminals to move around freely. According to the information received, the RNA spokesman, Colonel Deepak Gurung, in a statement on 11 February, denied army involvement in the suspicious death of Hem Narayan Yadav. The Communist Party of Nepal (CPN) (Maoist) have also reportedly denied involvement in his abduction and killing.

488. 14 suspected Maoist activists and two civilians were reportedly executed by the security forces during a raid on a village in Bhimad, Makwanpur district, on 5 February 2004. According to the information received, the 14 Maoists had requested shelter for the night from residents living in Ward 4, Handikhola Village Development Committee, and were sleeping in three houses and two cowsheds when the security forces patrol arrived and surrounded them. At least 12 Maoists were reportedly shot dead and two were reportedly taken into custody and were later summarily executed. Two local residents - who were not part of the Maoist group - were also reportedly killed: a 31-year-old man was reportedly shot when he opened the door to his house while an 80-year-old woman was shot and injured while she was trying to flee.

489. Padma Raj Devkota, a journalist who worked as editor-in-chief at the "Bhurichula" newspaper, was reportedly killed by security forces on 7 February 2004 in the remote western district of Jumla. According to the information received, the journalist who also worked as a local correspondent for the magazines "Nepal Today" and "Karnali Sandes", which are both published in Katmandu, was killed along with six members of the Communist Party of Nepal (CPN-Maoist) during routine security operations in the area.

#### **Response of the Government of Nepal dated 1 April 2005**

Parsuram Khanal (Nabin), area: Balapur Bardia, 2 Feb. 2004, Killed in an armed clash with security forces in Gulariya Mun, Shyalpur.

Hem Naraayan Yadav, Lahan, 2 Feb. 2004. Investigation revealed that the security forces were not involved.

14 Mbs + 2 locals of Bhimad makwanpur, Makwanpur, 5 Feb. 2004. It was a hideout by the Maoist cadres, which the security forces identified. During the raid of the hideout 14 MBs were killed and two locals died of collateral damage.

Padma Raj Devkota, 14 Oct. 2004, He was killed in an encounter with the security forces in Amgadh of Jumla district on 06/02/2004.

### **Nepal: Killings in Late 2004**

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

**Subject(s) of appeal:** 25 males; 6 females

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

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

The SR appreciates the preliminary information provided by the Government of Nepal.

With respect to the events of 20 September, 30 September, 17 October, 26 December, and 31 December 2004, the Special Rapporteur appreciates the preliminary information provided by the Government of Nepal and will request the results of the investigations to which it refers.

With respect to the events of 28 September 2004, the SR notes that the allegation that the Bishwanath Parajuli, Tomnath Poudel, and Dhan Bahadur Tamang were killed while attempting to escape does not clarify whether it the security forces acted in a lawful manner. Especially in light of the alleged location and character of their wounds, a more thorough investigation would have been required to adequately clarify the events.

With respect to the events of 18 December 2004, the SR notes that no factual substantiation is provided that would contradict the allegations received.

#### **Allegation letter sent on 15 March 2005**

Pheka Yadav, Ramnrayan Yadav, Manju Das, Seema Mahatto, Bikas, and an unnamed individual (5 males and 2 females), who were allegedly shot dead on 20 September 2004 in Aapghari, Ward No. 1. Mohanpur Kamalpur Village Development Committee, in Siraha District. According to the information provided, Pheka Yadav and Ramnarayan Yadav were arrested on 1 September 2004 by members of the security forces from the house of Phekan Yadav, along with eight other people. 5 of those arrested were released on 5 September. Manju Das, Seema Mahatto, Bikas, and the other unnamed individual were reportedly arrested on 15 September 2004 from Kanchi, Dhangadi Village Development Committee by security personnel. Authorities claim that the victims died during an encounter. However, allegations indicate that the victims' bodies showed signs of torture, as their eyes had been removed, their skull was broken and splattered brain and flesh was found on site. The victims had received bullets in their mouth. The body of one of the female victims was naked. Furthermore, no post mortem examination has been carried out. It is also reported that army

personnel conducted a survey into the matter dressed in police officers. The whereabouts of the other people arrested on 1 September 2004 are unknown.

Bishwanath Parajuli (also called Najendra Parajuli), Tomnath Poudel and Dhan Bahadur Tamang, of Hasandaha Village Development Committee in Morang were allegedly shot dead in the morning of 28 September 2004 by members of security personnel under the command of Eastern Pritana Headquarters, Itahari. Security forces, some of them wearing civilian clothes, had entered the village on 27 September 2004 in search of Maoists activists. The victims had been arrested, along with some other villagers. The victims' bodies were found by the road the morning after. The body of Bishwanath Parajuli had one gunshot wound in his chin, and another one in his stomach. Dhan Bahadur Tamang's body showed marks of rope on his hands, his right eye was out and he had two gun shot wounds, one in his chest and the other one on his upper abdomen. It is further alleged that the victim's bodies were left on the road during the entire day before their families could remove them. In addition, authorities claim that they were all Maoists. However, it is reported that only Dhan Bahadur Tamang was working for the Maoist party.

4 males and 3 females, namely Bir Bahadur Kumal, Min Bahadur Oli, Bir Bahadur B.K, Puspa and Dilmaya Gharti, as well as Dhani Ram Tharu, aged 33, and Jori Lal Tharu, aged 30, two farmers of Belaspur of Baijapur, who were reportedly killed by the Armed Police Force (APF) on 29 September 2004. It is alleged that APF members of Bageshwari Camp in plain clothes reached Prem Nagar of Khaskusma Village Development Committee in Banke district after getting information that the Maoists were hiding. When the Maoists tried to fled, the police opened fire. It is reported that half an hour later, members of APF have called upon all of the villagers to gather in Bhanu Primary School and asked them to identify the five corpses lined in the nearby highway. The villagers could not recognize any of them. Allegations indicate that the APF have taken one of the female Maoists' activists in their vehicle with them. She was allegedly killed later in the nearby Lumba Khola.

Janaki Chaudhary, aged 19, was reportedly killed by a security patrol on 30 September 2004 near Urmi School in Beli. According to the information received, she was returning home on her bicycle after attending her regular sewing-and-cutting class, when she was caught in a cross fire after crossing the Kanari stream. She tried to protect herself by hiding inside a toilet but she had been injured. It is further reported that security personnel took her out from the toilet, brought her back to the other side of the stream and shot four rounds at her. Her eyes were also gouged out.

Boumayal Mura Kawari, aged 40 from Patharwa Village Development Committee Ward No 3, Pateharwa, Danusha. According to the information provided, he was arrested on 17 October 2004 at 3:00 a.m. in his house, accused of being a Maoist and providing food for Maoists. He was then taken near Prasaitol where he was shot dead. His body was cremated by security personnel.

Ram Narayan Sada, aged 45, from Pateharwa Village Development Committee Ward No 3, Khotiya, Danusha. He was reportedly shot dead on 17 October 2004 at 4:00 a.m. by members of security personnel while he was sleeping under a tree. His body was then taken to be cremated in Janakpur.

Ratna Karki, a worker at a mill, Narad Rai, from Ward no. 4, Dhanjana Giri, head of Maoist's village committee and Madav Gautam, who were reportedly shot dead by security forces in Pathahari Pathhari Village Development Committee, Ward no 3, Morang District on 18 December 2004. According to the information received, Ratna Karki was returning from the mill when 8-9 security forces in plain clothes came running to him asking for a place to hide from the army. Since he had been told that they were carrying guns, the victim obeyed, provided drinking water and followed them, as he was asked to do so. At the same time, security forces arrested Narad Rai, Dhanjana Giri, and Madav Gautam. They brought them where Ratna Karki was being held. The security forces reportedly shot Narad Rai once when he tried to escape. He fell on the ground and was reportedly shot at many times. Ratna Karki was shot in the back of the head. The other victims were also shot dead. Allegations indicate that there were 50 to 60 firings rounds in the area. The security forces then surrounded the entire village. People were not allowed to move from their houses or walk on roads. It is further reported that one of 200 security forces present in the village threatened "Everyone in the village will die now!" They later asked the villagers to line up and identify the victims and whether they belonged to their village. Before taking away the victims' bodies, security forces allegedly forced villagers to sign a paper in which it was written that these four people were killed in an encounter.

Laxaman Pun, from Uwa Village Development Committee (VDC), Rolpa District, Prithvi Gautam BK alias Suraj, from Putalibazar Municipality, in Syangja District, a District Committee member of CPN (Maoist), Sher Bahadur Budha alias "Dinseh" 25th Battalion Vice Commander of People's Liberation Army and Lok Bahadur Pun alias "Paisas" an area Member 4 No area in Kaski were reportedly killed by security forces on 26 December 2004 after their arrest. According to the information received, at 4:30 a.m. on 26 December 2004, the four Maoists were resting in a villager's house when 50 to 60 soldiers surrounded the house to arrest them. 5 soldiers went inside the house and dragged the Maoists out, with their hands tied. They were shot at later, while they were on the road. Reports indicate that around 45 rounds of fire were heard at the time. It is also alleged that soldiers ordered the villagers to sign a paper stating that the four Maoists cadres were killed in an encounter. Reports indicate that the victims' bodies were buried by security forces 5 meters away from the road. It is also alleged that the Maoists were not armed.

Chaturdev Chaudhary, aged 45, of Dulari Village Development Committee -7, Ramesh Khadka, aged around 25, of Bishnu Paduka Village Development Committee, Dilip BK of Varaul Village Development Committee, Sunsari district, Sagar Limbu, of Jhapa district and Hari Gautam, of Mrigaulia Village Development Committee-2, were reportedly shot dead by plain clothes Security Forces in Dulari Village Development Committee-8, Trijuga, Morang on 31 December 2004. According to the information received, at around one in the morning of 31 December 2004, a group of Royal Nepalese soldiers in plain clothes reached Beldangi area of Mrigaulia Village Development Committee-3 where they searched some houses. In one of them, they found Chaturdev Chaudhary and Ramesh Khadka. The army interrogated them and started beating them. During interrogation, soldiers found out that in the next house were Dilip BK and Sagar Limbu. They arrested them and took them to Trijugachowk of Dulari Village Development Committee-8 where Hari Gautam was also brought by a next group of army. Hari Gautam had been arrested earlier in the night by 16 security officers. Allegations indicate that his hands were tied in his back when he

was arrested. The bodies of the victims were found the morning after, one in the fields and three in the banana tree bushes, about 50 meters from the road to Gachhia.

**Response of the Government of Nepal dated 1 April 2005**

Jori Lal Tharu, Khas Kusma 4 Banke, 29 Sept. 2004. Killed in an encounter with security forces in Yekal Gharwa, in Banke District.

**Response of the Government of Nepal dated 22 June 2005**

Regarding the events of 20 September 2004, the Government responded that they were under investigation and that the allegations had been forwarded to MOH, Eastern Division.

Regarding the events of 28 September 2004, the Government responded that Bishwanath Parajuli (also called Najendra Parajuli), Tomnath Poudel and Dhan Bahapur Tamang of Hassandaha VDC Morang District were involved in terrorist activities and were killed while being taken to the District HQ by Security Forces when they tried to escape, taking advantage of darkness and adverse terrain conditions. The Security Forces were compelled to open fire when they failed to heed repeated warnings to stop. They were killed during that firing in Hassanda VDC of Morang District on 27 September 2004. Their dead bodies were handed over in the presence of locals- Kedar Basnet (29), Maha Prasad Khatiwada (48), Lok Bahadur Shrestha (50) and Sushil Khatiwada (22) of Hassandaha VDC, Morang District. Necessary documents available at the concerned RNA units. Eastern Division.

Regarding the events of 29 September 2004, the Government responded that they were under investigation and that the allegations had been forwarded to MOH.

Regarding the events of 30 September 2004, the Government responded that they were under investigation and that the allegations had been forwarded to MOH, Eastern Division.

Regarding the events of 17 October 2004, the Government responded that they were under investigation and that the allegations had been forwarded to MOH, Central Division.

Regarding the events of 18 December 2004, the Government responded that Ratna Karki, Dhanjana Giri and Madav Gautam were killed during an armed clash between Security Forces and Maoist terrorists at Lamatol Area, Pathari VDC Ward No. 3 and 4, Morang District on 18 December 2004. Security Forces recovered the following items: Pistol-1, Cash Rs. 55, 000, socket bombs and Maoists literature from their bodies and belongings. Their dead bodies were handed over to their relatives in the presence of Local Police and Human Rights activists. Necessary documents available at the concerned RNA units. Eastern Division.

Regarding the events of 26 December 2004, the Government responded that they were under investigation and that the allegations had been forwarded to MOH (attention all divisions).

Regarding the events of 31 December 2004, the Government responded that they were under investigation and that the allegations had been forwarded to MOH, Eastern Division.

### **Nigeria: Extrajudicial Executions in Anambra State**

**Violation alleged:** Deaths in custody

**Subject(s) of appeal:** 20 males

**Character of reply:** Allegations rejected but without factual substantiation

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

During the Special Rapporteur's visit to Nigeria from 27 June to 8 July 2005, he made extensive inquiries concerning the police force's invocation of "armed robbery" as a pretext to justify extrajudicial executions. As noted in that report, the response of the Government of Nigeria concerning the executions in Anambra State is an "implausible denial".

#### **Allegation letter sent on 15 March 2005**

20 men, namely Samuel Odoh (Nsukka-Enugu State), Chibueze Ugwueke (Abakaliki-Ebonyi State), Ugochukwu Okonkwo (Abagana-Anambra State), Oforbike Odoh (Nsukka-Enugu State), Chizoba Mbaebie (Abagana-Anambra State), Ugochukwu Anaekwe (Mba-ukwu-Anambra State), Ifeanyi Izueke (Anambra State), Ekene Ejike (Oba-Anambra State), Christian Onwe (Abakaliki-Ebonyi State), Jekwu Okoye (Awka-Anambra State), Chinedu Okolo (Enugu State), Uchenna Ubaka (Awka-Anambra State), Charles Nwaluba (Awka-Anambra State), Onyeabo Anaekwe (Onitsha-Anambra State), Leonard Obasi (Ugwuoba-Enugu State), Emeka Ofoke (Abakaliki-Ebonyi State), Chibuzo Azouzu (Agulu-Anambra State), Obiajulu (Osamala-Anambra State), Ugochukwu Nwaude (Enugu State) and Ifeanyi Nwafunanya (Awka-Anambra State) who were reportedly shot dead on 4 November 2004 by members of the Special Anti Robbery Squad (SARS) of the State police command in Awka, Anambra State. According to the information received, they were arrested by the SARS and detained in Awka Central Police Station. On 4 November 2004, they allegedly were taken out of the Police Station and lined before being shot dead. It is further reported that 6 other detainees had to carry the victims' bodies into police vans.

#### **Response of the Government of Nigeria dated 15 June 2005**

Violent crimes especially armed robbery have always been one of the biggest problems in Anambra State. This situation has changed considerably over the last one and half years as it has been brought under control. Before now there was considerable insecurity. Armed bandits killed, maimed and raped their victims in addition to dispossessing them of their personal effects and goods. Social life was equally paralysed as there was almost a near state of breakdown of law and order to the extent that some indigenes of Anambra State did not only contemplate relocating but others outside the State refused to come home. The situation was that bad. As at today, normalcy has been restored through the combined efforts of the Nigerian Police

and other security agencies in Anambra State, the various Local village groups that work under close supervision of the Nigerian Police, and the generality of the people. This fact can easily be verified from indigenes of Anambra State.

A total of about five thousand (5000) armed robbery cases are under investigation and awaiting trial in different courts (see attached Appendix A of cases in court). It is also true that a number of armed robbers were killed by the Police during exchange of gunfire after the Police had been alerted by their victims. Some of them were killed while exchanging fire with the Police. Bodies of all such robbers are usually deposited by the Police in mortuaries of government hospitals and subsequently given burial, by hospital authorities. There is always a coroner's inquest/post mortem examination report, while the case files are forwarded to the office of the Director of Public prosecution for vetting and advise.

The Police also suffered heavy casualties in the band of armed robbers.

It is not true that the anti-robbery section of the State CID Awka, executes and executed armed robbery suspects in the manner alleged by the Petitioner. For the avoidance of doubt, none of the persons listed in the petition or any other persons for that matter were: executed or killed by the police on the 4th November, 2004. It is instructive, to note that the petitioner did not indicate the venue of the execution, the names of *the* other detainees that carried the corpses into waiting police vehicles, and the final destination of the corpses. It is not possible to publicly execute and in addition, secretly bury as many as twenty (20) persons without members of the public knowing it and protesting in a densely populated, heavily built up small suite like Anambra State.

In Conclusion, the operations of the Nigerian Police Force in Anambra State and the entire country are guided by laws with which the Police are directly charged, foremost of which is the Constitution of the Federal Republic of Nigeria 1999 that emphasizes respect for fundamental human rights of citizens in its chapter two.

Every effort therefore by the Nigerian Police to keep Nigeria safe for all, foreigners inclusive should be commended and supported. The petition is not only frivolous, diversionary, and false but calculated to encourage criminality especially violent crimes. It should therefore be discountenanced.

### **Pakistan: Execution of Najeebullah Khan**

**Violation alleged:** Non-respect of international standards of application 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 receiving the information related to the execution of Najeebullah Khan but regrets that the Government of Pakistan has not responded to the alleged violation of his right to due process.

**Urgent appeal sent on 16 June 2004**, reproduced from E/CN.4/2005/7, par. 548:

548. Urgent appeal, 16 June 2004. Mr. Najeebullah Khan was detained at the central jail of Mianwali and was due to be executed on 23 June 2004. According to the information received, Mr. Khan was tried by the Sargodha Anti-Terrorist Court and was convicted on 17 March 1999 for killing Fida Mohammed on 31 January 1998. The SR brought to the attention of the Government that the Safeguards guaranteeing protection of the rights of those facing the death penalty have not been respected. Besides, it has been brought to my attention that the postponement of the execution would allow Mr. Khan's family to raise the demanded amount of Diyat to be paid to the aggrieved family.

### **Response of the Government of Pakistan dated 15 September 2005**

The information received from the concerned authorities on the case is given below: Condemned prisoner Najeebullah was executed on 23<sup>rd</sup> June 2004 at Central Jail Mianwali. It may be stated that his execution was stayed thrice by the President to provide time to parties to effect a compromise.

### **Pakistan: Deaths in Custody of Sifullah Kharal and Qari Mohammad Noor**

**Violation alleged:** Death in custody

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

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur appreciates the information Pakistan has provided concerning the death of Sifullah Kharal and would appreciate being informed when those responsible are arrested. The SR appreciates the preliminary information Pakistan has provided concerning Qari Mohammad Noor and would appreciate updated information on the investigation into his death.

**Allegation letter sent on 9 November 2004** with the Special Rapporteur on torture, reproduced from E/CN.4/2005/7/Add.1, parag. 575–576

575. Allegation sent with the Special Rapporteur on torture, 9 November 2004. Saifullah Kharal, aged 26, and Riasat Ali, Mangtanwala, Lahore. On 20 June 2004, they were arrested at a vegetable market by Mangtanwala (Nankana Sahib) police on suspicion of stealing a car, and detained at the station. Both men were severely beaten in custody by the Station House Officer, Assistant Sub-inspector, a constable, and a station clerk (whose names are known to the Special Rapporteur). Saifullah Kharal subsequently died in custody after being detained for 12 days. Two days before his death, his sister came to the station with his meal, and found the police beating him, threatening him to confess, including threatening to beat his sister if he did not



confess. He died at 1am on 1 July. The body was sent for a post-mortem examination. A case was registered against the officials and reported to the Human Rights Commission of Pakistan.

576. Qari Mohammad Noor, a cleric. In August 2004, he was detained for alleged links to the al-Qaeda terrorist network in a raid on an Islamic school in Faisalabad. According to the police, he died in custody on 18 August 2004 from a heart attack. However, his post mortem reports have not been made public and it is alleged that he was beaten in detention and had nearly 180 marks on his body.

### **Response of the Government of Pakistan dated 15 February 2005**

Concerning the death of Mr. Salaifullah Kharal and Riasai Ali: Investigations revealed that Mr. Saifullah and Riasat resident of Village Chockianwala, Police Station Mangtanwala, district Sheikhpura were arrested allegedly having involved in theft as nominated in FIR No 211/04 dated 1 July 2004. Mr. Saifullah reportedly succumbed to injuries on the day of his arrest. A case under Section 302/31 was registered against the concerned Police Officials, who absconded and went underground. Apart from registration against these officials, the DPO Sheikhpura conducted departmental inquiry in their absence. On establishment of crime against them, they were dismissed. The culprit Police officials are still at large and every effort is made to arrest them for due process of law.

Concerning the death of Qari Muhammad Noor: Dead body of Qari Muhammad Noor was found by the police on 17 August 2004, from Chiniot Bazaar, circle road, Faisalabad. The police authorities registered a FIR against unknown persons. Subsequently, father in law of Qari Noor Muhammad submitted an application for lodging a FIR against Mr. Irfan Gill, Ch. Basher Ahmed and two other unknown persons. The case is under investigation by the police authorities. In view of the above response, the cases may be considered as settled.

### **Pakistan: Execution of Mohammed Yar**

**Violation alleged:** Non-respect of international standards of application of capital punishment

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

**Character of reply:** Largely satisfactory response

### **Observations**

The Special Rapporteur appreciates the information that the Government of Pakistan has provided regarding the execution of Mohammed Yar. In light of these facts, it is essential that the Government take all measures necessary to prevent future executions from taking place prior to a final judgment.

**Allegation letter sent on 21 July 2004**, reproduced from E/CN.4/2005/7/Add. 1, at par. 571

571. Allegation, 21 July 2004. Mr. Mohammed Yar, of Chak 244 R.B, Kakarwala, Faisalabad, who was sentenced to death by a trial court for the murder of Mr. Allah Ditta. The Lahore High Court upheld the verdict of the trial court while the Supreme Court also disposed of Mr. Mohammed Yar's appeal. He filed another appeal in the Supreme Court on 12 May 2004 for a further consideration on the verdict. Nevertheless, reports indicate that Mr. Mohammed Yar was hanged to death on 18 May 2004 at the Faisalabad prison. It is reported that both the prison authorities and the police were notified that an appeal was filed at the Supreme Court.

**Response of the Government of Pakistan dated 22 August 2005**

Muhammad Yar: "The counsel of accused/deceased led a criminal review petition No.21/2004 in the Supreme Court of Pakistan on 12.05.2004. The apex court admitted the appeal and issued notices to the Punjab Home Department and Superintendent, District Jail Faisalabad on 17.05.2004, but the lawful authority did not issue orders to stop his execution."

**Pakistan: Mohammed Ramazan, Dost Ali, and Haider Ali**

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

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

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of Pakistan regarding Mohammed Ramazan, Dost Ali, and Haider Ali.

**Allegation letter sent on 21 July 2004**, reproduced from E/CN.4/2005/7/Add. 1, at par. 572

572. Mr. Mohammed Ramazan, a laborer, along with his two friends, Mr. Dost Ali and Mr. Haider Ali who went to Bahiwal on 11 May 2004. On their way back, near Chak Sandhay Khan, they had a little quarrel with Mohammed Ashraf, an influential landlord. Mr. Ashraf accused Mr. Ramazan and his companions of a false case of dacoity and got them arrested by the Pakpattan police. Police officials opened fire at the men, killing Mr. Mohammed Ramazan and Mr. Dost Ali and injuring Mr. Haider Ali. According to the information received, the police sent Mr. Ali to a secret location so that his whereabouts remain unknown. The police handed over the dead bodies to their relatives after having conducted a postmortem concluding that the decesses were killed in a shoot-out. The relatives of the deceased appealed to the Governor, the Chief Minister, and the Inspector General of Police in Punjab to conduct an inquiry into the killings.

**Response of the Government of Pakistan dated 22 August 2005**

Muhammad Ramazan: “ On 11.05.2004, these individuals snatched a motorcycle from one Muhammad Ashraf resident of Sandhey Khan, District Pakpattan, Police Station Malka Hans at gunpoint. They were confronted by the local farmers working into a nearby fields. The culprits left the bike on a pavement and entered into a nearby maize crop farm. A Police party, encircled the field and in exchange of firing Muhammad Ramazan and Dost Muhammad were killed, while Haider Ali managed to escape. Haider Ali is still at large. Dost Muhammad son of Wali Muhammad, caste Bhatti resident of Marley Dakhali Chak Alwardi, Tehsil and District Pakpattan was a notorious criminal and a number of FIRs were registered against him on charges of theft and possessing of unlicensed weapons.

### **Pakistan: Killing of Yusuf by Police**

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

**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 Pakistan concerning the death of Yusuf on 8 June 2004.

**Allegation letter sent on 21 July 2004**, reproduced from E/CN.4/2005/7/Add. 1, at par. 573.

Yusuf, who was picked up on 8 June 2004 by the Lahore Anti-Car Lifting staff for which he had worked as an informer a few years ago and was taken to the Gulberg police station in Lahore. It is reported that Constable Shafi Lashari demanded Rs. 10,000 for Mr. Yusuf’s release. As Mr. Yusuf’s family could not pay the whole amount requested, the police took him away from the police station and killed him in a faked encounter.

### **Response of the Government of Pakistan dated 22 August 2005**

Yusuf: “One Yusuf provided information to Shafi Lashari (Sub Inspector) Anti-Car lifting staff, Gulberg Lahore stating that Noman Azhar, Suleman Azhar, both residents of Chak No.325/GB T.T. Singh were involved in stealing vehicles. The Police staff proceeded to T.T. Singh and also took Yusuf from Sahiwal with them (02-06-2004). On reaching near residence of the suspects, the police dispatched a party to confirm presence of the suspects at their residence. The suspects opened fire at this party. Resultantly Yusuf (informer) sustained bullet injuries and later succumbed to his injuries in a hospital. A case vide FIR No.153/2004,u/s 302, 148, 149 under Pakistan Penal Code was registered at Police Station City T.T. Singh against Noman Azhar Suleman Azhar and Asharf Masih.

### **Pakistan: Impunity for Honour Killings**

**Violation alleged:** Impunity for honour killings

**Subject(s) of appeal:** 18 females, including 3 minors; 3 males (persons killed in the name of honour)

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

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of Pakistan concerning the deaths of Koojan, Wazeeran, Noor Zadi and Abdul Qadir. The SR would appreciate receiving further information on these incidents and on the other incidents mentioned in his communication.

**Allegation letter sent on 8 December 2004** with the Special Rapporteur on Violence against Women

Shahida Bibi, of Okara. On 26 July 2004, she was killed with the blow of an axe by her husband Khan who suspected her of adultery. The incident was not reported to the authorities.

Hashmat Bibi (aged 55). On 26 July 2004, she was axed to death by her son Elahi Bukhsh (aged 24) in Dherki. He suspected her of illicit relations with a man of their village. Elahi Bukhsh fled with the murder weapon. The Dherki police is said not to have not yet registered a First Information Report.

Shazia and Razia, two sisters from Sahiwal, in Chack 107/7-R. They were shot dead on 20 July 2004 by their cousin Mazhar, and his accomplices Bashir and Bilal, over a marriage dispute. According to information received, Shazia had refused to marry her cousin. The incident was not reported to the authorities.

Robina Shahid (aged 32). On 2 July 2004, she was shot dead by her brother Anwar Ali of Raiwind. The police of Lahore stated that the accused had been suspicious about his sister's character for several months. The body was removed to the city mortuary for autopsy. A case has been reportedly registered, but no arrest was reported.

Sajida (aged 16). She was allegedly killed with an axe by her brother Yasin at Chak 3/WB in Vehari on 15 July 2004. She was pregnant, as a result of her relationship with one Salim from her village. According to the information received, the police arrested the assailant, but no further action was reported against him.

Ansa, aged 16. On 8 July 2004, she was shot dead by her father, Mohammed Aslam in Ferozewala. He suspected her of having illicit relations with someone. He allegedly fled after the incident. No report has been made to the authorities.

Imtiaz Mai from Warind tribe. On 6 July 2004, she was killed by members of the Warind tribe in Rahim Yar Khan. They supposedly buried her body without any post-mortem examination and alleged that she committed suicide. According to information received, members of the Warind tribe did not accept the marriage of Imtiaz Mai with Mir Hassan. They registered a case against the couple with the Rahim Yar Khan police. Despite the fact that they were in possession of a legal marriage

certificate, the police arrested them and induced Imtiaz Mai to record a statement against her husband. As she refused, they handed her over to her relatives who killed her. The incident was allegedly reported to the Rahim Yar police, but no action was taken against the assailants. It is further reported that Mir Hassan was sent to jail on charge of adultery.

Noorzadi an 18-year old girl and Qadir (aged 27). On 3 July 2004, at around 4 am, both were killed with an axe by Noorzadi's cousin, Nazar Mohammed in Ali Mohammed Goth, Karachi. He later came to the Ibrahim Hyderi Police station and confessed his crime. The victims' bodies were transferred to the police station where they were unattended for at least 8 hours. At around 4:30 pm, the bodies were moved to Jinnah Post-Graduate Medical Center. The autopsy could not be carried out on Noorzadi's body as the woman medico-legal officer was not present at the hospital. It is reported that no further action was taken by the police later on.

Nadeema Bibi a woman from Lahore. According to information received, her husband Ishaq killed her on 3 July 2004. He justified her killing by explaining that she had lost character. Police registered a case against on the complaint of the deceased's father. However, no action was reportedly taken by the Lahore police to bring Nadeema Bibi's husband to justice.

Sharifan alias Gudo. According to information received, Sharifan, her husband Sagheer Shahid and her sister Hanifan Bibi were killed by Hanifan Bibi's brother-in-law on 3 July 2004. Sagheer Shahid was an employee at the Police Department. He had divorced his first wife and was living with his second wife, Sharifan alias Gudo. It is alleged that Sagheer Shahid later developed illicit relations with Sharifan's sister, Hanifan Bibi, who was also married. Hanifan Bibi's brother-in-law came to know of her relations with Sagheer Shahid and therefore, killed Sagheer Shahid, Hanifan Bibi, and Sharifan. Police registered a case and were investigating at the time the information was received.

Zobia Begum of Rawalpindi. On 14 May 2004, she was killed by her father Manzoor Hussain and maternal uncle, Abdul Ghaffar. According to information received, she had married with Faisal Bukhari and fled to Mianwali with him. Manzoor Hussain filed a case of murder against his brother-in-law and the cause of murder was stated to be 'honor killing'. Faisal Bukhari, the victim's husband, filed a case against Manzoor Hussain and Abdul Ghaffar to Mochh Station House Officer of Police, who allegedly refused to register the complaint. Faisal Bukhari filed a writ to the High Court.

Shazia Khaskheli. According to information received, she was killed together with her husband Mohammed Hassan Solangi. Shazia Khaskheli and Mohammed Hassan Solangi married of their free will in October 2003. Since that date, the couple had contacted police to seek protection, but on the contrary they were handed over to relatives of the girl who murdered them on 2 April 2004. On the same month, the Supreme Court held that police had facilitated the murder of the couple who had approached them for protection and directed the Inspector General of Police to personally look into the matter and submit a report within a month.

Fatima Bibi, a woman from Vehari. According to information received, on 1 April 2004 she was strangled by her husband Allah Baksh who was accompanied by her

brother Allah Ditta and Mushtaq Baloch, Islam, Yameen, Karim Baksh, Ahmed and Sultan. Fatima Bibi had reportedly left her husband and went to live in a shelter home for women in Darulaman. An elder from Vehari called Fatima Bibi, her family, the panchayat and her husband to his house to settle the matter. Because she affirmed that she did not wish to live with her husband anymore, she was strangled by the men present. At the time the information was received, the police had not registered any case against the perpetrators.

Ms. Wazeeran, a 50-year-old woman from Mahar caste and elected as counselor in Taluka (sub division) Council Rohrri. According to information received, Ms Wazeeran was killed on 7 March 2004 at around 5:30 in Sanjrani street, Berri Chouk, Rohrri town by three nephews of her husband whose names are known to the Special Rapporteur. Although the victim's brother lodged a complaint to the Rohrri police station, no action had reportedly been taken by the police to bring the perpetrators to justice at the time the information was received. It is further reported that the perpetrators spread around the information that Ms. Wazeeran had committed adultery to make sure they would be set free in case of legal proceedings against them. Moreover, the police was said to offer no protection to the victim's family who was under permanent threat from the perpetrators.

Koojan, a 13-year-old girl from Kato Bangwar village, Kandh Kot town, Jaqcobabd district, Sindh province. According to information received, she was killed on 4 March 2004 at around 20:30 on the pretext of honour killing by her husband and four members of his family whose names are known to the Special Rapporteur. Koojan's father, Todo Bahilkani as well as his two cousins, Bilawal Bahilkani and Rasool Bux had come to visit Koojan. They were discussing when her husband accompanied by his father, his uncle, his brother and one of his relative, all armed with guns came to the house, dragged Koojan to the ground and shot her to death after having accused her of having sexual relationship with a man. They then took her body in a bull-cart and left the place to conceal it. Koojan's family members could not do anything to stop the killing. Koojan's father registered a case at the Karampur police station on 6 March 2004. Nevertheless, none of the perpetrators had reportedly been arrested at the time the information was received despite the fact that the killers were identified by three persons.

Robina, a woman from Farooqabad. According to information received, Robina was reportedly burnt by her husband Mohammed Ramazan and in-laws on 20 March 2004. It is also reported that Robina was cruelly treated since she got married 5 years ago because she had brought less dowry than they had expected. The mistreatment increased when she remained childless. Robina was first stabbed in the neck. She was later doused with kerosene oil and set on fire. Her in-laws affirmed that she was burnt by accident but the neighbors witnessed what actually happened. Robina's father-in-law only allowed her family to take her to hospital when they vowed that they would not file a case against her in-laws if she died. A month later, Robina passed as a result of her injuries. At the time the information was received, her in-laws and husband were said to remain free.

**Response of the Government of Pakistan dated 4 February 2005**

Concerning the death of Ms Koojan: A case of killing of Ms Koojan has been registered at Police Station Karampur on 6 March 2004 against accused Malhar, Ahmedan, Todo, Khalid, Rehmatullah all Banhgwar by caste vibe FIR No 15/2004 under section 302, 201 of the Pakistan Penal Code. The accused reportedly took away the dead body of the victim and concealed at unknown place and fled away towards Balotchistan side. On the directions of RPO Sukkur a Joint Special Team consisting of Senior and professionally competent officers from Watch and Wards and Investigation Branch was constituted by DPO Jacobabad for the arrest of involved accused and recovery of dead body of the girl. Efforts in this regard are continuing.

Concerning the death of Ms. Wazeeran: the matter has been enquired and as per report it has relevancy with FIR No 21/2004 u/s 302,337-Hii, 34 of the PPC of Police Station Rohri registered on the complaint of Hakim Ali Mahar. The facts of the case are that on 7.3.2004 at 5.30 hours accused Zaheer Ahmed Mahar, mohammad Saleh Mahar and Qaimuddin Mahar duly armed entered the house of Ms. Waziran Mahar and open fire on her. As a result, she died on the spot. The accused escaped from the scene and went underground. The motive of the murder is dispute between the parties on a pot located in village Rustam, district Shikarpur. Joint efforts are on the way by the DPO and SP Investigation for the arrest of the accused. Further information shall be conveyed in due course.

#### **Response of the Government of Pakistan dated 4 April 2005**

It is submitted that the subject matter pertains to case FIR No 65/04 U/S 302 PPC of Police Station Ibrahim Hyderi in which complainant Didar Hussain Resident of Katchi Abadi Ali Mohammad Brohi Goth Dehj Rehri Bin Qasim Town Karachi reported that accused Nazar Mohammad son of Fazal Mohammad murdered his sister Noor Zadi and one Abdul Qadir on the charge of Karo-Kari. The case was registered and Investigation was taken up by Incharge Investigation Wing Police Station Ibrahim Hyderi. During the course of Investigation, the Investigation Officer arrested accused persons 1) Nazar Mohammad son of Fazal Mohammad (husband of deceased Ms. Noor Zadi) 2) Haji Abdul Rehman son of Mir Hussain, the Investigation Officer added Section 34 PPC in the case and challaned the accused persons vide charge sheet No. 61/04 U/S 302/34 PPC dated 27/10/2004 in the Court of Law. Whereas accused 1) Zulifiqar son of Mir Hussain 2) Haji Fazal son of Mir Hussain are absconders in this case from the date of occurrence. The authorities are pursuing their arrest. In view of the above response, the case may be considered as settled.

#### **Pakistan: Deaths in Custody of Eight Persons**

**Violation alleged:** Deaths in custody

**Subject(s) of appeal:** 7 males; 1 female

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

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

The Special Rapporteur appreciates the preliminary information provided by the Government of Pakistan regarding the deaths of Yasir Lund, Mohammed Ashraf, Ameerzada, and Salim Khan. The SR would appreciate updated information on the

cases brought against those believed responsible. The SR would also appreciate information regarding the deaths of Perveen Bibi, Isfaque, Mohammed Tariq, and Bashir.

**Allegation letter sent on 15 March 2005** with the Special Rapporteur on Torture

Mr. Yasir Lund, Naushahro Feroze. At the end of January 2004, he died due to torture while under the custody of Station House Officer Mehrabpur Zaman Rind, Assistant Sub-inspector Faiz Mohammed, Head Constables Mohammed Mossa and Majeed of Mehrabpur Police Station. Following the incident, protests were held by the community demanding the arrest of the alleged perpetrators. No arrests have been made to date.

Mr. Mohammed Ashraf, a 30 year-old photographer, Karachi. On 13 July 2004 at 3am, he was arrested by members of the Crime Investigation Agency (CIA) Saddar team and taken to the CIA Centre no 1, on suspicion of a number of offences. Five other men were arrested on the same charges. On 14 July 2004, he died in police custody. The victim's family, who had not been notified of his death, was asked for a payment to secure his release by Inspector Farooq Sati and Sub-Inspector Taj Wassan. Mr. Ashraf's body was taken to Jinnah Hospital for a post-mortem examination, which concluded that he had subjected to torture. The authorities claimed that Mr. Ashraf died of a heart attack. A First Incident Report was registered against Head Constable Manzoor and Constable Israr (FIR No. 120/04) and they were both arrested for negligence before being released on bail. No other action has been taken against them. The victim's family has been the subject of threats and intimidation.

Ms. Perveen Bibi. On 12 August 2004, she died in custody of Hafizabad Police, while being held on suspicion of abducting two young boys. According to the authorities, Ms. Perveen Bibi complained of a stomach ache as she was taken into custody, and died as a result of it. However, no post-mortem examination was carried out.

Mr. Ameerzada, aged 40, and Mr. Salim Khan, aged 30, both from Shereen Jinnah Colony, Karachi. On 18 August 2004, they were arrested in front of their house by officers from Gizri Police Station, under the supervision of Sub-inspector Manzoor, on suspicion of a number of offences. They were subjected to torture in order to extract confessions. On 23 August in the evening, they were doused with petrol and set alight by the Sub-inspector. The men were later taken to the Civil Hospital for treatment. Mr Ameerzada died on 25 August from serious burns. Mr Salim Khan received burns to 75 percent of his body. According to the authorities, the burns resulted from suicide attempts. Thirteen police officers implicated in this incident were suspended, but not charged.

Isfaque (alias Kaloo), aged 14, Sheikhpura. On 27 September 2004, he was arrested by members of the Sheikhpura police on suspicion of theft. He died due to torture in police custody. The police claimed that he was already beaten before the police intervened and took him into custody.

Mr. Mohammed Tariq, Kamoki. On 4 October 2004, he died in custody of the Saddar Kamoki police due to torture. A post-mortem was carried out by a board composed of senior doctors of the Divisional Headquarter Hospital, Gujranwala. The results have not yet been revealed even though the victim's body has been returned to the family.



Mr. Bashir, aged 25, Sherakot. On 11 October 2004, he was arrested by members of Sherakot Police Station on suspicion of theft. Mr. Bashir was taken to a cell and subjected to torture by two sub-inspectors, Abdul Ghafoor and Mansoor Hamad and an assistant sub-inspector, Munir Ahmad. He died on 16 October 2004 due to torture. However, the police claimed that he was already injured prior to the arrest.

#### **Response of the Government of Pakistan dated 6 June 2005**

Yasir Lund: “was arrested as a suspect in a case by the police officials of Police Station Mehrabpur, District Nausheroferoze, Sindh. He died in the police lock up. The Police department conducted a preliminary enquiry and the mother of deceased Yasir Lund named Ghulam Zohra was advised to register FIR against the police officials who were on duty at that time.

Mother of Yasir Lund named Ghulam Zhora, lodged complaint vide FIR No. 9/04 with Police Station Mehrabpur, District Nausheroferoze against the following five police officials:

- i. Sub-Inspector Zaman Rind
- ii. Assistant Sub-Inspectorm Faiz Muhhamad
- iii. Police Constable Abdul Majeed
- iv. Police Constable Muhammad Moosa
- v. Police Constable Muhammad Ashraf
- vi.

Autopsy was carried out. After investigations, the case was registered in the court of District and Session Judge, Nausheroferoze. The Court passed the following orders:

- a. Sub-Inspector Zaman Rind was declared absconder
- b. Assistant Sub-Inspectorm Faiz Muhhamad was sent to jail custody. He is now in Central Prison Sukkur-I
- c. Police Constable Abdul Majeed was sent to jail custody. He is also in Central Prison Sukkur-I
- d. Police Constable Muhammad Moosa was granted bail
- e. Police Constable Muhammad Ashraf was also granted bail

The case is presently subjudice.

It is evident that Government has taken effective legal and administrative measures to bring the perpetrators to justice in accordance with the laws of the country.

Muhammad Ashraf: was taken into custody as a suspect by the CIA, Saddar, Karachi, on 13.7.2004. He died in police custody (CIA Saddar) on 14.7.2004.

Autopsy of the dead body was carried out at Jinnah Post Graduate Medical Centre, Karachi, where the doctors declared the cause of death as “Cardio-Respiratory Failure due to Neurogenic Shock”. The investigating officer sought Medico Legal opinion on neurogenic shock. The Incharge of Medico Legal Section of Jinnah Postgraduate Medical Centre, Karachi, stated in his medico-legal opinion that “Cardio Respiratory Failure due to neurogenic shock may result from fright”.

A complaint was lodged vide FIR No. 120/04 with Police Station Saddar, Karachi. Head Constable Manzoor and Constable Israr were arrested and case was registered in the court of Additional District Judge, District South Karachi.

The Court having examined the autopsy report granted bail to Head Constable Manzoor and Police Constable Israr. The case is presently sub-judice in the court of law.

It is evident that Government has taken effective legal and administrative measures to bring the perpetrators to justice in accordance with the laws of the country.

Ameerzada and Salim Khan: The summary of the allegations contained in the Special Rapporteur's letter were sent to authorities in Pakistan for investigation. The facts provided by them are as under:

Ameerzada and Salim Khan belonging to Shireen Jinnah Colony, Karachi were arrested under the supervision of Sub-Inspector Manzoor on suspicion of a number of offences. They were kept inside the lock up of Police Station Gizri, District South, Karachi, where they were doused with petrol and set alight, which resulted into the death of Ameerzada while Salim Khan sustained 75% injuries due to burns.

An FIR was registered at Police Station Gizri against the following police officials U/s 302 PPC.

The autopsies of dead bodies were carried out and it was confirmed that the cause of death was burning. A complaint was lodged with Police Station Gizri vide FIR 17/04 U/s 302 against following police officials:

- i) Inspector Ghaffar Jumani—SHO, Police Station Gizri
- ii) Sub Inspector Nasrullah
- iii) Inspector Arif Usman
- iv) Sub Inspector Manzoor
- v)

The State prosecuted four police officials in the court of Judicial Magistrate, South Karachi, where it is presently subjudice.

In addition, the Government also conducted departmental enquiry of the incident. As a result of the enquiry report, following eleven police officials were dismissed from service under a departmental action:

1. Inspector Ghaffer Jumani—SHO, Police Station Gizri
2. Inspector Arif Usman
3. Sub-Inspector Nasrullah
4. Sub-Inspector Manzoor
5. Assistant Sub Inspector Faiz Muhammad
6. Assistant Sub Inspector Qurban Ali
7. Assistant Sub Inspector Hanif
8. Police Constable Badruddin
9. Police Constable Masood Shad
10. Police Constable Waheed
11. Police Constable Abid

It is evident that Government has taken effective legal and administrative measures to bring the perpetrators to justice in accordance with the laws of the country.

### **Pakistan: Death Sentences of Two Juvenile Offenders**

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

**Subject(s) of appeal:** 2 males (1 minor; 2 juvenile offenders; 2 refugees)

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur appreciates receiving the information from Pakistan that the cases of Ziauddin and Abdul Qadir have been remanded due to the death sentences that had been imposed. The SR would appreciate updated information on their sentences.

#### **Urgent appeal sent 9 June 2005**

Urgent appeal sent on 9 June 2005 concerning two Afghan refugees known as Ziauddin, aged around 15 and Abdul Qadir, aged around 18, currently in Much Prison, east of the provincial capital Quetta.

According to the information received, both were sentenced to death in 2003 after having been found guilty of murder by an Anti-Terrorism Court although court documents clearly record them as being minors at the time of their arrest, which means that they should have been tried by a Juvenile Court. Reports indicate that Ziauddin, who suffers from polio, was 13 years old at the time of his arrest whereas Abdul Qadir was 16 years old. Their death sentence is currently under appeal.

The two young males are being detained in Much Prison, an adult prison, where they share a cell with 6 men under death sentences. Much Prison is heavily overcrowded and persons sentenced to death are allegedly kept in particularly appalling conditions in extremely small cells without separate toilets.

In this regard, I wish to note that the Juvenile Justice System Ordinance of 2000 explicitly prohibits the imposition of capital punishment on anyone who was under the age of 18 at the time of the commission of the crime. Moreover, the right to life of persons below eighteen years of age and the obligation of States to guarantee the enjoyment of this right to the maximum extent possible are both specifically expressed in article 6 of the Convention on the Rights of the Child. More explicitly, article 37(a) provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age.

In this regard, I would respectfully urge the Government of your Excellency to take all measures necessary to comply with international law. These measures were, in our

view, accurately reflected in the recommendations issued by the United Nations Committee on the Rights of the Child, which called on the Government of Pakistan, in October 2003, to, inter alia, “(b) Raise the minimum age of criminal responsibility to an internationally acceptable level and ensure that children below the age of 18 years are accorded the protection of juvenile justice provisions and are not treated as adults; (e) Set up a system of juvenile courts; (f) Ensure that children in detention are always separated from adults; (h) Take immediate steps to ensure that the prohibition of the death penalty, as stipulated in the Juvenile Justice System Ordinance, is guaranteed for all children below the age of 18 years, in light of articles 37 (a) and 6 of the Convention, and that death sentences imposed before the promulgation of this Ordinance are not carried out.” (See CRC/C/15/Add.217, at par. 81).

In this connection, I would also be grateful if your Excellency’s Government could inform me of the steps it has taken to ensure that, in future, the death penalty cannot be imposed either upon the two above-mentioned young men or on any other child accused of committing a crime when under the age of 18. This would appear to be a matter of pressing importance in view of the fact that both domestic and international law prohibit the imposition of such a punishment, but that this did not apparently prevent the death sentence being imposed in the first instance.

#### **Response of the Government of Pakistan dated 17 August 2005**

“A report was sought on the subject from Inspector General of Prisons, Balochistan, Quetta. The Report states that the Honourable High Court of Balochistan vide its Judgment dated 23.05.2005 set aside the order/judgment of the Honourable Court of ATC-I Quetta dated 12.06.2003, regarding death sentence of both juvenile prisoners and remanded the case to the “Juvenile Justice Court” for rewriting the Judgment.

Besides the Superintendent, Central Jail, Mach has informed that both the Juvenile prisoners are being kept in a separate room with other five youthful offenders of the same age and they are not confined with adult prisoners.

Regarding allegations of torture or abuse, the Superintendent Jail Mach personally interviewed both the juvenile prisoners. They have informed the Superintendent Jail that they had no complaint of torture or abuse by their fellow juvenile prisoners or the officials of the Jail. They are in safe hands and are being treated very well.”

#### **Pakistan: Death Sentence of Juvenile Offender Mutabar Khan**

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

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

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

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

The Special Rapporteur appreciates the information that the Government of Pakistan has provided concerning Mutabar Khan. However, in light of the credible allegations that Mutabar Khan was younger than 18 years of age at time of the crime’s

commission, he would appreciate further information concerning how Mutabar Khan's precise age was determined.

#### **Urgent appeal sent on 9 June 2005**

Mutabar Khan, aged about 25, who was reportedly sentenced to death for murder in 1998 and is now being held in a death cell in the Haripur prison in the North West Frontier Province of Pakistan. According to the information received, Mr. Khan was arrested in 1996 while he was reportedly 16 years old. Although his age was not recorded by the authorities, he was then allegedly detained in the juvenile section of the Peshawar Central Jail, which would support his claim that he was a juvenile at the time of his arrest.

According to the information received, Mr. Khan has been facing great difficulties in attempting to prove that he was in fact a juvenile at the time of the commission of the crime. Indeed, reports indicate that successive appeals against his death sentence on these grounds have all failed. Both his appeals in the Peshawar High Court and the Supreme Court were dismissed in 2000 and 2001 respectively. In 2003, two petitions filed by his mother, one with the Peshawar High Court to overturn the sentence because of his age as well as another one with the Supreme Court, asking for his age to be determined through medical tests on his bones were also dismissed. I have been informed that, as a last resort, Mr. Khan's lawyer filed a petition for mercy with the President asking to commute his death sentence. President Musharraf has not yet reached a decision on the case.

In this regard, I note that the Juvenile Justice System Ordinance of 2000 (JJSO) explicitly prohibits the imposition of capital punishment on anyone who was under the age of 18 at the time of the commission of the crime. Besides, I have been informed that, in December 2001, by the Presidential Commutation Order of 2001, President Pervez Musharraf ordered the commutation of death sentences of all those juveniles who had been sentenced to death before July 2000. It is my understanding that, because of the dispute over his age, this commutation did not apply to Mr. Khan.

In this connection, concern has been expressed over reports that many juveniles under sentence of death have actually faced a lot of problems and long delays when seeking to commute their sentence under the terms of this above-mentioned Presidential Commutation Order. Indeed, it is reported that, in many cases, the authorities simply have no record of the age of the accused as prior to the implementation of the JJSO in 2000, age was not taken into account when deciding leniency. On the other hand, it is reported that it is also difficult for the accused themselves, their relatives or their legal representatives to prove their age, as documents such as school leaving certificates and birth certificates have often been refused as evidence due to the simplicity with which they can be forged.

Finally, concern is heightened by reports according to which, despite the introduction of the JJSO, many judges have failed to address the issue of age of the accused before them and generally accept the age recorded by police, even if the accused person appears to be younger.

If these allegations are correct, there would be grounds for serious concerns. Therefore, while I do not wish to prejudge the accuracy of these allegations, I would

respectfully urge your Excellency's Government to take all necessary measures in order to fully implement the Presidential Commutation Order of December 2001 without delay, in accordance with Pakistan's commitments under both the Juvenile Justice System Ordinance and the United Nations Convention of the Rights of the Child. I take this opportunity to remind your Excellency's Government of the fact that the right to life of persons below eighteen years of age and the obligation of States to guarantee the enjoyment of this right to the maximum extent possible are both specifically expressed in article 6 of the Convention on the Rights of the Child, to which Pakistan is a State party. More explicitly, article 37(a) provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age.

I would also like to recall that, in its concluding observations on the report of Pakistan in October 2003, while welcoming the promulgation of the Juvenile Justice System Ordinance of 2000, the United Nations Committee on the Rights of the Child indicated that it was "concerned at its poor implementation and that many of the authorities in charge of its implementation, particularly within provincial governments and tribal areas, are unaware of its existence. Further, the Committee is deeply concerned about reports of juvenile offenders being sentenced to death and executed, which have occurred even after the promulgation of the Ordinance." The Committee therefore recommended, inter alia, that the State party "(h) Take immediate steps to ensure that the prohibition of the death penalty, as stipulated in the Juvenile Justice System Ordinance, is guaranteed for all children below the age of 18 years, in light of articles 37 (a) and 6 of the Convention, and that death sentences imposed before the promulgation of this Ordinance are not carried out."

In view of what appears to be remaining uncertainty over Mr. Khan's age at the time of the commission of the crime, I would strongly suggest that his death sentence be commuted. I would also request your Government to show clemency in similar cases where juveniles have been unable to adequately prove that they were indeed juveniles at the time of the alleged offence either because of their parents' failures to register their births or because of delays in the criminal justice system to establish their age.

#### **Response of the Government of Pakistan dated 16 September 2005**

Muthabar Khan son of Khan Pur, of Swabi, fell in love with a local girl Mashooqa daughter of Khanzada and wanted to marry her. On refusal, he brutally axed to death Mashooqa, her father, her two sisters, her minor brother and injured her mother who later succumbed to her injuries. One Taza Gul was co-accused in the case who is still at large.

In this connection, the local police had registered a case and arrested the accused Mutabar Khan. The accused was convicted and awarded five time death sentence besides 53 years Rigorous Imprisonment and Rs. 65,000 Fine, by Additional Session Judge Swabi. Mutabar Khan remained in Swabi, Haripur, Bannu and Peshawar Prisons. At present, he is in the Death Cell of Central Jail Peshawar since 14 March 2004. His appeals have been rejected by the Superior Courts. His review petition was also dismissed by Supreme Court of Pakistan on the ground that the case cannot be reopened for trial under the "Juvenile Justice System Ordinance 2000" and the orders issued by the President of Pakistan on 27<sup>th</sup> December 2001 (under which the death

sentence awarded to any minor of under 18 years accused can be remitted /converted to life imprisonment), as his age at the time of the commission of the crime was 18 years, 6 months and 12 days.

In view of the foregoing, the accused is not entitled to trial under the “Juvenile Justice System Ordinance 2000” because his age at the time of the commission of offence was above 18 years and his present age is 27/28 years. It may be mentioned that his age recorded as 23 years and 6 months, by Medical Officer on 1 April 2001, when the culprit was transferred from Haripur Jail to Central Jail, Peshawar. His sentence is based on the verdicts given by the Superior Courts on his gruesome crime.

### **Pakistan: Targeted Killing of Haitham al-Yemeni**

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

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

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

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

The Special Rapporteur appreciates the information provided by the Government of Pakistan. However, the SR remains concerned about the lack of a thorough investigation into the allegations. A finding that a foreigner was killed when a car exploded is consistent with a targeted killing directed at Haitham al-Yemeni, and the SR regrets that a more thorough investigation was not conducted.

### **Allegation letter sent on 1 September 2005**

Haitham al-Yemeni, an alleged al-Qaeda senior figure, was killed on the Pakistani side of the Pakistan-Afghanistan border on or around the 10 May 2005 by a missile fired by an un-manned aerial drone operated by the US Central Intelligence Agency (CIA). Mr. al-Yemeni had reportedly been under surveillance for more than a week by US intelligence and military personnel. Reports indicate that the Predator drone, operated from a secret base hundreds of kilometers from the target, located and fired on him in Toorikhel, Pakistan, an area where forces of your Excellency’s Government had allegedly been looking for al-Qaeda leader Osama Bin Laden.

According to the information received, although Mr. al-Yemeni was not listed by that name neither in your Government’s “most wanted”, nor in that of the United States of America, the active surveillance of his activities would suggest that he was playing an important role inside the al-Qaeda organization. It has been suggested that those undertaking the surveillance were hoping that he would lead them to Osama bin Laden. However, after Abu Faraj al-Libbi, another suspected al-Qaeda leader, was arrested by your Excellency’s Government a month before, it is reported that a decision was taken to kill Mr. al-Yemeni for fear that he would go into hiding and thus be lost track of. My understanding is that the CIA reportedly refused to comment on the situation. Similarly, Sheik Rashid Ahmed, your Government's Information Minister reportedly denied that any such incident had ever happened near the Pakistan-Afghanistan border.

I wish to stress that, while Governments have a responsibility to protect their own citizens and those of other States against the excesses of non-State actors or other entities, efforts to eradicate terrorism must be undertaken within a framework clearly governed by international human rights law as well as by international humanitarian law. In this respect, I would reiterate my concern that empowering Governments to identify and kill “known terrorists” places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative has been exhausted. (See E/CN.4/2005/7, at par. 41).

Without in any way wishing to pre-judge the accuracy of the information received, I would be grateful for a reply to the following questions:

1. Did the government of Pakistan consent to the killing of Haitham al-Yemeni? If so, on what basis was it decided to kill rather than capture Haitham al-Yemeni?
2. What rules of international law does your Excellency’s Government consider to govern this incident? If your Excellency’s Government considers the incident to have been governed by humanitarian law, please clarify which treaty instruments or customary norms are considered to apply.
3. What procedural safeguards, if any, were employed to ensure that this killing complied with international law?
4. In case your Excellency’s Government did not consent to the killing of Haitham al-Yemeni, what steps were taken to investigate the incident and hold those responsible accountable?

#### **Response of the Government of Pakistan dated 17 October 2005**

On 8 May 2005, a car blew up with an explosion near Mirali, North Waziristan Agency (NWA), resulting in the killing of a local and an unidentified foreigner. The remains of the foreigner were buried at an unknown place. After a few days it was propagated on media that Haitham Al Yemeni had been killed in a missile attack in North wazirisitan Agency. There is no evidence to suggest that the deceased foreigner was Hatham Al-Yemeni.

#### **Papua New Guinea: Lethal Force Used to Disperse Crowd on 31 October 2005**

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

**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 Papua New Guinea has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

#### **Allegation letter sent on 10 November 2005**



I would like to draw the attention of your Excellency's Government to reports regarding accounts of police violence against children. According to the information I have received, three school children who were shot dead by police on 31 October in Enga province while another twenty to thirty five persons, some as young as nine or ten years old, were injured. The police reported that they were met by rock-throwing students when they went to arrest the headmaster of Porgera top-up primary school. It is my understanding that these executions have taken place in the context of repeated police violence -including arbitrary arrests, torture and deaths in custody- against children perceived as gang members, street vendors, child sex workers and boys engaged in homosexual conduct. At the same time, internal police statistics indicate that very few officers are punished for violence against children.

If these allegations were correct, there would be ground for serious concerns. Therefore, while I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your Excellency's Government to the fundamental principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and political Rights. Article 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 none shall be arbitrarily deprived of his or her life. I would also like to refer your Government to the United Nations Basic Principles on the Use of Firearms by Law Enforcement officials applicable to such an incident as the one that took place in Enga province on 31 October. Under the Principles, law enforcement officials may use lethal force only "when strictly unavoidable in order to protect life". When doing so they must act with restraint and in proportion to the seriousness of the offense, minimize injury and respect and preserve life.

In this context, I urge your Government to take all necessary measures to establish responsibility in the above-mentioned killings and to adequately sanction the perpetrators.

**Peru: Amenazas de Muerte Contra Luís Alberto Ramírez Hinostroza**

**Violación alegada:** Amenazas de muerte y temor por la seguridad

**Persona objeto del llamamiento:** 1 hombre.

**Carácter de la respuesta:** No respuesta.

**Observaciones del Relator Especial**

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

**Llamamiento urgente enviado el 10 de junio de 2005** con el Relator Especial sobre la tortura, Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y Representante Especial del Secretario-General para los defensores de los derechos humanos

Luis Alberto Ramírez Hinostroza, quien fue víctima de tortura durante la dictadura militar y quien fue uno de los testigos principales ante la Comisión de la Verdad y

Reconciliación del Perú y ahora va a testificar en el proceso judicial contra un general retirado acusado de la desaparición forzada de nueve personas en 1991. Su caso ya fue objeto de un llamamiento urgente enviado el 7 de septiembre del 2004 (E/CN.4/2005/62/Add.1. para 1292) por el Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, el Relator Especial sobre la tortura, el Relator Especial sobre la independencia de magistrados y abogados, el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Representante Especial del Secretario-General para los defensores de los derechos humanos. De acuerdo con las nuevas alegaciones recibidas:

El 1 de junio del 2005, aproximadamente a las 6:30 de la tarde, dispararon varias veces a Luis Alberto Ramírez Hinostroza desde un vehículo en movimiento mientras cruzaba por el parque Mariscal Castillo de Lima, acompañado de un guardaespaldas de la policía. El atentado ocurrió después de mantener una reunión con sus abogados del Instituto de Defensa Legal (IDL). Debido a la intervención del agente policial asignado para su custodia, ambos salieron ilesos de los disparos de arma de fuego. Este último intento de asesinato es el tercer atentado contra la vida del Sr. Ramírez en el transcurso de un poco más de un año.

Se teme que este nuevo intento de asesinato pueda estar relacionado con el testimonio previsto de Luis Alberto Ramírez Hinostroza en el juicio contra un general retirado por la desaparición de al menos nueve estudiantes universitarios detenidos en el cuartel militar "9 de Diciembre" de Huancayo. A la luz de estas nuevas alegaciones y a pesar de las medidas cautelares otorgadas por la Comisión Interamericana de Derechos Humanos y el Estado Peruano a favor de Luis Alberto Ramírez Hinostroza y su familia, se han expresado temores por la vida e integridad física de dichas personas.

### **Philippines: Death Sentence of Francisco Larrañaga**

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

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

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur appreciates the information provided by the Government of the Philippines.

#### **Urgent appeal sent on 19 April 2005**

Francisco Larrañaga, a Spanish-Filipino national, who was sentenced to death on 4 February 2004 by the Supreme Court of the Philippines for the alleged kidnapping,

murder and gang-rape of Marylan and Jacqueline Chiong in 1997. I am aware that various amicus curiae briefs as well as petitions have been presented in relation to this case, including by the President of the European Parliament and a variety of other groups of legal experts. The information that I have received in relation to serious procedural and other irregularities in the trial proceedings would seem to be sufficient to raise at least some doubts as to Mr. Larrañaga's guilt. It may be that your Excellency's Government has already undertaken a detailed review of this case in response to the concerns that have been expressed but if so I have not seen this information. Given the level of the concern that has arisen and the seriousness of the suggested irregularities, I would be grateful for any detailed information your Excellency's Government may be able to provide in relation to this case.

Even if the avenues for redress from the courts have now been closed, I request your Excellency's Government to exercise its prerogatives to ensure that the process conforms to pertinent international standards. Finally, in the context of such a case, it may well be appropriate for the fullest consideration to be given to a grant of clemency at the prerogative of President Macapagal-Arroyo.

### **Response of the Government of the Philippines dated 25 May 2005**

The Government provided a copy of the per curiam decision of the Supreme Court of the Philippines in *People vs. Larranaga, et al.* (G.R. Nos. 138874-74, 3 February 2004). "A reading of the decision negates allegations of "serious procedural and other irregularities in the trial proceedings" of the Larranaga case.

Under the Philippines' domestic laws, more particularly Article 83 of the Revised Penal Code as amended by Section 25 of the Death Penalty Law, upon the finality of a decision imposing the death penalty, the case is automatically forwarded to the Office of the President for the possible exercise of the President's pardoning power. Nevertheless, the Department of Foreign Affairs has forwarded to the Office of the President the Special Rapporteur's request that Mr. Larranaga be granted clemency."

### **Philippines: Killing of Francisco Bulane, Padilla Bulane, and Prumencio Bulane**

**Violation alleged:** Death due to attacks by security forces

**Subject(s) of appeal:** 3 males (members of ethnic minority)

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

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

The Special Rapporteur appreciates the preliminary information provided by the Government of Philippines and will request the results of the judicial process to which it refers.

**Allegation letter sent on 16 March 2005** with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

Three brothers, Mr. Francisco Bulane, aged 32, Mr. Padilla Bulane, aged 29 and Mr. Prumencio Bulane, aged 28, farmers belonging to an indigenous Tribe B'laans and

residents of Sitio Latil, Barangay Colonsabak, Matan-ao, Davao del Sur, in Mindanao were reportedly killed by members of 25th Infantry Battalion (IB) of the Philippine Army based in Santa Cruz on 8 February 2005 in Sitio Latil. They had gone fishing in the river at 6:30 on 8 February 2005 along with three other persons. According to the information received, the victims were prepared to eat what they had caught when 50 members of the 25th Infantry Battalion started firing at them. Francisco Bulane, Padilla Bulane and Prumencio Bulane died instantly

### **Response of the Government of the Philippines dated 7 July 2005**

Following is a report from the Philippine National Police regarding the incident:

According to the military, the incident was a legitimate operation which involved an encounter with rebel groups in a far-flung area that is known to be a stronghold of communist terrorists, the New People's Army and *B'laan* bandits. The military claimed that those killed were members of a splinter group of communist terrorists who were the ones who ambushed the military. On the other hand, the survivors in the encounter claimed that the military attacked them with heavy gunfire and without reason. Killed in the incident were the brothers Francisco, Padilla and Prumencio, while their two other brothers, Richard and Rogelio and the latter's son, Ricky, were wounded.

On 18 February 2005, the military filed a case of attempted murder, docketed as Criminal Case No. 8247, against Richard, Rogelio and Ricky Bukane, before the 3<sup>rd</sup> Municipal Circuit Trial Court of Padada-Kiblawan, Davao del Sur. The case was dismissed on 7 March 2005 based on a resolution issued by Judge Segundino D. Maniwang which recommended that a case for rebellion be filed instead against the accused Bulane's. Meanwhile, the three accused also filed a case for murder and frustrated murder against First Lieutenant Roberto Betita and First Lieutenant Josue Erie, team leaders of the 25<sup>th</sup> Infantry Battalion, before the Office of the City Prosecutor's Office, Digos City, Davao del Sur, docketed as IS No. DS-2005-0-40.

### **Philippines: Extrajudicial Execution of Ellasar, Concepcion and Charlie Monsalud**

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

**Subject(s) of appeal:** 2 males (1 minor); 1 female

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of the Philippines has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

### **Allegation letter sent on 15 March 2005**

Mr. Ellasar Monsalud, aged 48, Mrs. Concepcion Monsalud, aged 39 from Purok 3, Lower Calabat, Josefina, Zamboanga del Sur were members of a rebel group which

operated in the Lanao del Norte area up to 2001. They had reportedly stopped their activities since that time. It is alleged that on 6 November 2004, Mr. Ellasar Monsalud had come across a soldier who had recognized him as being a member of a rebel group. On 10 November 2004, Ellasar and Concepcion Monsalud went to surrender to the police in Josefina, in order to clear their name and avoid harassment. They were reportedly brought to the Tabak 1st Infantry Division, Philippines Army in Pulacan, Labangan, Zamboanga del Sur where they found out that no case had been filed against them nor any arrest warrant issued. Reports indicate that on 4 December 2004, at around 4:30 a.m., six armed men, among whom 5 were wearing military uniforms, went to the house of Ellasar and Concepcion Monsalud and shot them dead, killing also their 10 year-old son Charlie Monsalud.

### **Philippines: Killing of Three Human Rights Defenders**

**Violation alleged:** Impunity

**Subject(s) of appeal:** 3 males (human rights defenders)

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of the Philippines has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

### **Allegation letter sent on 11 May 2005**

Mr. Marcelino Beltran, a labour rights activist who was killed by military forces. Mr. Marcelino Beltran, aged 53, was Chairman of the Alliance of Peasants in Tarlac, as well as Vice-Chairman of the Alliance of Peasants in Central Luzon (Alyansa ng mga Magbubukid sa Gitnang Luzon – AMGL). He participated in a strike by farm workers of Hacienda Luisita Sugar Mill and was a key witness to the dispersal of strikers on 16 November 2004 when 7 peasants allegedly were killed as members of the National Police and military personnel belonging to the 69th and 703rd Infantry Battalion tried to disperse the crowd. Reportedly, two children, aged 2 and 5, also died of suffocation due to the use of tear gas. On 14 December 2004, Mr. Marcelino Beltran was set to testify in a congressional investigation into the dispersal.

He was killed on 8 December 2004, allegedly by military forces in San Sotero, Santa Ignacia, Tarlac. It is reported that at around 9:00 p.m., Mr. Marcelino Beltran went outside of his house as he heard his dogs barking. A few minutes later, he received gunshots. According to the information provided, he was still alive when his relatives took him to the nearest clinic and was able to identify his murderers as being members of the military. It is further reported that upon their arrival at the clinic, they saw soldiers on a motorcycle and decided to bring Mr. Beltran to the Tarlac Provincial Hospital. He died on the way to the hospital. He suffered from four gunshot wounds on his arm, thigh, stomach and back.

I have further been informed that two others persons who were also involved in the defense of the workers have been killed by unidentified gunmen.

Mr. Abelardo Ladera, aged 43, was a City Councilor of Tarlac, in Luzon and a provincial Chapter leader of Bayan Muna. He had protested against the 16 November 2004 dispersal of strikers at Hacienda Luisita Mill, to which he was a witness, and had mediated between farm workers and their employer. He was shot at on 3 March 2005, at around 1:00 p.m. in front of a store located in Baranguay Paraiso in Tarlac City. He received one fragmented bullet in the chest. He was taken to the Central Luzon Doctor's Hospital where he reportedly died of massive loss of blood due to his injury. Mr. Ladera was one of the negotiators in the dispute between Hacienda Luisita Management and strikers.

Reverend Fr. William Tadena, aged 37, an Aglipayan Church leader and member of the Promotion of Church People's Response who had organised a relief mission for the striking workers at Hacienda Luisita Mill and donated about 100 bags of relief goods. He was killed on 13 March 2005 at 7:30 a.m by two armed men on a motorcycle. He had celebrated mass in Baranguay Guevarra and was in front of the Guevarra Public Elementary School when he was shot at. He suffered multiple gunshots wounds and died minutes after reaching the Central Luzon Doctor's Hospital in Tarlac. Reverend Tadena was with friends who were also injured in the shooting.

Concern is expressed that the reported killings of Mr. Marcelino Beltran, Mr. Abelardo Ladera and Reverend Fr. William Tadena may be in retaliation of their human rights defence activity and in particular in connection with the strike of workers at Hacienda Luisita Mill.

In light of these successive killings of human rights defenders who took part in the strike of Hacienda Luisita workers, I invite your Excellency's Government to promptly, independently and thoroughly investigate these allegations. In addition, I would urge your Excellency's Government to take any steps which might be necessary in order to adopt effective measures to prevent the recurrence of such acts.

**Russian Federation: Disappearance of Zarema Buraeva, Baudin Buraev, and Ali Buraev**

**Violation alleged:** Fear of imminent extrajudicial executions

**Subject(s) of appeal:** 1 female; 2 males

**Character of reply:** No response

**Observations of the Special Rapporteur**

The Special Rapporteur regrets that the Government of the Russian Federation has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Urgent appeal sent on 2 November 2005** with the Chairman-Rapporteur of the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the question of torture

Urgent appeal sent concerning: Zarema Buraeva (born in 1982), Baudin Buraev (born in 1984) and Ali Buraev (born in 1987). According to the allegations received:

On 2 October 2005, at 4 p.m. the house of the Buraev family at 37 Ivanov Street in Grozny, Chechnya was surrounded by a large number of representatives from the Ministry of Defence, the Federal Security Service (FSB), and the Anti-terrorist Center (ATC) from the Staropromyslovsky district of Grozny. Reportedly, they all spoke Chechen and the commander of the operation was called "Iran" by the others.

According to the source, the servicemen demanded that Ali and Baudin Buraev lie on the ground and then started to beat them heavily. After approximately one hour, the commander of the operation asked Zarema BURAEVA about her deceased husband, and then demanded that she follows them through the house. From that moment, Zarema Buraeva's whereabouts remain unknown.

The servicemen took Ali and Baudin Buraev away. They were not able to stand normally after the ill-treatment. The servicemen threatened the mother of Ali and Baudin Buraev who tried to intervene, by saying: "You should consider yourself lucky not to be executed yourself". Since then, the whereabouts of the two men are not known.

During these events the servicemen confiscated 9000 rubles, a TV, a computer and several other valuables. The next day, they servicemen came again, to look for hidden weapons but they did not find any.

It is further reported that in the following days, a relative of the victims repeatedly went to Grozny police station to ask about the whereabouts of the three disappeared persons. The relative was told that Zarema, Ali and Baudin Buraev were not in their custody. They were also told that the operation had been done jointly with other security services, and that they did not know where they were detained.

Allegedly, the police officers offered that Ali and Baudin Buraev would be returned home safely, if a document testifying that the servicemen had found two weapons buried in the garden of the house of the Baudin family was signed. The relative refused to do so.

On 14 October 2005, a relative of the victims went to the Prosecutors office, and was told that a criminal case will be opened.

While we do not wish to prejudge the accuracy of these allegations, we should like to appeal to your Excellency to seek clarification of these circumstances. The Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture request that this clarification should be with a view to ensuring that the right to physical and mental integrity of the above-named persons is protected.

The Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and accountability of any person guilty of the alleged violations

ensured. They also request that your Government adopts effective measures to prevent the recurrence of these acts.

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 undertaken? Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate whether compensation has been provided to the victims or the family of the victims.

#### **Saudi Arabia: Death Sentences of Three Migrant Workers**

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

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

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of Saudi Arabia has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

#### **Urgent appeal sent on 13 April 2005**

Three Sri Lankan migrant workers – Mr. Edirisinghe Jayasooriyage Victor Corea, Mr. Ranjith de Silva and Mr. Sanath Pushpakumara – who were all reportedly sentenced to death on charges of possession of illegal firearms and attempted robbery by the Saudi Arabian High Court. They were involved in a robbery and arrested by the Riyadh police on 10 March 2004. Reports indicate that they are all currently detained at Al Nayad Prison, in Riyadh.

It is our understanding that an appeal for mercy is now pending before His Excellency, the King of Saudi Arabia, King Fahd Bin Abdul Aziz, and that if this appeal fails the accused would be liable to imminent execution.



According to the reports which we have received the three men were sentenced to death after trials that appear to have fallen short of international fair trial standards. It is reported that they did not have any legal representation during their trials, although a translator was provided. The translation of proceedings is no substitute for adequate legal representation as required by international standards. In addition, it is alleged that after their trial, the three men were asked to sign a document in Arabic, stating their acceptance of the death sentence which only Mr. Silva reportedly refused to sign.

If these allegations are correct there would be grounds for serious concern. We would therefore be grateful if your Excellency's Government could provide us with information indicating whether or not the defendants in this case were given the right to formal representation by a lawyer, and providing details of any such access. In addition, we would appreciate knowing if the proceedings were open to observers including representatives of the Government of Sri Lanka. Finally, we would like to receive information as to the nature of any right to an effective appeal which was applied in this case.

### **Saudi Arabia: Death Sentence of Majda Mustapha Mahir**

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

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

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

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

The Special Rapporteur appreciates the response of the Government of Saudi Arabia regarding the commutation of the death sentence. However, the SR regrets the lack of information provided regarding the alleged violations of Majda Mustapha Mahir's due process rights.

**Urgent appeal sent on 27 May 2005** with the Special Rapporteur on violence against women, its causes and consequences

Ms. Majda Mustapha Mahir, a 40-year-old Moroccan woman who is reportedly at risk of imminent execution in Saudi Arabia, where she was sentenced to death for the murder of her husband seven years ago.

According to the information received, she arrived in Riyadh in 1997 with her husband, the Saudi prince Farid Ibn Abdullah ibn Mishari al Saud. Soon after, he was found dead inside their house and she was arrested. Initially, and after verifying its authenticity, the Saudi Police reportedly accepted her version of the facts and her statement that the death was accidental. However, following alleged pressure by the prince's family, Ms. Mahir was arrested again and transferred to the Milaz prison, where she has allegedly spent the last seven years in solitary confinement.

Concern has been expressed that Ms. Mahir was sentenced to death by an Islamic Court after a trial that fell short of international fair trial standards. She was reportedly not given a public hearing and did not have access to legal representation. Her parents

weren't allowed to visit her and she was prevented from being contacted by the Moroccan consulate. Besides, she was reportedly given no possibility of appeal.

It is our understanding that Ms. Mahir's only remaining option is to seek a pardon from the victim's family following the payment of "blood money" or to file an appeal for mercy with the King of Saudi Arabia, King Fahd Bin Abdul Aziz, who also has the power to commute her death sentence. In the event that these two options would fail, she would be liable to imminent execution.

If these allegations are correct there would be grounds for serious concern. We would therefore be grateful if your Excellency's Government could provide us with information indicating whether or not the defendant in this case was given the right to formal representation by a lawyer, and providing details of any such access. In addition, we would appreciate knowing if the proceedings were open to observers including representatives of the Government of Morocco. Finally, we would like to receive information as to the nature of any right to an effective appeal which was applied in this case.

### **Response of the Government of Saudi Arabia dated 30 August 2005**

In this connection, the Permanent Mission wishes to inform the distinguished Special Rapporteur that the said woman was sentenced to death under the terms of legal judgment No. 67/12 handed down by the General Court of Riyadh on 8/12/1419 A.H. (3 June 1998), with the proviso that execution of the sentence was to be deferred until the minor heirs of H.H. Prince Farid attained the age of majority, at which time they would be asked, together with the other heirs, whether they wished to avail themselves of their right to demand enforcement of the sentence against the defendant. This judgment was ratified by the Court of Cassation and the Standing Committee of the Supreme Council of the Judiciary. Royal Orders Nos. 4/B/19621 of 20/10/1422 A.H. (4 January 2002) and 10884 of 28/2/1425 A.H. (18 April 2004) subsequently called for conciliatory endeavours to be made with a view to persuading the murdered Prince's heirs to pardon the convicted woman. The Second of these Royal Orders (No. 10884) further emphasized the need to await the minor's attainment of majority, when this matter could once again be raised with them.

This case was also accorded special attention by H.H. the Governor of the Riyadh Region, who assigned a person to endeavour to conciliate the heirs of the murdered Prince, through their legal representative, and to urge them to engage in a meritorious act of pardon. By the Grace of God, these endeavours were crowned with success insofar as the legal representative agreed to renounce the death penalty, without compensation, as a gesture pleasing to Almighty God. H.H. the Governor of the Riyadh Region ordered the rapid completion of the renunciation attestation procedures and legal judgment No. 144/12 of 12/5/1426 A.H. (19 June 2005) confirmed that the convicted woman was no longer liable to the death penalty by virtue of the fact that some of the heirs had renounced their right to demand it. Moreover, H.H. the Governor of the Riyadh Region personally undertook to pay the share of the legal blood money due to the heirs who had not renounced it in if, on attainment of the age of majority, they decided to claim their right thereto. An account of the outcome of the case was submitted to the Royal Court.

The allegations concerning the situation of the convicted person Majda are unfounded since a representative of her country's Embassy was permitted to visit her and this visit was documented. Furthermore, at her request, she was transferred from Riyadh Women's Prison to Jiddah Women's Prison in order to be closer to her family, thereby making it easier for them to visit her without undergoing the hardship of travel."

### **Saudi Arabia: Death Sentence of Mrs. Samira**

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

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

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of Saudi Arabia has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Urgent appeal sent on 23 August 2005** with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on violence against women, its causes and consequences

Urgent appeal sent concerning Mrs. S (reportedly known as Mrs. Samira) a married woman with children, who is reportedly at risk of imminent execution.

According to the information received, she was arrested in 1999 in connection with the murder of a man who had allegedly threatened to tell her husband that she had sexual intercourse with him when they were teenagers if she did not have sex with him. She denies having killed him. Concern has been expressed that Mrs. Samira was convicted and sentenced to death by a Shari'a Court after a trial that fell short of international fair trial standards. She was reportedly not given a public hearing and did not have access to legal representation.

It is our understanding that Mrs. Samira's only remaining option is to obtain a pardon from the victim's family following the payment of "blood money". We have been informed that the Crown Prince has intervened on her behalf with the family of the victim who has requested a few days to consider their decision. In the event that this option fails, she would be liable to imminent execution.

In view of the urgency of the matter and of the irreversibility of the punishment, we would appreciate a response from your Excellency's Government to safeguard the rights of the above-mentioned person, in accordance with Saudi Arabia's relevant obligations under international law.

It is our responsibility under the mandates provided to us by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all 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. Was the accused represented by counsel, and if so under what circumstances?
3. Was the hearing at which she was condemned held in public?
4. What possibilities of appeal were available to Mrs. Samira after her conviction and what was the outcome of any appeal lodged?

**Saudi Arabia: Death Sentence of Juvenile Offender Ahmad `Abd al-Murdi Mahmud al-Dukkani**

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

**Subject(s) of appeal:** 1 male (minor; juvenile offender)

**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 he has been given by the United Nations Commission on Human Rights.

**Urgent appeal sent on 10 November 2005**

I hereby would like to bring to your Excellency's attention the situation of Ahmad `Abd al-Murdi Mahmud al-Dukkani, a fourteen-year-old Egyptian national, resident of Dammam. He was reportedly sentenced to death in July 2005 by a Dammam Court for the April 2004 murder of his three-year-old neighbour Wala' `Adil `Abd al-Badi', also an Egyptian national. According to the information I have received, the victim's family has thus far refused to accept the payment of "blood money" (diya), therefore leaving Ahmad `Abd al-Murdi Mahmud al-Dukkani's case to go before the Saudi Court of Appeals and the High Judicial Council, and ultimately to King Abdullah for final review. Ahmad reportedly remains on death row at the Dammam Dair al-Mulahitha al-Ijtima`iyya, a juvenile detention facility, where he has been detained since he was arrested and where he has spent three months in solitary confinement.

The principal purpose of the present note is to raise one particular point of concern in relation to this case, namely, the age of Ahmad `Abd al-Murdi Mahmud al-Dukkani at the time of the commission of the crime. Indeed, although he was thirteen years old at the time of the murder, I am concerned that the court tried and sentenced Ahmad as an adult, reportedly based on the court's assessment of the coarseness of his voice and the appearance of pubic hair.

The execution of Ahmad `Abd al-Murdi Mahmud al-Dukkani would be incompatible with your Government's international obligation under the Convention of the Rights of the Child which prohibits capital punishment for offenses committed by individuals

under 18 at the time of the crime. This would also contradict the commitment given in your Government's report on 2 November 2004 to the United Nations Committee on the Rights of the Child according to which "a juvenile is defined under the Detention Regulation and the Juvenile Homes' Regulation of A.H. 1395 (1975) as every human being below the age of 18," and "[t]he "Islamic Shari`a in force in the Kingdom never imposes capital punishment on persons who have not attained their majority, regardless of whether the offence they committed was a qisas offence [for which the penalty is retaliation], a hadd offence [for which the prescribed penalty is mandatory] or a ta`zir offence [for which the penalty is left to the judge's discretion]" (CRC/C/136/Add.1, para. 33 and 68)

I am aware that the last confirmed execution of a juvenile offender in Saudi Arabia dates back to 1992. However, I have been informed that at least four other persons - namely Mrs. S. from Khamis Mushayyit, Sadiq A. in Qatif, Mr. A. in Jazan, and an unnamed person in Jeddah reportedly convicted of murdering his rapists- are under a death sentence for crimes committed when they were below eighteen years old.

In view of the irreversibility of the sentence, I respectfully ask his Excellency King Abdullah to commute Ahmad `Abd al-Murdi Mahmud al-Dukkani's death sentence to a punishment consistent with his age and culpability. I would also be grateful if the Government of Saudi Arabia could provide me with detailed information relating to individuals who have been sentenced to death for crimes committed when they were less than eighteen years of age, even if such sentences have not been confirmed.

Finally, I wish to indicate that my request for a visit dated 11 May 2005 is still valid and I would be very grateful if it were possible to set specific dates for the mission as soon as possible. I again emphasize that in the absence of any indication of a possible timing for the visit, I will have no option but to report to the CHR that my request to visit has been unsuccessful.

### **Serbia and Montenegro: Death in Custody of Dejan Petrovic**

**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 receiving the autopsy results from the Government of Serbia and Montenegro. However, the SR remains concerned at the lack of a thorough investigation into the allegations. A finding that Dejan Petrovic died "following a thrust through a glass window" is consistent with either suicide or murder and should have led to a broader investigation. The SR would appreciate further information concerning subsequent public or private prosecution of the case.

**Allegation letter sent on 15 November 2004** with the Special Rapporteur on torture, reproduced from E/CN.4/2005/7/Add.1 at par. 636

636. Allegation sent with Special Rapporteur on torture, 15 November 2004. Dejan Petrovic, aged 29, Belgrade. On 16 January 2002 he was arrested on suspicion of theft and spent the night in the lock-up in Božidara Adžije Street. At about 9am the next day, three police inspectors (whose names are known to the Special Rapporteurs) brought him to his parents' apartment with a warrant to search his room. His father reported, "They brought Dejan in with his hands cuffed. His lips were blue, as if something wasn't right. I didn't notice any injuries on his face. However, Dejan didn't say a word the whole time." At noon that day, the police informed his parents that he had leapt from a second floor window and that he was in a coma at the Emergency Treatment Centre. He sustained a ruptured spleen and gall bladder, a damaged liver and pancreas, broken ribs, a fractured left femur, and a large hematoma on his head. He was in a coma for two weeks and died on 15 February. On 18 February, an autopsy was performed at the Institute of Forensic Medicine. The pathologists established that death was due to violence and caused by damage to vital brain centres and ensuing complications. They also found that the brain damage, fractures and other internal and external injuries sustained were due to blunt force trauma. A criminal complaint was first filed with the Third Municipal Prosecutor's Office and, in April 2002, the District Prosecutor's Office. However, the prosecutor has not asked for an investigation, nor has he dismissed the complaint, which would have enabled the parents to proceed as private prosecutors. The medical records were transferred to the Belgrade Institute of Forensic Medicine on 12 September 2003 for an expert opinion on the injuries sustained.

**Response of the Government of Serbia and Montenegro dated 25 May 2005**

On 1 February, Mr. Dragomir Petrovic filed a criminal complaint against police officers of the Vracar (Belgrade) Police Station for the criminal offence of extraction of statement under Art. 65, para. 2, in connection with para. 1, of the Criminal Code of the Republic of Serbia. On 12 February 2002, the Office of the Public Prosecutor requested the Emergency Department of the Clinical Centre of Serbia to provide information and documentation on the injury and treatment of Mr. Dejan Petrovi, while the Vracar Police Station was asked to forward all available documents relative to that case. On 15 February 2002, the Belgrade Police Department forwarded a supplementary report on the incident of 16 January 2002, while on 15 May 2002 the Institute of Forensic Medicine of the Faculty of Medicine in Belgrade provided the minutes of the findings of the post mortem examination carried out on the body of the late Dejan Petrovic.

Upon collection of relevant documents, the Office of the District Public Prosecutor of Belgrade recommended the investigative magistrate of the District Court of Belgrade on 18 September 2003 to issue an order to the effect that medical expertise be carried out, which order was issued and forwarded to the Institute of Forensic Medicine on 8 October 2003. The Institute returned the documents relative to the case with its finding and opinion on 15 September 2004, from which it transpired that all injuries diagnosed in respect of Dejan Petrovic had been caused by a fall and a thump on the floor following a thrust through a glass window. It further transpired that, during the treatment at the post mortem examination, no other injuries had been found as would

have been consistent with some other means capable of inflicting injury. A representative of the Humanitarian Law Centre was also advised of, and had insight into the finding and the opinion.

In view of the contents of the finding and the opinion, the Office of the District Public Prosecutor in Belgrade rejected the criminal complaint and informed the complainant accordingly, advising him of the available remedy. In line with the advice, the complainant took over the criminal prosecution of the case.

### **Singapore: Death Sentence of Nguyen Tuong Van**

**Violation alleged:** Non-respect of international standards 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 regrets the decision of the Government of Singapore to execute Nguyen Tuong Van given the legal infirmities involved. The Government of Singapore has been strongly critical of previous SRs for their failure to spell out in detail the nature of their concerns when communicating with the Government. In this case a very detailed analysis was provided, showing that the Privy Council, whose legal precedents are usually applied in Singapore, had clearly and unequivocally found the mandatory death sentence to be in violation of international human rights law. Rather than engaging in a dialogue on this central issue the Government eventually asserted that it simply disagreed with the proposition, without providing any reasoning for its position. The Government's various claims that the SR had misled the public and had attempted to set up a smoke screen focused on the fact that I specifically quoted from a minority opinion in the key Privy Council case. But as my letter to the Government had originally made clear, the majority and the dissenting judgements in *Boyce and Joseph v The Queen* were entirely in agreement that the mandatory death penalty violates international human rights law. The basis for disagreement in that case turned solely on whether the mandatory death penalty was, nevertheless, permissible under the Constitution of Barbados — a question that is of no relevance to this case. Given the Government's deep concern to uphold the rule of law the SR hopes that a reasoned dialogue on this issue will be possible in the future.

### **Urgent appeal sent on 15 March 2005**

Mr. Nguyen Tuong Van, a 24-year-old Australian national of Vietnamese origin who is reportedly under sentence of death at Changi Prison in Singapore. He was reportedly arrested in Changi Airport in December 2002, whilst in transit from Cambodia to Australia. He was later charged and convicted of drug-trafficking involving just under 400 grams of pure heroin. In March 2004 he was sentenced to death by a Singapore Court for trafficking heroin. On 20 October 2004, the Court of Appeal dismissed his appeal against his conviction and upheld the death sentence. Mr Nguyen appears from the record to have been 21 at the time of the offence, to have been a self-employed computer salesman, to have had no prior criminal record and no

prior involvement in the drug trade, and to have confessed almost immediately to his possession of drugs. His stated reason for having agreed with a third-party to carry drugs was his need to assist his brother to pay outstanding legal fees in Australia.

It is my understanding that Nguyen Tuong Van's final option is to file an appeal for clemency with the President, S.R. Nathan, who has the power to commute his death sentence. Reports indicate that a petition for clemency from the Australian Governor-General was received by the Singapore Government and that a plea from Mr. Nguyen himself is also expected. I have also been informed that Your Excellency's Government has already indicated that it would give consideration to such a petition.

In addressing the Government of Singapore I am acutely aware of the criticisms that you have directed on several occasions to the reports of my predecessors as Special Rapporteur when matters arising under this mandate have been raised with the Government (see statements reproduced in E/CN.4/2003/G/57; E/CN.4/2002/170; E/CN.4/2001/153; E/CN.4/1998/113). In particular, it has been suggested that by failing to provide evidence to substantiate previous claims the Special Rapporteur thereby betrayed her bias, prejudged the cases, and cast aspersions on the integrity of the Singapore judiciary and the judicial safeguards observed by the courts of Singapore (E/CN.4/2002/170, para. (b)). Accordingly, in relation to the present case, I will endeavour to be as precise as possible although this will necessitate my going into significantly more detail than might usually be the case.

Permit me first of all to note that the raising of a case under the present mandate does not amount to prejudging a case, an observation which is usually made whenever a communication is sent to a Government. Nor does it cast aspersions on the judiciary of a State to suggest that international standards might not have been taken fully into account in its deliberations.

I am aware that the Government of Singapore has previously stated that "the death penalty is primarily a criminal justice issue, and therefore is a question for the sovereign jurisdiction of each country" (E/CN.4/2001/153, para. (c)). By the same token, however, matters relating to the functioning of the criminal justice system are legitimate matters of international concern when questions of non-compliance with international standards are raised in good faith.

The principal concern in the present case relates to the application of a mandatory death penalty. Making such a penalty mandatory and thereby eliminating the discretion of the court generally makes it impossible to take into account mitigating or extenuating circumstances and eliminates case by case determinations of an appropriate punishment in light of all the circumstances of the case. Whatever considerations might be appropriate in relation to other forms of mandatory sentencing, its use in the death penalty context raises fundamentally different issues because the right to life is at stake and because once the sentence has been carried out it is irreversible.

It is my understanding that, since 1975, the death penalty in Singapore has been imposed as a mandatory sentence for a range of specific drug trafficking offences. The consequences of this approach were spelled out by Kan Ting Chiu J. in the High Court in the present case when he observed that "where the legislature has by the



proper exercise of its powers prescribed that for offences involving large quantities of drugs the offenders shall be punished with death, the punishment will be imposed without hearing pleas in mitigation ...” (Public Prosecutor v. Nguyen Tuong Van, No. CC 43/2003, 20 March 2004, para. 84 of the Judgment issued by the High Court).

Both at the trial and at the appeal stage, Mr. Nguyen Tuong Van challenged the constitutionality of the mandatory sentence of death as provided for by s 33 and the Second Schedule of the Misuse of Drugs Act. The arguments were based on Articles 9(1), 12(1) and 93 of the Constitution of Singapore, which deal, respectively, with fundamental liberty of the person, equal protection of the law, and the vesting of judicial power in the courts. In the High Court Kan Tin Chiu J. dismissed this argument by noting that he was bound by the decision of the Privy Council in *Ong Ah Chuan v. Public Prosecutor* which upheld the mandatory death penalty. On appeal the defendant noted that a number of Privy Council cases had reversed this interpretation of the law, primarily in light of the evolution of human rights standards in the intervening two decades. In terms of timing, only one of the relevant later cases (*Reyes v. The Queen*), an appeal from Belize, was available to the trial judge. He observed, however, that that case had relied upon the prohibition of torture and inhuman or degrading treatment or punishment contained in the Belize Constitution and concluded that it was distinguishable from the present case because, as the Appeal Court put it, “there is no equivalent in [the Singapore] Constitution nor in any local Act of Parliament”.

The judgment of Lai Kew Chai J, on behalf of the Court of Appeal, in this case did, however, address the more recent Privy Council decisions. Thus the Court noted that: “The appellant’s arguments on unconstitutionality made reference to several very recent Privy Council decisions on the mandatory death penalty. These decisions, in turn, made reference to international jurisprudence dealing with ‘the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment’” (*Nguyen Tuong Van v. Public Prosecutor* [2004] SGCA 47, para. 59). The Privy Council decisions included *Watson v The Queen* [2004] UKPC 34 as well as *Reyes v The Queen* [2002] 2 AC 235. The Appeals Court noted that in “both *Watson v. The Queen* and *Reyes v The Queen*, the mandatory death penalty in respect of certain classes of murder was ruled unconstitutional as a violation of the prohibition against cruel or inhuman treatment or punishment. In *Matthew v The State* and *Boyce v The Queen*, the Privy Council would have ruled the same way but for certain “saving provisions” in the relevant national Constitutions which preserved pre-existing national laws” (para. 83).

In paragraph 29 of *Watson v The Queen* the Law Lords indicated that “It is no longer acceptable, nor is it any longer possible to say, as Lord Diplock did on behalf of the Board in *Ong Ah Chuan v Public Prosecutor* [1981] AC 648, 674, that there is nothing unusual in a death sentence being mandatory. As Lord Bingham pointed out in *Reyes*, p. 244, para. 17, the mandatory penalty of death on conviction of murder long predated any international arrangements for the protection of human rights. The decision in that case was made at a time when international jurisprudence on human rights was rudimentary.” The Privy Council further observed that “The march of international jurisprudence on this issue began with the Universal Declaration of Human Rights which was adopted by a resolution of the General Assembly of the United Nations on 10 December 1948 (1948) (Cmd 7662). It came to be recognized that among the

fundamental rights which must be protected are the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment.”

In relation to the present case the Singapore Court of Appeal opted not to “examine each [of these cases] in detail” (para. 83) and, after a brief recitation of some passages from the Privy Council, concluded “However, we are of the view that the mandatory death sentence prescribed under the MDA is sufficiently discriminating to obviate any inhumanity in its operation. It is therefore constitutional.” This conclusion was not, however, based upon any analysis which might have shown that the sentence is discriminating in the sense of taking account of the circumstances of the individual. The fact that the law discriminates on the basis of the quantity of drugs involved does not address the concerns raised by the Privy Council nor those reflected in international standards.

The Court of Appeal did not specifically cite, nor did it address, the directly relevant observations of the Privy Council contained in the case of *Boyce and Joseph v. The Queen*. In that case the constitutional validity of the mandatory death penalty law of Barbados was upheld, but the majority opinion carefully limited the grounds for its finding to the terms of the Constitution of Barbados.

More pertinent to the present case is the fact that, on the basis of a systematic review of international legal standards, the majority observed that the maintenance of the mandatory death penalty ‘will ... not be consistent with the current interpretation of various human rights treaties to which Barbados is a party’ (See Judgment of the Lords of the Judicial Committee of the Privy Council, Privy Council Appeal No. 99 of 2002, Judgment of 7 July 2004, para. 6). The same conclusion was repeated in more forceful terms in the minority judgment on behalf of four Law Lords who stated that: “the jurisprudence of the Human Rights Committee, the Inter-American Commission and the Inter-American Court has been wholly consistent in holding the mandatory death penalty to be inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment. ... The appellants submitted that ‘No international human rights tribunal anywhere in the world has ever found a mandatory death penalty regime compatible with international human rights norms,’ and this assertion has not been contradicted”(para. 81(3)).

In light of this review of relevant legal standards I would respectfully request Your Excellency’s Government to take all necessary steps to avoid an execution which is inconsistent with accepted standards of international human rights law.

### **Response of the Government of Singapore dated 29 March 2005**

The Government stated that by this letter the SR was raising matters that go beyond his mandate. “We find this regrettable, especially since we have explained to your predecessor, on four occasions since 2001, the reasons why her attempted interventions in Singapore’s judicial process were similarly unrelated to her mandate. As the SR on Sumex, your mandate allows you to intervene only when there is a possibility that due process and safeguards have not been observed. This is not the situation in the Mr. Nguyen’s case. It was not extrajudicial, not summary, and certainly not arbitrary. Mr. Nguyen was tried and sentenced with full observance of due process and judicial safeguards. In accordance with this due process, the petition

for clemency will be considered. Your legal arguments are also fundamentally flawed in that there is no international consensus or international standards for or against capital punishment imposed according to due process of law. We should also like to clarify your apparent misunderstanding of the Court of Appeal's judgment. Your letter states that the Court of Appeal "opted not to examine each of these cases" (referring to various decisions of the Privy Council) and came to its conclusion "after a brief recitation of some passages from the Privy Council". This conveys the impression that the Court of Appeal in reaching its conclusions did not give careful consideration to the issue of whether the death penalty violates customary international law. This is incorrect. The Court of Appeal did in fact take full account of the materials before it that dealt with the question of the status of customary international law, including the cases to which you refer. The fact that you appear to have reached a different opinion from the Court of Appeal based on the same materials does not in itself call into question the competence of the Court of Appeal, or the validity of its judgment to such an extent that your enquiry into this case was warranted.

### **Press statement by the Special Rapporteur issued 15 November 2005**

The Special Rapporteur on extrajudicial, summary or arbitrary executions of the United Nations Commission on Human Rights issued the following statement today:

Philip Alston, the Special Rapporteur on extrajudicial, summary or arbitrary executions of the United Nations Commission on Human Rights, today called on the Government of Singapore not to proceed with the planned execution of Nguyen Tuong Van. Mr Nguyen was sentenced to death for attempting to traffic just under 400 grams of pure heroin through Changi Airport in December 2002.

Mr. Alston, a law professor at New York University, said that the execution of Mr Nguyen would violate international legal standards relating to the imposition of the death penalty.

The principal problem, according to Alston, is the mandatory nature of the death penalty. "Making such a penalty mandatory – thereby eliminating the discretion of the court – makes it impossible to take into account mitigating or extenuating circumstances and eliminates any individual determination of an appropriate sentence in a particular case", Alston noted. "The adoption of such a black and white approach is entirely inappropriate where the life of the accused is at stake. Once the sentence has been carried out it is irreversible."

In the Nguyen case, the Singapore Court of Appeal considered a range of cases decided by the Privy Council. But, according to Alston, "it failed to examine the most relevant case of all" (*Boyce and Joseph v. The Queen*, decided in 2004). In that case four of the Law Lords endorsed the statement that "No international human rights tribunal anywhere in the world has ever found a mandatory death penalty regime compatible with international human rights norms."

Professor Alston noted that the Singaporean Government had, in the past, stated that "the death penalty is primarily a question for the sovereign jurisdiction of each

country”. He indicated, however, that matters relating to the functioning of the criminal justice system are legitimate matters of international concern when questions of non-compliance with international standards are involved.

Noting the longstanding commitment of the Singaporean courts to the rule of law, Alston called upon the Government of Singapore to take all necessary steps to avoid an execution which is inconsistent with accepted standards of international human rights law.

**Press statement by the Government of Singapore issued on 16 November 2005**

In response to media queries on the press statement issued by Mr Philip Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the MFA Press Spokesman said:

“There is no international consensus that capital punishment should be abolished. At the most recent meeting of the UN Commission on Human Rights, 66 countries dissociated themselves from a CHR resolution calling for the abolition of capital punishment.

Singapore maintains that capital punishment is a criminal justice issue; it is the sovereign right of every country to decide whether or not to include capital punishment within its criminal justice system.

On this occasion, Mr Alston grossly misrepresented the facts in claiming that the Singapore Court of Appeal “considered a range of cases decided by the Privy Council ... [but] ... failed to examine the most relevant case of all” i.e. *Boyce and Joseph v. The Queen*. That case was in fact cited by Mr Nguyen's lawyers in their written arguments and the Court of Appeal dealt with it in its judgment. We note also that Mr Alston did not disclose that he cited the minority judgment in *Boyce* and that the majority in the Privy Council upheld the constitutionality of the mandatory death penalty in Barbados.

We regret that Mr Alston has attempted to mislead the public. In doing so, he diminishes the credibility of his office.

Mr Alston is the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. Mr Nguyen was tried and convicted in an entirely open, fair and transparent manner, according to due process of law, as has been acknowledged by the Australian Government. Therefore this case does not fall within his mandate.

Mr Alston has on several previous occasions attempted to exceed the limits of his office in criticising judicial executions in Singapore. His purpose in doing so has been to campaign for the abolition of the death penalty, which is clearly beyond the mandate of his office.

We have previously protested Mr Alston’s abuse of his office and will continue to do so as necessary.”

**Press statement by the Special Rapporteur issued 17 November 2005**

Philip Alston, the Special Rapporteur on extrajudicial, summary or arbitrary executions of the United Nations Commission on Human Rights issued the following statement today:

I have read the statement attributed to the Press Spokesman of the Ministry of Foreign Affairs of Singapore in relation to my comments on a current capital case in Singapore.

In view of the apparent misunderstandings of my position I have decided that it is in the best interests of all concerned that I make public the full text of the communication which I sent to the Government of Singapore in March 2005 and which will be reproduced in my annual report to the Commission on Human Rights. This communication seems to me to be the best way in which to clarify the issues raised by the Ministry's Press Spokesman. [15 March 2005 communication annexed.]

**Press statement by the Government of Singapore issued on 18 November 2005**

In response to media queries on Mr Philip Alston's press statement released on 17 November 2005, the MFA Spokesman said:

“This is all just a smoke screen. Mr Alston has still not explained why in his statement of 15 November 2005 he tried to mislead the public by claiming that the Singapore courts had not taken into consideration the case he cited and why he cited only the dissenting opinion in that case. He tried to conceal the fact that the majority of judges in that case upheld the mandatory death penalty in Barbados.”

**Response of the Government of Singapore dated 22 November 2005**

I refer to your press releases on the case of Mr Nguyen Tuong Van, dated 15 and 17 November 2005.

As mentioned in our earlier letters of 29 March 2005 and 25 September 2005, we do not consider that this matter falls within the ambit of your office as Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. Mr Nguyen Tuong Van was convicted and sentenced in a court of law, and there is clearly no extrajudicial Execution in issue. This is not a case where due process and safeguards have been ignored. Instead, Mr Nguyen's trial in the High Court and subsequent appeal to the Court of Appeal were public hearings conducted in accordance with the laws of Singapore. He was at all times represented by two Singapore lawyers who were ably assisted by a team of Australian lawyers.

In your Press Release of 15 November 2005, you asserted that the Singapore Court of Appeal "considered a range of cases decided by the Privy Council ... (but) ... failed to examine the most relevant case of all" (*Le, Boyce and Joseph v. The Queen* [2004] 3 *WLR* 786). This is simply mistaken, and as a result, misleading. This case was

referred to by Mr Nguyen's lawyers in their written arguments, and the Court of Appeal specifically dealt with this case in its judgment.

Furthermore, your reliance on a dissenting, minority judgment, without stipulating that the majority took the contrary view is also misleading.

It was only after we pointed out that your statement was misleading that you found it necessary to address the "misunderstandings of [your] position" by releasing your 15 March 2005 letter together with your Press Release of 17 November 2005. Your March letter acknowledged that the Singapore Court of Appeal had considered the *Boyce and Joseph* case. This does not, however, detract from the fact that in your Press Release of 15 November 2005, you sought to mislead the public by claiming that the Court of Appeal "failed to examine" the case. Furthermore, in releasing the March letter, you failed to admit or mention that my Government has in fact, on 29 March, already responded to your letter of 15 March. This is again misleading, and most regrettable.

We do not agree that the mandatory death penalty, applied after a public trial where the accused is afforded legal representation, can be said to offend international law binding on Singapore. The Australian Government has acknowledged that Mr. Nguyen received a fair trial and that the Singapore Government has the sovereign right to maintain the death penalty in its criminal justice system. In addition, Mr. Nguyen filed a petition for clemency to the President of the Republic, and this was carefully considered. Further exchanges on this matter will only be repetitive, as evidenced by the resurfacing of your 15 March 2005 letter, to which we had already responded on 29 March 2005. Accordingly, we can only agree to disagree.

### **Singapore: Death Sentence of Shanmugam s/o Murugesu**

**Violation alleged:** Non respect of international standards 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 notes that he has received credible information that Shanmugam s/o Murugesu has been executed and regrets the decision of the Government of Singapore to execute him given the legal infirmities involved and the Government's unwillingness to address any of the legal issues raised by the SR.

#### **Urgent appeal sent on 10 May 2005**

Mr. Shanmugam s/o Murugesu, aged 38, who is reportedly at risk of imminent execution, following the rejection of his appeal for clemency by the President of Singapore. Reports indicate that he could be hanged on 13 May 2005.

The judgment of the High Court in *Public Prosecutor v Shanmugam s/o Murugesu* [2004] SGHC 88 indicates that the convicted man was arrested on 29 August 2003 at

Tuas checkpoint as he entered Singapore from Malaysia. A search of his motorcycle led to 6 packets, containing 1029.8 grams of cannabis and 880.89 grams of cannabis mixture being found in the motorcycle's carrier box. At his trial, the prosecution proceeded on a capital charge of importing 1029.8 grams of cannabis under s. 7 of the Misuse of Drugs Act, Cap. 185, which carries a mandatory death sentence for anyone found guilty of trafficking in more than 500 grams of cannabis. He was found guilty and consequently sentenced to death by the High Court on 4 May 2004. On 14 January 2005, the Court of Appeal rejected his appeal against his conviction and death sentence. Reports indicate that he has no previous criminal record, has reportedly expressed deep regret for his actions and has asked for the opportunity to be rehabilitated. The estimated street value of the cannabis involved was between \$5,600 and \$7,000.

As Special Rapporteur I am concerned that the mandatory death penalty has been imposed in contravention of applicable international law. Because this aspect of the case raises identical issue to those which I addressed in my earlier note verbale to your Excellency's Government of 15 March 2005 in relation to the case of Mr. Nguyen Tuong Van, I shall take the liberty of recalling the analysis that I offered in that case:

I am aware that the Government of Singapore has previously stated that "the death penalty is primarily a criminal justice issue, and therefore is a question for the sovereign jurisdiction of each country" (E/CN.4/2001/153, para. (c)). By the same token, however, matters relating to the functioning of the criminal justice system are legitimate matters of international concern when questions of non-compliance with international standards are raised in good faith.

The principal concern in the present case relates to the application of a mandatory death penalty. Making such a penalty mandatory and thereby eliminating the discretion of the court generally makes it impossible to take into account mitigating or extenuating circumstances and eliminates case by case determinations of an appropriate punishment in light of all the circumstances of the case. Whatever considerations might be appropriate in relation to other forms of mandatory sentencing, its use in the death penalty context raises fundamentally different issues because the right to life is at stake and because once the sentence has been carried out it is irreversible.

It is my understanding that, since 1975, the death penalty in Singapore has been imposed as a mandatory sentence for a range of specific drug trafficking offences. The consequences of this approach were spelled out by Kan Ting Chiu J. in the High Court ... when he observed that "where the legislature has by the proper exercise of its powers prescribed that for offences involving large quantities of drugs the offenders shall be punished with death, the punishment will be imposed without hearing pleas in mitigation ..." (Public Prosecutor v. Nguyen Tuong Van, No. CC 43/2003, 20 March 2004, para. 84 of the Judgment issued by the High Court).

Both at the trial and at the appeal stage, Mr. Nguyen Tuong Van challenged the constitutionality of the mandatory sentence of death as provided for by s 33 and the Second Schedule of the Misuse of Drugs Act. The arguments were based on Articles 9(1), 12(1) and 93 of the Constitution of Singapore, which deal, respectively, with

fundamental liberty of the person, equal protection of the law, and the vesting of judicial power in the courts. In the High Court *Kan Tin Chiu J.* dismissed this argument by noting that he was bound by the decision of the Privy Council in *Ong Ah Chuan v. Public Prosecutor* which upheld the mandatory death penalty. On appeal the defendant noted that a number of Privy Council cases had reversed this interpretation of the law, primarily in light of the evolution of human rights standards in the intervening two decades. In terms of timing, only one of the relevant later cases (*Reyes v. The Queen*), an appeal from Belize, was available to the trial judge. He observed, however, that that case had relied upon the prohibition of torture and inhuman or degrading treatment or punishment contained in the Belize Constitution and concluded that it was distinguishable from the present case because, as the Appeal Court put it, “there is no equivalent in [the Singapore] Constitution nor in any local Act of Parliament”.

The judgment of *Lai Kew Chai J.*, on behalf of the Court of Appeal, in this case did, however, address the more recent Privy Council decisions. Thus the Court noted that: “The appellant’s arguments on unconstitutionality made reference to several very recent Privy Council decisions on the mandatory death penalty. These decisions, in turn, made reference to international jurisprudence dealing with ‘the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment’” (*Nguyen Tuong Van v. Public Prosecutor* [2004] SGCA 47, para. 59). The Privy Council decisions included *Watson v The Queen* [2004] UKPC 34 as well as *Reyes v The Queen* [2002] 2 AC 235. The Appeals Court noted that in “both *Watson v. The Queen* and *Reyes v The Queen*, the mandatory death penalty in respect of certain classes of murder was ruled unconstitutional as a violation of the prohibition against cruel or inhuman treatment or punishment. In *Matthew v The State* and *Boyce v The Queen*, the Privy Council would have ruled the same way but for certain “saving provisions” in the relevant national Constitutions which preserved pre-existing national laws” (para. 83).

In paragraph 29 of *Watson v The Queen* the Law Lords indicated that “It is no longer acceptable, nor is it any longer possible to say, as Lord Diplock did on behalf of the Board in *Ong Ah Chuan v Public Prosecutor* [1981] AC 648, 674, that there is nothing unusual in a death sentence being mandatory. As Lord Bingham pointed out in *Reyes*, p. 244, para. 17, the mandatory penalty of death on conviction of murder long predated any international arrangements for the protection of human rights. The decision in that case was made at a time when international jurisprudence on human rights was rudimentary.” The Privy Council further observed that “The march of international jurisprudence on this issue began with the Universal Declaration of Human Rights which was adopted by a resolution of the General Assembly of the United Nations on 10 December 1948 (1948) (Cmd 7662). It came to be recognized that among the fundamental rights which must be protected are the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment.”

In relation to the present case the Singapore Court of Appeal opted not to “examine each [of these cases] in detail” (para. 83) and, after a brief recitation of some passages from the Privy Council, concluded “However, we are of the view that the mandatory death sentence prescribed under the MDA is sufficiently discriminating to obviate any inhumanity in its operation. It is therefore constitutional.” This conclusion was not, however, based upon any analysis which might have shown that the sentence is



discriminating in the sense of taking account of the circumstances of the individual. The fact that the law discriminates on the basis of the quantity of drugs involved does not address the concerns raised by the Privy Council nor those reflected in international standards.

The Court of Appeal did not specifically cite, nor did it address, the directly relevant observations of the Privy Council contained in the case of *Boyce and Joseph v. The Queen*. In that case the constitutional validity of the mandatory death penalty law of Barbados was upheld, but the majority opinion carefully limited the grounds for its finding to the terms of the Constitution of Barbados.

More pertinent to the present case is the fact that, on the basis of a systematic review of international legal standards, the majority observed that the maintenance of the mandatory death penalty 'will ... not be consistent with the current interpretation of various human rights treaties to which Barbados is a party' (See Judgment of the Lords of the Judicial Committee of the Privy Council, Privy Council Appeal No. 99 of 2002, Judgment of 7 July 2004, para. 6). The same conclusion was repeated in more forceful terms in the minority judgment on behalf of four Law Lords who stated that: "the jurisprudence of the Human Rights Committee, the Inter-American Commission and the Inter-American Court has been wholly consistent in holding the mandatory death penalty to be inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment. ... The appellants submitted that 'No international human rights tribunal anywhere in the world has ever found a mandatory death penalty regime compatible with international human rights norms,' and this assertion has not been contradicted"(para. 81(3)).

In light of this review of relevant legal standards I would respectfully request Your Excellency's Government to take all necessary steps to avoid an execution which is inconsistent with accepted standards of international human rights law.

These issues were not addressed in the response provided by your Excellency's Government on 29 March 2005. It was said that the arguments I raised were 'fundamentally flawed in that there is no international consensus on international standards for or against capital punishment imposed according to due process of law'. This sweeping rejection of the views of the Privy Council and of the approach adopted by every 'international human rights tribunal anywhere in the world' (to use their Lordships phrase) in relation to the mandatory death penalty, fails to address the issue raised. The response to my letter goes on to conclude that the fact that I 'appear to have reached a different opinion from the Court of Appeal ... does not in itself call into question the competence of the Court of Appeal or the validity of its judgment'. I would note only the undoubted competence of the Court was never called into question, and that I was juxtaposing not my own views but those of every international tribunal which has had reason to reflect on the issues raised by the mandatory imposition of the death penalty.

I wish to emphasize that the principal issue at stake is not the interpretation adopted by the Court of Appeal but the legislation which mandates the imposition of the death penalty regardless of the circumstances of the case. My analysis, while drawing upon the reasoning of the Court, is thus addressed not to it but to your Excellency's Government.

In the present case of Mr. Shanmugam s/o Murugesu I would note that neither the High Court nor the Court of Appeals appears to have addressed any attention to the issue of the validity of the mandatory death penalty. The facts that the accused had no prior convictions, was apparently not implicated in the drug trade beyond this incident, and was trafficking drugs to the value of less than S\$7,000, were thus not able to be taken into account by the Court which imposed the death penalty. Nor were any other considerations relating to the personal situation of the accused able to be taken into account.

In conclusion, therefore, I would reiterate that in light of the irreversibility of the punishment, it is imperative that your Excellency's Government takes all steps necessary to prevent executions which are inconsistent with accepted standards of international human rights law.

#### **Acknowledgment of the Government of Singapore of letter dated 12 May 2005**

#### **Response of the Government of Singapore dated 13 May 2005**

It is not clear to us how Mr Shanmugam's sentence, not being extrajudicial, summary or arbitrary, falls within your mandate. We cannot agree that the imposition of the mandatory death penalty on Mr. Shanmugam s/o Murugesu is in any way inconsistent with Singapore's international legal obligations, whether under treaties to which Singapore is a party or under customary international law. There is no international consensus on standards either for or against capital punishment imposed in accordance with the due process of the law. While we respect your views on this issue, they do not represent "accepted standards of international human rights law".

#### **Spain: Muertes de Migrantes Cruzando la Frontera en Mellila**

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

**Persona objeto del llamamiento:** 9 hombres

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

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

El Relator Especial aprecia la información proporcionada por España relativa a los resultados de las investigaciones sobre dichas muertes. El Relator preguntará más información relativa a los resultados de los procesos judiciales descritos.

#### **Alegación enviada el 7 de octubre de 2005**

Tenemos el honor de dirigirnos a usted en nuestras respectivas calidades de Relator Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias, Relator Especial sobre la tortura y Relator Especial sobre los derechos humanos de los migrantes, de conformidad con las resoluciones 2004/37, y 2005/47 de la Comisión de Derechos Humanos.

En el ejercicio de nuestros mandatos respectivos, continuamos recibiendo y examinando información sobre presuntas violaciones de derechos humanos. En este sentido, deseamos poner en su conocimiento que durante el mes de septiembre de 2005, hemos recibido diversas denuncias relativas a una serie de incidentes en los cuales varios migrantes de origen subsahariano habrían resultado muertos, sea como consecuencia de disparos o de maltratos por parte de las fuerzas de seguridad que vigilan las frontera española con Marruecos en Ceuta y Melilla.

Según las informaciones recibidas, el 29 de agosto de 2005, a las 02:00 horas, unos cincuenta migrantes habrían intentado traspasar la valla fronteriza en Melilla. Se habrían dividido en tres grupos, uno de ellos compuesto por unas 16 personas. Este grupo habría sido visto por miembros de la Guardia Civil española, quienes habrían utilizado material anti-disturbio. De este grupo de 16, ocho personas habrían logrado atravesar las dos vallas que separan territorio marroquí de territorio español.

Se alega que agentes de la Guardia Civil habrían golpeado con la culata de sus fusiles y con porras eléctricas a los otro ocho migrantes que habían quedado atrás, antes de re-enviarles a territorio marroquí por una puerta de servicio de la frontera situada entre los puntos "A7" y "A8", entre Melilla y Marruecos. Joseph Abunaw Ayukabang, un camerunés de 17 años, fue trasladado por sus compañeros hacia un bosque donde falleció, según se alega, a consecuencia de los golpes recibidos.

Se informa también que el cadáver de otro migrante también herido durante el incidente habría sido recogido por efectivos de la Gendarmería real marroquí. Sin embargo, el Hospital de Nador habría confirmado solamente haber recibido un solo cadáver.

El 12 de Septiembre de 2005, el cuerpo de un migrante de origen sub.-sahariano habría sido trasladado al Hospital Comarcal de la ciudad de Melilla. Registraba heridas, supuestamente imputables a las fuerzas de seguridad marroquíes, ocasionadas cuando intentaba cruzar la frontera el 8 de septiembre de 2005. No obstante, otras informaciones indican que esta persona habría sido herida accidentalmente ese mismo día en territorio marroquí.

Las informaciones que hemos recibido hacen también referencia a la muerte de otro migrante el 15 de Septiembre 2005, quien también habría sido trasladado al Hospital Comarcal. Su cuerpo presentaba una herida de bala de caucho en la garganta disparada supuestamente por elementos de las fuerzas de seguridad que vigilan la frontera hispano-marroquí.

Hemos recibido también informaciones según las cuales otras cinco personas habrían sido mortalmente heridas de bala al tratar de cruzar la valla fronteriza en Ceuta conjuntamente con otros 500 o 600 migrantes el 29 de septiembre de 2005. Sus cadáveres fueron encontrados en ambos lados de la frontera.. Otras ocho personas fueron trasladadas al hospital de Tetuán por heridas provocadas por impacto de balas de caucho, material antidisturbios al parecer utilizado por la Guardia Civil española encargada de vigilar la frontera.

Algunas informaciones hacen mención que elementos de las fuerzas de orden marroquíes se habrían colocado en línea delante de la valla fronteriza y habrían disparado con fusiles.

Es de nuestro deber informar sobre estas alegaciones a la Comisión. Estaríamos muy agradecidos de contar con la cooperación de su Gobierno y con sus observaciones sobre los cinco asuntos siguientes:

1. ¿Son exactos los hechos referidos? Si no, para refutar estas alegaciones, agradeceríamos nos proporcione los resultados de las diligencias efectuadas, incluyendo las necropsias que eventualmente se han realizado.
2. Si fueron presentadas quejas o denuncias, ¿cuales han sido las respuestas a las mismas y las acciones referidas en las respuestas?
3. Por favor, proporcione los detalles así como los resultados, en caso que sean disponibles, de las diligencias, judiciales o de otro tipo, realizadas en relación con estos casos.
4. Por favor, proporcione los detalles de cualquier diligencia que haya sido emprendida.
5. Por favor, indique si alguna compensación ha sido otorgada a las familias de las víctimas.

Garantizamos que la respuesta de su Gobierno a cada una de las preguntas anteriores será incluida en los informes que presentaremos a la próxima sesión de la comisión de Derechos Humanos a fin de que ésta que esta los examine.

#### **Respuesta del Gobierno de España del 25 de noviembre de 2005.**

Por carta con fecha de 25 de noviembre de 2005, la representación permanente de España ante las organizaciones internacionales, transmitió la siguiente información con relación a la comunicación del 7 de octubre de 2005:

La oficina de derechos humanos del Ministerio de asuntos exteriores establece los hechos y las actuaciones sobre los incidentes ocurridos los días 29 de agosto, 12 de septiembre, 15 de septiembre y 29 de septiembre.

#### 29 de agosto de 2005

Como consecuencia del asalto protagonizado por aproximadamente 300 inmigrantes de origen subsahariano el 28 de agosto de 2005, resultaron heridos leves diez agentes de la Guardia Civil de fronteras y cinco inmigrantes que fueron trasladados a un centro médico. Ese día, los Guardias civiles no observaron la existencia de otras personas heridas.

El 29 de agosto, un grupo de unos 50 inmigrantes en territorio marroquí se acercó a la zona fronteriza y entregó a los agentes de las Fuerzas Auxiliares de Marruecos (Mehaznia) el cadáver de una persona envuelto en una manta. Hasta entonces, los agentes de la Guardia Civil, no habían tenido conocimiento de que se hubiese producido una muerte. A través de la Mehaznia, los agentes españoles supieron que los inmigrantes atribuían la causa del fallecimiento al asalto masivo del día anterior.

Se abrió de oficio una investigación interna cuyas únicas fuentes de información son la información aportada por las autoridades marroquíes y la visión de las cintas de grabación del asalto a la valla.

Resulta de una reunión con los mandos de la Gendarmería Real Marroquí que practicó las diligencias de reconocimiento y tomó declaración a los inmigrantes, que la supuesta responsabilidad de los agentes españoles se basa sobre la manifestación de un testigo, según el cual un guardia civil habría disparado a bocajarro con balas de caucho y habría devuelto el cadáver a territorio marroquí por una de las puertas de las vallas. Sin embargo por varios motivos las autoridades españolas rechazan la credibilidad del testigo, entre ellos, el hecho de que la grabación del asalto no recoge ninguno de estos hechos, que ningún otro inmigrante corroboró este relato de los hechos, que existen contradicciones en la declaración del testigo, que el arma supuesta y las contusiones que presentaba el fallecido son incompatibles, que la inspección ocular de la zona no advirtió restos de sangre o indicios.

Se señala que las fuerzas y cuerpos de seguridad españoles tienen prohibida la tenencia y el uso de porras eléctricas. En los registros de los depósitos de armas nunca se han encontrado estas armas ilegales. Asimismo los supuestos golpes con la culata del arma no son coherentes con el hecho de que el cuerpo del fallecido presentara una única contusión necrótica.

#### 12 de septiembre

El 8 de septiembre, la Guardia civil de fronteras detectó la presencia de unos 100 inmigrantes en la zona de los acantilados de Aguadú que avanzaban hacia la línea fronteriza. Ante la presencia de la Guardia Civil volvieron sobre sus pasos, dejando en el lugar a seis personas. Sospechando que pudieran estar heridas los agentes se aproximaron y procedieron a su evacuación. Cuatro de los heridos fueron trasladados al centro de salud de la ciudad y dados de alta el mismo día. Los otros dos fueron conducidos al Hospital Comarcal. Uno de ellos, ingresó en estado de coma y falleció el 12 de septiembre.

El 8 de septiembre se inició una investigación sobre las causas de las lesiones, en poder de la autoridad judicial, en la que consta que los acompañantes del fallecido declararon que había sufrido una caída desde un barranco cuando trataba evitar de ser alcanzado por las autoridades marroquíes. Debido al secreto de la instrucción judicial, estos son los únicos datos disponibles por el momento.

#### 15 de septiembre

En la madrugada del 15 de septiembre, los agentes de la Guardia civil introdujeron en territorio español a un hombre que solicitaba atención médica al que trasladaron en ambulancia al Hospital comarcal dónde falleció el mismo día.

Por la tarde, la persona que lo acompañaba se acercó a la valla con agentes de las Fuerzas auxiliares de Marruecos. A solicitud de los agentes españoles, entró en España para declarar como testigo.

Todos lo anterior fue grabado por la cámara de seguridad.

Existe un proceso judicial en fase de instrucción y una investigación interna ya cerrada en la que constan las declaraciones del testigo y la de los agentes.

El testigo declaró que su compañero era de Ghana, que lo había encontrado en la localidad de Farhana en estado crítico con una herida en la nuca, de la que desconocía el origen, y lo había llevado a la valla. En la investigación interna se descartó cualquier relación entre el asalto a la valla y el fallecimiento del inmigrante.

El proceso judicial sigue su curso.

#### 29 de septiembre

En la madrugada del 29 de septiembre, un grupo de 500 o 600 personas asaltó la frontera entre Marruecos y Ceuta falleciendo dos personas.

El proceso judicial fue iniciado inmediatamente por la comunicación de los agentes de la Guardia Civil al Juez de Guardia.

Fue iniciado de oficio un proceso interno de investigación que puso de manifiesto que los cuerpos de las personas fallecidas presentaban impactos de bala de armas de fuego largas que fueron la causa de su muerte. El examen balístico de la policía científica reveló que ni la munición ni el tipo de armas corresponde a las que utiliza la Guardia Civil. Otras constataciones confirmaron las declaraciones de los agentes españoles quienes escucharon disparos procedentes del otro lado de la frontera y avisaron a la Mehaznia del peligro que ello suponía tanto para los inmigrantes como para ellos.

Todo ello es coherente con el hecho de que los agentes del puesto fronterizo no están autorizados para la tenencia o uso de armas de fuego real.

En conclusión de lo expuesto sobre los cuatro casos se excluye la posibilidad de contemplar compensaciones a las familias de las víctimas que exigirían petición previa y declaración de la responsabilidad de las autoridades españolas.

### **Sri Lanka: Killing of Kumaravel Thambiah and Journalist Aiyathurai Nadesan**

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

**Subject(s) of appeal:** 2 males (1 journalist; 2 members of an ethnic minority)

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur appreciates the preliminary information provided by the Government of Sri Lanka. He would appreciate updated information on the investigations into the killing of Aiyathurai Nadesan and Kumaravel Thambiah.

**Allegation letter sent on 21 July 2004**, reproduced from E/CN.4/2005/7/Add. 1, paras. 669, 670

669. Allegation with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 21 July 2004 Mr. Aiyathurai Nadesan, a journalist who had been reporting to the Tamil daily, "Virakesari", International Broadcasting Corporation (IBC) and to some daily electronic media. On 24 May 2004, he was reportedly shot dead by unidentified gunmen believed to be members of the Sri Lankan intelligent service in Batticaloa, while he was going to work on his motorbike. Mr. Nadesan won the North East Sahithya Academy award for his book written in Tamil "History of Ethnic Strife". He also won the best Tamil journalist award in year 2000. He was one of the founder members of Sri Lanka Tamil Media Alliance (SLTMA) and held the post of Vice-President of this association. On 17 July 2001, Mr. Nadesan was interrogated by a military officer of the city of Batticaloa. The officer reminded him that he had to obey them and that he would be arrested if he continued to write critical articles against the military. No investigation had been conducted into his death at the time of writing this communication.

670. Mr. Kumaravel Thambiah, a senior lecturer at the Eastern University was reportedly shot dead by members of the Sri Lanka intelligent agency, while he was at home in Batticaloa on 24 May 2004. No investigation has been conducted into his death till the filling of this report.

#### **Response of the Government of Sri Lanka dated 24 March 2005**

Concerning the death of Mr. Aiyathurai Nadesan (parag 669): Mr. Alyathural Nadesan was a Senior Income Tax Officer in Batticaloa and used to write newspaper articles on current political issues. The deceased had also written several articles to Tamil newspapers condemning the activities of "Karuma Faction", which is a group loyal to former LTTE member, Karuna who defeated with his troops breaking away from the LTTE main group. Mr. Nadesan had written an article condemning the assassination of Lecturer Thambiah by an unknown gunman, a week prior to Mr. Nadesan being killed.

The Investigation conducted by the CID revealed that the deceased was shot dead on his way to office on his motor cycle on 31.05.2004 at about 0915 hrs.

Batticaloa Police visited the scene immediately and conducted Investigations. Police have found two empty casings at the scene. There were no eye witnesses to this incident A post mortem examination was also conducted by the JMO/Batticaloa who reported that the death was due to gun shot injuries causing multiple fracture on ribs, laceration of left lung, resulting shock and hemorrhage. The Magistrate of Batticaloa also had visited the scene and returned the verdict of Homicide. The facts of this crime have also been reported to Magistrate Court Batticaloa under case No. B 553/2004 having held an identification parade. The witnesses did not identify any of the suspects at the identification parade. It is presumed that the death of deceased Nadesan had been caused as he had written several articles condemning the activities of "Karuna Faction" and the assassination of the Lecturer Kumaravel Thambiah in the Tamil newspapers. A statement from the wife of the deceased was also recorded with regard to the allegations raised against the intelligence Officers of the Government. She has stated that she did not suspect any of the government officers nor has she made any allegation against anyone. The CID is conducting further investigation after which notes of investigation will be submitted to the Attorney General.

Concerning the death of Mr. Kumaravel Thambiah (parag 670): The CID conducted an investigation into the murder of Mr. Thambiah on the direction given by the Inspector-General of Police. Mr. Kumaravel Thambiah was a Lecturer of the University of Eastern Province. The Investigation conducted by the CID revealed that around 1615 hrs, the assailant had come into this house and wanted to speak to Mr. Thambiah. Immediately when Mr. Thambiah came out, the assailant had shot Mr. Thambiah and escaped. Batticaloa Police visited the scene immediately and conducted investigations. Police have found a pair of slippers near the scene and sniffer dogs had been deployed to crack down the suspect but without a success. A postmortem examination was also conducted by the Judicial Medical Officer of Batticaloa who reported that the death was due to gun shot injuries resulting fracture on left side fifth rib, damage to Spiral Code resulting shock and hemorrhage. The Magistrate of Batticaloa also visited the scene and returned the verdict of homicide. The facts of this crime have also been reported to the Magistrate Court-Batticaloa under case No. B 519/2004. The witnesses did not identify any of the suspects at the Identification parade conducted by the Magistrate. A statement of the wife of the deceased has also been recorded with regard to the allegations raised against the Intelligence Officers of the government. She has stated that she did not suspect any of the government officers nor has she made any allegation against anyone. The CID is conducting further investigation after which notes of Investigation will be submitted to the Attorney General.

With regard to the above two cases, the Government of Sri Lanka also wishes to state the following: there have been infighting between groups loyal to LTTE leader V. Prabhakaran and Chose loyal to former LTTE member Karuna who defeated with his troops, breaking away from the LTTE main group. Since then there have been a number of killings where both parties accuse each other for such killings. Intelligence information received during investigation points out that the above-mentioned killings too may have been motivated by the above.

### **Sri Lanka: Death in Custody of Herman Quintus Perera**

**Violation alleged:** Death in custody

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

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur appreciates the preliminary information provided by the Government of Sri Lanka regarding the death in custody of Herman Quintus Perera. The SR would appreciate updated information on the prosecution of the alleged perpetrators.

#### **Allegation letter sent on 21 December 2004**

Mr. Herman Quintus Perera, (aged 40) was killed on 3 October 2004 by the Pollonnaruwa police while in custody. It is alleged that two police officers came by motorcycle to the restaurant where Mr. Quintus Perera was manager and asked for a bottle of liquor. Mr. Perera explained that he could not accommodate their request as



it was a Poya Day (World Temperance Day) on which the sale of liquor is prohibited by law. The two police officers then left the restaurant. They soon returned with a large number of other officers in a police jeep. They reportedly assaulted Mr. Perera. The police then put Mr. Perera and three other workers into the jeep and took them away. Allegations indicate that in the morning of October 4, Mr. Perera was not in the police cell of the Polonnaruwa Police Station and that his body was found at the morgue. An Assistant Superintendent of Police (ASP) allegedly claimed that the victim was killed during a fight when the police raided his restaurant. They alleged that M. Quintus was selling illicit liquor.

### **Response of the Governemnt of Sri Lanka dated 24 March 2005**

Initial investigation into this incident revealed that 1<sup>st</sup> October 2004 had been declared as a temperance day where the sale of liqor was prohibited. The police anti-vice squad having received information of the sale of liqor on this day at the restaurant had proceeded to conduct a search with a search warrant issued by the Court. The staff of the restaurant had resisted the search and a scuffle had arisen between the police search party and the staff of the restaurant. Four person including the deceased were arrested and brought to the police station where the deceased had fallen ill and was taken to the hospital where he died. During the search, the police also arrested a prostitute which gave rise to the suspicion that the restaurant was also being used as a brothel.

The investigation into the death of Mr. H. Quintus Perera was investigated into by a special team under the supervision of DIG/NCP (Anuradhapura) appointed by the Inspector General of Police. Four police officers from the Polonnaruwa Police have been identified as the alleged perpetrators and they were produced before the Magistrate's Court Polonnaruwa, The perpetrators have been remanded and this case is in progress.

### **Sri Lanka: Death Threats Against Dawundage Pushpakumara and His Family**

**Violation alleged:** Death threats and fears for safety

**Subject(s) of appeal:** 1 male (minor) and his family

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

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

The Special Rapporteur appreciates the information provided by the Government of Sri Lanka and will request the results of the judicial hearing and disciplinary proceedings to which it refers. However, the SR must reiterate the Government's obligation to ensure the safety of the victim and his family.

**Urgent appeal sent on 11 February 2005** with the Special Rapporteur on torture

Mr. Dawundage Pushpakumara was reportedly severely tortured by the then Officer-in-Charge and other officers of the Saliyawewa Police Post in Putlam on 1 September 2003, when the boy was aged 14. After he filed a complaint and the investigations started, the police officers have been constantly threatening him and his family and

even tried to prevent him from getting medical treatment. The Child Protection Authority intervened and took him to Colombo for treatment. Due to the fear for his life, he never returned home and was given protection at a nearby technical centre where he stayed since. Complaints regarding the threats have been made to the National Police Commission and the National Human Rights Commission and the Attorney General of Special Rapporteur Lanka. However, it is alleged that no effective action has yet been taken to guarantee the security for this family. Dawundage Pushpakumara's case was the object of a previous communication sent by the Special Rapporteur on Torture on 25 September 2003 to which the Government responded that the Special Investigation Unit commenced an investigation and, upon completion, forwarded extracts of the investigation notes to the Attorney General's Department on 13 November 2003, where it was under consideration. I have been informed that his family has recently received further threats by the accused police officers in an attempt to force them to withdraw their complaints. The threats allegedly became even more serious as the case was to be heard for the first time at the Chilaw High Court on 9 February 2005 (Case No. H.C.24/2004/Chilaw High Court under CAT Act No. 22 of 1994). Reports indicated that, on that day, the Court was informed about the death threats made to the victim and his family. Consequently, a group of human rights activists took the family back to their home, where they live in a defenseless position whereas D. Pushpakumara was taken back to the training centre near Colombo.

Concern is heightened by recent reports indicating that the hearing has been postponed as the accused police officer did not attend the court, transmitting a medical report as a justification. The next hearing of the case was set to 25 April 2005 and this period could be critical for the victim and his family if adequate protection is not provided to them.

It is my understanding that the indictments for torture cases are filed after the Attorney General, on behalf of the State, is satisfied that there is substantive evidence to proceed against the perpetrators for offenses under the Convention Against Torture (CAT) Act of Special Rapporteur Lanka (Act No. 22 of 1994). It is alleged that the prospect of the seven years mandatory sentence for torture under the CAT Act often leads the alleged perpetrators to threaten the complainants and their families, as demonstrated by several previous cases brought to the attention of the Inspector General of Police, the Attorney General, the Human Rights Commission of Sri Lanka and the National Police Commission. I would like to underline the fact that, once such indictments have been filed, the State is under an obligation to protect the complainants. This is underscored by the standards contained in a number of applicable international instruments which provide for an obligation on the part of the State to provide protection. 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. More specifically, principles 4 and 9 to 19 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Economic and Social Council resolution 1989/65 of 24 May 1989 oblige 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. A thorough, prompt and impartial investigation of all suspected cases of any such executions or death threats must be carried out and its results shall be made public. I have been informed that, despite several previous warnings to the Sri Lankan authorities regarding the risks encountered by complainants when similar torture cases are soon to be heard by the High Court, the Government has reportedly failed to establish an "effective witness protection program". Without in any way prejudging the facts of the case, I would respectfully urge your Government to take all measures necessary in order to protect the lives of D. Pushpakumara and his family. I also urge you to promptly order an investigation into the allegations of death threats to the victim and his family. I would be grateful if your Excellency could provide me with information on the results of the investigation as well as on the steps undertaken in order to bring the alleged perpetrators to justice. Finally, I would request your Government to seriously consider establishing an effective witness protection program to protect 'at-risk' witnesses in criminal trials and to provide me with the relevant information on the progress made towards this objective. I would greatly appreciate receiving shortly information from Your Excellency's Government in response to these concerns.

#### **Response of the Government of Sri Lanka dated 24 March 2005**

The Special Investigation Unit (SIU) of Sri Lanka Police who conducted an investigation into this allegation has reported that the accused police officers have been indicted under the Act No. 22 of the 1994 on Convention on torture and other cruel, inhuman or degrading treatment or punishment. The hearing has been postponed for 25.04.2005. Furthermore, action has been taken by the Police Department to initiate disciplinary inquiry against accused Police Inspector Samarakoon.

#### **Sri Lanka: Inquiry Regarding the Death Penalty**

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

**Subject(s) of appeal:** General

**Character of reply:** No response

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

The Special Rapporteur appreciated the conversations concerning the death penalty that he had with Government officials during his visit in November – December 2005. However, the SR did not have the occasion to make extensive inquiries on this issue and would appreciate a response to the questions posed.

#### **Communication sent on 2 August 2005**

In this connection, I would like to seek information from your Government in relation to reports stating that – in reaction to a series of particularly heinous crimes that have shaken your country recently – Sri Lanka will reactivate capital punishment.

To my knowledge, the last time the death penalty was executed in Sri Lanka dates back to June 1976. Since then, consecutive presidents have commuted all death sentences. In March 1999, amid reports of rising crime, the Government announced that death sentences would no longer be automatically commuted when they came before the President. In practice, however, death sentences continued to be commuted in all cases. According to information brought to my attention, in recent months high-ranking officials of your Government have again announced the resumption of executions. On 20 November 2004, the Office of the President stated that “the death penalty will be effective from today for rape, murder and narcotics dealings”. The Justice Ministry and the Attorney General have reportedly recommended that the death sentences be imposed in a notorious rape and murder case (the killing of Rita John) be carried out.

I am of course aware of the fact that Sri Lanka has acceded to the International Covenant on Civil and Political Rights (ICCPR), but is not a Party to the Second Optional Protocol thereto, aiming at the abolition of the death penalty. International law does therefore not preclude your Government from having recourse to the death penalty. The Commission on Human Rights has, however, consistently requested me and my predecessors as Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of all standards relating to the imposition of capital punishment.

At present, I would like to highlight four of these standards relating to the imposition of capital punishment:

- (i) the “sentence of death may be imposed only for the most serious crimes” (Article 6(2) ICCPR);
- (ii) “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);
- (iii) “anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.” (Article 6(4) ICCPR);
- (iv) the obligation to disclose the details of the application of the penalty (*see* my Report to the Commission on Human Rights, E/CN.4/2005/7, para. 58, and Commission on Human Rights Resolution 2005/59, OP 5(c) and (d)).

In order to carry out the mandate entrusted to me by the Commission on Human Rights, i.e. in order to be able to effectively monitor the implementation of the

mentioned standards, I would be grateful for your responses in relation to the following matters:

- (a) Assuming that your Government intends to change the policy that has resulted in the commutation of all death sentences in the course of the last three decades, I would like to know if this decision is in the remit of the President alone, or is a matter for the Cabinet, or for the attorney general? In what form would such a decision be taken?
- (b) For which offences does the law currently provide for the imposition of the death penalty? Does your Government envisage introducing legislation to change the list of offences punishable by death?
- (c) Are there any specific procedural guarantees applying in criminal cases in which the death sentence is or could be sought, e.g. in relation to the right to legal counsel or in the area of evidentiary standards?
- (d) Which courts can impose the death sentence? Which appeals and extraordinary remedies are available to a person sentenced to death?
- (e) 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 used by them as well as those still available to them. Please also provide a list of the currently pending criminal cases in which the prosecution intends to seek the death sentence.

In view of my official visit to Sri Lanka scheduled for the month of December, I would like to ask your Government to provide the information requested by 1 November 2005, so as to allow me to adequately prepare for a constructive continuation of this exchange.

By way of conclusion, let me assure you, Excellency, that I am fully aware of the deeply troubling nature of the crimes that have led to calls for the resumption of executions in Sri Lanka. As stated above, I also recognise that under international law your Government enjoys the option of retaining the death penalty in the legal system and of resuming executions. Nonetheless, the question of adequate safeguards is of the highest importance in this situation.

### **Sri Lanka: Impunity for the Bindunuwewa Massacre**

**Violation alleged:** Impunity; Deaths in custody

**Subject(s) of appeal:** 27 males (members of an ethnic minority)

**Character of reply:** No response

**Observations of the Special Rapporteur**

During his visit to Sri Lanka in November – December 2005, the Special Rapporteur discussed this case with Government officials, the mothers of victims, a survivor, and an attorney for the families. The SR would emphasize that there is no justification for the impunity that has prevailed in the *Bindunuwewa* case and would appreciate being informed of any progress that might be made.

### **Communication sent on 10 August 2005**

Communication sent regarding recent developments in the criminal proceedings concerning the killing of 27 Tamil detainees at the Bindunuwewa Rehabilitation Centre on 25 October 2000. It would appear that, as a result of a judgment of the Supreme Court of Sri Lanka of 27 May 2005, the only five men ever held accountable for the murders were acquitted.

As your Excellency will recall, my predecessor as Special Rapporteur on extrajudicial, summary or arbitrary executions wrote to your Government in this matter on 31 October 2000. Your Government replied on 10 November and 6 December 2000, as well as on 9 March and 9 July 2001. In these communications your Government provided detailed information about the incident itself, the autopsies conducted on the bodies of the victims, the first steps in the investigations, arrests carried out (among both villagers and police officers) disciplinary measures provisionally imposed, and compensation paid to the families of the victims. Your Government also transmitted to my predecessor copies of two particularly useful documents: the *Interim Report on the Incident at the Bindunuwewa Rehabilitation Centre, Bandarawela – 24 & 25 October 2000* of the Human Rights Commission of Sri Lanka of 1 November 2000, and an (undated) *Communication received from the Attorney General's Department on the developments with regard to the judicial investigation into the incident relating to the killing of the inmates at the Bindunuwewa Rehabilitation Centre*.

I consider the following statements in these two documents particularly significant:

- "... all the information we have been able to gather so far does not suggest that what occurred on the 25<sup>th</sup> was an unpremeditated eruption of mob violence caused by the provocation of the inmates. It is more consistent with a premeditated and planned attack." (Human Rights Commission Interim Report, p. 16);
- "... it is clear that the police officers, approximately 60 in number, have been guilty of a grave dereliction of duty in not taking any effective action to prevent the acts of violence that resulted in the deaths of 26 inmates ..." (Human Rights Commission Interim Report, p. 12);
- "The autopsies were accordingly conducted by the Judicial Medical Officers. Causes of deaths were identified as Cardio Respiratory Failure due to Shock and Hemorrhage resulting from injuries caused by Sharp and Blunt Weapons. ... [V]erdicts of homicide were pronounced. This was followed by overt and covert investigations, which enabled the police initially to arrest 56 suspects" (Attorney General's Communication, p. 4);
- "Having regard to the magnitude of the crime, the Attorney General opined that the criminal trial should be held before a Trial-at-Bar, a special trial procedure where a preliminary inquiry is dispensed with and the trial is

- expeditiously conducted by three judges of the High Court”; (Attorney General’s Communication, p. 5)
- “the Attorney General has now contemplated a total of 83 counts (Charges) to be included in the proposed indictment upon which the trial is intended to proceed. These Counts include those of Murder punishable with Death relating to the 27 deceased inmates and of Attempted Murder punishable with terms of 20 year rigorous imprisonment and fines in respect of the injured inmates” (Attorney General’s Communication, p. 5).

I regret that since 9 July 2001 no further information has been received from your Excellency’s Government regarding the progress made in the prosecution of the inquiries and criminal proceedings. However, according to information brought to my attention by other sources:

On 8 March 2001, the government established a Commission of Inquiry into the killings. The Commission faulted the local police commanders (identified by their rank and name) for failing to protect the detainees from the attack in spite of prior knowledge of a planned demonstration by local villagers in front of the detention centre, and for their failure to take any disciplinary action against their subordinates for failing to protect inmates under their control. However, to date, the two officers have neither been disciplined nor criminally prosecuted.

Following police investigations, the prosecution charged 41 persons with various crimes, including murder. Of those, 23 were subsequently released on the grounds that there was no case to answer. By the end of the trial, 13 of the remaining 18 were also acquitted for lack of evidence. On 1 July 2003, the Colombo High Court found the remaining five individuals guilty and sentenced them to death. On an unspecified date, the Supreme Court quashed the conviction of one of the five, a police subinspector from Bandarawela, on grounds of “lack of evidence”. By judgment of 27 May 2005, the Supreme Court acquitted the last four accused in the case, again citing lack of evidence. Reportedly, during the Supreme Court hearing the justices were openly hostile to the prosecution. One justice publicly reminded those present in the courtroom that the killed inmates were members of the LTTE, suggesting that this might mitigate the guilt of the accused.

To sum up, close to five years after the murder of 27 boys and young men detained by your Government for purposes of rehabilitation, no one has been found guilty of their deaths and been subjected to punishment.

In this respect, I would like to recall that, as reiterated in Commission on Human Rights Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, ... and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions”. This obligation, affirmed also in the jurisprudence of the Human Rights Committee (*see, e.g. the Committee’s views in Arhuacos v. Colombia*, Communication no. 612/1995, § 8.8.), is indeed part

and parcel of the obligation to respect and protect the right to life enshrined in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights.

I therefore urge your Government to persist in and step up the efforts to bring to justice those responsible for the Bindunuwewa massacre, particularly police officers and other public officials, whatever their hierarchical level and their role in the events.

### **Sri Lanka: Death Threats Against Lawyer W.R. Sanjeewa**

**Violation alleged:** Death threats and fear of imminent extrajudicial execution

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

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

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

The Special Rapporteur regrets that the Government of Sri Lanka has not conducted an investigation into alleged threats against W.R. Sanjeewa and notes that the information required to conduct such an investigation was previously communicated to the Government. The SR has received copies of correspondence indicating that the necessary information regarding W.R. Sanjeewa was communicated to the Inspector General of Police in October 2005. A letter from the Attorney General to the Inspector General of Police dated 18 October 2005 requested that the IGP “take necessary steps to ensure his safety so that he will be able to discharge his professional functions without fear or undue interference” and included a copy of a letter from the complainant. Similarly, a letter from the Human Rights Commission of Sri Lanka to the IGP dated 19 October 2005 requested that he “investigate into this matter and provide necessary protection to him” and included a fax from the complainant. The SR reiterates his request that an investigation be conducted and that its results be communicated to him.

**Urgent appeal sent on 2 November 2005** with the 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

Urgent appeal sent concerning death threats against W.R. Sanjeewa, a lawyer representing victims of torture and extrajudicial killings. According to the information received:

Mr. W.R. Sanjeewa is a lawyer appearing on behalf of a number of Sri Lankans claiming to be the victims of torture by police officers in cases currently pending before various courts in Sri Lanka.



Several police officers accused of torturing Mr. W.R. Sanjeewa's clients have approached him, personally or by phone, requested him move his clients to withdraw their torture complaints, and threatened him and his clients. On 22 October 2005, Mr. Sanjeewa lodged a formal complaint which was recorded at the police headquarters in Colombo. He had previously written a formal letter to the Inspector General of police with copies to the Attorney General regarding the threats received. We understand that Mr. Sanjeewa's report to the police of 22 October 2005 identifies the names of the police officers who have attempted to intimidate him and the names of the cases the threats refer to. These names are on record with us as well. However, the police appear not to have taken any action to investigate the threats or to protect Mr. Sanjeewa.

The threats against Mr. Sanjeewa and the alleged inaction by the police in response thereto give rise to the preoccupation that his life might be at risk. These concerns are reinforced by the fatal shooting of torture victim Gerald Marvin Perera, who had insisted on legal action against the policemen who tortured him notwithstanding threats aimed at making him desist, and by the recent arson attack against the Human Rights Commission's headquarters in Colombo.

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, 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?

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 Commission on Human Rights for its consideration.

#### **Response of the Government of Sri Lanka dated 23 January 2006**

In relation to the alleged death threats against Mr. W.R. Sanjeewa, the Special Investigations Unit (SIU) of the Police in Sri Lanka has informed the Ministry of Foreign Affairs that Mr. W.R. Sanjeewa has not made a complaint to the Police Headquarters on 22 October 2005 as stated in the urgent appeal. In the circumstances, the SIU has requested the Foreign Ministry to obtain Mr. Sanjeewa's address in order to record a statement.

#### **Sri Lanka: Deaths in Police Custody**

**Violation alleged:** Deaths in custody

**Subject(s) of appeal:** 13 males

**Character of reply:** No response (recent communication)

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

The Special Rapporteur studied the problem of deaths in custody during his visit to Sri Lanka in November – December 2005 and appreciates the open and constructive attitude taken towards his visit by the Government of Sri Lanka. However, the SR looks forward to receiving a response concerning these allegations.

### **Allegation letter sent on 22 November 2005**

Since assuming this mandate, I have received numerous reports of death as a result of ill-treatment in police custody in Sri Lanka, as did my predecessor as Special Rapporteur. This matter is therefore one of the most pressing issues I would like to discuss with your Excellency's Government in the course of my upcoming visit to Sri Lanka. In order to prepare the ground for a positive dialogue with the Government during my visit, I would like to share with your Government a summary of the information received. I do not intend to prejudge the accuracy of these reports, but rather to use them as the basis for our discussions in Colombo.

In the annex to this letter, I list the cases of alleged death in police custody brought to the attention of your Excellency's Government by my predecessor and myself in the course of the last five years. I further attach information received with regard to two recent cases of death in custody.

All the cases mentioned in the annex share certain elements: persons placed under arrest by the police were allegedly subjected to severe ill-treatment and died as a result of that treatment, either in custody or shortly after release. In a majority of the cases, the ill-treatment appears to have been motivated by the intention to extract a confession from a criminal suspect. A further common aspect of these cases is that, on the basis of both information provided by your Excellency's Government and by other sources, it would appear that none of the police officers responsible have been held criminally accountable. Even disciplinary sanctions against the perpetrators appear to constitute an exception.

In this context, I would like to assure your Excellency that I am aware of significant steps taken by your Excellency's Government in recent years to address this problem. In 1997, the Human Rights Commission (HRC) was established. It enjoys the power to launch investigations into cases of police conduct violating human rights. Reportedly, in the course of the present year the HRC has become considerably more pro-active and increased the use of its powers vis-à-vis the Attorney General and the Inspector General of Police. Furthermore, in 2002, the Seventeenth Amendment to the Constitution of Sri Lanka established the National Police Commission (NPC), an independent body with vast powers regarding appointments, promotions, and disciplinary measures, the investigation of allegations of police misconduct, as well as recruitment, training, and codes of conduct for the police. A Disappearances Investigation Unit (DIU) and a Prosecution of Torture Perpetrators Unit (PTPU) were established in the Attorney General's Office (AG). The Attorney General has recently become more active in prosecuting torture cases, resulting in forty torture prosecutions currently pending and two convictions. The Supreme Court, finally,

hears fundamental rights cases brought by victims and has awarded compensation to the families of persons who died as a result of ill-treatment suffered in police custody.

On the basis of the information I have received, it would appear that various shortcomings in the system continue to lead to the prevalence of severe ill-treatment of detainees in police custody and – as a consequence – a high incidence of deaths in custody. In particular, reports indicate that:

- HRC officers are empowered to pay unannounced visits to police stations. Ill-treatment of detainees, however, often takes place not in the police station itself but in adjoining buildings, such as garages or barracks. HRC officers are allowed to visit these facilities only with the prior agreement of the Attorney General and the Inspector General of Police, which considerably reduces the effectiveness of this oversight mechanism.
- The central register of detainees was either never established or is not in function.
- Support for effective prevention and monitoring at the political level is ambiguous. The Inspector General of Police in many instances has justified police ill-treatment of detainees as necessary under the circumstances, and a senior cabinet member has recently proposed weakening the independence of the NPC vis-à-vis the Inspector General of Police.

Disciplinary procedures for the police, as established in the Sri Lankan Establishment Code, do not contain sufficient safeguards of impartiality to inspire trust in victims and the public. All parties to inquiries into police conduct are police officers, and the hearings take place in police premises. Sometimes civilian observers are invited, but they are not allowed to intervene in the inquiry proceedings. Disciplinary inquiries take many years and less than ten percent are actually ever completed. Neither the victim nor the public is informed of the outcome.

- The NPC has been unable to assert its constitutional prerogatives concerning transfers, promotions, and disciplinary measures. The NPC is so severely understaffed and underfunded that it cannot carry out its own investigations into allegations of torture or killings by the police. As a result, it has to rely on investigations by police of the same district or even the same police station as those alleged to have engaged in torture.
- While disciplinary or criminal proceedings regarding torture (whether with or without lethal outcome) are pending against a police officer, the officer generally remains in service at the same police station. This situation, coupled with the absence of a witness protection program, exposes victims, witnesses and family members to intimidation by the alleged perpetrators.
- Notwithstanding the progress noted above, prosecution of torture in police custody and of cases of death in custody remains the exception. Judicial medical officers are scarce and all too ready to accept the explanations of the police regarding cases of death in custody. Prosecutors have to rely on the police, often the unit accused of torture or killing, to investigate the crime. The year-long delays in bringing cases to trial, the absence of a witness protection program, and the failure to obtain the

attendance of witnesses in court mean there have been relatively few convictions of police officers on charges of torture and killings.

- Finally, there appears to be unwillingness to hold police officers with command responsibility accountable for torture and killings engaged in by their subordinates.

In connection with these allegations, I would like to refer Your Excellency's Government to the fundamental principles applicable to such incidents under international law. Article 6 of the International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of his or her life. The obligations arising for State Parties from Article 6 with regard to incidents of death in custody have been spelled out by the UN Economic and Social Council in resolution 1989/65 of 24 May 1989, recommending the adoption of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. They include preventive measures, such as

- ensuring strict control, including a clear chain of command, over all officials responsible for apprehension, arrest, and custody (Principle 2);
- holding detainees in officially recognized places of custody, and making accurate information on their custody and whereabouts promptly available to their relatives and lawyer (Principle 6);
- inspections to places of custody by qualified inspectors, including medical personnel, on a regular basis but including unannounced inspections, with full guarantees of independence and unrestricted access to all persons in such places of custody, as well as to all their records (Principle 7).

The Principles further provide guidance with regard to the duty to thoroughly, promptly and impartially investigate all suspected cases of extra-judicial, arbitrary and summary executions, and to bring those suspected of being responsible for the death of persons in custody to trial (Principles 9 and following). This duty is indeed part and parcel of the obligation to respect the right to life enshrined in Article 6 ICCPR. Effective measures against impunity of course also have a powerful deterrent – and thus preventive – effect.

In preparation for my meetings with officials of your Excellency's Government in the course of my visit to Sri Lanka, I would like to raise the following questions with regard to the information received:

- (i) Are the allegations summarized above concerning shortcomings in the system for the prevention, investigation and prosecution of cases of death in custody accurate?
- (ii) What steps does your Government intend to adopt in order to improve the system of registration of all arrests, detentions at police holding facilities, transfers and releases of detainees?

- (iii) What steps does your Government envisage to strengthen the capacity of the HRC to receive complaints, to investigate them forcefully and independently, and to ensure that its recommendations are taken into serious consideration?
- (iv) What steps does your Government envisage to put the NPC in a position to fully live up to its constitutional mandate?
- (v) What steps does your Government intend to adopt in order to ensure that police disciplinary proceedings are impartial and perceived to be impartial by victims and their family members?
- (vi) What steps does your Government envisage to ensure that police officers accused of assaulting persons in custody are not in a position to contact, intimidate, threaten and assault again those who complain about ill-treatment in custody?
- (vii) What steps does your Government intend to adopt at the level of the criminal justice system in order to improve the prospects for successful prosecution of police officers guilty of ill-treating and torturing detainees, often with deadly outcome, particularly with regard to effectiveness of the prosecution service, witness protection, forensic medicine, and command responsibility?

#### Annex

##### Allegations of death in police custody

My predecessor as Special Rapporteur and I sent you communications regarding the reported death in police custody, allegedly due to ill-treatment, of the following persons:

Uchita Thussara Kumaea, communication sent on 30 August 2001 (E/CN.4/2002/74/Add.2, p. 114); a reply from the Government was received on 8 April 2002, stating that a criminal investigation had been initiated (E/CN.4/2003/3/Add.1, p. 133)

W.A.P. Jayaratne, W. Sujeewa Priyadarshana, Mullakandage Lasantha Jagath Kumara, and Jayakodige Anura Wijeseri, communication sent on 2 September 2002 (E/CN.4/2003/3/Add.1, p. 130-131); on 4 December 2003, the Government replied with regard to the cases of W.A.P. Jayaratne, Mullakandage Lasantha Jagath Kumara, and Jayakodige Anura Wijeseri (E/CN.4/2004/7/Add.1, p. 131-132). The reply indicates that in the first two cases criminal proceedings are pending, while in the third case the Attorney General is taking no action as the post-mortem report indicates that it is a case of suicide. No response has been received with regard to the case of W. Sujeewa Priyadarshana.

S.L. Kulatunga, communication sent on 23 March 2004 (E/CN.4/2005/7/Add.1, p. 243, § 649); a reply from the Government was received on 29 November 2004, stating that a criminal investigation had been initiated (communication sent on 2 September 2002 (E/CN.4/2005/7/Add.1, p. 244, § 651).

Dehiwatte Gedera Jayathilaka, Muthuthanthrige Chamal Ranjith Corrad and Senarath Hettiarachilage Abeysinghe, communication sent on 13 July 2004 (E/CN.4/2005/7/Add.1, p. 248-250, § 661-663); the Government replied on 20 July 2004 stating that there was insufficient information to investigate these three cases (E/CN.4/2005/7/Add.1, p. 248, § 664).

Moreover, the following two recent cases have been reported to me. According to the information received:

On 13 July 2005, the police took Hettiarachchige Abeysiri, aged 52, to the Peliyagoda Police Station on suspicion of having stolen a telephone. There he was tortured by several officers in front of a member of his family who had accompanied him. Unable to watch the assault, his relative left after a while. Upon the relative's return about half an hour later, Mr Abeysiri was being carried by four policemen in civilian clothes. He was taken to a hospital, where he died. When his family visited the mortuary, they saw injuries on his body; a subsequent postmortem confirmed that the death was due to injuries caused by blunt instruments.

On the evening of 10 October 2005, A.D. Lalantha Fernando was forcibly taken from a relative's house by two policemen driving a white van (the name of one of the police officers and the license plate number are on record with me). The vehicle left in the direction of Koswatte. Later that evening, Lalantha's relatives were guided by the police to a place in Tunmodera, where they found Lalantha lying semi-conscious on the ground with the marks of many injuries on his body. His family immediately took him to the Marawilla Hospital, from where he was then transferred to the National Hospital in Colombo. Notwithstanding being placed in the intensive care unit for treatment, he died at National Hospital on 19 October 2005. The Judicial Medical Officer who conducted the post mortem informed the family that the victim had died due to attacks with a blunt instrument to his head, chest and kidneys. Parts of the body were sent to medical laboratory for examination. Lalantha's death has sparked strong protest amongst the local population and the media. As a result, one police sub-inspector has been transferred out of his station pending enquiries, but the other policemen involved have neither been charged nor sanctioned and continue to report for duty as usual.

#### **Sudan: Death Sentence of Juvenile Offender Nagmeldin Abdallah**

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

**Subject(s) of appeal:** 1 male (minor; juvenile offender)

**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 he has been given by the United Nations Commission on Human Rights.

**Urgent appeal sent on 23 February 2005**

Nagmeldin Abdallah, aged 17, is said to be currently held in the prison of Port Sudan in Al Bahr al Ahmar state (Red Sea) and at risk of imminent execution. According to the information received, Nagmeldin Abdallah was sentenced to death even though he was 15 years old at the time of the crime for which he was charged. He was reportedly arrested on 13 April 2003 and charged by the Criminal Court in Al-Damazin for the murder of a trader in the town of Al-Damazin, in the state of An Nil al Azraq (Blue Nile) on 17 May 2003. It is reported that his appeal has been rejected by the An Nil al Azraq Court of Appeal on 1 June 2003 and that the Supreme Court has upheld his sentence on 1 November 2003. It is reported that at the time of his arrest, he did not have a birth certificate to prove his age. However, his family was later able to provide the certificate to the authorities. In addition, it has been brought to my attention that Nagmeldin Abdallah did not have access to legal representation during his trial. If this sentence is carried out, it would contravene your Excellency's Government account in your letter dated 3 July 2003 where it is stated that the practice of the Criminal Court complies with international standards regarding the imposition of the penalty for those under the age of 18. The execution of Nagmeldin Abdallah would then be incompatible with the international obligations of Sudan.

#### **Syrian Arab Republic: Events of March 2004**

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

**Subject(s) of appeal:** 42 persons (members of an ethnic minority; more than 2 minors)

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

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

The Special Rapporteur appreciates that the Government of the Syrian Arab Republic provided additional information following his request. (*See* E/CN.4/2005/7 Add 1.Parag. 697). However, the SR notes that no information has been received clarifying the allegation that 40 Syrian Kurds were killed by security forces at a 12 March 2004 football match. The SR also notes that the information provided regarding the deaths of Hussein Nouri and Badry Shaheen does not reflect a thorough investigation which would, in part, identify who fired the shots and their justification for doing so.

**Allegation letter sent on 26 May 2004**, reproduced from E/CN.4/2005/7 Add 1.Parag. 695

695. Allegation, 26 May 2004. 40 Syrian Kurds, (among whom were many children), who were attending a football match on 12 March 2004, were killed by security forces, while over a hundred spectators were injured near the Turkish- Iraqi border in an operation where security forces made excessive use of force. Following this incident, clashes between Syrian Kurds and Syrian security forces broke out in different Kurdish cities, including Qameshli, Aleppo, al- Hassaka and Damascus. Hundreds of Kurdish men, including children, were arrested at their homes and were held incommunicado where concerns for their safety were expressed. In addition, on 13 March 2004, the police attacked mourners attending the funerals of those killed.

This led to two days of protests and rioting in various towns in north-eastern Syria, including al-Malikiya, al-Qahtaniya and 'Amouda. Hussein Nouri, aged 16 and Badry Shaheen, aged 6, were shot dead by the security forces that opened fire at protesters who were throwing stones at the Military Intelligence and State Security buildings in al-Malikiya.

**Response of the Government of Syria dated 16 September 2004**, reproduced from E/CN.4/2005/7 Add 1.Parag. 696

696. Response dated 16 September 2004 According to the Government of Syria, the persons in questions were arrested following disturbances that took place in the governorate of Hassakah. The vast majority of those arrested were released after questioning, while the remainders were referred to the competent court pursuant to the laws on riotous assembly, sabotage and damage to public property, and were tried for committing acts of sabotage against public institutions and installations. None of them was subjected to torture or ill-treatment and all the arrest, detention and trial procedures were carried out in accordance with the process of law, as defined in laws and regulations which do not conflict with human rights.

**Response of the Government of Syria received 2 February 2005**

The events at the Qamishili football stadium began on 12 March 2004, when fighting broke out in the stands between the supporters of the Jihad and the Fatwa teams. The Jihad supporters started throwing stones at the Fatwa supporters and the police had to intervene to separate the two sides. Three children died in a crush on the way out of the stadium. On 13 March 2004, some Syrian Kurdish supporters of the Jihad team set fire to public and private property, including railway buildings, cultural centres, a centre selling animal fodder, silos, and customs points. They also went into schools and courts and set fire to court records, prompting the authorities to send out the police to quell the disturbance. In the ensuing exchange of fire, a number of persons on both sides were wounded and Hussein Noury and Badry Shaheen were killed. Everyone proved to have committed acts of sabotage, destruction or arson was brought before the courts, which are still hearing cases. The payment of compensation to the families of the victims is dependent upon the identification and criminal prosecution of the perpetrators of the acts in question. The cause of death was gunshot wounds and all the forensic procedures were carried out properly. The Government should like to point out that the fighting and clashes cannot be described as politically motivated or an attempt to assert the rights of Kurdish citizens. Kurdish citizens are an integral part of Syria's national community. Indeed, Syria plays host to other Kurds who crossed into the country from Iraq and Turkey and enjoy all the rights guaranteed to their counterparts.

### **Tanzania (United Republic of): Inquiry Concerning the Death Penalty**

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

**Subject(s) of appeal:** General



**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the serious consideration and detailed response provided by the Government of the United Republic of Tanzania. Its careful and constructive character merits a response in kind:

(a) Mandatory nature of the death penalty for murder

The SR appreciates the Government's explanation that a criminal conviction is based on a number of considerations in addition to proof that the accused committed a proscribed act (*actus reus*). However, he would note that it is important to distinguish between the process for determining the accused's culpability for a *criminal offence* and the process for determining his or her *sentence*. There are considerations that are relevant to the sentence which might be irrelevant to the conviction. These considerations include aspects of the accused's personal circumstances that do not enter into the determination of *mens rea* (malice aforethought). In order to guarantee that the imposition of the death penalty is not cruel or arbitrary, it is essential that judges be permitted to determine whether the death sentence is just in each particular case.

(b) Right to legal representation and to appeal

The SR accepts the Government's assurances that the right to legal representation and to the review of one's conviction and sentence is guaranteed in the statutes and constitution of the United Republic of Tanzania. However, he would note that the existence of legal guarantees is consistent with allegations that these guarantees are not always respected in practice.

(c) Right to seek pardon or commutation

The SR appreciates the detailed information provided by the Government on its process for considering whether to grant pardons. He would observe, however, that despite its automaticity, this process falls short of what is required by Article 6(4) ICCPR and Safeguard No. 7 of the *Safeguards guaranteeing protection of the rights of those facing the death penalty*. These international standards recognized that it is an individual right of the condemned person to seek a pardon. This ensures that the condemned person will have the opportunity to invoke any personal circumstances or other considerations that might appear relevant to him or her. In contrast, the process described in the letter means that only matters that came to the attention of the trial judge will be taken into account.

(d) Transparency

The SR appreciates the Government's commitment to provide statistics on the death penalty and appreciates that compiling such statistics may be time-consuming. The SR would note that he did not intend to suggest that information on individual cases is not in the public domain; he would, however, suggest that maintaining and publishing aggregate statistics on the administration of the death penalty is an important

safeguard of the right to life. (*See the SR's report to the Commission concerning Transparency and the Imposition of the Death Penalty.*)

The SR makes these observations in the hope that they will prove helpful to the Government in ensuring compliance with human rights standards and looks forward to further constructive dialogue in the future.

#### **Allegation letter sent on 10 November 2005**

In this connection, I would like to raise several concerns in relation to the application of capital punishment in your country.

To my knowledge, the last time the death penalty was executed in Tanzania dates back to 1995. I commend your Excellency's Government for this ten year de facto moratorium. Under the Tanzanian Penal Code, however, the death sentence remains a mandatory penalty for murder. It can also be applied for treason. While there are no statistics published on the number of condemnations, I understand that individuals are still regularly sentenced to death.

I am of course aware of the fact that Tanzania is a State Party to the International Covenant on Civil and Political Rights (ICCPR), but not to the Second Optional Protocol thereto, aiming at the abolition of the death penalty. International law does therefore not preclude your Government from having recourse to capital punishment. However, I would like to remind your Excellency's Government that under international law the death penalty must be regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner. Therefore, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences.

The Commission on Human Rights has consistently requested me and my predecessors as Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of all standards relating to the imposition of capital punishment.

The purpose of the present note is to raise four main concerns in relation to the question of the death penalty with the Government of Your Excellency: 1) the mandatory nature of the death penalty for murder; 2) the allegedly frequent violation of the right to legal representation in cases in which the death penalty is imposed; 3) the frequent denial of the right of appeal against a death sentence and of the right to seek pardon or commutation, and 4) the absence of public statistics on the number of death sentences issued each year.

#### *The mandatory nature of the death penalty for murder*

According to the information I have received, the death penalty in Tanzania is imposed as a mandatory sentence for murder. Making such a penalty mandatory and thereby eliminating the discretion of the court generally makes it impossible to take into account mitigating or extenuating circumstances and eliminates case by case determinations of an appropriate punishment in light of all the circumstances of the case. Whatever considerations might be appropriate in relation to other forms of

mandatory sentencing, its use in the death penalty context raises fundamentally different issues because the right to life is at stake and once the sentence has been carried out it is irreversible.

In this connection, I would respectfully refer Your Excellency to paragraphs 63 and 64 of my last report to the Commission on Human Rights (E/CN.4/2005/7) in which, addressing the issue of mandatory sentence of death, I underlined that: “It is appropriate, therefore, to note a recent judgment of the Privy Council in response to a ruling by the Court of Appeals of Barbados. The relevance of such a case in the present context is that it was decided on the basis of a careful review of international legal standards. The majority of the Court observed that the maintenance of the mandatory death penalty “will ... not be consistent with the current interpretation of various human rights treaties to which Barbados is a party” (para. 63) ((Judgment of the Lords of the Judicial Committee of the Privy Council, Privy Council Appeal No. 99 of 2002, Judgment of 7 July 2004, para. 6).

I also stressed that: “On that issue, the minority judgment reached the same conclusion, but went into greater detail: “[T]he jurisprudence of the Human Rights Committee, the Inter-American Commission and the Inter-American Court has been wholly consistent in holding the mandatory death penalty to be inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment. ... The appellants submitted that ‘No international human rights tribunal anywhere in the world has ever found a mandatory death penalty regime compatible with international human rights norms’, and this assertion has not been contradicted.”(Para. 64 of the report, quoting par. 81(3) of the Judgment).

#### *Right to legal representation*

I understand that legal representation for an accused individual is both a constitutional and a statutory right in Tanzania. However, I have been informed that in some instances defendants sentenced to death had very poor or no access to legal representation. There are reports of accused convicted of murder and sentenced to death by a High Court judge without being defended by legal counsel at all. Moreover, concerns have been expressed that indigent defendants facing the death penalty occasionally receive insufficient legal aid due to a lack of resources for legal aid. This leads to prisoners facing the death penalty not being legally represented and having to write their appeals by themselves.

In this connection, I would like to emphasize that “in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the [ICCPR] admits of no exception” (*Little v. Jamaica*, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10).

#### *Right of appeal*

The information I have received also points out that persons sentenced to death in Tanzania do not always in practice enjoy the right of appeal or review of their sentence. Indeed, concern has been expressed that the right to appeal is often undermined, apparently for different reasons, including delay by the courts in delivering judgments to prisoners, or even occasionally by a complete failure to do so;

failure to set dates for appeal hearings or prisoners not being provided with updated information on the current developments in their appeal. Such shortcomings would render the application of the death penalty incompatible with Article 14(5) ICCPR providing that "[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."

I have also been informed that, under Tanzanian law, death row inmates do not have the right to apply for Presidential commutation or pardon. The President can only take the decision to review death sentence cases on his own motion. This would appear to be incompatible with Article 6(4) ICCPR stating that "[a]nyone sentenced to death shall have the right to seek pardon or commutation of the sentence" and with Safeguard No. 7 of the *Safeguards guaranteeing protection of the rights of those facing the death penalty* which provides that "anyone sentenced to the death penalty shall have the right to seek pardon or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment".

#### *Transparency*

Finally, I am concerned that statistics on the number of sentences of death are not made public in Tanzania. In this connection, I would respectfully refer the Your Excellency's Government to my last Report to the Commission on Human Rights, E/CN.4/2005/7, para. 58, in which I have addressed the obligation to disclose the details of the application of the death penalty and explained how secrecy is incompatible with human rights standards in various respects. I would also refer Your Excellency to Commission on Human Rights Resolution 2005/59, OP 5(c) and (d).

#### **Response of the Government of the United Republic of Tanzania dated 8 December 2005**

The mandatory nature of the death penalty for murder:

Prof Philip Alston, the Special Rapporteur on extrajudicial, summary and arbitrary executions in his letter to the Government of United Republic of Tanzania raises four main concerns in relation to the death penalty in the following sequence:

- (a) the mandatory nature of the death penalty for murder;
- (b) the allegedly frequent violation of the right to legal representation in cases in which death penalty is imposed;
- (c) the frequent denial of the right of appeal against a death sentence and of the right to seek pardon or commutation, and
- (d) the absence of public statistics on the number of the death sentences issued each year.

We have read and noted with interest the conclusion based on the source of information relied on by the rapporteur. We do appreciate his decision to seek and verify such information from the government. The right to be heard is universal.

Before proceeding any further, we do concede that our legal system provides for death penalty for the offence of murder and treason. We also agree with him that capital punishment is an extreme exception to the fundamental right to life. It must as such, be applied in the most restrictive manner. We do at this early stage, submit that the application of the penalty is restricted in the sense that the procedure for establishing the guilt of an accused is stringent and thorough enough to ensure a correct verdict. The applicable rules of evidence and principles established by courts in this area, the procedure, which includes trial by assessors, coupled with the fact that these offences are triable in the High Court presided by a judge, are sufficient safeguards against a wrong verdict. In addition, the Court of Appeal is well placed to correct any mistake that could be overlooked by the High Court.

The right to life is a constitutionally entrenched norm in Tanzania's legal system to the extent that it is one of the several pillars of the Constitution of United Republic of Tanzania, 1977. The Constitution contains a Bill of Rights. The Right to Life is recognized under Article 14 as follows:

“Every person has the right to life and to receive from the society the protection of his life, in accordance with law.”

The exception to the right to life must be in accordance with law and nothing else. The Court of Appeal, the highest court of the land, decided in *Mhushuu @ Dominic Mnyaroje and Another V Republic* (1995) T.L.R 97 that the right to life is not absolute but qualified. It noted that derogation from the basic rights of an individual is permissible under Article 30(2) of the Constitution. With these preliminary observations, our response to the allegations will follow.

#### 1. Mandatory nature of the death penalty

The offense of murder is stipulated in section 39 of the Penal Code for treason and other offenses against public order and in section 196 of the Penal Code as an offense against person. Under section 39, a person who is under allegiance to the United Republic murders or attempts to murder the President or levies war against the United Republic shall be guilty of treason and shall be liable on conviction to suffer death.

On the other band, section 196 of the Penal Code provides that “any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.” The punishment for this offense is stated in Section 197 as follows:

“Any person convicted of murder shall be sentenced to death: Provided that, if a woman convicted of an offence punishable with death is alleged to be pregnant, the court shall inquire into the fact and, if it-is proved to the satisfaction of such court that she is pregnant the sentence to passed on her shall be a sentence of imprisonment for life instead of a sentence of death.”

The trial of a person accused of murder is regulated by procedures and process that safeguard the right of an accused person. This norm flow from the Constitution itself, Article 13 of the Constitution states that all persons are equal before the law and are entitled, without discrimination, to protection and equality before the law.

It further goes on to require state authority to make procedures which are appropriate or which take into account the following principles:

- (a) when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and the right of appeal or other legal remedy against the decision of the court or of the other agency concerned;
- (b) no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence;
- (c) for the purpose of preserving the right or equality of human beings, human dignity shall be protected in all activities pertaining to criminal investigations and process, and in any other matters for which a person is restrained, or in the execution of a sentence, and
- (d) no person shall be subjected to torture or inhuman or degrading punishment or treatment.

It is prudent to take these constitutional requirements down the lane; and see how they are enforced in relation to capital punishment, As depicted from section 196 of the Penal Code, once a judge is satisfied after trial, that the offence is proved, he has no discretion but to impose the sentence of death as provided for in section 197 of the Code. We do not agree with the observation made by the Special Rapporteur that “making such a penalty mandatory and thereby eliminating the discretion of the court generally makes it impossible to take into account mitigating or extenuating circumstances and eliminate case-by-case determinations of an appropriate punishment in light of all circumstances of the case.”

Determination of mitigating or extenuating circumstances is not excluded as the Special Rapporteur seems to think. The ingredients of murder are malice aforethought known technically as *mens rea* and *actus reus* which is the unlawful act. Malice aforethought as an ingredient of murder may, among others, be established by evidence proving that:

- (a) *an intention to cause the death of, or to do grievous harm to any person, whether such person is the person actually killed or not;*
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm *is* caused or not, or by a wish that it may not be caused;

Where malice aforethought is not proved, or is negated, the accused person will not be convicted of murder. Such a person may be convicted of manslaughter, a lesser offence that will attract a sentence of life imprisonment or custodial sentences of duration that a judge may discretionary determine taking into account mitigating facts or extenuating circumstances. It may also lead to an acquittal of the accused. Other circumstances that a judge may take into consideration are provocation, mistake of fact, insanity, intoxication, right of defence and other

circumstances that are recognized as General Rules to Criminal Responsibility under Chapter IV of the Penal Code. It is incorrect to say that the judge has no discretion to consider mitigating or extenuating circumstances that reduces the offense of murder to a lesser offense or are capable of establishing a diminished responsibility on the part of the accused.

The purpose of a homicide trial is to determine the veracity of a charge laid against the accused person based on the particulars indicated in the charge sheet. In this process, the offense of murder must be proved beyond reasonable doubts. The onus of proof is not on the accused but on the prosecution. The standard of proof for murder is higher. The accused is only required to raise doubts. The accused person may raise various defences and if a trial judge is satisfied of them, have the effect of exonerating the accused criminal responsibility or may convict him with a lesser offence of manslaughter. Any one familiar with this procedure is aware that it is in the process of weighing evidence adduced before the trial judge including that of the accused' and hearing final submission from the prosecution side and the defence's advocate that a judge finally write a judgement. Once a judge makes a finding of fact and law, taking into account and considering all other circumstances that are in law relevant, then it cannot be said that he must have discretion to decide the case suo moto or ex aequo et bono in disregard of evidence and all other matters that he is in law enjoined to take into account. The judge has no discretion after he has arrived at the decision that the offense of murder is proved beyond reasonable doubt and that there are no extenuating circumstances in favour of the accused. The judgement is an out of inputs from the prosecution witnesses, defence witnesses, final submission of the State Attorney and defence Counsel, finding of facts of the Court Assessors and mitigating plea of the accused. Once there are complete, court will render a judgement and state whether the offence has been proved or not. It will give reasons for either decision including taking into account any mitigating or extenuating circumstances or evidence that it considers present in the case. This is not a mechanical process. The mandatory aspect of the punishment comes through a process that has considered all evidence, all statements of witnesses and defence including mitigating factors. Rule of law dictates that a decision or judgement arrived through this process must be implemented. The argument against mandatory sentence invites an opportunity for subjective decisions. This later position is defeative of and contrary to the nurtured principles of the rude of law.

We take note of the Privy Council decision on an appeal from Barbados. However, that decision is of a persuasive value only, it is not binding on us in Tanzania. Our position is that capital punishment is recognized by the Constitution, supported by laws promulgated therefrom as well as decisions of municipal courts as shown above.

## 2. Right to legal representation

The allegations made to the effect that there are instances where accused persons are represented by poor or have not access to legal representation are false. The information relied upon must be from a source alien to or that is ill informed of the legal system in Tanzania. The right to legal representation by a person charged with murder is both a constitutional and a statutory right. In *Laurent Joseph Vs Republic* [19881 T.L.R 351 the Court of Appeal of Tanzania nullified a judgement of the High Court which convicted an accused for the offence of murder while the later was not

legally represented. The Court held that there was an undoubted right to free legal representation to the poor. In view of this decision, courts will not allow a trial involving murder to proceed without a defence counsel, either of his choice or the dock brief, one provided by the court and paid for by the state. We wish to bring to attention of the Rapporteur the existence in our statutory law the provisions of section 310 of the Criminal Proceedings Act, No. 9/1985 on this matter. The section provides that:

“Any person accused before any criminal court, other than a primary court may of right be defended by an advocate of the High Court under powers conferred by Article 26 of the Tanganyika Order in Council, 1920 from time to time.”

In addition to the requirement of these provisions, section 3 of the Legal Aid (Criminal Proceedings) Act, 1969 also specifically provides for legal aid assistance to indigent accused persons for the preparation of briefs, conduct of their defence or appeal as the case may be. In construing the scope of the Act, the Court of appeal of Tanzania in *Laurent Joseph (supra)* determined that the obligation is an entrenched right. This right is more entrenched when it comes to capital offences.

The allegation relating to very poor representation given to accused person is a dimensional problem. First, the quality of defence counsel is a subjective and an impression matter. Advocates are legally qualified persons, otherwise one would not be enrolled to the Bar. The bench, that is, the court before which the advocate practice, usually checks this quality. Courts will not tolerate poor representation of clients. Secondly, advocates are bound by professional ethics off the Bar and thirdly, disciplinary action may be taken if it is proved that an advocate belittles dock briefs. We are not aware of such behaviour and we would know if there are any.

The question of indigent defendants receiving insufficient legal aid does not arise because the funds are not given to them or their advocates. Advocates use their own resources and are refunded after the conclusion of the case as well as paid fees. It is not true that prisoners write their appeals themselves. Once an accused person is assigned an advocate, it is his/her duty to discuss all of his/her wishes with the advocate. The appeal against conviction in murder cases is automatic and the advocate's obligation to process the appeal will continue until the appeal is determined.

### 3. Right to appeal

The right of appeal in capital offences is, without exception, automatic. Any information to the contrary is false. The source of this sacrosanct right flow from Article 13(6) of the Constitution of the United Republic. Further, section 323 of the Criminal Procedure Act requires the court to inform the accused of the right of appeal and of the period within which, if he wishes to appeal, his appeal "should be preferred. In respect to lack of information on development on their appeal, we find this allegation circular. We have already said prisoners convicted of murder have legal aid services provided for by the state. The obligation is on the advocate to brief his or her client on any development concerning the appeal.

As to delays in processing appeals, we concede that this happens but the government through judiciary is addressing the problem as a governance issue by providing



financial resources to enable the Court of Appeal to hold more sessions, to ensure that High Court proceedings are typed and forwarded to the appellant's advocate timely in order to file appeals. The government is equally investing more in the Legal Sector by acquiring court buildings and establishing more High Court centres in order to bring justice close to the people. We have noted marked improvement in this area compared to the 1980's and 1990's and with undergoing reforms in the Legal Sector, delays are soon to be matter of the past.

The Special rapporteur has been informed that convicts or row inmates do not have the right to apply for Presidential pardon and further, that the President acts *suo moto*. This is not the position of law and practice. The process is triggered in the first place not by the President but by the judge who convicted the accused in the High Court. It is important to note, that the process begins immediately after the Court of Appeal upheld the sentence of the High Court on appeal. Section 325 of the Criminal Procedure Act provides for a procedure\*. We do invite the rapporteur to examine it to understand and appreciate the embedded procedure.

The President's powers under the Criminal Procedure Act are constitutional powers given to him under Article 45 of the Constitution of the United Republic.<sup>2</sup> Since the provisions of the Constitution are not exhaustive on the issue, Parliament was given power to enact a legislation providing for the procedure to be followed by the President in the exercise of his powers under Article 45. There is legislation to that effect. The Presidential Affairs Act, Chapter 9 of the Laws of Tanzania (revised edition of 2002) establishes an Advisory Committee on the Prerogative of Mercy. The President constitutes the Committee and its members includes the Attorney-General, a Minister and other members not exceeding five and not less than three. The President chairs the meetings of the Advisory Committee.

Section 3(3) of the Presidential Affairs Act an obligation on the shoulders of the President to cause a written report of the case from the trial judge for every person convicted of murder to be submitted to the Committee, Application by the convicted person for presidential prerogative of mercy does not arise in this set up.

Administratively, the Committee has a Secretary who is a public servant. He is an officer who makes day to-day follow up actions in consultation with the Attorney General. These facts eluded the source of the Rapporteur's information. We submit that the facts and position availed to the Rapporteur is distorted, unreliable and does not reflect the correct position of the law and practice. It is easy to note that we have gone beyond Article 6(4) of ICCPR in that whether a convicted person desires to be pardoned or not his or her conviction will be reviewed by the Committee at no cost of his.

The concern of the Rapporteur for lack of transparency in statistical availability on death sentences is regrettable. Proceedings involving murder cases in Tanzania are conducted, as a matter of law, in an open court. The records are published in Law Reports of Tanzania series and are available in criminal registries of the High Court. All of that is in public domain and such an undertaking is incompatible with secrecy. We are therefore baffled with such an allegation. It is simply not true.

To recapitulate on this submission, the government of United Republic has procedural guarantees for the rights of a person accused and convicted of murder as we have demonstrated in this reply. The allegations on instances of denial of right of counsel in murder cases are wild and incorrect as are those touching on exercise of presidential prerogative of mercy.

The rapporteur has requested statistics on inmates on death row. We shall provide you with those statistics in due course. Unfortunately we are yet to computerize the records.

### **Thailand: Deaths Connected to the Events at Tak Bai**

**Violation alleged:** Deaths due to excessive use of force; Deaths in custody

**Subject(s) of appeal:** 87 persons (persons exercising their right to freedom of opinion and expression)

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur appreciates the detailed responses the Government of Thailand has made to the allegations concerning the events of 25 October 2004 and its effort to keep him apprised of the status of its investigation. He notes, however, that the Commission of inquiry into the Tak Bai incident appears to have resulted in only minor disciplinary measures being taken against relevant officials.

**Allegation letter sent on 29 October 2004** with Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture, reproduced from E/CN.4/2005/7/Add 1, Parag. 717

717. Allegation, sent with Special Rapporteur on on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture, 29 October 2004. The SR received information concerning the deaths of 87 persons following actions taken by Thai security forces on 25 October 2004 in Takbai, in the province of Narathiwat. According to the allegations received, on the morning of 25 October 2004, during a clash between 2,000 Muslim protesters and security forces in Narathiwat province's Takbai district, 9 people were killed by police officers. The protest occurred to demand the release of six detained Muslim security guards. Demonstrators allegedly threw stones at security forces and attempted to storm a police station. It is reported that police officers, after using water cannons and tear gas, fired among the protesters, killing six of them. Authorities claim that protesters were armed and that orders were given to fire in the air but failed to be respected. It is further alleged that three other protesters died during these events. The Special Rapporteurs have also received information concerning the death of 78 people in police custody. It is reported that 1,300 people were arrested following the above mentioned protest and put into military trucks to be transferred to detention centres. Among those, 78 prisoners died, most of them of suffocation or dehydration during transportation that allegedly lasted five hours.

**Response of the Government of Thailand dated 18 January 2005** reproduced in E/CN.4/2005/7/Add 1, Parag. 719

**Response of the Government of Thailand dated 4 November 2004** reproduced in E/CN.4/2005/7/Add 1, Parag. 718

**Response of the Government of Thailand dated 31 January 2005**

Regarding the incident on 25 October 2004, in Tak Bai District, Narathiwat Province, the Government informed of further developments after the Independent Fact-finding Commission has completed its findings on the incident.

On 28 December 2004, the Cabinet considered the Commission's report and instructed the agencies concerned to take measures based on the findings as follows:

1. In the independent fact-finding commission's opinion, at least three high ranking military officers had a part in the failure to properly discharged the assigned functions and duties. The ministry of defence is therefore tasked to commence the disciplinary process on the basis of the findings of the Commission
2. The competent police authorities shall investigate the incident under the provisions of the criminal procedure code so as to bring to justice all those found to be responsible under the law through due process. Where wrongdoers serve in the military and are under the jurisdiction of the military court, the military penal code and the statute of the military court shall apply
3. A commission shall be established to provide assistance and remedies for any damage caused in the cause of the incident based on the findings of the Independent fact-finding commission. Any assistance or remedies shall be extended, as necessary, to the relatives of those who died, were injured, or are still missing, and for property and belongings damaged or lost and for other types of damages caused by the incident. Such assistance and remedies shall be treated as exceptional and as being apart from assistance and remedies in other types of situations. The Commission included 7 officials at ministerial level.
4. The royal Thai Army, the royal Thai police, the Ministry of Interior and the ministry of justice shall jointly undertake a study of the report of the independent commission on the Krue Se incident as well as that of the independent fact-finding commission on the Tak-Bai incident and shall promptly submit their recommendations to the prime minister and the cabinet on systemic measures and administrative approaches to avert such similar situations should they again recur. The study shall address, inter alia, the issues of how to prevent such situations as well as the required procedures, including legal and law enforcement problems. It should also address the question of the inadequacy or unavailability of equipment and facilities which are needed, and should submit recommendations on their procurement. Recommendations are also to be made on regulatory measures on prevention.

**Response of the Government of Thailand received 11 March 2005**

The Royal Thai Government considers the incident as a great tragedy for the whole nation. It wishes to draw attention to key conclusions contained in the Findings and Recommendations of the Fact-Finding Commission presented to the Cabinet on 28 December 2004. The salient points of the findings are as follows:

(1) Firstly, the Independent Fact-Finding Commission found that the demonstration at Tak Bai Police Station on 25 October 2004 was pre-organised and pre-planned by a group of people with certain ulterior motives. The demand to free six detained members of a village security guard unit was merely a pretext. Some of the demonstrators were armed since bullet holes found at the police station, on the trees and the recreational area in the public park, indicate that the bullets came from the direction of the demonstrators. One police officer was also injured from such bullet.

(2) Secondly, the Commission found that the exercise of state authority in taking control of the situation and maintaining public order, the dispersal and the custody of demonstrators and the transportation of those held in custody were conducted in conformity with laws and were reasonable given the necessity dictated by the prevailing circumstances. However, the Commission found that there were errors in the transportation process on the part of commanding officials who failed to properly discharge their duty, which resulted in unfortunate injuries and deaths. The officials who bear responsibility for each stage of the incident as well as for the overall incident were identified.

(3) Thirdly, the Commission found that some of the core leaders who desired to prolong the situation were the instigators of the unrest. Officials who were called upon to restore law and order had to perform their duties under many constraints, which have caused the tragic error in the transportation process. However, these officials did not have the intention to cause deaths or injuries. This incident, therefore, must be studied and recommendations should be made to prevent the re-occurrence of similar incident.

(4) Fourthly, within the framework of the above findings and of the lessons learned, the Commission offered a comprehensive set of recommendations bearing in mind the complexity of the situation in the area. The recommendations covered topics of intelligence, dispersal of demonstrators, holding of demonstrators in custody and their transfer, administrative measures to be used in the three southern border provinces, and appropriate systems and guidelines on enforcement of the relevant law. The Commission also recommended a set of remedial measures for those who died, for the injured persons, for the persons held in custody, and any other persons affected by the incident.

(5) The Commission also found that since both the demonstrators and the officials suffered death and injury during the dispersal of the crowd gathered at Tak Bai Police Station, therefore, the agencies tasked with the implementation of the judicial process should dispense justice for all the parties concerned. To further ensure justice and rehabilitation, the Commission recommended that an ad hoc committee should be established by the Government to determine the amount of compensation to be given to persons affected by the incident and to find ways to prevent misconduct from recurring. For those who have been accused of instigating the unrest, the Commission

recommended that the Government prosecute them in an expeditious, just and fair manner in accordance with due process of law.

In this connection, I wish to avail myself of this opportunity to further inform you of the operative part of the relevant Cabinet Resolution dated 28 December B.E. 2547 (2004) in which the Cabinet, taking note of the findings of the Independent Fact-Finding Commission, instructed the agencies concerned to take measures based on the said findings as follows:

(1) In the Independent Fact-Finding Commission's opinion, at least three high-ranking military officers had a part in the failure to properly discharge the assigned functions and duties. The Ministry of Defence was thereby tasked to commence the military disciplinary process on the basis of the findings of the Commission.

(2) The competent police authorities shall investigate the incident under the provisions of the Criminal Procedure Code so as to bring to justice all those found to be responsible under the law through due process. Where wrongdoers serve in the military and are under the jurisdiction of the Military Court, the Military Penal Code and the Statute of the Military Court shall apply.

(3) A Commission shall be established to provide assistance and remedies for any damage caused in the course of the incident based on the findings of the Independent Fact-Finding Commission. Any assistance or remedies shall be extended, as necessary, to the relatives of those who died, were injured or are still missing, and for property and belongings damaged or lost and for other types of damage caused by the incident. Such assistance and remedies shall be treated as exceptional and as being apart from assistance and remedies in other types of situations.

(4) The Royal Thai Army, the Royal Thai Police, the Ministry of Interior and the Ministry of Justice shall jointly undertake a study of the report of the Independent Commission on the Krue Se Incident as well as that of the Independent Fact-Finding Commission on the Tak Bai Incident, and shall promptly submit their recommendations to the Prime Minister and the Cabinet on systemic measures and administrative approaches to manage such similar situations should they again recur. The study shall address, inter alia, the issues of how to prevent such situations as well as the required procedures, including legal and law enforcement problems. It should also address the question of inadequacy or unavailability of equipment and facilities which are needed, and should submit recommendations on their procurement. Recommendations are also to be made on regulatory measures on prevention.

In this regard, I wish to affirm to you that the Royal Thai Government considers the restoration of peace and harmony in the three southern border provinces as the top national priority and is fully determined to bring about its realisation. The following are concrete examples of what are being pursued towards this end:

(1) A Remedial Commission has been established to provide assistance and remedies for any damages caused in the course of the Tak Bai incident. The Commission is shortly to submit to the Cabinet a proposal that families of those who lost their lives in the incident be compensated.

(2) A National Reconciliation Commission has been established to foster a spirit of reconciliation and national unity. The Commission would seek a consensual, non-partisan approach in addressing the situation and exploring creative ways to restore social harmony and peaceful co-existence. The internationally respected figure, former Prime Minister of Thailand, Anand Panyarachun, has consented to chair the Commission while the Commission's members will consist of recognized personalities from diverse backgrounds.

(3) More than twelve billion baht (approximately USD 300 million) has been initially earmarked for a broad range of development projects, which aim at accelerating economic and social development in the region. Thailand is closely working with Malaysia through the Thai - Malaysia Committee on Joint Development Strategy for border areas (JDS) to uplift the living standard of the people in the region. Over 40 project proposals are in the pipeline to improve basic infrastructure and promote human resources development. Furthermore, various administrative, educational and legal measures have been implemented with an aim to assist the Thai citizens of Islamic faith to lead a way of life of their choices within a multicultural society.

Within this context, I also wish to take this opportunity to bring to your attention that the massive earthquakes and Tsunamis on 26 December 2004, which hit six provinces in southern Thailand and claimed over 5,000 lives, has had the effect of bringing the whole nation closer together. Unity among people from all walks of life and religions has been all too evident throughout the relief and rehabilitation efforts. This atmosphere of unity has thus nurtured a collective determination of the whole nation as one to bring peace and reconciliation to the three southern border provinces.

### **Thailand: Emergency Decree on Public Administration in Emergency Situations**

**Violation alleged:** Impunity

**Subject(s) of appeal:** General

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of Thailand has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

### **Allegation letter sent on 15 November 2005**

I have received information that on 18 October 2005 your Excellency's Government extended the state of emergency originally declared on 18 July 2005 without repealing those provisions of the Emergency Decree on Public Administration in Emergency Situations, B.E. 2548 that are inconsistent with applicable international human rights law and which fall within the purview of my mandate as Special Rapporteur. Section 17 of the Emergency Decree provides that:

A competent official and a person having identical powers and duties as a competent official under this Emergency Decree shall not be subject to civil,

criminal or disciplinary liabilities arising from the performance of functions for the termination or prevention of an illegal act, provided that such act is performed in good faith, is non-discriminatory, and is not unreasonable in the circumstances exceeding the extent of necessity, but does not preclude the right of a victim to seek compensation from a government agency under the law on liability for wrongful act of officials.

This section is incompatible with the obligations undertaken by Thailand when it acceded to the International Covenant on Civil and Political Rights (ICCPR) on 29 October 1996.

In this regard, I would like to draw the attention of your Excellency's Government to relevant provisions of the ICCPR. Article 6 provides that "the inherent right to life . . . shall be protected by law". Previous emergency decrees conferring immunity on police officers have been found to violate this provision, because such immunity circumvents the limits on the use of lethal force imposed by human rights law. (*Suárez de Guerrero v. Colombia*, Communication No. 45/1979, para. 13.3). The use of lethal force is prohibited unless strictly necessary, regardless of an officer's good faith or reasonableness.

I would also like to draw the attention of your Excellency's Government to ICCPR, Article 2, which provides that each State Party must "ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the" Covenant. Pursuant to this obligation, States must investigate violations of the right to life and bring those responsible to justice. (*Arhuacos v. Colombia*, Communication no. 612/1995, § 8.8; Human Rights Committee, General Comment 31). Article 4 confirms that the right to life is non-derogable and that its procedural safeguards cannot lawfully be eliminated even during a state of emergency. (Human Rights Committee, General Comment 29, para. 15).

The decision not to repeal Section 17 of the Emergency Decree is especially troubling in light of the observations brought to the attention of your Excellency's Government by the Human Rights Committee on 28 July 2005. The Committee noted that Thailand must comply with the ICCPR's derogation regime (Art. 4) and stated that it was "especially concerned that the Decree provides for officials enforcing the state of emergency to be relieved of legal and disciplinary actions, thus exacerbating the problem of impunity". (CCPR/CO/84/THA, para. 13.)

I would greatly appreciate information from your Excellency's Government concerning the decision to leave Section 17 in force. I would particularly appreciate details on the Government's legal justification for Section 17 of the Emergency Decree and on any measures it has taken to prevent this provision from producing a state of impunity. I undertake to ensure that your Government's response is accurately reflected in the reports I will submit to the Commission on Human Rights for its consideration.

### **Trinidad and Tobago: Death Sentence of Lester Pitman**

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

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

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of Trinidad and Tobago has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Urgent appeal sent on 10 June 2005** with the Special Rapporteur on the independence of Judges and Lawyers

Mr. **Lester Pitman**, aged 28, who is reportedly scheduled to be executed on 13 June 2005. Concerns have been expressed that, on 8 June 2005, a death warrant was issued for his execution to be carried out despite the fact that Mr. Pitman has not yet exhausted all legal remedies available to him.

According to the information received, Lester Pitman was sentenced to death on 14 July 2004 for the murder of British national John Cropper, his mother-in-law, Maggie Lee and sister-in-law Lynette Lithgow Pearson on 11 December 2001. His co-defendant, Daniel Agard, who was Maggie Lee's great-grandson, was also sentenced to death but his conviction was reportedly overturned by the Court of Appeal in March 2005 and a new trial ordered.

Reports indicate that Mr. Pitman's lawyers have filed a notice on 22 April 2005 with the Court of Appeal indicating that their client intended to appeal against his death sentence in a higher court.

In this connection, we would like to remind the Government of your Excellency that Article 14 (5) of the International Covenant on Civil and Political Rights, to which Trinidad and Tobago is a State party, provides that: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law." Besides, Article 6(4) provides that "anyone sentenced to death shall have the right to seek pardon or commutation of sentence". By articles 2 and 14, States undertake to respect and ensure the right to a fair trial including the right to appeal.

We have further been informed that the death penalty in Trinidad and Tobago is imposed as a mandatory measure for murder, thus making it impossible to take into account any mitigating or extenuating circumstances and eliminating any individual determination of an appropriate sentence. Such arbitrariness is incompatible with the international obligations of Trinidad and Tobago under various instruments.

While we are aware that the Judicial Committee of the Privy Council overturned its own 2004 ruling in the case of *Balkissoon Roodal* and upheld the constitutional validity of the mandatory death penalty law in its judgment of July 2004 in the case of *Charles Matthew v. the State*, we note, however, that the majority opinion carefully



limited the grounds for its finding to the issue of constitutional interpretation. The Court expressly observed, however, that the maintenance of the mandatory death penalty ‘ will ... not be consistent with the current interpretation of various human rights treaties to which Trinidad and Tobago is a party’ (Judgment of the Lords of the Judicial Committee of the Privy Council, Privy Council Appeal No. 12 of 2004, Judgment of 7 July 2004, para. 6). Their Lordships further noted that “Trinidad and Tobago is, like Barbados, a party to the International Covenant on Civil and Political Rights and a member of the Organization of American States and that the Human Rights Committee and Inter-American Commission have both decided that the mandatory death penalty is inconsistent with the international law obligations created by adherence to the ICCPR and membership of the OAS respectively: see *Kennedy v Trinidad and Tobago* (2002) CCPR/C/67/D/845/1998 and *Edwards v The Bahamas* (2001) Report No 48/01 (Judgment of the Lords of the Judicial Committee of the Privy Council, Privy Council Appeal No. 12 of 2004, Judgment of 7 July 2004, para. 12).

Moreover, in the minority judgment in that case, signed by four Law Lords, the following opinion is expressed: ‘It is in our opinion clear that the effect of reversing Roodal is to put the State in breach of its international obligations under the Universal Declaration, the ICCPR, the American Declaration and the American Convention, to all of which the State was party when the appellant committed his crime and to the first three of which it remained a party at the date when he was sentenced. In acknowledging, as it does, that imposition of the mandatory death penalty is cruel and unusual treatment or punishment, the State must indeed be taken to admit these breaches of its international obligations.’ (para. 59). The Lords went further and concluded that: “The result of reversing Roodal is to replace a regime which is just, in accordance with internationally-accepted human rights standards and (as experience in the Eastern Caribbean has shown) workable by one that is unjust, arbitrary and contrary to human rights standards accepted by the State.” (para. 63).

Since the mandatory death penalty is clearly in violation of international law and thus of the norms applicable in relation to Trinidad and Tobago, it follows that the execution of Mr. Pitman on the basis of a mandatory death sentence provision would constitute a failure by Trinidad and Tobago to comply with its obligations under international law. It would thus amount to an extrajudicial, summary or arbitrary execution.

Furthermore, we would like to refer your Excellency's Government to Principle 6 of the Basic Principles on the Independence of the Judiciary, which entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

We would also 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 Trinidad and Tobago on 21 March 1979, and which states:

- principle 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

**Tunisia: Mort en Détention de Badreddine Ben Hassen Ben Mokhtar Reguii**

**Violation alléguée:** Mort en détention à la suite de torture.

**Objet de l'appel:** 1 homme

**Caractère de la réponse:** Réponse faisant preuve de coopération mais incomplète

**Observations du Rapporteur Spécial**

Le Gouvernement apprécie les renseignements préliminaires fournis par le Gouvernement de Tunisie relatifs à l'enquête sur la mort de Badreddine Ben Hassen Ben Mokhtar Reguii. Le Rapporteur Spécial demandera ultérieurement des renseignements sur les résultats de l'enquête.

**Allégation envoyée 25 Mars 2004** avec le Rapporteur Spécial sur la Torture, reproduit de E/CN.4/2005/7/Add.1, para. 729 et 730

729. Allégation envoyée avec le Rapporteur spécial sur la torture, 25 Mars 2004. Badreddine Ben Hassen Ben Mokhtar Reguii, 29 ans, de Mégrine, une banlieue proche de Tunis, serait décédé le 8 février 2004, au centre de détention de Bouchoucha (Le Bardo). Selon les informations reçues, Badreddine Ben Hassen Ben Mokhtar Reguii aurait été arrêté pour un délit de droit commun le 2 février 2004. Il aurait auparavant purgé une peine de trois ans de prison ferme qui lui aurait été infligée dans une affaire liée au groupe islamiste " Al Ansar ". Le 9 février 2004, des agents de police auraient informé sa famille de son décès, alléguant qu'il s'agissait d'un suicide. Toutefois, des traces de violence auraient été constatées sur le corps du défunt et des craintes auraient été exprimées quant au fait que de mauvais traitements et à des actes de torture supposément subis en détention pourraient être la cause du décès.

**Réponse du Gouvernement de la Tunisie datée du 15 Avril 2005**

Le Gouvernement a répondu que, recherché pour vol par effraction d'un lieu habité, Badreddine Reguii a été appréhendé, le 3 Février 2004, par la police judiciaire du District de Ben Arous et a décliné une fausse identité. Il fut transféré, au Centre de détention de Bouchoucha, en attendant que sa véritable identité soit établie. Durant la deuxième journée de sa détention et de son interrogatoire par la police judiciaire, il a fait une crise d'épilepsie et a été aussitôt conduit à l'hôpital régional dudit District. Lors de son examen par le médecin, l'intéressé a tenté de s'enfuir de l'hôpital et s'est blessé les mains. Suite à cet incident et afin d'éviter une nouvelle récurrence, il a été alors confiné dans une cellule individuelle. Lors de son interrogatoire, le 7 Février 2004, il a de nouveau manifesté un comportement violent en se cognant la tête contre le mur et en tentant de s'enfuir, cette fois-ci, des locaux de la police judiciaire. Ayant reçu les soins appropriés, il a regagné par la suite sa cellule après qu'un procès verbal pour tentative de suicide ait été dressé. Le 8 février 2004, les gardiens du centre de détention ont trouvé l'intéressé pendu dans sa cellule. Son cou était entouré d'un cordage confectionné à partir de la couverture dont il disposait. Transféré d'urgence à l'hôpital Charles Nicole de Tunis, le médecin de garde constata malheureusement son décès. Il convient de signaler cependant, qu'au regard de son comportement violent et de ses tentatives de fuite, l'intéressé avait fait l'objet d'une surveillance particulière de

la part de ses gardiens qui l'ont contrôlé à douze reprises. Il a pu, toutefois, déjouer la vigilance de ses geôliers pour mettre fin à ses jours. Après que le Ministère public ait été informé du décès, le juge d'instruction s'est rendu à la cellule où le suicide a eu lieu ainsi qu'à la morgue de l'hôpital Charles Nicole où des traces de violence au niveau des mains, du front et du cou ont été relevées sur le corps du défunt. Le cordage avec lequel le défunt s'est suicidé a été mis à la disposition de la police technique pour les besoins de l'enquête. Suite à ces constatations, le juge d'instruction a décidé, comme pour tout cas de décès survenant en détention, de l'ouverture d'une instruction judiciaire au sujet des circonstances du décès de M. Reguii et ce, conformément à la législation en vigueur. Les agents de la police judiciaire de Ben Arous, qui ont veillé à sa détention ainsi que les détenus mitoyens de l'intéressé au Centre de Bouchoucha, ont fait l'objet d'interrogatoires. Le médecin légiste de l'hôpital Charles Nicole, chargé de l'autopsie du défunt, a confirmé l'existence de traces de violence sur les mains, le front ainsi que le cou du défunt et précisé que le décès est survenu suite à une asphyxie. L'instruction suit son cours.

### **Tunisia: Mort en Détention de Moncef Louhichi**

**Violation alléguée:** Mort à la suite de torture by des agents de l'Etat

**Objet de l'appel:** 1 homme

**Caractère de la réponse:** Pas de réponse

### **Observations du Rapporteur Spécial**

Le Rapporteur Spécial regrette que le Gouvernement de Tunisie n'ait pas coopéré avec le mandat qui lui a été conféré par la Commission des Nations Unies pour les Droits de l'Homme.

### **Lettre d'allégation envoyée le 13 juillet 2005 avec le Rapporteur sur la torture**

Lettre d'allégation envoyée concernant M. Moncef Louhichi, 42 ans. Selon les informations reçues,

M. Moncef Louhichi aurait été arrêté le 9 juin 2005 à Tabarka par des agents de la police politique suite à une convocation orale par celle-ci. Dès son arrestation, M. Moncef Louhichi aurait été transféré à Jendouba et aurait été victime d'actes de torture. Les agents l'auraient notamment frappé à la tête. Le 10 juin 2005 à 21h, il aurait été remis, inconscient, à son frère aîné M. Houcine Louhichi, chauffeur de taxi à Tabarka par des agents de la police politique de Jendouba. Ces derniers lui auraient interdit d'hospitaliser la victime et de parler publiquement de cette affaire.

M. Houcine Louhichi aurait néanmoins emmené son frère au service des urgences de l'hôpital de Tabarka. M. Moncef Louhichi aurait d'abord été transféré à l'hôpital de Jendouba, puis à l'hôpital « La Rabta » à Tunis, où il est décédé le 16 juin 2005 des suites d'une hémorragie cérébrale, causée, d'après les résultats d'une analyse médicale effectuée à l'hôpital de Jendouba, par des mauvais traitements infligés à la tête.

## **Turkey: Killing of Ugur Kaymaz and Ahmet Kaymaz**

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

**Subject(s) of appeal:** 2 males (1 minor)

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

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

The Special Rapporteur appreciates the detailed response provided by the Government of Turkey and will request the result of the prosecutions described.

### **Allegation letter sent on 11 February 2005**

Ugur Kaymaz, aged 12 and his father Ahmet Kaymaz, aged 30, a Kurdish truck driver from Kiziltepe, in Mardin were reportedly shot dead on 20 November 2004 by police officers in front of their house. According to the information received, Ugur Kaymaz and his father were preparing a trip to Iskenderun to pick up a shipment. At around 16:30 on 20 November 2004, they left their house and were heading towards the truck parked 50 meters from their house to put the luggage they had prepared when they were shot at. Reports indicate that after the first shots, Ugur Kaymaz was kneeling down in front of the truck, facing the ground. Some gunshots were then heard. According to the post mortem examination, 13 bullets were found in Ugur Kaymaz's body, four in his hands, and nine on his back. He had gunpowder marks on his body. His father has received 8 gunshots. Results also indicate that all but 4 of those 21 bullets were fired from a distance less than 50 centimetres. All came from the same side, leaving out any possibility of a "shoot-out". Other reports indicate that police members planted weapons near the victims' bodies and placed Ugur Kaymaz's arm on a rifle. Yet, in a statement made on 21 November, the Mardin Governor Temel Koçaklar claimed that "terrorists" had attacked the Kiziltepe police headquarters, and that soldiers responded by killing two of those alleged "terrorists". In a second statement, the official said that the "shoot out" had occurred in front of the house of a man who had been convicted of being a member of the Kurdistan Workers' Party. I understand that the Parliament Human Rights Sub-Commission submitted the findings of its investigation to the Parliament Human Rights Sub-Commission; it concluded that the local executives and the security forces had acted negligently and that the security operation could have been carried out without any loss of life. Subsequently, the Human Rights Commission asked the Interior Ministry whether they were considering any measures against the Mardin Governor Temel. While I welcome the suspension of the Mardin Deputy Police Chief Kemal Donmez and of three members of Special Forces, awaiting the end of the investigation, I would be grateful if you could inform me about the results of any internal inquiry, and in particular if sufficient evidence was found to start criminal prosecution against the police officers involved.

### **Response of the Government of Turkey dated 4 May 2005**

*The Incidence:*

Intelligence reports suggested that the PKK terrorist organization was in preparation of an attack against the security forces in Kiziltepe, Mardin in autumn 2004. The same reports indicated that a PKK militant house which was the closest to the Central Gendarmerie Station of Kiziltepe would be used as a base for the attack.

On 20 November 2004 at 20.00 hours, the security forces in Kiziltepe were informed that two men armed with rifles entered the house located at No: 4 Road 2227, the Vatan Street in the Turgut Ozal neighborhood in Kiziltepe. The police files revealed that it was the domicile of Ahmet Kaymaz who was registered as a member of the PKK, stemming from his past activities in favor of this terrorist organization.

In view of these reports, the security forces applied to the Kiziltepe Public Prosecutor's Office to obtain a search warrant to Mr. Kaymaz's house. In accordance with Article 6 of the By-law of Judicial Preventive Search, the Office issued a search warrant on grounds that there existed sufficient elements to support a reasonable suspicion. The security forces, foreseeing a high risk of an armed clash which might injure the Kaymaz household, decided to keep the house under close surveillance.

On 21 November 2004 at dusk (16.30 hours), groups of police officers were ordered to approach the house. The officers advanced towards the house and saw two unidentified persons on the right side of a truck, bearing the plate 73 SD 977, on their way. The police officers immediately shouted "Stop Police!". Following this, the two unidentified persons shot at the officers. The officer Yasafettin Açiksdz shot in return and the other two officers Mehmet Karaca and Seydi Ahmet Tdngel walked around the truck to position themselves in a way to obtain better view of persons shooting. Despite the police officers' repeated calls to stop, the unidentified persons continued firing their arms. After the exchange of fire was over, it was discovered that the two were dead. The identities of the deceased were later on established as Ugur Kaymaz and Ahmet Kaymaz.

*The evidences:*

Two Kaleshnikov automatic assault rifles bearing serial numbers 1974-316727 and 1976-647698 were found near the bodies of Ugur Kaymaz and Ahmet Kaymaz respectively. The search over the body of Ahmet Kaymaz revealed two Russian-made hand grenades and four magazines. 43 cartridge cases [29 (9 mm), 13 (7.62 mm), 1 (5.56 mm)] and 3 bullet cores were found nearby the bodies of the deceased. Two bullet cores extracted from the bodies of Ugur Kaymaz and Ahmet Kaymaz and the bullet cores and the cartridge cases gathered from the incident venue were examined in the Physical Ballistic Expertise Division of the Istanbul Forensic Science Institution. The report of the Institution, dated 30 November 2004, Ref No: 479, indicates that;

- 8 out of the 13 (7.62 mm) cartridge cases were from the Kaleshnikov rifle found near Ugur Kaymaz's body,
- 5 out of the 13 (7.62 mm) cartridge cases were from the Kaleshnikov rifle found near Ahmet Kaymaz's body,

- the bullet core extracted from the body of Ugur Kaymaz was fired from the MP-5 gun shot by the police officer, Yasafettin Açiksöz
- the bullet core extracted from the body of Ahmet Kaymaz was fired from the iJzi gun shot by the police officer, Salih Ayaz,
- the three bullet cores found in vicinity of the bodies were fired from the MP-5 gun shot by the police officer, Yasafettin Açiksöz,
- 21 out of the 29 (9 mm) cartridge cases belonged to the MP-5 gun used by the police officer, Yasafettin Açiksöz,
- 6 out of the 29 (9 mm) cartridge cases belonged to the Uzi gun used by the police officer, Salih Ayaz,
- 2 out of the 29 (9 mm) cartridge cases belonging to Uzi gun used by the police officer, Mehmet Karaca.

The post mortem and autopsy examinations of Ugur and Ahmet Kaymaz conducted under the control of the Kiziltepe Public Prosecutor's Office and the Diyarbakir Public Prosecutor's Office indicated that there were respectively 11 and 6 bullet holes in the bodies.

The Kaleshnikov rifles found in the incident place were checked with the police archives concerning the crimes committed with unidentified guns. The files revealed that the cartridge cases gathered on 7 August 2004 in the armed attack against the `tenisehir Police Central Police Station in Mardin which resulted in wounding of Kamil K. -skin, deputy inspector, Mehmet Emin Güner, deputy inspector, Mehmet Bayrak, police officer and Adem Ekinici, police officer, were from the Kaleshnikov rifle, Serial No: 1976-647698 which was found near Ahmet Kaymaz's body.

Upon the complaint lodged by some members of the Kaymaz family at the Kiziltepe Public Prosecutor's Office alleging that Ugur and Ahmet Kaymaz were shot by the police officers while they were lying on the ground, the Office undertook additional investigation. The incident venue shown by Makbule Kaymaz, the wife of deceased Ahmet Kaymaz as the intervening witness, was examined by the ballistic experts by means of metal detectors and also through digging and sifting the soil. No bullet cores were found confirming the allegation.

The report of the First Expertise Board of the Forensic Science Institution dated 22 December 2004, Ref No: 4003, states that the bullets killing Ugur and Ahmet Kaymaz were fired from neither long (75-100 meters) nor short (35-40 centimeters) shooting range.

Another report of the Ballistic Division of the Forensic Science Institute dated 20 December 2004, Ref No: 749 indicates that the samples collected from the hands of both Ugur and Ahmet Kaymaz contained sufficient amount of lead and antimony proving that they were gunshot residues.

*The investigations:*

The Kiziltepe Public Prosecutor's Office initiated two separate investigations related to the case.

I) The Kziltepe Public Prosecutor's Office filed an investigation against the police officers Yaeafettin Aıkstiz, Seydi Ahmet Ttingel, Mehmet Karaca and Salih Ayaz who participated in the operation.

The intelligence reports indicating a planned attack by the PKK against the security forces in Kziltepe was confirmed by a PKK militant Halil ibrahim  zt rk who surrendered in Gaziantep on 22 November 2004, one day after the incident. During his interrogation at the Mardin Public Prosecutor's Office on 26 November 2004, Mr.  zt rk stated that in October 2004 the PKK militants in Kziltepe decided to undertake an armed attack in the region in order to reinstate the PKK's existence, to financially empower the terrorist organization and to get revenge of Dijvat Erkendi, the regional commander, who had been killed during a previous operation.  zt rk also said that Nusret Bali, a PKK militant, whose code name was "Kabat" took the lead and started preparations for conducting an armed attack against the military vehicle which carried personnel to the airport. bzt rk iwucated that finding the planned attack highly risky, lie decided to escape and surrender.

The investigation further revealed that Nusret Bali, the leading PKK militant for the planned attack was hiding in Ahmet Kaymaz's house on 21 November 2004. Ahmet Kaymaz noticing that his house was under surveillance by the security officers went out together with his son Ugur Kaymaz in order to divert the attention of police officers and to facilitate the escape of Nusret Bali from the back door of the house. Ahmet Kaymaz also trie;d to give the impression to the security officers that the person with him was Nusret Bali, net is son Ugur.

In the course of the investigation it was also established that when the incident took place the police officers could not have taken their defense positions properly. Moreover, due to the darkness, the lacking of night vision equipment and the fact that thf; suspect was carrying a rifle in his hand, the police officers were unable te, realize that this person was Ahmet Kaymaz's son, Ugur Kaymaz.

The witnesses also confirmed that the security officers' loud warning of "Police! Stop" was immediately followed by the sounds of long gun shots and in return :ohort gun shots. It is also confirmed that Ugur and Ahmet Kaymaz targeted their rifles towards vital parts of the bodies of the police officers.

After a thorough investigation of the incident, on 24 December 2004 (Ref No: 2004/2676) the Kiziltepe Public Prosecutor's *Office* referred the dossier te, the Mardin Public Prosecutor's Office and requesting a lawsuit to be filed against the police officers Mehmet Karaca, Yqafettin Ailcs z, Seydi Ahmet T ngel and Salih Ayaz, on grounds that by exceeding the legal limits of self-defense and the legal limits of using firearms tley caused the deaths of Ugur Kaymaz and Ahmet Kaymaz in manner in which the individual perpetrator cannot be determined.

Consecutively, on 27 December 2004 in line with the proposal of the Kiziltepe Public Prosecutor's Office, the Mardin Public Prosecutor's Office filed a lawsuit at the Mardin

Heavy Penal Court No: 2 against these police officers requesting the accused be sentenced in accordance with the Articles 448, 50, 463, 31, 33 of the Turkish Penal Code.

II) The Kiziltepe Public Prosecutor's Office initiated an additional investigation against two other police officers (Reg. No: 208069 and 179319), two superintendents (Reg. No: 110825 and 154606) and the Provincial Deputy Chief of Superintendent (Reg No: 66977) who had also participated in the said operation on grounds of intentional killing by exceeding the legal limits of using firearms. On 24 December 2004 (Ref No: 20041207fi), the Office concluded with a decision of non-prosecution on grounds that they abode by their legal obligations during the operation and their acts did not amount to any crime. The legal representatives of the complainants appealed against this decision at the Midyat Heavy Penal Court which ruled for dismissal on 16 February 2005 (Ref No: 2005/32).

*The legal proceedings:*

The legal proceedings against the police officers Mehmet Karaca, Yaeafettin Açıksdz, Seydi Ahmet Tüngel and Salih Ayaz started at Mardin Heavy Penal Court No: 2 on 30 December 2004. The first hearing was held on 21 February 2005. The complainants Makbule Kaymaz, Emine Kaymaz, Re~at Kaymaz, their legal representatives and some members of the Bar Association appeared before the Court. However, the complainants did not testify on grounds that they were still under the psychological influence of th.e incident. One witness, Ahmet Tekin, testified before the Court.

The accused were unable to participate in the first hearing since they were assigned in other cities. (Mehmet Karaca to Kocaeli, Ya5afettin AçıksOz to istanbul, Seydi Ahmet Tôngel to Bursa, Salih Ayaz to Mersin). The accused applied to the Court before the hearing and asked for written orders to be sent to the local courts where they reside for their testimonies.

The legal representatives of the complainants and the interveners requested for the transfer of this case to another city on grounds of public security in accordance with the Article 14 of the Turkish Criminal Procedural Code.

The Court decided to send written orders to the local courts where the accused resides in order to obtain their testimonies. It would invite Besir Ôzkilxç, Halil İbrahim Ôztürk and other security officers to the next hearing as witnesses. The Court also officially requested a copy of the report prepared by the Human Rights Inquiry Commission of the Turkish Grand National Assembly on this incident. The next hearing is scheduled on 16 May 2005.

**United Kingdom of Great Britain and Northern Ireland: Impunity for Killing of Patrick Finucane**

**Violation alleged:** Impunity

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

**Character of reply:** Largely satisfactory response

**Observations of the Special Rapporteur**

While the Special Rapporteur welcomes the decision by the Government to establish a new inquiry into the death of Patrick Finucane, he is concerned that the terms of the inquiry, pursuant to the Inquiries Act of 2005, may not be such as to satisfy the need



for a genuinely independent investigation into an event in which the police and the Government have been directly implicated.

**Allegation letter sent 23 September 2004** with the Special Rapporteur on the independence of judges and lawyers, reproduced from E/CN.4/2005/7/Add.1, para. 758

The SR welcomed the Government's action in April 2004 to publish the 4 reports submitted by Justice Cory in October 2003 concerning the murders of Patrick Finucane, Rosemary Nelson and others.

The SR brought to the attention of the Government information concerning recent developments in the Patrick Finucane case whereby Mr. Ken Barrett pled guilty and was sentenced on 16 September for admitting to the murder of solicitor Patrick Finucane. Since the criminal proceedings in this case have now concluded, the SR would like to take this opportunity to encourage the Government to commence a public inquiry without delay and liberally apply the terms of reference referred to in Justice Cory's report so there can be a full and open investigation into the allegations of state collusion regarding the death of Mr. Finucane. The Government made the decision to postpone the establishment of an inquiry due to ongoing criminal proceedings. However, in the case of Mr. Finucane the proceedings are now exhausted. The SR asked the Government whether it intended to hold a public inquiry pursuant to the 1921 Tribunals of Inquiry (Evidence) Act and what was the expected date of commencement.

### **Reponse of the Government of Great Britain and Northern Ireland dated 26 January 2005**

On 23 September 2004, the Secretary of State of Northern Ireland announced that the Government had concluded that steps should be taken to enable the establishment of an inquiry in to the death of Patrick Finucane.

The Government is determined that where there are allegations of collusion the truth should emerge, and the inquiry into the death of Patrick Finucane will be given all the powers necessary to uncover the full facts of what happened. In order that the enquiry can take place speedily and effectively and in a way that takes into account the public interest, including the requirements of national security, new legislation is required.

The Government believes that the Inquiries Bill, which was introduced to the House of Lords on 25 September and is currently in its Grand Committee stage, would provide a suitable framework for the inquiry to take place.

Statement by Secretary of State Paul Murphy MIP on Finucane Inquiry

As I said when publishing Justice Cory's reports, the Government is determined that where there are allegations of collusion the truth should emerge. The Government has consistently made clear that in the case of the murder of Patrizk Finucane, as well as in the other cases investigated by Justice Cory, it stands by the commitment made at Weston Park.

However, in the Finucane case, an individual was being prosecuted for the murder. The police investigation by Sir John Stevens and his team continued and it was not possible to say whether further prosecutions might follow. For that reason, the Government committed to set out the way ahead at the conclusion of prosecutions.

The prosecution of Ken Barrett has now been completed, with Barrett sentenced to life imprisonment for the murder of Patrick Finucane. It is still possible that further prosecutions might result from the Stevens investigation into the murder of Patrick Finucane. Nevertheless, with the Barrett trial now concluded, and following consultation with the Attorney General, who is responsible for the prosecutorial process, the Government has considered carefully the case for proceeding to an inquiry. In doing so, the Government has taken into account the exceptional concern about this case. Against that background, the Government has concluded that steps should now be taken to enable the establishment of an inquiry into the death of Patrick Finucane.

As in any inquiry, the tribunal will be tasked with uncovering the full facts of what happened, and will be given all of the powers and resources necessary to fulfil that task. In order that the inquiry can take place speedily and effectively and in a way that takes into account the public interest, including the requirements of national security, it will be necessary to hold the inquiry on the basis of new legislation which will be introduced shortly.

### **United Kingdom of Great Britain and Northern Ireland: Killing of Jean Charles de Menezes**

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

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

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur appreciates the preliminary information provided by the Government of the United Kingdom of Great Britain and Northern Ireland. The SR would appreciate receiving updated information on the investigations into the killing of Jean Charles de Menezes.

**Allegation letter sent on 29 July 2005**

Communication sent on 29 July 2005, concerning Mr. Jean Charles de Menezes, a 27-year-old Brazilian national who was reportedly shot dead on 22 July 2005 by plainclothes police officers in South London. Reports indicate that he was shot five times in the head at point blank range after having been pushed to the ground.

According to the information received, Mr. Menezes had been living in the UK for the last three years and was working as an electrician. Initial police statements stated that he was a suspect linked to the bombing incidents which have recently taken place in London. However, on 24 July 2005, the Chief Commissioner of the Metropolitan Police acknowledged that Mr. Menezes had no involvement in any suspicious activities and that he was in fact killed by mistake.

I have further been informed that, while recognizing that Mr. Menezes' death was a tragedy and apologizing to his family, the Metropolitan Police Chief, Sir Ian Blair, conceded that more people could be shot in the process of the search for alleged suicide bombers. Sir Ian reportedly indicated that a "shoot to kill" policy, reportedly codenamed Operation Kratos, for dealing with suspected bombers would remain in force.

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.

I would also like to remind the Government of Your Excellency that 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-defense or defense 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. Arbitrary or abusive use of force and firearms by law enforcement officials is to be punished as a criminal offence under national law. 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.

It is my understanding that an investigation into the circumstances of the killing of Mr. Menezes was first initiated by officers from Scotland Yard's Directorate of Professional Standards, and then referred to the Independent Police Complaints Commission. I would greatly appreciate being informed by the Government of Your Excellency of the progression of this inquiry.

In addition, I would appreciate receiving detailed information on the terms of the current rules of engagement that the police have to follow in their search for potential terrorists, including details on the above-mentioned policy allowing officers to "shoot to kill" suspected suicide bombers.

Finally, I would like to appeal to the Government of Your Excellency to make sure that there is full public accountability for the actions of the state and also to inform me of the measures taken in order to prevent the recurrence of such incidents.

**Response of the Government of the United Kingdom of Great Britain and Northern Ireland dated 8 August 2005**

The questions you raise relate to matters currently under intense investigation in the United Kingdom, I can assure you at this stage of the UK's steadfast commitment to the fundamental principles set forth in the Universal Declaration of Human Rights, as well as our strong desire to prevent a recurrence of the tragic death of Mr de Menezes. I will however need to seek further information before I can respond in full to the points raised in your letter. Your letter has been forwarded to London, where it will receive urgent attention.

**Response the Government of the United Kingdom of Great Britain and Northern Ireland dated 6 September 2005**

“You asked for progress of the investigation by the Independent Police Complaints Commission (IPCC) into the circumstances of the killing of Mr. de Menezes. The IPCC decided to conduct an independent investigation into those circumstances during which they have a duty to keep the family informed of the progress of their enquiries. However, while this investigation continues, I am unable to comment on it but I understand that the IPCC anticipates the investigation will last until the end of 2005 and that, subject to sensitive information, they intend to publish their report.

In regards to your main point on human rights and the basic principles on the use of force and firearms, I am sure you will know that the UK Government subscribes fully to the principles of human rights and Parliament will want to be satisfied that all existing and proposed legislation is compatible with the European Convention on Human Rights. It follows that police policies and practices must adhere to those principles.

Police officeres in Great Britain are not routinely armed. The use of firearms is a rare last resort, considered only where there is a serious risk to public or police safety. There will be occasions when police officers need to be armed to protect the public or themselves. For those occasions, police firearm capability is confined to a relatively small number of highly trained officers.

Once authorized to use firearms, it is for individual officers to ensure they act within the law. Common law recognizes that the use of force may be lawful if it is necessary in self defence or defence of another. Additionally, under section 3 of the Criminal Law Act 1967, the use of force for the prevention of crime and apprehension of offenders and those unlawfully at large must be reasonable in all the circumstances.

You referred to full public accountability for the actions of the State. There will be a Coroner's Inquest into the death of Mr. Menezes, which has been convened but adjourned until February 2006 by which time the Coroner hopes to have the IPCC report on investigation. The Inquest is an open process with public access and at which interested parties can be represented. It will be the purpose of the inquest to

determine how, when and where and in what broad circumstances Mr. de Menezes came by his death.

Furthermore, I can assure you that there is no question of police officers being exempt from the normal requirement of the law that any force used must be proportionate. To that end, if the independent investigation finds evidence that suggests that a criminal offence may have been committed by police officers, the IPCC have a statutory duty to refer the case to the Director of Public Prosecutions. The Director will decide whether criminal charges should be brought and it will be for a court to decide whether criminal charges should be brought and it will be for a court to decide whether a police officer's behaviour was proportionate and reasonable.

You asked for detailed information on the terms of the current rules of engagement that the police have to follow in their search for potential terrorists. I take this to mean the rules of engagement in regards to firearms and their search for suspected terrorists since the search for potential terrorists goes much wider than the use of firearms and, indeed, much wider than the police service.

The use of firearms by police officers must be strictly in accordance with the Guidance on Police Use of Firearms produced by the Association of Chief Police Officers (ACPO). Details of this guidance is at [www.westmercia.police.uk](http://www.westmercia.police.uk) under "ACPO Police Use of Firearms". However, information on tactics is an operational matter in which the Government would not want to intervene. Therefore, it is not appropriate to comment on what has been described in the media as a "shoot to kill" policy. However, I can say that we will consider how the rules of engagement can be reviewed but this must await completion of the IPCC investigation.

Finally, you should know that the IPCC has a duty to identify any lessons that can be learnt, for the benefit of the whole of the police service, from the police operation that resulted in the tragic death of Mr. de Menezes. However, I cannot say, at this stage, what those lessons may be."

### **United Kingdom of Great Britain and Northern Ireland: Impunity for Killing of Raymond Mc Cord**

**Violation alleged:** Impunity

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

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of the United Kingdom of Great Britain and Northern Ireland has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

#### **Allegation letter sent on 5 October 2005**

Allegation letter sent regarding the killing of Raymond Mc Cord in November 1997 in Newtownabbey.

According to the information I have received, on 9 November 1997, Mr Mc Cord, a 22 year old Protestant, was battered to death and his body was dumped in Ballyduff Quarry in Newtownabbey. It has been widely reported in the media that the victim was a member of the Ulster Volunteer Force (UVF) and that he was killed by the members of the Mount Vernon UVF. The allegation is that Mark Haddock, a Mount Vernon Officer Commanding who was in prison at the time, ordered William Young, a UVF member who was on weekend parole, to kill McCord before he could tell the UVF command on Shankill Road in west Belfast that Mr. Haddock was double crossing the UVF by dealing in drugs and retaining the proceeds.

Mark Haddock is alleged to have been involved in other murders and was allegedly recruited as a police informer in 1993 after a murder committed in Mount Vernon. In return for immunity from prosecution he is said to have led the police to major arms dumps across Belfast and informed on other loyalists who were later convicted. Until his arrest in 1993, he is said to have acted with impunity while benefiting from the Royal Ulster Constabulary's protection.

It is my understanding that no one has been charged with Mr. Mc Cord's murder. I understand that the Police Ombudsman is currently conducting a wide-ranging investigation into this murder and others allegedly committed by the same UVF gang. While her report will certainly be very helpful, she has no power to investigate the murder itself as her mandate is to investigate complaints about the police.

I am taking this matter up, despite the time which has elapsed, in part because I understand that the life of Mr. Raymond Mc Cord Snr is at risk and that he has repeatedly been threatened and is forced to live at a secret address.

Given the serious allegations of collusion in relation to this case, I would respectfully suggest that your Excellency's Government put in place an investigation that should be completely independent of the Police Service of Northern Ireland and would seek to identify and bring to justice the perpetrators of the killing of Raymond Mc Cord.

### **United States of America: Death of Journalist Waleed Khaled**

**Violation alleged:** Violations of the right to life during armed conflicts contrary to international humanitarian law

**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 the United States of America has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Allegation letter sent on 16 September 2005** 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, both by your Excellency's Government and by the United States authorities, insofar as you are aware of such inquiries. Have penal, disciplinary or administrative sanctions been imposed in connection with this incident? If your Government has not undertaken any inquiries in this matter or if they have been inconclusive, please explain why.
3. Is your Excellency's Government aware of the rules of engagement or policies of the United States military forces operating in Iraq. Have such rules of engagement or policies been agreed on with your Government? What safeguards do they contain 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.

### **United States of America: Targeted Killing of Haitham al-Yemeni**

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

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

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of the United States of America has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

#### **Allegation letter sent on 26 August 2005**

Letter of allegation sent in relation to information received that Haitham al-Yemeni, an alleged al-Qaeda senior figure, was killed on the Pakistan-Afghanistan border on or around the 10 May 2005 by a missile fired by an un-manned aerial drone operated by the US Central Intelligence Agency. Mr. al-Yemeni had reportedly been under surveillance for more than a week by US intelligence and military personnel. Reports indicate that the Predator drone, operated from a secret base hundreds of kilometers from the target, located and fired on him in Toorikhel, Pakistan, an area where Pakistani forces had allegedly been looking for al-Qaeda leader, Osama Bin Laden. It is my understanding that the CIA is authorized to operate such Predator operations under presidential authority signed after the September 11, 2001 terrorist attacks.

According to the information received, although Mr. al-Yemeni was not listed by that name neither in the FBI's, nor in Pakistan's, "most wanted" list, the active surveillance of his activities would suggest that he was playing an important role inside the al-Qaeda organization. It has been suggested that those undertaking the surveillance were hoping that he would lead them to Osama bin Laden. However, after Abu Faraj al-Libbi, another suspected al-Qaeda leader, was arrested by Pakistani



authorities a month before, it is reported that a decision was taken to kill Mr. al-Yemeni for fear that he would go into hiding and thus be lost track of. My understanding is that the CIA reportedly refused to comment on the situation. Similarly, Sheik Rashid Ahmed, Pakistan's Information Minister denied that any such incident had ever happened near the Pakistan-Afghanistan border.

In drawing the attention of your Excellency's Government to this information and seeking clarification thereof, I am fully aware of the stance taken by your Government in correspondence with my predecessor with respect to the mandate's competence regarding killings that are said to have occurred within the context of an armed conflict (I refer to your Government's letters dated 22 April 2003 and 8 April 2004). As I have explained in my Report to the 61<sup>st</sup> Commission on Human Rights, however, both the practice of the General Assembly and of the independent experts successively holding the mandate since its creation in 1982 make it clear that questions of humanitarian law fall squarely within the Special Rapporteur's mandate (See E/CN.4/2005/7, at par. 45).

In the light of these considerations, I would reiterate my concern that empowering Governments to identify and kill "known terrorists" places no verifiable obligation upon them to demonstrate in any way that those against whom lethal force is used are indeed terrorists, or to demonstrate that every other alternative has been exhausted. (See E/CN.4/2005/7, at par. 41). I would also recall that the Human Rights Committee has held that a State party can be held responsible for violations of rights under the Covenant where the violations are perpetrated by authorized agents of the State on foreign territory, "whether with the acquiescence of the Government of [the foreign State] or in opposition to it". (See *Lopez v. Uruguay*, communication No.52/1979, CCPR/C/OP/1 at 88 (1984), paras. 12.1-12.3.)

Finally, I wish to stress that, while Governments have a responsibility to protect their citizens against the excesses of non-State actors or other entities, efforts to eradicate terrorism must be undertaken within a framework clearly governed by international human rights law as well as by international humanitarian law.

Without in any way wishing to pre-judge the accuracy of the information received, I would be grateful for a reply to the following questions:

1. What rules of international law does your Excellency's Government consider to govern this incident? If your Excellency's Government considers the incident to have been governed by humanitarian law, please clarify which treaty instruments or customary norms are considered to apply.
2. What procedural safeguards, if any, were employed to ensure that this killing complied with international law?
3. On what basis was it decided to kill, rather than capture, Haitham al-Yemeni?
4. Did the government of Pakistan consent to the killing of Haitham al-Yemeni?

### **Uzbekistan: Death Sentence of Farid Nasibullin**

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

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

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of Uzbekistan has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

**Urgent appeal sent on 16 February 2005** with the Special Rapporteur on independence of judges and lawyers and the Special Rapporteur on Torture

Urgent appeal sent concerning the reported imminent execution of Farid Nasibullin for whom an urgent appeal was sent on 26 June 2003 with the Special Rapporteur on torture expressing concerns that his confessions which led to his death sentence were obtained under torture (E/CN.4/2004/56/Add.1, para. 1887). In a letter dated 16 July 2003, your Excellency advised that Farid Nasibullin was sentenced to capital punishment for committing murder, robbery and drug related crimes by the Tashkent Provincial Court in February 2003, a decision that was upheld in April 2003 by the Tashkent Provincial Court of Appeals. Your letter further indicated that in April 2003 he submitted an appeal to the Clemency Commission under the President's Office of Uzbekistan, which suspended his execution pending its final decision (ibid, para. 1888). According to the latest information we have received, Mr. Nasibullin has been prevented from requesting access to his defense lawyer by the Head of the Tashkent prison who demands that a person sentenced to death write to him personally through a relative in order to be able to exercise that right. Making access dependent on such a contingent factor amounts to a violation of internationally accepted standards guaranteeing the right to adequate legal assistance at all stages of criminal proceedings (see attached). In an attempt to overcome this unlawful restriction to access counsel, a defence lawyer from the organization which has been involved in Mr. Nasibullin's case has tried to review his file but, to date, he has been denied access to the criminal case. Further, we understand that the date of execution of Mr. Nasibullin is being kept secret. This lack of transparency denies the human dignity of the person sentenced as well as the rights of family members to know the fate of their relative. In the absence of any indication that the allegations of torture have been adequately reviewed by either the judicial or administrative authorities, we would respectfully request your Excellency's Government to suspend the implementation of the death penalty of Farid Nasibullin, to review the procedures followed in this case, and to ensure that the trial complied with all applicable international standards and principles.

**Uzbekistan: Death Sentences of Nazirzhan Azizov, Khurshidbek Salaidinov, and Bakhtiorzhan Tuichev**

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

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

**Character of reply:** Allegations rejected but without adequate substantiation

**Observations of the Special Rapporteur**

The Special Rapporteur finds that the Government of Uzbekistan's conclusory assertions that torture was not used to elicit confessions even though no investigation has been conducted to lack credibility. The SR does, however, appreciate the Government's assurance that Nazirzhan Azizov, Khurshidbek Salaidinov, and Bakhtiorzhan Tuichev will not be executed until the Human Rights Committee has issued its views and these have been considered by the Government.

**Urgent appeal sent on 12 May 2005** with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture

We would like to draw the attention of your Government to information we have received regarding Nazirzhan Azizov, aged 33, Khurshidbek Salaidinov, aged 21, and Bakhtiorzhan Tuichiev, aged 31, all detained in Andizhan prison. According to the allegations received:

They are at imminent risk of execution after having been tortured in pre-trial detention. Nazirzhan Azizov, Khurshidbek Salaidinov and Bakhtiorzhan Tuichiev were convicted of two murders by Andizhan Regional Court and sentenced to death in October 2004. Reports indicate that they were tortured to extort a confession to the murders they were subsequently convicted of. In particular, the families of Bakhtiorzhan Tuichiev and Khurshidbek Salaidinov claimed that they had been beaten so badly in custody that they were unable to move for several weeks. During the trial the three men alleged in court that they had been tortured to make them sign confessions to the murders, but the court failed to investigate their claims. Moreover, they were not allowed to meet with lawyers hired by their families, and were only able to meet with a state-appointed lawyer after they had been in custody for a month. All three men appealed against their convictions and sentences and/or requested a re-trial. Their requests were rejected by the Andizhan Regional Court in December and again in February.

Nazirzhan Azizov, Khurshidbek Salaidinov and Bakhtiorzhan Tuichiev have submitted communications to the Human Rights Committee under the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). The Committee has requested your Excellency's government to take interim measures of protection in these cases, i.e. not to carry out the death sentence as long as the communications are pending before it, on 14 and 20 January 2005 respectively. On 26 April 2005, the Committee reminded your Excellency's government that these requests remain valid. Considering, however, that your Excellency's government

executed another death row detainee (Mr. Akhrokhuzha Tolipkhuzhaev) on whose case the Committee had also requested interim measures of protection, our concerns are only partially alleviated by the Committee's requests in the present cases.

While we are fully aware of the serious nature of the crime these three men have been found guilty of, we respectfully remind your Excellency that "in capital punishment cases, the obligation of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the (International Covenant on Civil and Political Rights) admits of no exception" (*Little v. Jamaica*, communication no. 283/1988, Views of the Human Rights Committee of 19 November 1991, para. 10). Relevant to the cases at issue, these guarantees include the right not to be compelled to confess guilt, the right to adequate time and facilities for the preparation of one's defence, and the right to communicate with counsel of one's own choosing.

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

Furthermore, we would like to refer your Excellency's Government to 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. 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 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.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights under international law of Nazirzhan Azizov, Khurshidbek Salaidinov and Bakhtiorzhan Tuichiev are respected. Considering the irremediable nature of capital punishment, this can only mean suspension of the death sentence against the three men until the allegations of torture have been thoroughly investigated and all doubts in this respect dispelled. Moreover, it is imperative that they be granted access to lawyers of their own (or of their families') choosing without delay. Finally, international law requires that the accountability of any person guilty of subjecting Nazirzhan Azizov, Khurshidbek Salaidinov and Bakhtiorzhan Tuichiev to torture is ensured.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government, including confirmation that Nazirzhan Azizov, Khurshidbek Salaidinov and Bakhtiorzhan Tuichiev are still alive.

In connection with the present cases, we would also like to recall that Commission on Human Rights resolution 2005/59 “calls upon all States that still maintain the death penalty to ... make available to the public information with regard to the imposition of the death penalty and to any scheduled execution” and to “to provide to the Secretary-General and relevant United Nations bodies information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty”. The resolution thus reaffirms the need for transparency in the use of the death penalty to which the Special Rapporteur on extrajudicial, summary or arbitrary executions draws the Commission’s attention in his most recent Report (E/CN/2005/7, paras. 57-59). As the Special Rapporteur states there: “Countries that have maintained the death penalty are not prohibited by international law from making that choice, but they have a clear obligation to disclose the details of their application of the penalty.” (para. 59). We therefore respectfully request your Excellency’s Government to submit to us and to render public detailed information concerning the number and the identity of, and the crimes committed by the persons subjected to the capital punishment in recent years, as well as of those currently on death row.

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. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegations that Nazirzhan Azizov, Khurshidbek Salaidinov and Bakhtiorzhan Tuichiev were subjected to torture while in pre-trial detention. If no inquiries have taken place or if they have been inconclusive please explain why.
3. Please provide the full details of any prosecutions which have been undertaken with regard to the alleged torture of Nazirzhan Azizov, Khurshidbek Salaidinov and Bakhtiorzhan Tuichiev. Have penal, disciplinary or administrative sanctions been imposed on the perpetrators?
4. Please provide full details with regard to the legal assistance Nazirzhan Azizov, Khurshidbek Salaidinov and Bakhtiorzhan Tuichiev have enjoyed from their arrest on (until to date). Is it accurate that, although their families hired legal counsel to assist them, they were not allowed to avail themselves thereof? If so, on what grounds?
5. Please provide details concerning the legal remedies already exercised by Nazirzhan Azizov, Khurshidbek Salaidinov and Bakhtiorzhan Tuichiev, and those still open to them to challenge their conviction and the sentence imposed.

**Response of the Government of Uzbekistan dated 10 June 2005**

“The PM has also honour to emphasize that the enclosed information comprehensively reveals the inaccuracy, groundlessness and unsubstantiated nature of allegations in the subject communication.

In accordance with the decision of a judicial panel of the Supreme Court of the Republic of Uzbekistan on criminal cases dated 8 February 2005 and amended decision of the Court of Appeal of the Andijan regional court dated 14 December 2004 and the verdict of the court dated 27 October 2004, Mr. Baktiorzhan Tuichiev was sentenced to death sentence pursuant to the subparagraphs ((B,N, O, M, P) part 2, of the Article 97, subparagraphs (A,N,O,M,P), part 2 of the Article 25 , 97, subparagraph “B”, part 4, of the Article 164, subparagraph “B”, part 4, of the Article 25, 164 and subparagraph “B”, part 4, of the Article 169 and the Article 276, part 1, of the Criminal Code of the Republic of Uzbekistan.

Mr. Nazirzhan Azizov was sentenced to death sentence pursuant to subparagraphs (N,O,M,P), part. 2, of the Article 97, subparagraphs (A,N,O,M,P), part 2, of the Article 25, 97, subparagraphs (B), part 2 of the Article 25 , 97, subparagraph “B”, part 4, of the Article 164, subparagraph “B”, part 4, of the Article 25, 164 and subparagraph “B”, part 4, of the Article 169 and the Article 276, part 1, of the Criminal Code of the Republic of Uzbekistan.

Mr. Khurshid Salaydinov was sentenced to death sentence pursuant to subparagraphs (??), part. 2, of the Article 97, subparagraphs (N,O,M,P), part 2, of the Article 25, 97, subparagraphs (A,N,O,M,P), part 2 of the Article 25 , 97, subparagraph “B”, part 4, of the Article 164, subparagraph “B”, part 4, of the Article 25, 164 and subparagraph “B”, part 4, of the Article 169 and the Article 276, part 1, of the Criminal Code of the Republic of Uzbekistan.

In accordance with the court verdict they were found guilty of committing the following crimes:

Having been imprisoned twice before B. Tuichiev gathered M. Umarov, M. Azizov, Kh. Salaydinov, Kuchkarov and I. Akhmedov, who is being on wanted list as a criminal group to illegally possess the property of other people by robbery and committing premeditated murders and other grave and very grave crime.

In February 2004 B. Tuichiev and N. Azizov killed D. Egamberdieva premeditatedly and under aggravated circumstances in order to seize her property by robbery. The criminal group took D. Egamberdieva away by car and killed her premeditatedly. B. Tuichiev and Kh. Salaydinov participated in committing the crime as a “back-up”. M. Umarov and N. Aziziou killed Ms. Egamberdieva through torture by suffocating and physically assaulting, they took her golden earrings. To conceal the crime they dropped the corps of Ms. Egamberdieva into Ferghana channel.

The criminal group planned to possess by robbery and attempting to kill the property of G. Kurbanbaeva and people, who have been renting premises at her home.

Under the plan of crime of B. Tuichiev, M. Umarov, N. Azizov and Kh. Salaydinov in the same day at around midnight attempted to kill premeditatedly Ms. G. Kurbanbaeva as well as Ms. M. Zaynobbiddinova and Ms. Yunusova, who lived at her home, in order to seize their property by robbery.

In March 2004, B. Tuichiev killed Ms. N. Niyazova in Shahrihan City by suffocating. Kh. Salaydinov helped B. Tuichiev to commit this crime. The objective of the crime was to possess the jewelry of Ms. Niyazova amounting to 515 000 soums and pulling out her golden teeth amounting to 108 000 soums.

On 7 April 2004 B. Tuichiev, N. Azizov and Kuchkarov assaulted Mr. R. Ahunov in his car in Shahrihan City, killed him by suffocating and seized his monex amounting 480 000 soums. In order to conceal the crime they dropped his corps into the channel in Tayd village.

B. Tuichiev and I. Akhmedov, who is currently on the wanted list, stolen a cattle belonging to Mr. G. Omonov in Shahrihan district in March 2004.

Law enforcement officers, in accordance with the provisions of the Criminal Procedure Code arrested B. Tuichiev, Kh. Salaydinova and N. Aziziov on 2 May 2004 by confirmed material evidences and in the presence of witnesses. All allegations of Bakhodir Tuichiev, I. Kimsanov and N. Salaydinova in their communication to the UN Human Rights Committee are groundless and unsubstantiated. In particular, the allegations of course of court hearings, proof and planting of evidences and absence of access to a lawyer do not correspond to the real situation. Besides the frank confession of guilt in the court by B. Tuichiiev, N. Azizov and Kh. Salaydinov, their guilt in committing the crimes were confirmed by the following:

- confessions and evidences provided by M. Umarov and T. Kuchkarov, who were also convicted, and by victims—R. Niyazova, G. Kurbanbaeva, R. Yunusova, A. Ahunov, M. Zaynobiddinova, R. Rejabov, Omonov, eye-witnesses—Yusupov, Nishonov, Sharipova, Karimov, Haydarov, Tursunov, Rizaeva, Orinboev, Mamathonov, Bahodir Tuichiev, E. Tuichiev, Ganiev, Komilov, Tursunov, Tojjeva, Qaraboeva and Holmatov.

- conclusions of forensic-psychiatric examinations, overview of the crime sights;

- verifying the testimonies of convicted persons at crime sights, obtaining material evidence;

- written confirmations of victims and eye-witnesses, including photo pictures and videotapes and other evidences collected during the process of this case.

All convicted persons were granted with full access to lawyers and all investigation actions have been accomplished with participation of lawyers from the time of their arrest on 2 May 2004. Lawyers—Ms. Q. Abdullaeva, Mr. A. Rakhimov, Ms. Karimova, Mr. H. Akramov, Ms. Yu. Nuriddinovy, Ms. D. Botiralieva, Ms. Akhmedova and Mr. O. Azizov, have defended the above- mentioned convicted persons at all stages of preliminary investigation and court hearings.

The convicted persons were not subjected to physical or psychological pressure, including torture or any form of ill-treatment, which is confirmed by case materials.

The convicted persons confirmed that interrogations during preliminary investigation have been held with participation of lawyers, they have given their confessions under their own wish and there has been no pressure exerted against them.

Preliminary investigation and judicial processes have been implemented in conformity with provisions of the Criminal Procedure Code of the Republic of Uzbekistan, and the conclusions on the guilt of convicted persons have been substantiated.

The court properly identified punishment measures against B. Tuichiev, N. Azizov and Kh. Salaydinov as death penalty which revealed the following crimes: B. Tuichiev leading an organized criminal group, at aggravated circumstances participated in killing 3 persons and attempts to kill 3 persons through crimes of robbery and thefts; N. Azizov actively participating in the organized criminal group, at aggravated circumstances participated in killing two persons and attempts to kill 3 persons through crimes of robbery; Kh. Salaydinov actively participating in the organized criminal group, at aggravated circumstances participated in killing 2 persons and attempts to kill 3 persons through crimes of robbery.

The sentences have been taken in view of absolute danger of these persons to the society and absence of effect and possibility for reformatory or correction work with regard to them.

Following the request of the UN Human Rights Committee in accordance with rule 92 of the Rules of Procedure the State party has taken interim measures to suspend the sentences against them.

In the meantime these convicted persons are being held in the penitentiary institution of the Main Directorate on Execution of Punishment of the Ministry of Internal Affairs of the Republic of Uzbekistan.

Health condition of B. Tuichiev, N. Azizov and Kh. Salaydinov is registered as satisfactory level.

### **Uzbekistan: Deaths in Andijan, 13 May 2005**

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

**Subject(s) of appeal:** Hundreds of people (persons exercising their right to freedom of opinion and expression)

**Character of reply:** Allegations rejected but without adequate substantiation

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

The Special Rapporteur wishes to express his concern at the major contradictions between the Government of Uzbekistan's account of the deaths that occurred in Andijan on 13 May 2005 and the many consistent allegations from other sources.

**Allegation letter sent on 19 May 2005** with the Special Rapporteur on freedom of expression

Allegation sent on 19 May 2005 with the Special Rapporteur on freedom of expression concerning the obstruction, harassment and arrests of various members of the media, as well as the deaths of hundreds of people after government troops



violently dispersed a peaceful demonstration on 13 May in Andijan. According to the information received:

A peaceful crowd of protesters numbering as many as 10,000 on the town's main square had gathered to call for justice and for an end to the economic hardship felt by many in the region. Reports indicate that the demonstration was sparked by a smaller protest against the ongoing trial of 23 local businessmen charged with religious extremism. Nevertheless, troops have reportedly opened fire on the crowd from armoured personnel carriers without warning, shooting indiscriminately at men, women and children as they fled from the main square in panic.

Moreover, US, Russian and British cable channels, CNN, NTV and BBC were all stopped from broadcasting throughout Uzbekistan on 13 May 2005, national news reports were replaced with culture programmes and music clips, and Russian independent websites, *www.lenta.ru*, *www.gazeta.ru* and *www.fergana.ru*, as well as several other Uzbek websites were also blocked within Uzbekistan.

Furthermore, on 14 May 2005, administration officials confiscated documents belonging to reporter and cameraman for the Russian-based *Ren TV*, Dmitry Yasminov and Vikrot Muzalevsky respectively, and did not allow them to enter Andijan to prepare a report for their news program *Nedelya*. They were released several hours later and escorted back to Tashkent. In the outskirts of Andijan, that same day, police officers also detained a crew from the Russian television channel NTV, confiscating their papers and demanding that they leave the city. They were also escorted to Tashkent and their identity documents were only returned to them five hours later. Furthermore, Shamil Baygin, a Reuters correspondent and Galima Bukharbayeva, a correspondent for the London-based Institute for War and Peace Reporting, were detained by Andijan police officers on Friday 13 May 2005 and released on Saturday 14 May 2005, when they left Andijan out of fear of reprisal from the authorities.

### **Response of the Government of Uzbekistan dated 1 July 2005**

“The information provided to the Special Rapporteurs does not correspond to the facts. In reality, the representatives of the media who were at the scene of the events were advised to leave Andijan in the interest of their personal safety. Certain media and human rights defenders considered this measure by the authorities to be a restriction of their rights.

The allegations are based on information obtained from unreliable sources. In point of fact, an investigation established the following:

During the armed terrorists' attacks on a prison and military units in Andijan, they seized a large quantity of weapons and ammunition and killed several prison staff and servicemen; their ranks were swelled by persons whom they had released from prison and who were immediately provided with weapons; 65 persons were taken hostage, of whom 14 were later killed.

After this, the terrorists occupied the Andijan oblast administration building, the approaches to which were blocked by burning vehicles that had been taken during the attacks. Once inside the building, the terrorists telephoned their relatives and friends

and urged them to come to the main square; they also used their weapons to threaten passers-by and people living in the neighbourhood and forced them onto the main square. As a result, some 300 to 400 people gathered in the square; in their presence, the terrorists called for the violent seizure of power and the creation of a caliphate. The terrorists later used civilians and hostages as human shields when they left Andijan for Kyrgyzstan.

The nature and course of events in Andijan confirmed that they were the result of subversive activities by extremist groups and their sponsors living abroad. The organizers of these events made use of methods typical of terrorist and extremist organizations:

- use of weapons during attacks;
- release of convicts from prison;
- hostage-taking and occupation of local administration buildings;
- the nature of the attackers' demands (release prisoners convicted for terrorist activities);
- use of civilians - old people, women and children - as human shields. Using these human shields, the attackers were the first to open fire from more than 300 firearms, with which they killed 45 civilians and 37 law enforcement officers.

During the terrorist acts, 73 vehicles were set on fire or damaged, and damages amounting to over 3 billion sum were caused to more than 20 buildings.

Paragraph 2: The Uzbek side declares that the events in Andijan were in no way related to the trial of 23 so-called "businessmen".

The individuals referred to as businessmen were being criminally prosecuted in accordance with Uzbek law for crimes against the constitutional system of the Republic of Uzbekistan.

The picketing outside the courthouse in Andijan, where the criminal case of the 23 members of the Akramiya movement was being tried, was staged. The organizers recruited known terrorists from Kyrgyzstan and Uzbekistan, who were provided with suits that had been specially acquired for the occasion, to take part in the picketing. The troops did not open fire on men, women and children fleeing from the square in panic, as alleged in the information provided to the Special Rapporteurs.

The Uzbek authorities took all the necessary measures to avoid the use of force and made serious compromises: they agreed to release six detained extremists and offered to provide buses to transport the terrorists, together with their weapons, to the district to which they wanted to go. However, the terrorists kept setting more and more unfeasible conditions; in particular, they demanded the release of a number of imprisoned leaders of religious extremist organizations and their transport by plane to Andijan. Thus, by politicizing their demands, the terrorists brought the negotiations to a deadlock.

Aware that Government troops were preparing to storm the oblast administration building and wishing to forestall them, the criminals left the building in columns using hostages as cover and making use of weapons.

Many people who were hoodwinked and deceived by their fanatical leaders and the individuals who carried out the orders of their foreign patrons and sponsors, died during the aforementioned events.

Paragraph 3: These allegations are completely false.

We understand the natural desire of journalists and agencies responsible for covering events to provide their readers and listeners with factual information.

At the same time, the situation is such that individual agencies and media operate by following orders and are very fond of making completely unfounded insinuations and circulating all kinds of conjectures.

Uzbekistan places no restrictions whatsoever on the population's access to the media, including the Internet. This is demonstrated by the large number of Internet cafes and Internet providers active in Uzbekistan (since the beginning of 2005, the number of Internet users has risen to 675,000, representing a 137 per cent increase in Internet use).

Thus, the Uzbek side is perplexed by the aforementioned allegations.

Paragraph 4: These allegations were investigated by the Andijan oblast procurator's office, which failed to confirm them. The media representatives referred to in the allegations - Dmitry Yasminov, Vokrot Muzalevsky, Shamil Bayigin and Khalima Bukharbayeva - and the Russian television channel NTV, did not complain to the relevant bodies concerning their detention or the confiscation of their documents, which demonstrates that the allegations are unfounded.

Paragraph 5: The Uzbek authorities take all the necessary measures to conduct thorough investigations. To date, 102 persons have been detained for involvement in terrorist activities. In the course of a thorough investigation conducted by the investigative authorities, half of those persons were released from custody and subjected to other preventive measures, since their hands had not been soiled by the blood of innocent victims.

The investigation is being conducted openly:

- a working group to monitor the investigation of the tragic events in Andijan has been established; it is composed of representatives of the diplomatic corps in Tashkent. To date, the working group has held three meetings to discuss the preliminary results of the investigation and to examine material evidence, including documentary photographs;
- 
- at press conferences held by the President of Uzbekistan, Mr. Islam Karimov, on 14 and 17 May 2005, for local and foreign media and representatives of the diplomatic corps in Tashkent;
-

- in a briefing held by the Procurator-General of Uzbekistan, Mr. R.K. Kadyrov, on 17 May 2005, and a briefing by the chief of the press service of the Office of the Procurator-General on 27 May 2005;
- 
- at receptions held by the Office of the Procurator-General of Uzbekistan for representatives of embassies and international organizations (United Nations, Organization for Security and Cooperation in Europe) in Tashkent.

Paragraph 6: The Government of Uzbekistan takes all necessary measures to guarantee the rights and freedoms of all persons in the territory of Uzbekistan.

**Uzbekistan: Death Sentences of Yuldash Kasymov and Alisher Khatamov**

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

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

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

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of Uzbekistan. With respect to the case of Alisher Khatamov, the SR would note that information regarding the basis for determining his culpability is irrelevant to the question whether his confession was extracted by torture and his death sentence thereby arrived at without respect for due process. With respect to the case of Yuldash Kasymov, the SR welcomes the Government's commitment in its submission to the Human Rights Committee that he will not be executed while his case is being examined by the Committee. The SR would appreciate updated information regarding the situations of Alisher Khatamov and Yuldash Kasymov.

**Urgent appeal sent on 29 June 2005** with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture

Urgent appeal sent concerning Mr. Yuldash Kasymov, aged 19, and Mr. Alisher Khatamov, aged 27, who appear to be at risk of imminent execution. Reportedly, their conviction and sentence is based on confessions extorted under torture or other forms of ill-treatment.

According to the information received, Yuldash Kasymov was found guilty of the murder of his parents and sentenced to death by the Tashkent City Court on 3 March 2005. The sentence was confirmed by the Supreme Court on 10 June 2005. Reportedly, both Yuldash Kasymov and his brother Mansur were beaten during interrogations in order to force either one of them to plead guilty to the murder. As a

result of the pressure, Yuldash ultimately signed the confession statement. A video presented in Court showed that when the investigators took him to the crime scene, his face was covered with bruises. His girlfriend was also reportedly beaten to punish her for insisting that he was innocent, and he was allegedly threatened that she would be raped in front of him if he did not "confess". The lawyer who was hired by his family was only able to have access to him ten or more days after his arrest, when he had already signed the statement. Yuldash Kasymov immediately retracted his "confession" in a letter to the relevant procurator and insisted on his innocence.

In a separate case, Alisher Khatamov was found guilty of the murder of two persons and sentenced to death by the Tashkent Regional Court on 16 March 2005. His sentence was confirmed by the Supreme Court on 14 June 2005. Reports indicate that officers of the Bukinsky district police and the regional police of Tashkent beat him and all the members of his family. Moreover, both he and his father were reportedly told that his mother and his sister would be raped unless Alisher confessed to having committed the crime. Reports indicate that Alisher Khatamov's lawyer only got access to him two weeks after he was arrested. During the trial the family complained about the beatings, but this was allegedly ignored by the court.

Yuldash Kasymov and Alisher Khatamov have submitted communications to the Human Rights Committee under the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). The Committee has requested your Excellency's Government to take interim measures of protection in these cases, i.e. not to carry out the death sentence as long as the communications are pending before it, on 13 April and 13 May 2005 respectively. Considering, however, that, on 1 March 2005, your Excellency's Government executed another death row detainee, Mr. Akhrokhuzha Tolipkhuzhaev, on whose case the Committee had also requested interim measures of protection, our concerns are only partially alleviated by the Committee's requests in the present cases.

#### **Response of the Government of Uzbekistan dated 1 July 2005**

Regarding the case of Yuldash Kasymov, the Government referred the Special Rapporteur to its 13 June 2005 submission to the Human Rights Committee.

Regarding the the case of Alisher Khatamov, the Government provided the following observations:

Khatamov, Alisher Makhsudzhanovich, born 1978, convicted on 16 March 2005 by Tashkent Regional Court, under articles 25-97 paragraphs 2 (a), (c), (g) and (i) (premeditated murder), article 164, paragraph 4 (a) (robbery with violence), article 169, paragraph 4 (a) (theft), article 227, paragraph 4 (a) (acquisition, destruction, damage to or concealment of documents, stamps, seals, blank forms), article 247, paragraph 1 (unlawful acquisition of firearms, ammunition, explosive substances or devices), article 276, paragraph 1 (unlawful possession, production, purchase, storage and other activities with narcotic and psychotropic substances without the purpose of resale), and article 59 (determination of penalties for commission of multiple crimes) under the Criminal Code of the Republic of Uzbekistan.

The court found Alisher Khatamov guilty of committing the crimes in the following circumstances.

On the night of 9-10 October 2003, Khatamov unlawfully entered the home of Ms. D. Yusupova and Ms. S. Yusupova, Bldg. 5, 3rd Lane, Tinchlik St, in the town of Buka, with the aim of stealing their personal property. He stole 12 gold objects worth 1,200,000 Uzbek SUM, 1,570,000 SUM in cash, 11 gold objects worth 1,125,000 SUM, a further 700,000 SUM in cash and a video cassette. The total value of the property stolen from the two women was 4, 685,000 SUM. In addition, Khatamov unlawfully took the internal passports of Mr. T. Yusupov and Ms. D. Yusupova.

On 27 April 2004, Khatamov committed armed robbery against Ms. F. Vakhobova, stealing 1,200,000 SUM from her.

Continuing his criminal activities, in September 2004, intending to murder his uncle Mansur Khatamov and aunt Saiora and steal their property, Khatamov stole a 16-calibre double-barrelled shotgun and ammunition - four 16-calibre cartridges, two 12-calibre cartridges, 200 grams of lead shot, and 21 percussion caps - from the home of his grandfather, M. Khatamov.

He modified the shotgun by sawing off the barrel, and he then unlawfully kept it in his home.

On the night of 6-7 October 2004, with the aim of carrying out his criminal design, Khatamov broke into his uncle's and aunt's home. Threatening them with the sawn-off shotgun, he forced his uncle to tie his wife's hands with adhesive tape, then demanded money and other valuables. Mansur Khatamov was forced to open a metal safe in the room which contained 2,000 US dollars, 600,000 SUM, a gold chain and two gold bracelets.

Proffering resistance, the uncle, Mansur Khatamov, threw himself on Alisher; Alisher fired at his head with the shotgun, causing him serious injury. Then Saiora Khatamova trying to defend her husband, also threw herself on him, but Alisher fired at her several times, hitting her once in the right arm and injuring her seriously. Alisher Khatamov thereupon drew a knife and stabbed his uncle several times in the chest and neck: his uncle died on the spot.

Khatamov, bent on murder for personal gain, stabbed his aunt a number of times in the arms then, catching her, seized her head and cut her throat with the same knife: she, too, died on the spot.

Khatamov took the 2,000 US dollars, the 600,000 SUM and the gold chain and bracelets and left the scene of the crime.

In his communication to the United Nations Human Rights Committee, the author, Mr. M. Khatamov, stated that:

(a) During the investigation, Alisher Khatamov was subjected to physical and psychological pressure by militia officers and all the admissions he made were extracted by torture without a lawyer present;

(b) Defence witnesses were put under pressure during the trial, and many witnesses were not questioned as a result of unmotivated refusals by the judge;

(c) The court paid no attention to these violations, and sentenced Alisher Khatamov to death without justification.

The arguments adduced in Mr Khatamov's complaint are unfounded and shown to be so by the evidence in the case file.

During the pretrial investigation, a bag containing rubber bands for tying wads of money, empty jewel cases, keys later recognized by Ms. Vakhobova, and the sawn-off portions of the shotgun barrel and stock were recovered from the toilet at Khatamov's home on the strength of information he provided. During the search Mr. Khatamov voluntarily produced the sawn-off 16-calibre shotgun he had modified, a knife with traces of blood, a mask, gloves, a sweater, and a T-shirt with traces of blood which he had hidden in the vineyard.

During verification of Khatamov's testimony at the crime scene in the presence of a lawyer, a white bag containing tights, trainers, a black cap with eyeholes cut in it, and adhesive tape, all of them with spots that looked like blood, were found in the attic of his home while a metal-cutting tool and fine metal shavings were found in his cellar.

During his initial interrogation as a witness on 14 October 2004, later that day when questioned as a suspect, and on 16 October when questioned as the accused, Khatamov, in the presence of Ms. M. Ergasheva, the lawyer acting in his defence during the pretrial investigation, provided detailed testimony about his crimes. No one stated that Khatamov had been pressured or beaten by militia officers or complained about his state of health.

Later, during verification of his testimony at the crime scene in the presence of Ms. Ergasheva and official witnesses, Khatamov also provided detailed information but did not mention any pressure being applied to him.

At his trial, Khatamov stated the following:

With the aim of personal gain he decided to steal property from Ms. S. Yusupova, as he was reliably informed that she had money and gold objects. To that end, one night in early October 2003 he used a saw and hacksaw to cut through the roof of the Yusupov family home, and on the night of 9-10 October he used this hole in the roof to break in. Once inside the room, he found in a cupboard a packet containing money, and in a sideboard, gold jewellery in the shape of four pairs of earrings and five rings, which he put in a string bag. He left the scene of the crime through the hole in the roof.

As to the commission of armed robbery, he explained that, needing money he decided in April 2004 to steal some from Ms. F. Vakhobova, who bought and sold gold items. To commit this crime he prepared a black cap with eyeholes cut in it, adhesive tape and gloves, and, arming himself with a knife, entered the garden of the Vakhobova house on the night of 27 April 2004. Cutting the telephone wires with a knife, and with a pair of pliers he was carrying cut through the iron grating over the window, through which he then entered the house. Going into the bedroom, he woke up Ms.

Vakhobova, ordered her to keep quiet, gagged her with adhesive tape then, threatening her with his knife, demanded money. She took a bag containing some money out from under her bed, then unexpectedly hit him a number of times over the head with some object and ran out of the room screaming. He grabbed the bag and left the scene of the crime. When he reached home he found 1,200,000 SUM in the bag. He treated his head wound himself, and did not go to a doctor. He used the money to buy for Ms. G. Usmanova building materials, clothing, a camera, a television set and other things.

He further explained that, with the intention of committing armed robbery on his uncle Mansur Khatamov, in late August 2004, he secretly took from his grandfather Mazhid Khatamov's home a 16-calibre shotgun, with one round, three cartridges, powder, shot and caps. He sawed off the stock and barrel of the shotgun and kept the modified weapon in his room.

On the night of 7 October 2004, he armed himself with the shotgun and three rounds and a knife, put on the mask and gloves that he had prepared, and, removing a pane, entered his uncle's home through a window. Going into the bedroom, he woke up his uncle and aunt and demanded US dollars and other money from his uncle, whom he ordered to tie his wife's wrists with adhesive tape. His uncle did so and opened a safe in the room, taking out 260,000 SUM.

But then his uncle threw himself on Khatamov, who, taken by surprise fired his shotgun, hitting his uncle in the head. At that moment his aunt Saiora also attacked him, but when he pulled the trigger, the gun misfired. Re-cocking it, he fired again and his aunt in the arm. When his uncle threw himself at Khatamov a second time, he began to stab him in the chest and slashed his aunt's arms. When his uncle stopped moving, he chased after his aunt, caught up with her in the yard, and cut her throat. He went back into the room, took the gun and returned home across the common courtyard. Admitting to the murder, he stated that he had not wanted to kill his relatives: he had only taken the gun and knife to frighten them. At the same time he denied taking US\$ 2,000, a gold chain and two bracelets from them. He had given the 260,000 SUM he stole to Ms. G. Usmanova. Khatamov stated that his admissions had been made voluntarily, without coercion, and no physical or psychological pressure had been put on him.

Khatamov's guilt is also borne out by the following:

- The testimony given in court by Ms. D. and Ms. S. Yusupova, victims, who testified that on the morning of 10 October 2003, they found a hole in their ceiling through which persons unknown had entered the room and stolen money and valuables. The valuables included: gold rings and earrings worth 1,125,000 SUM, and 700,000 SUM in cash; gold ornaments worth 1,200,000 SUM and 1,570,000 SUM, the passports of Ms. D. Yusupova and her father Teshaboy Yusupov, and a video-recording of a wedding;
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- The testimony given in court by Ms F. Vakhobova, victim, that on the night of 27 April 2004, she had been woken by an unknown man in a mask who entered



her bedroom, gagged her with adhesive tape and, threatening her with a knife, demanded money. Fearing for her life and that of her son, a minor, she had taken out from under the bed a bag of money and handed it over. Then, acting in her own defence, she had taken a knife out from under her pillow and stabbed the criminal several times before running from the room. Neighbours came running in answer to her screams and noticed that the window grating was broken; the criminal had made his escape through the hole.

- The testimony in court by Ms. S. Mazhitova, victim, that on the day before the incident, 6 October 2004, her mother, Saira Khatamova, had shown her gold ornaments - a chain and two bracelets - which she promised to give her. At her mother's insistence, she had put them in her father's safe, where there were also US\$ 2,000 and some 600,000 SUM. That night she had been woken by the screams of her uncle Makhsud Khatamov, who was calling her father by name. Later she learned that her parents had been murdered;
- The testimony in court by witness Ms. L. Khatamova that going out into the courtyard on the night of 7 October 2004, she had discovered Saira lying face down. Frightened, she had called her husband, Makhsud Khatamov, and her sons Alisher and Akram, who told her that Mansur and Saira Khatamova were dead. While searching their home, militia officers found parts of a shotgun barrel and a shotgun stock in the toilet, and a sawn-off shotgun and blood-spattered clothing under a vine trellis. Her son Alisher later confessed to the murder of the Khatamovs, to stealing from the Yusupovs, and to the armed assault on Ms. Vakhobova and theft of her money which he had passed on to Ms. G. Usmanova;
- The testimony in court of witness Ms. G. Usmanova, that she had known Khatamov since he was a schoolboy. As he was her godson, he often used to visit them. In October 2003, at his suggestion, they went to the "Ippodrom" market and bought clothes for her, her brother, and the children. In April 2004, Khatamov brought her 1,200,000 SUM which they used to buy building materials, an LG television set, a camera, clothes and other things. On 8 October 2004, he brought her more money, this time 250,000 SUM, which she used to buy building materials. She knew nothing about crimes committed by him;
- The conclusions of a forensic examination which established that the bruises sustained by Ms. F. Vakhobova to her rib cage, knees and left wrist were minor injuries;
- The findings of forensic examinations which established that:

The death of Mansur Khatamov was caused by a combination of injuries: penetrating knife wounds to the lungs and heart ventricles, open cerebrocranial trauma and internal bleeding as a result of a gunshot wound; and

The death of Saiora Khatamova was caused by severe haemorrhage resulting from the severing of her carotid artery and adjoining veins in the neck;

- The official report on the recovery of material evidence: a sawn-off hunter's shotgun from No. 30, Zhura Yorov St. in the town of Buka, the domicile of Alisher Khatamov;
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- The findings of a forensic ballistics test showing that the recovered sawn-off shotgun had been altered from a double-barrelled cocking-action hunting firearm, 16-calibre, No. 159753, Model B, manufactured in 1958, usable for shooting and a firearm;
- The official crime scene report and record of recovery of a spent cartridge case discovered at 30, Zhura Yorov St., Buka, where the Khatamov couple, victims, lived;
- The findings of a forensic ballistics test showing that the recovered cartridge case was in good working order and capable, when loaded with ammunition, of being fired from a 16 calibre firearm, and had been used in a discharge from the right-hand barrel of the 16-calibre sawn-off shotgun that was an exhibit in the investigation;
- The official report on the recovery of material evidence - the barrel and part of the stock of a double-barrelled shotgun, powder, shot and metal filings (shavings) discovered at 30, Zahra Yorov St., Buka, the home of Alisher Khatamov;
- The finding of a forensic ballistics test that the portion of the double barrel and wooden stock, and the 16-calibre sawn-off double-barrelled shotgun presented in the course of the investigation had once formed a single firearm, and that the metal filings (shavings) were of materials identical to those of the portion of the gun stock and the piece of double barrel;
- The official identification of material evidence - sawn-off shotgun, powder and shot, by their owner, Mazhit Khatamov;
- The official records of recovery of material evidence - an Uzbek national knife, adhesive tape, trainers, tights, sports shirt, sweater, gloves, cap with eye-holes, at 30, Zhura Yorov St., Buka, the home of Alisher Khatamov;
- The official identification of material evidence - sports shirt, sweater, cap with eye-holes, by Ms. L. Khatamov, as belonging to her son, Alisher Khatamov;

- The findings of a forensic biological examination, that:

The Uzbek knife, sports shirt, sweater, gloves, tights and trainers submitted for forensic examination bore traces of blood belonging to Saiora Khatamova's blood group;

The adhesive tape and hat with eye-holes submitted for forensic examination bore traces of blood belonging to Saiora and Mansur Khatamov's blood groups;

- The finding of a forensic medical examination that two stab wounds were identified on slivers of skin from the chest area of the corpse of Mansur Khatamov, which may or may not have been inflicted by the Uzbek knife submitted for forensic examination;
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- The finding of a forensic medical examination that two stab wounds were identified on slivers of skin from the area of both right and left forearms of the corpse of Saiora Khatamova which may or may not have been inflicted by the Uzbek knife submitted for forensic examination;
- The official identification of material evidence - a bag, empty jewel cases and keys, by their owner, Ms. F. Vakhobova, victim;
- The finding of a forensic biological examination that curtains recovered from Bldg 2, Bobur St. Entry 1, Buka, the home of Ms. F. Vakhobova, and submitted for examination, bore traces of blood from the blood group of Alisher Khatamov;
- The official record of recovery of material evidence - building materials, clothing, an L.G. television set, camera, children's bicycles and the sum of 28,000 SUM, recovered from Bldg. 44, Zhalilov St., Buka, the home of Ms. G. Usmanova.

According to the forensic psychiatric examination of Alisher Khatamov, he was of sound mind when he committed the acts he has been charged with. The actions of Khatamov have been correctly classified according to law.

The sentence on the condemned man is commensurate with the offence.

From the record of the court hearings it can be seen that on application by counsel Ms. M. Ergashova, the following additional witnesses were subpoenaed and questioned: militia officers A. Babakhodzhaev, O. Alimbetov; official witnesses to the inspection of the crime scene A. Umarov, Zh. Khusainov; chairman of the "Dustlik" *makhallin* (neighbourhood) committee A. Oblaknlov.

The use against A. Khatamov and other witnesses of unauthorized methods in the course of the pretrial investigation and the court hearing has not been confirmed.

From the moment Alisher Khatamov was taken into custody, all interrogations, investigations and court hearings in relation to his case were conducted with lawyers M. Ergashova and A. Umarov from the Tashkent Oblast Bar Association, and A. Shaimardanov and A. Babakulov, lawyers from the law firm "Lochin Khimoyasi", in attendance.

No violations of the Code of Criminal Procedure have been established and Khatamov's conviction is recognized as being correct.

### **UZBEKISTAN: DEATH IN CUSTODY OF SHAVKAT KOMILJANOVICH MADUMAROV VIOLATION ALLEGED: DEATH IN CUSTODY**

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

**Character of reply:** Allegations rejected but without adequate substantiation

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

The Special Rapporteur notes that a finding of HIV infection is consistent with allegations that Madumarov received injections against his will and finds the Government of Uzbekistan's conclusory assertion that his death did not result from torture and other mistreatment to lack credibility.

**Allegation letter sent on 12 October 2005** with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the question of torture

Allegation letter sent concerning Mr. Shavkat Komiljanovich Madumarov, 27 years, imam of the Mosque "Ismoil Ota" in Utra-Chirchik District of Tashkent region. According to the allegations received:

Shavkat Makhmudov was arrested on 16 February 2005 by Ministry of Interior officials. He was charged with "Wahhabism" under article 244-1 – preparing and distributing materials presenting a threat to public security. After the arrest he was severely ill-treated. In August 2005, during the trial at Tashkent city court, Shavkat Madumarov was unable to stand on his own. In order for him to be able to sit, he had to be bound to the chair. Before the court he made a statement to the effect that he regularly received injections without being informed of the reason for the injections. He claimed that, because of the injections, he was unable to move and he had headaches and a high temperature. The court did not respond to his allegations in relation to these issues. His condition further deteriorated and in the beginning of September he had to be carried into the court building.

Three days after having been sentenced to 6 years of imprisonment by Judge D. Saidaliev, Shavkat Madumarov died on 14 September 2005. His body was taken to his parents' home from the investigation isolator SI-1 "Tashturma". On that day their house on Bakht street 2, Toytepa town, Urta-Chirchik district was

surrounded by around 40 military policemen. His relatives were not allowed to open the shroud in which Shavkat Makhmudov's body was wrapped and were forced to bury him immediately at the closest cemetery.

Since we are expected to report on these cases to the Commission, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place or if they have been inconclusive please explain why.
4. Please provide the full details of any prosecutions which have been undertaken;
5. Please indicate whether compensation has been provided to the family of the victim.

#### **Response of the Government of Uzbekistan dated 28 November 2005**

Since 2001, Mr. Shavkatjon Komiljonovich Madumarov had been actively involved in religious extremist activities directed at the violent change of Uzbekistan's constitutional structure through the armed overthrow of the legitimate power and the establishment of an Islamic state. He was arrested on 16 February 2005.

On 1 March 2005, Mr. Madumarov entered the UYa-63/IZ-1 holding facility in Tashkent, where he underwent an initial medical check-up. The diagnosis made on the basis of the medical examination was periarteritis nodosa and HIV infection. During his stay, Mr. Madumarov received medical treatment. On 9 August 2005, he reported to the medical unit, complaining of a cough, chest pains and high temperature. He was diagnosed as having pneumocystic pneumonia; the secondary diagnosis was periarteritis nodosa with primary infection of the skin, dystrophy III and respiratory insufficiency II.

The detainee received in-patient treatment at the medical unit of the UYa-64/IZ-1 holding facility in Tashkent until 12 September 2005.

On 12 September 2005, the Tashkent city criminal court sentenced Mr. Madumarov to five years and six months' imprisonment for having committed an offence pursuant to Article 244, paragraph 1, of the Uzbek Criminal Code (Formation, leadership or membership of religious extremist, separatist, fundamentalist or other banned organizations).

The same day, in order to conduct a full examination and provide treatment, Mr. Madumarov was transferred to the national hospital of the UYa-64/18 holding facility in Tashkent, where he was diagnosed with HIV infection, pneumocystic pneumonia, periarteritis nodosa and cardiovascular insufficiency II-III

While at the national hospital, Mr. Madumarov received a complete check-up and was examined by specialists, after which he was diagnosed as having HIV infection IV, pre-AIDS stage (lymphadenopathy, chronic hepatitis, candidiasis of the oral cavity, encephalopathy and diarrhoea). The secondary diagnosis was bilateral pneumonia, chronic drug addiction in the non-persistent remission stage, cachexia and severe anemia.

Despite having received medical treatment, Mr. Madumarov died on 14 September 2005. On the same day, in order to allow funeral arrangements to be made, his body was turned over to his next of kin (his father, Komiljon Madumarov), who resides at 2 Bakht Street, Toitepa, Urta-Chirchik district, Tashkent province.

On learning of Mr. Madumarov's death, the procuratorial authorities conducted a further inquiry, and on 24 September 2005 dropped criminal proceedings on the grounds of lack of evidence that a crime had been committed (Code of Criminal Procedure, art. 83, para. 2).

There is no substance to allegations that Mr. Madumarov was tortured or subjected to any other illegal forms of treatment. No wrongful acts were committed against Mr. Madumarov, and no physical or psychological coercion was employed during the investigation or trial.

The above information concerning Mr. Madumarov and the causes of his death show that reports received by the Special Rapporteurs of the Commission on Human Rights are based on false information.

The Uzbek Government is of the view that such communications are sent to the Special Rapporteurs in order to discredit Uzbekistan's human rights policy and to make unfounded accusations against Uzbek authorities concerning the "systematic use of torture" in law enforcement practice.

In this connection, the Uzbek Government considers it essential to draw the attention of the Special Rapporteurs to the fact that Uzbekistan has previously received unfounded allegations that the Uzbek citizens A. Shelkovenko ("the Shelkovenko case"), I. Umarov ("the Arnasi case") and S. Umarov died as a result of torture. In response to those unsubstantiated statements, the Uzbek authorities, conducted, with the assistance of international experts, independent investigations into all three deaths. The findings of the investigations showed that the aforementioned assertions were unfounded.

In this connection, we consider it necessary to draw attention to the fact that the mandate of the Special Rapporteurs of the Commission on Human Rights requires them to use only reliable sources of information when considering individual communications.

### **Uzbekistan: Death Penalty in Andijan Trial**

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

**Subject(s) of appeal:** 15 males

**Character of reply:** Allegations rejected but without adequate substantiation

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the information provided by the Government of Uzbekistan. While the SR would note that the conclusory assertions provided by the Government do not respond to the serious allegations presented in his urgent appeal, he accepts the Government's assurance that the persons tried in connection with the "Andijan events" of May 2005 will not be executed.

**Urgent appeal sent on 21 October 2005** with the Special Rapporteur on Human Rights and counter terrorism, Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the question of torture

Urgent appeal sent concerning the on-going trial of 15 men, including 3 Kyrgyz citizens, accused of being the main organisers of the "Andijan events" of May 2005, before the criminal Chamber of the Supreme Court of Uzbekistan in Tashkent. Without any intention to intervene in the role of the judiciary in the matter and without prejudging the outcome of the trial, we wish to express our concern over the conduct of the executive in preparing the trials, and also in respect of certain elements of the legislative framework. According to our sources, 106 people are still in detention and are expected to face trial on similar charges.

According to the information we have received, the ongoing trial against 15 persons is based on charges of premeditated murder and terrorism, punishable by the death penalty. It is a source of concern to us that the crime of terrorism may not be defined in national law in a manner compatible with the requirements that follow from articles 6 and 15 of the International Covenant on Civil and Political Rights in relation to crimes that carry the death penalty.

Furthermore, reports indicate that, on the first day of the trial, all 15 defendants confessed their guilt and did so in terms which tracked the prosecution statement practically word by word. In addition, rather than seeking to defend their clients' interests, the defendants' attorneys instead posed questions which were not significant in terms of the charges or were formulated in such a way as to assist the prosecution case. These allegations give weight to suggestions that the defendants had been intimidated into confessing and that the defence procedures were inadequate to ensure a fair trial.

Since, apart from the confessions, little evidence has been presented during the trial and since the defendants were not cross-examined by any independent lawyers to verify their testimonies, concern is expressed that their confessions may have been obtained by means of torture. Without prejudging how the Supreme Court will assess the confessions, we would expect your Excellency's Government to initiate an investigation into the question of whether the confessions were in fact obtained through torture.

This concern is exacerbated by the fact that the previous Special Rapporteur on Torture, in his report on the visit to Uzbekistan (E/CN.4/2003/68/Add.2) stated that

“torture or similar ill-treatment is systematic as defined by the Committee against Torture [and that] torture and other forms of ill-treatment appear to be used indiscriminately against persons charged for activities qualified as serious crimes such as acts against State interests, as well as petty criminals and others.”

While we do not wish to prejudge the accuracy of the allegations described above, we wish to express our concern that the allegations received indicate that the trial did not respect the principles of equality of arms of the parties and the presumption of innocence of the accused. We also fear that applying the charge of “terrorism” in this matter may be used as a tool by the executive to punish the defendants for the religious or political beliefs and convictions they hold.

We are also concerned that the crimes with which the defendants have been charged allow for the use of the death penalty. We respectfully remind your Excellency that “in capital punishment cases, the obligations of States parties to observe rigorously all the guarantees for a fair trial set out in Article 14 of the International Covenant on Civil and Political Rights admits of no exception”. (Little v. Jamaica, communication no. 283/1988, Views of Human rights Committee of 19 November 1991, para. 10). Of particular relevance to the case at issue is the fact that these guarantees include the right not to be compelled to confess guilt.

In this regard we wish to remind you that GA Resolution 59/191, in its paragraph 1 stresses “that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law;

With reference to the above, we would be grateful for the cooperation and responses by your Excellency’s Government in respect of the following questions:

1. Please provide us with the excerpts from your legislation that deal with terrorism, in particular those articles that define what terrorist acts and their punishments are and comment whether the laws in question comply with the requirements of article 15 of the International Covenant on Civil and Political Rights (nullum crimen sine lege, nulla poena sine lege, non-retroactivity of criminal law).
2. Please also indicate on the basis of what criteria organizations are qualified as terrorist organizations and whether they can appeal against such qualification. Please provide the relevant legal base. Please, describe why Akromia has been qualified as a terrorist organization.
3. Please describe the safeguards in place to ensure that the prosecutorial authorities prepare trial proceedings in conformity with all the requirements of art. 14 of the International Covenant on Civil and Political Rights.
4. Please provide information on how the defense lawyers were selected and whether they had free access to the accused persons during the preparation of the trial and from which point in time on? Have they had full access to the files of the case in order to prepare the defense?

**Response of the Government of Uzbekistan dated 28 October 2005**



“Despite the intention expressed in their letter to refrain from prejudging the accuracy of the allegations, the Special Rapporteurs, not waiting for an official reply from Uzbekistan, publicly circulated a joint statement on the given issue on 26 October 2005. This action testify to the gross violation of the mandate of the Special Rapporteurs.

A serious concern is caused over the fact that the statement of the Special Rapporteurs once again have tendencious and prejudiced characters. We regard as inadmissible such kind of statements, which are not taking into account at all a real situation in connection with the acts of terrorism in Andijan and outcome of the investigation. Thewith, not wating for outcome of court proceedings, the Special Rapporteurs doubted the competence of investigative and judicial bodies of the sovereign state.

We emphasize that in this case the subject matter relates to bringing to justice those persons who committed grave crimes punishable under criminal law and recognized worldwide, namely—premeditated murder, terrorism resulted in casualties among peaceful population, undermining the constitutional order.

The statement of the Special Rapporteurs contains explicit speculations causing perplexity of the Uzbek side. In particular, the reference is made to an alleged demand of a prosecutor to pass death penalty against defendants. In fact, during the trial process such demands have not been tabled. Moreover, the prosecutor, in view of gravity of crimes, has demanded to sentence the accused persons to imprisonment from 15 to 20 years.

As far as the assumptions on alleged usage of torture to get confessions of defendants are concerned, we once again draw the attention that all procedural measures relating to court proceedings are being implemented in full conformity with the national legislation and norms of international law. Neither defendants nor lawyers and nor relatives of the accused have not made such statements during court hearings, which are being conducted in open order.

Once again we draw the attention that representatives of the diplomatic corps and international organizations, including United Nations, OSCE/ODIHR, UNHCR, Shangai Cooperation Organization, and as well as international human rights organizations and mass-media have access to the court room without restrictions.

There are no restrictions on the part of the judicial authorities in monitoring the course of the process, which is conducted in strict conformity with the national legislation. Uzbekistan firmly adheres to basic principles of international law—the presumption of innocence and the right of court on rendering verdict.

In combating terrorism Uzbekistan is devoted to norms of international law, including the International Covenant on Civil and Political Rights, as well as Resolutions 1269, 1373, 1624 of the United Nations Security Council. The statement of the Special Rapporteurs give ground to believe that they are not fully informed of the efforts and policy ofd Uzbekistan in the field of combating terrorism.

We state that such actions of Special Rapporteurs undermine the authority of Special Procedures of the Commission on Human Rights and could be regarded as abuse of a

mandate of a Special Rapporteur for political purposes aimed at discrediting a policy of a full-fledged member of the United Nations in the field of human rights.

### **Response of the Government of Uzbekistan dated 29 November 2005**

From 20 September to 14 November 2005, the criminal division of the Uzbek Supreme Court held open hearings in part of the criminal proceedings against 15 persons in connection with the terrorist acts and other particularly serious crimes committed on 12 and 13 May 2005 in Andijan.

The 15 persons were accused of committing offences under article 97 (Aggravated homicide), article 155 (Terrorism), article 159 (Crime against the constitutional order of the Republic of Uzbekistan), article 242 (Organization of a criminal association), article 244 (Mass disturbances), article 244, paragraph 1 (Preparation or dissemination of materials that threatens public order and security), article 244, paragraph 2 (Formation, leadership or membership of religious extremist, fundamentalist or other prohibited organizations), article 247 (Unlawful taking of firearms, ammunition or explosive or explosive devices), article 132 (Destruction of, or damage to, historical or cultural monuments) and other articles of the Uzbekistan Criminal Code.

The court found the accused guilty under the relevant articles of the Criminal Code and sentenced M. Sabirov, F. Khamidov, A. Khakimov, A. Gaziev and I. Khadzhev to 20 years' imprisonment; G. Nadirov to 18 years' imprisonment; A. Ibragimov, M. Artykov and T. Khadzhev to 17 years' imprisonment; K. Turapov and A. Turgunov to 16 years' imprisonment; and A. Yusupov, L. Imankulov, D. Burkhanov and V. Ergashev to 14 years' imprisonment.

The course and outcome of the judicial proceedings show that the investigation and trial were conducted in strict conformity with Uzbekistan's procedural legislation and the universally recognized norms of international law.

During the trial, more than 100 representatives of foreign and local media, diplomatic missions and international organizations, including the United Nations, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, the Office of the United Nations High Commissioner for Human Rights, the Shanghai Cooperation Organization and international human rights organizations, such as Human Rights Watch and the American Association of Jurists, were present as observers.

No restrictions were placed by the court on observing the trial. Both sides (defence and prosecution) were provided with equal conditions and opportunities for conducting impartial adversarial proceedings.

Unfortunately, for political or other reasons a number of human rights organizations and political circles in other countries were unable to be objective about the trial and questioned the actions taken by the investigative authorities and judicial bodies to bring the perpetrators to justice.

In this connection, we draw the attention of the Special Rapporteurs to the unfounded allegations in their joint communication concerning procedural violations during the investigation and trial. In particular, the allegations cast doubt on the sincerity of the

defendants' testimony and the participation of lawyers in the pretrial investigation and the trial.

These baseless allegations reveal an obvious ignorance of the principles and provisions of Uzbek legislation on criminal procedure and a biased attitude towards the judicial proceedings against persons accused of committing a number of serious offences.

In the present case, it should be pointed out that, pursuant to article 46 of the Uzbek Code of Criminal Procedure, the accused has the right to make any statement concerning the substance of the charges. At the same time, the accused is not required to testify, prove his or her innocence or adduce any other evidence. However, sincere remorse is regarded as an extenuating circumstance (Criminal Code, art. 55).

The confessions of the accused (defendants) were, in fact, very similar to the bill of indictment.

There is no substance to the Special Rapporteurs' allegation that the confessions of the accused "tracked the prosecution statement practically word by word" since, in accordance with Uzbek legislation on criminal procedure, the indictment is drawn up on the basis of the evidence, including the statements made by the accused. This explains the similarity of the confessions made by the accused (defendants) with the bill of indictment.

The allegation that the accused (defendants) confessed under torture is also false. During the pretrial investigation and the judicial examination, the accused and their defence lawyers did not submit any complaints concerning their subjection to physical, psychological or any other form of coercion.

Further proof of the baselessness of such allegations is the fact that a medical examination of each of the accused during the pretrial investigation did not reveal any traces of physical coercion.

During the trial, the presiding judge asked the defendants on a number of occasions whether they had been subjected to illegal methods or physical or psychological coercion. The defendants invariably answered in the negative.

As to the allegation that the court did not examine the evidence sufficiently, it should be pointed out that, during the pretrial investigation, all substantiated evidence was carefully, thoroughly, comprehensively and objectively studied. As a result, the body of evidence collected showed without a doubt that the accused were guilty as charged.

The evidence was set out in the bill of indictment, copies of which were given in good time to all the accused and to the lawyers representing their interests, and was carefully examined by the court.

The evaluation of the evidence and of the defendants' plea of guilty or not guilty is the prerogative of the court. Any conclusions concerning insufficient examination of the evidence made prior to the court's handing down of its decision are premature and may be regarded as coercion of the court.

There is no substance to the Special Rapporteurs' allegation that the authorities may be using the charge of terrorism in this matter as a tool to punish the defendants for the religious or political beliefs and convictions they hold. Such an allegation shows how poorly informed the authors of the joint communication are about the nature and public danger of the offences committed by the defendants.

The case-file contains evidence showing that each defendant committed armed attacks on military facilities, police stations and other buildings, which were accompanied by the seizure of a large number of weapons, ammunition and hostages, the murder of law enforcement officers and civilians and the destruction of State property and the private property of citizens through arson, as well as a number of other particularly cruel and cynical crimes that cannot be justified under any circumstances by religious dogmas or political beliefs and convictions.

The allegation of improper conduct by lawyers in the performance of their professional duties is the purely subjective opinion of the authors of the joint communication. Pursuant to articles 46 and 50, the accused (defendants) have the right to choose or refuse a lawyer.

The lawyers representing the interests of the defendants were chosen directly by the defendants themselves. No restrictions were placed on lawyers' meetings with the defendants, and no interference in lawyers' activities was reported.

During the pretrial investigation and the trial, the accused (defendants) did not request the dismissal of the lawyers who had been selected or for their replacements.

(a) Answers to the Special Rapporteurs' questions:

1. Terrorism as a punishable act is defined in article 155 of the Uzbek Criminal Code. The article has four paragraphs.

“1. Terrorism - violence, the use of force or other acts that pose a danger to individuals or property, or the threat of such acts, with a view to forcing a State body, international organization, their officials or natural persons or legal entities to carry out or refrain from carrying out an activity for the purposes of complicating international relations, violating sovereignty or territorial integrity, undermining State security, provoking war or armed conflict, destabilizing the social or political situation or intimidating the population, as well as activities for the purpose of securing the existence, operation or financing of a terrorist organization, preparing or committing terrorist acts or directly or indirectly supplying or collecting any means, resources or other services for terrorist organizations or persons who facilitate or participate in a terrorist activity - shall be punishable by 8 to 10 years' imprisonment.

“2. An attempt on the life of, or infliction of bodily harm on, a State or public figure or government representative committed in connection with their State or public activity in order to destabilize the situation, influence decision-making by State bodies or hinder political or any other public activity shall be punishable by 10 to 15 years' imprisonment.

“3. Acts covered in paragraphs 1 and 2 of this article which:

- (a) result in a person’s death; or
- (b) have other serious consequences,

shall be punishable by 15 to 20 years’ imprisonment or by the death penalty.”

Paragraph 4 sets out circumstances that exempt persons from liability: “a person who participated in the preparation of terrorism shall be exempted from criminal liability if he or she warns the authorities in a timely manner or by other means contributes actively to the prevention of serious consequences and the terrorists’ attainment of their goals, provided that such person has not committed other offences”.

Article 15, paragraph 1, of the International Covenant on Civil and Political Rights states that “no 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. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby”.

Article 15, paragraph 2, states that “nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations”.

It is not possible to compare the above provisions of Uzbek legislation with the norms of international law prior to the court’s pronouncement of a decision, because article 155 of the Criminal Code defines the act and its punishment, whereas article 15 of the International Covenant regulates the principle of *nulla poena sine lege*.

2. Akromiilar has been qualified by the investigative authorities as a religious extremist movement; an organization may be recognized as a terrorist organization only on the basis of a court decision.

Pursuant to article 55, paragraph 1 and article 56 of the Uzbek Code of Criminal Procedure, any natural person or legal entity against whom a decision has been taken with which such person or entity is not in agreement has the right to appeal the decision.

3. The pretrial investigation and trial of persons involved in the commission of crimes during the Andijan events were conducted in full conformity with the norms of Uzbek legislation on criminal procedure, which is in line with the provisions of the International Covenant on Civil and Political Rights. In particular, during the investigation, every accused person was immediately informed in detail, in a language that he understood, of the nature of and grounds for the charges against him. There were no restrictions on the time an accused person had to prepare his defence or on the number of his meetings with lawyers. During the trial, the defendants were provided conditions for the full exercise of their rights pursuant to Uzbek legislation on criminal procedure.

4. Lawyers representing the interests of the defendants were chosen directly by the accused themselves; there were no restrictions on meetings. The lawyers did not complain of any illegal actions or attempts at coercion. Their right to represent the interests of the defendants was not infringed.

In accordance with article 49 of the Code of Criminal Procedure, the lawyers were given access to a criminal case as soon as the accused (defendants) were informed that proceedings were being instituted against them as suspects.

### **Venezuela (Bolivarian Republic of): Amenazas de muerte contra Nelson Bocarando**

**Violación alegada:** Amenazas de muerte y temor por la seguridad

**Persona objeto del llamamiento:** Un hombre, periodista

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

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

El Relator Especial aprecia la información preliminar proporcionada por el Gobierno de Venezuela. Preguntará ulteriormente información relativa a la investigación sobre las amenazas de muerte supuestamente proferidas en contra de Nelson Bocarando.

**Carta de alegación mandada el 22 de octubre de 2004**, reproducido desde E/CN.4/2005/7 Add 1, para. 817

817. Llamamiento urgente enviado con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión, 22 de octubre de 2004. De acuerdo con las informaciones recibidas, el 14 de octubre de 2004 Norberto Catalá, un coronel jubilado, habría amenazado de muerte a Nelson Bocarando, periodista de Radio Onda, por haber hecho comentarios durante su programa de radio sobre la gestión de Alfredo Catalá, alcalde del municipio El Hatillo e hijo de Norberto Catalá. Ese mismo día, Norberto Catalá habría acudido con un guardaespaldas a la oficina del Sr. Bocarando, ubicada en el centro empresarial La Lagunita, al este de Caracas. El coronel buscaba al periodista para “darle unos tiros” si no retiraba durante las próximas horas las imputaciones que habría hecho en su programa. Nelson Bocarando no estaba en su oficina al momento. El coronel fue recibido por la secretaria del periodista, a quién le habría advertido que estaba armado y que dispararía al periodista. El Coronel Catalá fue grabado por las cámaras de seguridad del edificio. Se teme por la vida de Nelson Bocarando cuyas actividades de periodistas están siendo amenazadas.

**Respuesta del Gobierno de Venezuela del 21 de diciembre de 2004**, reproducida desde E/CN.4/2005/7 Add 1, para. 818

818. Respuesta del 21 de diciembre de 2004. El gobierno de la República Bolivariana de Venezuela informa que la Dirección General de Coordinación Policial del Ministerio del Interior y Justicia no ha recibido ninguna denuncia por amenazas de

muerte, así como petición de alguna medida de protección de la integridad física del periodista Nelson Bocaranda Sardi.

### **Respuesta del Gobierno de Venezuela del 1 de marzo de 2005**

En relación con la supuesta amenazada de muerte en contra del Señor Nelson Bocarando el Ministro Público designo al Fiscal Sexagesimo Octavo de la Circunscripción Judicial del Aera Metropolitana de Caracas, abogado Alejandro Castillo, quien dio orden de inicio a la investigación el pasado 3 de noviembre de 2004, de conformidad con lo establecido en el Código Orgánico Procesal Penal venezolano. De igual manera, le participo que luego de haber recolectado información y entrevistado a los testigos y a la victima, el proceso se encuentra en fase preparatoria. En fecha próxima, se le remitirá cualquier otra información referente a este caso.

### **Venezuela (Bolivarian Republic of): Amenazas de Muerte Contra la Familia de Barrios**

**Violación alegada:** Muerte a consecuencia de asesinato por fuerzas de seguridad, impunidad y amenazas de muerte

**Persona objeto del llamamiento:** 3 hombres así como miembros de su familia

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

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

El Relator Especial aprecia la información preliminar proporcionada por el Gobierno de Venezuela. El Relator Especial preguntará ulteriormente más reciente información relativa al cumplimiento de las medidas de protección y a la investigación sobre las muertes de Narciso Barrios, Luis Barrios, y Rigoberto Barrios.

### **Llamamiento urgente mandado el 2 de febrero de 2005**

En este contexto, quisiera llevar a su atención urgente la información recibida sobre el tercer asesinato, desde diciembre de 2003, de un miembro de la familia Barrios. Cabe señalar que el difunto, Rigoberto Barrios, así como miembros de su familia, fueron ya objetos de dos llamamientos urgentes en julio y noviembre de 2004 por los cuales requería al Gobierno de su Excelencia que protegiese a la familia Barrios, de conformidad con la decisión de la Corte Interamericana de Derechos Humanos de 23 de septiembre de 2004. Además en mi comunicación, llamaba a su atención que el 3 de marzo de 2004, Rigoberto y Jorge Barrios, ambos menores de edad, habían sido detenidos sin cargos por la policía durante cinco días, en los cuales fueron golpeados y amenazados de muerte. De acuerdo con la información recibida, el 9 de enero de 2005, Rigoberto Barrios, de 16 años de edad, recibió ocho disparos de dos hombres portando uniformes de la policía del Estado de Aragua. Falleció el 19 de enero en el hospital de Maracay, donde fue trasladado. Los informes indican que sus atacantes utilizaron armas del mismo tipo que las utilizadas para cometer el homicidio de su tío Luis Barrios en septiembre de 2004, imputado a la policía. Agradezco el Gobierno de su Excelencia por sus respuestas de 27 de septiembre, 16 de noviembre de 2004 y 19 de enero de 2005 por las cuales informa, entre otras cosas que, en cuanto a las

amenazas e intimidaciones contra los miembros de la familia Barrios, la Fiscalía Superior del Estado de Aragua solicitó medidas de protección para algunos de sus miembros, incluyendo a Rigoberto Barrios, medidas que fueron ejecutadas por la Guardia Nacional. Sin embargo, en vista de de la ineffectividad de dichas medidas y de la seriedad de las circunstancias, pido al Gobierno que refuerce con efecto inmediato la seguridad de los miembros de la familia Barrios y que aparte de sus puestos a todos los agentes implicados en las amenazas y homicidios. Además solicito al Gobierno que me informe sobre los progresos realizados en las investigaciones sobre los asesinatos de Narciso, Luis y Rigoberto Barrios.

### **Respuesta del Gobierno de Venezuela del 11 de marzo de 2005.**

La Misión Permanente tiene a bien informar que las instancias competentes en materia de Derechos Humanos en Venezuela, han venido realizando las investigaciones pertinentes, a fin de esclarecer los hechos relacionados con este caso. Al respecto, la Dirección General de Servicios Jurídicos de la Defensora del Pueblo informa lo siguiente:

Esta Dirección General de Servicios Jurídicos de la Defensoría del Pueblo, con fecha 20 de enero de 2005, remitió oficio a la Dirección de Protección de Derechos Fundamentales del Ministerio Público, solicitando información sobre las medidas de protección adoptadas para resguardar la vida y la integridad física de los miembros de la familia Barrios, específicamente, de los que se hace mención en la Resolución de la Corte Interamericana de Derechos Humanos de fecha 23 de noviembre de 2004".

Asimismo, en la misma fecha se solicitó información a la Defensoría del Pueblo Delegada en el Estado Aragua, sobre el caso en cuestión y específicamente el estado de las investigaciones realizadas por los Fiscales de Protección de Derechos Fundamentales 14 y 20 del Ministerio Público sobre las presuntas violaciones a los derechos humanos de los ciudadanos Eloisa Bardos, Jorge Barrios, Rigoberto Barrios, Oscar Barrios, Inés Barrios, Pablo Solórzano, Beatriz Barrios, Caudy Barrios, Carolina Garcia y Juan Barrios, como también el nivel real de ejecución de la medida de protección dictada por el Juzgado de Control N° 9 del Circuito Judicial Penal de Aragua a favor de los ciudadanos antes mencionados, como de la medida de protección acordada específicamente en favor del ciudadano Caudy Barrios por el Juzgado de Control N° 7 del mismo Circuito Judicial. Sobre el particular, se solicitó a esa Delegación que se libranan oficios tanto a los Juzgados citados, como al Destacamento 28 de la Guardia Nacional, organismo éste encargado de la ejecución de la misma.

Con fecha 27 de enero de 2005 el Ministerio Público dio respuesta a nuestra solicitando indicando que se abrieron tres investigaciones:

La primera con ocasión de la muerte del ciudadano Narciso Barrios y de las presuntas amenazas recibidas por distintos integrantes de la familia Barrios Ravelo, así como el supuesto hurto cometido en la residencia de las ciudadanas Eloisa Barrios, Elvira Barrios y Justina Barrios. Para la investigación se comisionó a las fiscales Decimocuarta y Vigésima del Ministerio Público de la Circunscripción Judicial del Estado Aragua, quienes han practicado las siguientes diligencias: como la identificación de los funcionarios que practicaron el procedimiento, la recolección de



las armas de fuego utilizadas por los agentes policiales cuando ocurrieron los sucesos, efectuándoles el respectivo reconocimiento legal, a su vez, se han realizados las siguientes experticias: comparación balística, trayectoria balística, levantamiento planimétrico, necropsia, inspección técnica en el lugar donde ocurrieron los hechos, y entrevistas a los funcionarios actuantes y a varios testigos de los acontecimientos. Actualmente, la Fiscal cognoscente se encuentra haciendo un estudio minucioso de la causa a fin de emitir el acto conclusivo correspondiente.

En la segunda de las causas iniciadas se investigan los presuntos abusos, maltratos y privación ilegítima de libertad en perjuicio de los ciudadanos Jesús Ravelo, Gustavo Ravelo, Luisa de Ravelo, Elvira Barrios, Oscar Barrios, Jorge Barrios y Néstor Acudi Barrios, cuyo caso fue asignado bajo comisión a la Fiscal Vigésima del Ministerio Público de la circunscripción judicial del Estado Aragua. Este caso se encuentra en fase de investigación, en la cual se han practicado diversas diligencias a objeto de lograr el esclarecimiento de los hechos y determinar las responsabilidades a que haya lugar.

En fecha 15 de marzo de 2004, la Fiscal Superior del Ministerio Público de la Circunscripción Judicial del Estado Aragua, solicitó medida de Protección para los ciudadanos Pablo Solórzano, Eloisa Barrios, Inés Barrios, Beatriz Cabrera Barrios, Jorge Barrios, Rigoberto Barrios, Maritza Barrios y Juan Barrios, por cuanto los mismos expresaron que habían sido amenazados por funcionarios adscritos al cuerpo de Seguridad y Orden Público de ese Estado. La Medida fue acordada en tacha 30 de marzo de 2004, por el Juzgado Noveno de Primera Instancia en funciones de Control del Circuito Judicial Penal del Estado Aragua, designándose para su cumplimiento a funcionarios adscritos al destacamento N° 21 de la Guardia Nacional, siendo notificada de esa decisión en fecha 02 de abril de 2004, la Fiscal Superior antes señalada, quien solicitó el día 03 de mayo de 2004, reunión con el comandante de dicho destacamento, Tte. Cnel. Héctor Morales, para verificar el cumplimiento de lo acordado por el Tribunal de Control en mención.

No obstante a ello, y en virtud de que el comando designado para cumplir la Medida de Protección, se encontraba a una distancia excesivamente lejana de las personas amparadas por dicha disposición, en fecha 12 de mayo de 2004, la Fiscal Superior del Ministerio Público de la Circunscripción Judicial del Estado Aragua, informó al Juzgado Noveno de Primera Instancia en funciones de Control de ese Circuito Judicial Penal, la situación, solicitándole que designara otro destacamento de la Guardia Nacional, a los fines de hacer efectiva la tutela de los ciudadanos anteriormente identificados.

En tal sentido, el Juzgado de Control señalado, observó ajustado a derecho el pedimento interpuesto por el Ministerio Público y en consecuencia, resolvió el día 13 de mayo de 2004, oficiar al comandante del destacamento N° 28 de la Guardia Nacional, con sede en el Estado Guárico, por encontrarse ubicado más próximo a las residencias de las víctimas, a objeto de que funcionarios de ese comando cumplan con la medida de protección.

Posteriormente, el día 11 de agosto de 2004, se tramitó por intermedio de la oficina de Atención a la Víctima del Ministerio Público con sede en el Estado Aragua, la solicitud de una Medida de Protección a favor del ciudadano Néstor Caudy Barrios,

siendo esta acordada el día 24 de agosto de 2004, por el Juzgado Séptimo de Primera Instancia en Funciones de Control del Circuito Judicial Penal del Estado Aragua, designándose al referido destacamento de la Guardia Nacional para su cumplimiento.

Por otra parte, es preciso destacar, que no todos los beneficiados de dichas tutelas, son testigos oculares de la muerte del ciudadano Narciso Barrios, tal como lo indica la Resolución de fecha 24 de septiembre de 2004, de la Corte Interamericana de Derechos Humanos, ya que del resultado de las investigaciones efectuadas, se derivó que los únicos testigos oculares de los acontecimientos son los ciudadanos Néstor Caudy Barrios y Jorge Barrios.

La tercera de las investigaciones se inició con ocasión a la muerte del ciudadano Luis Alberto Barrios, de la cual conoce la Fiscal Vigésima del Ministerio Público de la Circunscripción Judicial del Estado Aragua, antes identificada, quien a los fines de investigar los hechos ocurridos, solicitó a la Delegación del Cuerpo de Investigaciones Científicas Penales y Criminalísticas de ese Estado, designar una comisión técnica multidisciplinaria, a objeto de que se encargue de investigar dicho suceso. Actualmente la causa se encuentra en fase preparatoria, en el transcurso de la cual se ha solicitado la práctica de diversas diligencias de importancia, con el propósito de esclarecer los hechos y establecer las responsabilidades atinentes.

Respecto al incumplimiento de las mencionadas Medidas de Protección por parte de las Víctimas, el Fiscal Superior del Estado Aragua, solicitó al Juzgado Noveno de Primera Instancia en Funciones de Control de ese Circuito Judicial Penal, la celebración de una audiencia en las que estén presentes las víctimas y los funcionarios policiales, a los fines de verificar el cabal cumplimiento de las mismas, la cual tuvo lugar en fecha 03 de diciembre de 2004, donde el referido Juzgado ratificó las medidas acordadas en fecha 30 de marzo de 2004, bajo la modalidad de la constitución de una comisión permanente de funciones de la Guardia Nacional del Destacamento N° 28, en el domicilio de los beneficiarios de la tutela con la obligación de enviar un informe semanal de sus actuaciones a la Fiscalía Superior del Estado Aragua.

Igualmente, en fecha 22 de diciembre de 2004, la Fiscal Superior del Ministerio Público, solicitó al Juzgado en mención, la celebración de una audiencia de la misma naturaleza de la efectuada con anterioridad, a los fines de solicitar el cabal cumplimiento de la tutela adoptada en beneficio del ciudadano Néstor Caudy Barrios, el día 24 de agosto de 2004, esperándose para la fecha el pronunciamiento de dicho Tribunal. En fecha 23 de diciembre de 2004, la fiscal Superior del mencionado Estado, celebró reunión con el Tte. Cnel. José Dioniso Goncalves Mendoza, Comandante del Destacamento N° 28 de la Guardia Nacional, en la cual se le instó a dar cumplimiento con la Protección dictada a favor de diversos miembros de la Familia Barrios.

Por último, en fecha 18 de Febrero de 2005, se recibió en esta Dirección fax proveniente de la Defensoría del Pueblo Delegada en el Estado Aragua informando que la Fiscal Vigésima del Ministerio Público se encuentra próxima a presentar la acusación.

Asimismo, esa Delegación envió oficio a la Presidenta del Circuito Judicial del Estado Aragua con fecha 17 de febrero de 2005 recomendando hacer efectiva las medidas de protección acordadas y solicitó colaboración a las Defensoría del Pueblo Delegada en el Estado Guárico para que oficie al Destacamento 28 de la Guardia Nacional con la finalidad de que informe el grado de ejecución de la medida".

Una vez se reciba mayor información acerca del citado caso, esta Misión Permanente lo hará del conocimiento de la Oficina de la Alta Comisionada para los Derechos Humanos, a los fines de responder adecuadamente a los mecanismos de vigilancia de la Comisión de Derechos Humanos.

**Venezuela (Bolivarian Republic of): Amenazas de muerte contra la familia de Hernández Mota**

**Violación alegada:** Amenazas de muerte y temor por la seguridad

**Persona objeto del llamamiento:** 1 mujer, 2 hombres

**Carácter de la respuesta:** Respuesta en gran parte cooperativa.

**Observaciones del Relator Especial:**

El Relator Especial aprecia la información proporcionada por el Gobierno de Venezuela informando que unas medidas de protección han sido ordenadas por los tribunales. Sin embargo, considerando que no se han puesto en práctica los órdenes de medidas protectivas anteriores para este mismo caso, el Relator Especial preguntará urgentemente más recién información relativa a su cumplimiento.

**Llamamiento urgente enviado el 31 de mayo de 2005**

**Carmen Alicia Mota de Hernández, Roberto Carlos Hernández Mota** (25 años de edad) y **Carlos Arturo Hernández Mota** (23 años), familiares (respectivamente esposa e hijos) de Arturo Hernández Ortega, quien habría sido asesinado el 12 de abril de 2004. De acuerdo con la información recibida:

El 13 de septiembre de 2004, miembros de la familia Hernández Mota, acompañados por miembros de la Red de Apoyo Por la Justicia y la Paz y del Comité de Derechos Humanos en Educación Acción y Defensa del Estado Guárico, denunciaron el asesinato de Arturo Hernández Ortega ante el Fiscal General de la República, implicando a personas relacionadas con la policía.

El 23 de septiembre de 2004, el Tribunal Penal en Funciones de Control No. 2 de la Circunscripción Judicial de la ciudad Valle de la Pascua, otorgó una medida de protección en favor de Carmen Alicia Mota de Hernández, Roberto Carlos Hernández Mota, Carlos Arturo Hernández Mota y sus familiares. Desde esa fecha, la medida no habría sido cumplida por el Comando Regional No. 2 de la Guardia Nacional, y la familia Hernández Mota habría sido víctima de actos intimidatorios y de amenazas de muerte por parte de

funcionarios policiales adscritos a la Brigada de Intervención y Apoyo de la Policía Regional del Estado Guárico.

Según nueva información recibida, el 5 de mayo de 2005, cuatro agentes uniformados viajando en dos motocicletas se habrían puesto delante del coche de Roberto Carlos Hernández Mota, obligándole a frenar. El 9 de mayo, policías uniformados siguieron de nuevo a Roberto Carlos Hernández Mota. Igualmente, el 16 de mayo de 2005, la familia Hernández Mota habría observado frente a su empresa, en la localidad de Valle de la Pascua, estado de Guárico, a dos agentes de policía uniformados, quienes vigilaban atentamente.

Se teme que las amenazas y los actos referidos estén relacionados con la denuncia que la familia Hernández Mota habría formulado ante la Fiscalía.

### **Respuesta del Gobierno de Venezuela del 3 de noviembre de 2005.**

Sobre el particular, las instancias competentes en material de Derechos Humanos en Venezuela, han venido realizando las investigaciones pertinentes, a fin de esclarecer los hechos relacionados con este caso. Al respecto, esta Misión se permite transcribir la información suministrada por el Ministerio Público acerca de las acciones llevadas a cabo en este sentido :

« El juzgado segundo en función de control del circuito judicial penal del Estado Guárico, decidió en fecha 23 de septiembre de 2004, otorgar medidas de protección vigentes hasta la finalización del proceso judicial, a favor de la cónyuge y descendientes del occiso, los ciudadanos Carmen Alicia Mota de Hernández, Roberto Carlos Hernández Mota y Carlos Arturo Hernández Mota, respectivamente, así como a los demás miembros del grupo familiar, para lo cual, comisionó al Comando Regional No 2 de la Guardia Nacional, policía del Estado Guárico y la dirección de servicios de inteligencia y prevención (DISIP); sin embargo, las víctimas han manifestado el no acatamiento de las medidas decretadas por el órgano jurisdiccional competente.

La dirección de protección de derechos fundamentales, a los fines de garantizar el cumplimiento de la decisión jurisdiccional, instó al fiscal superior del ministerio público del Estado Guárico, para que haga especial énfasis en la efectiva ejecución del fallo aludido, solicitando al mismo elaborar inmediata y urgentemente todas las diligencias necesarias y correspondientes ante el juez de control referido, con el objetivo de que se cumplan cabalmente las medidas decretadas por el tribunal, integrando a las víctimas y a los funcionarios encargados de llevarla a cabo, garantizando así de forma plena, la seguridad e integridad física y psicológica de las víctimas en cuestión.

En este sentido, el Ministerio Público informa que en fecha 4 de junio de 2005, los Fiscales sexta y cuarto de la circunscripción judicial del Estado Guárico, comisionados para conocer el caso en referencia, sostuvieron una entrevista con el ciudadano Roberto Carlos Hernández Mota, quien manifestó haber realizado en múltiples oportunidades las gestiones en pro del cumplimiento efectivo de las medidas de protection.

Del resultado de la intervención del fiscal superior del Estado Guárico, en fecha 14 de junio de 2005, se constituyó el Tribunal segundo de control en sala de audiencias no. 3, presidido por la juez, abogado Ofelia Ruedo Botello, actuando como secretaria la abogado Isabel Cristina Flores, presentes la Fiscal superior encargada, abogada Nairobi Blanco y los solicitantes víctimas Carmen Alicia Mota de Hernández y Roberto Carlos Hernández Mota. Una vez escuchados los planteamientos hechos, a través de los cuales las víctimas antes mencionadas expresaron sentir temor por sus vidas ya que las medidas de protección decretadas el 27 de abril de 2004, acordando que las mismas deberán ser cumplidas por el destacamento no 28 del comando regional no 2, tercera compañía de la guardia nacional con sede en el estado Guárico, en sustitución de la policía del Estado Guárico y la dirección de los servicios de inteligencia y prevención (DISIP), en resguardo de la integridad física de los ciudadanos Carmen Alicia Mota de Hernández, Roberto Carlos Hernández Mota, Carlos Arturo Hernández Mota y el testigo Juan Rafael Martínez González.

Finalmente, se informan que la dirección de de protección de derechos fundamentales a los fines de atender requerimiento de las víctimas y de las organizaciones nacionales e internacionales de protección de los derechos humanos, ha realizado las gestiones pertinentes para el logro de la decisión dictada por el órgano jurisdiccional competente para conocer el caso. Igualmente, manifiesta encontrarse atenta al desarrollo del proceso penal que se lleva con ocasión del homicidio cometido contra el ciudadano Carlos Arturos Hernández Ortega y al cumplimiento de las decisiones que deriven del mismo.

Una vez se reciba ayor información acerca del citado caso, la misión permanente lo hará del conocimineto al relator especial, a los fines de responder adecuadamente a los mecanismos de vigilancia de la Comisión de Derechos Humanos.

### **Viet Nam: Death Sentence of Tran Van Thanh**

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

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

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur appreciates the information provided by the Government of Viet Nam and has taken note of information from other sources that the death penalty in this case was commuted in August 2005.

#### **Urgent appeal sent on 8 March 2005**

Mr. Tran Van Thanh, a 39-year-old Australian of Vietnamese origin was reportedly sentenced to death on charges of drug trafficking by the Ho Chi Minh City's People Court on 5 November 2004. According to the information received, he was a member of a gang accused of trafficking heroin from Viet Nam to Australia between February and June 2003. Two of his accomplices, also Australians, reportedly received life

imprisonment while two Vietnamese nationals received 16 and 20 years in prison. They were all reportedly arrested in June 2003.

According to international standards, the death penalty should only be imposed for the most serious crimes. This is reflected in Article 6(2) of the International Covenant on Civil and Political Rights, to which Vietnam is a State party. It provides that “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes”. In its General Comment No. 6, the United Nations Human Rights Committee has stated that “the expression “most serious crimes” must be read restrictively to mean that the death penalty should be a quite exceptional measure”. This approach conforms with 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, which provides that capital punishment may be imposed only for the most serious crimes. It is understood that these should only include intentional crimes with lethal or extremely grave consequences.

I have been informed that the death penalty for drug-related offences was introduced in December 1992 under Article 96 a of the Criminal Code as an optional punishment for the offence of “illegally manufacturing, concealing, trafficking in or transporting narcotic substances in a manner contrary to state regulations when the offence is committed in particularly serious circumstances”. Concerns have been expressed that at least one third of all publicized death sentences are imposed for drug-related crimes and that the great majority of these would not appear to fall into the category of the most serious crimes.

In this connection, I would like to take this opportunity to respectfully remind your Excellency’s Government of the Human Rights Committee’s Concluding Observations published in July 2002, following consideration of Viet Nam’s State party report on implementation of the ICCPR, in which the Committee stated that it remained “concerned with the large number of crimes for which the death penalty may still be imposed.” The Committee added that “The penalty does not appear to be restricted only to those crimes that are considered as the most serious ones” and recommended that “The State party should continue to review the list of crimes for which the death penalty may be imposed in order to reduce and limit these to crimes which may be strictly considered as the most serious crimes, as required by article 6, paragraph 2 ...” (See CCPR/CO/75/VNM, at paragraph 7).

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned person, in accordance with the State Party’s relevant obligations under international law.

It is my responsibility under the mandate provided to me by the Commission on Human Rights, and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Commission I would be grateful for your cooperation and your observations. I undertake to ensure that your Government’s response is accurately reflected in the reports I will submit to the Commission on Human Rights for its consideration.

### **Response of the Government of Viet Nam dated 10 May 2005**

Tran Van Thanh was caught red handed together with his accomplices in trafficking heroin from Viet Nam to Australia (the amount of 682,7 grams of heroin). In so doing, Thanh committed an extremely serious crime in violation of the Article 96 of the Penal Code of Viet Nam. Therefore, Thanh was put on trial of first instance in November 2004 by the People's Court of Ho Chi Minh City and was sentenced to death. Due to his very serious crime, Thanh's death sentence was upheld by the People's Supreme Court at the final trial on 21 March 2005 in Ho Chi Minh City.

### **Yemen: Death Sentence of Juvenile Offender Amina Ali Abdulatif**

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

**Subject(s) of appeal:** 1 female (juvenile offender)

**Character of reply:** Largely satisfactory response

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

The Special Rapporteur welcomes the decision by the Government of Yemen to reconsider the case of Amina Ali Abdulatif and emphasizes again that it would violate Yemen's treaty commitments to execute anyone for a crime committed when he or she was under the age of 18. The SR will request information on the outcome the Government's reconsideration.

### **Urgent appeal sent on 29 April 2005 with the Special Rapporteur on Torture**

We would like first of all to recall that, in a correspondence sent last week the Special Rapporteur on extrajudicial, summary or arbitrary executions had brought to your Excellency's attention information he had received according to which a young man named Hafez Ibrahim, aged 17, was under sentence of death for a crime he had allegedly committed when he was 16 years old. In this letter, he was respectfully requesting Your Excellency's Government to inform him of the steps it had taken to ensure that, in future, the death penalty could not be imposed either upon him or on any other child accused of committing a crime when under the age of 18. You will recall that the Special Rapporteur was also noting that this would appear to be a matter of pressing importance in view of the fact that, although both domestic and international law prohibit the imposition of such a punishment, as demonstrated by a review of the relevant legal standards, this did not prevent the death sentence being imposed in the first instance.

The principal purpose of our present note is to raise another related case which is that of Ms. Amina Ali Abdulatif, aged 21, who is reportedly scheduled to be executed on 2 May 2005. Reports indicate that she was sentenced to death when she was 16 years old. She was convicted and sentenced to death on 24 May 1999 for the murder of her husband who was killed in January 1998. Concerns have been expressed that she was subjected to torture in order to force her to confess to the murder and that she has since maintained her innocence. It is reported that Muhammad Ali Said Qaba'il was

also sentenced to death for the murder, although it is not known when he is scheduled to be executed.

It is our understanding that, when it upheld her death sentence in July 2001, the Court of appeal took no account of Ms Amina Ali Abdulatif's age, despite the fact that under Yemen's national law and its international obligations, this element fundamentally transforms the options available to the Court. Notwithstanding this basic defect in the process, the sentence was upheld by the Supreme Court in July 2002, and ratified by the President shortly afterwards.

In this regard, we note that the Yemeni Penal Code explicitly prohibits the imposition of capital punishment on anyone who was under the age of 18 at the time of the commission of the crime. Moreover, the right to life of persons below eighteen years of age and the obligation of States to guarantee the enjoyment of this right to the maximum extent possible are both specifically expressed in article 6 of the Convention on the Rights of the Child. More explicitly, article 37(a) provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. Besides, 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.

Finally, we have further been informed that, shortly after the President ratified her death sentence, Amina Ali Abduladif was actually put before a firing squad for the execution to be carried out. However, the execution was reportedly stopped when the executioners noticed that she was pregnant. According to the information received, she had become pregnant after she had been raped by one of the guards at al-Mahawet prison. She would now be held in Sana'a Women Central prison, with her nearly two-year-old child.

In this regard, we would urge your Excellency's Government first and foremost to ensure conformity with domestic and international law and commute the death sentence. In addition we would request that an investigation be ordered into the allegations of rape of Amina Ali Abduladif and steps taken to ensure that she is provided with adequate protection from any further ill-treatment while held in custody. We would be grateful if you could provide me with information on the steps taken to commute the sentence and on the results of the investigation as well as on the steps undertaken in order to bring the alleged perpetrator to justice.

We should like to appeal to your Excellency to seek clarification of the circumstances with a view to ensuring that the right to physical and mental integrity of the above-named person is protected. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture.

In light of the above review of relevant legal standards and in view of the irreversibility of the punishment, it is imperative that your Excellency's Government takes all steps necessary to prevent executions which are inconsistent 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 accordance with the State Party's relevant obligations under international law.

### **Response of the Government of Yemen dated 8 June 2005**

His Excellency, Ali Abdullah Saleh, President of the Republic of Yemen, has given directives to stop the execution of death penalty against the Yemeni national, Amina Alatahif, so as to reconsider her case anew, especially the examination of the issue of the accused as being perpetrator of the crime.

The political leadership affirms the importance of finding out solutions with the family of the victim in order to accept the blood money and avoid the execution of the death penalty.

### **Yemen: Death Sentence of Juvenile Offender Hafez Ibrahim**

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

**Subject(s) of appeal:** 1 male (minor; juvenile offender)

**Character of reply:** No response

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

The Special Rapporteur regrets that the Government of Yemen has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

### **Urgent appeal sent on 21 April 2005**

Urgent appeal sent concerning Hafez Ibrahim, aged 17, who is reportedly under sentence of death for a murder which he allegedly committed when he was 16 years old. I have recently been informed that his death sentence has been postponed and the case remitted to the Preliminary Court by the Attorney General as it was considered that the sentence was given on unfounded grounds.

In this regard, I note that the Yemeni Penal Code explicitly prohibits the imposition of capital punishment on anyone who was under the age of 18 at the time of the commission of the crime. Moreover, the right to life of persons below eighteen years of age and the obligation of States to guarantee the enjoyment of this right to the maximum extent possible are both specifically expressed in article 6 of the *Convention on the Rights of the Child*. More explicitly, article 37(a) provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. Besides, 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.

While I am gratified to note that the conviction in this case is apparently now under reconsideration, I would be grateful if Your Excellency's Government could inform me of the steps it has taken to ensure that, in future, the death penalty cannot be

imposed either upon Hafez Ibrahim or on any other child accused of committing a crime when under the age of 18. This would appear to be a matter of pressing importance in view of the fact that both domestic and international law prohibit the imposition of such a punishment, but that this did not prevent the death sentence being imposed in the first instance.

### **Yemen: Death Sentence of Fuad' Ali Mohsen al-Shahari**

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

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

**Character of reply:** UN translation awaited for response of the Government of Yemen dated 10 February 2006

#### **Urgent appeal sent on 10 October 2005**

Urgent appeal sent concerning Fuad' Ali Mohsen al-Shahari, aged about 45, who appeared to be at risk of imminent execution if his death sentence, which had already been upheld by the Supreme Court in March 2004, was ratified by the President.

Your Excellency will recall that the principal purpose of the above correspondence was to raise concerns in view of information received that Fuad' Ali Mohsen al-Shahari's trial failed to meet international fair trials standards. As mentioned in the letter, he was for instance allegedly convicted on bases of a confession which was said to have been extracted under torture while he was held incommunicado for one month. Four versions of his confessions were reportedly included in the charge sheets and forensic evidence was contradictory. It was further reported that he had not been represented by lawyers throughout the legal proceedings against him, that defense witnesses were not allowed to testify and that certain pieces of evidence had been disregarded. It was also alleged that a personal dispute between himself and the Prosecutor could have compromised the Prosecutor's impartiality. Finally, it was reported that the death sentence against him had been confirmed by the Commercial Division of the Supreme Court instead of the Criminal Division.

I have recently been informed that, on 6 September 2005, the President has ratified Fuad' Ali Mohsen al-Shahari's death sentence, which means that he could be executed at any time. It is reported that, in August 2004, the President had actually ordered the Office of the Attorney General to review his case. While the details of this review are not known, it is my understanding that, afterwards, the Head of the Supreme Court advised the Office of the Attorney General that there had been no procedural flaws during Fuad al-Shahari's trial.

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

Since I have received no response to my previous communication concerning this situation, I would respectfully request the Government of your Excellency to provide me with the details of the above-mentioned review of the case of Fuad' Ali Mohsen al-Shahari' by the Office of the Attorney General with a view to determine if the trial proceedings fully complied with international standards relating to the imposition of capital punishment.

In view of the urgency of the matter, I would appreciate a response on these matters before any irreversible steps are taken in relation to the fate of Fuad' Ali Mohsen al-Shahari'.

### **Yemen: Death Sentence of Yahya Al-Daylami**

**Violation alleged:** Non-respect of international standards 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 Yemen on the legal framework within which it applies the death penalty. However, the SR remains concerned that the norms of due process may not have been respected in this case, especially in the light of recently received allegations that the review of Al-Daylami's initial conviction and sentence lasted only a few minutes. The SR would note that he understands that the Government is confronting an insurgency but would stress that counter-insurgency efforts must be conducted within the framework of international law.

**Urgent appeal sent on 27 October 2005** with the Special Rapporteur on freedom of religion or belief, 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 question of torture

Urgent appeal sent concerning the incommunicado detention of and imposition of the death sentence against Mr. Yahya Al-Daylami. According to the allegations received:

On 9 September 2004, Mr. Yahya Al-Daylami, a religious leader of the Shiite Zaydi minority, was taken into custody in Sa'da by agents of the Political Security Force. As this arrest was carried out by force, covertly, and without an arrest warrant, it has been described as an abduction rather than an arrest. Since then, he has been held incommunicado at the intelligence detention centre in Sana'a. On 29 May 2005, a special criminal court sentenced Mr. Al-Daylami to death. He is currently awaiting execution, as the death sentence requires the approval of the President of Yemen, which is still pending.

Mr. Al-Daylami's trial fell short both of international human rights standards and of the standards set forth in Yemen's Constitution. He was detained for more than eight months without access to a lawyer or anybody else. The special court which tried him was not competent under Yemeni law and lacks independence, as it is properly described as part of the executive power and not of the judiciary. Mr. Al-Daylami's lawyers were not only denied access to their client, but also to the relevant documents, including evidence that the court relied on. On 30 January 2005, Mr. Al-Daylami's lawyers withdrew from the case having reached the conclusion that the court was unwilling to respect minimum fair trial guarantees.

As set out in the court's decision of 29 May 2005, Mr. Al-Daylami was accused and convicted of two offences: "First, he and another person conducted intelligence connections with, and worked for the interest of, a foreign state which will harm the political and diplomatic position of the Republic. Secondly, he in association with others, planned to attack the constitutional authority in order to change and restrict it from exercising its powers and then to change the regime; he established an organization called 'Youth of Sana'a' to achieve this end...." The decision further states: "Such acts are criminal offences according to Articles 21, 128(1) and 129 of the Presidential Decree No. 12 of 1994 relating to Crimes and Penalties." The charges against Mr. Al-Daylami were not further specified. It is alleged that the actual reason for the charges against him are his efforts to motivate the public to peacefully protest against detention campaigns that targeted opposition activists. Mr. Al-Daylami had also delivered speeches during public gatherings where he criticized certain policies of the Government such as the failure to respect the law and to combat corruption,

Although the death penalty is not prohibited under international law, we would like to remind your Excellency's Government that it must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. Therefore, it is crucial that all restrictions and fair trial standards pertaining to capital punishment contained in international human rights law are fully respected in proceedings relating to capital offences. This includes the right to a trial by an independent and lawfully established tribunal, the right to adequately prepare one's defence, and the right to communicate with counsel. "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).

Moreover, 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). The reports we have received suggest that Mr. Al-Daylami might have been detained, tried and sentenced to death for the legitimate and peaceful exercise of his rights to freedom of religion or belief and freedom of opinion and expression, which are enshrined in Articles 18 and 19 of the Universal Declaration of Human Rights respectively. Such legitimate exercise of these fundamental human rights not only could not constitute a "most serious crime" punishable by death, but no crime at all.

Furthermore, we should like to appeal to your Excellency to seek clarification of the circumstances with a view to ensuring that the right to physical and mental integrity of Mr. Al-Daylami is protected. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We would also like to draw your Excellency's attention to Commission on Human Rights resolutions 2005/39 which remind all States that "prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person." (para. 9).

We urge your Excellency's Government to take all necessary measures to guarantee that Mr. Al-Daylami's rights under international law are respected. Considering the irremediable nature of capital punishment, this can only mean suspension of the death sentence until it has either been lifted or the above allegations regarding a failure to comply with international fair trial standards have been thoroughly and independently investigated and all doubts in this respect dispelled. Moreover, it is imperative that his incommunicado detention be brought to an end and that he be granted access to lawyers of his own choosing without delay. Finally, we urge your Government to ensure that Mr. Al-Daylami is not detained or executed for having exercised his freedoms of religion or belief and of opinion and expression.

The Commission on Human Rights has consistently requested the Special Rapporteur on extrajudicial, summary or arbitrary executions to monitor the implementation of all standards relating to the imposition of capital punishment. Without in any way pre-judging the accuracy of the information we have received, we would respectfully request Your Excellency's Government to provide us with the details of the criminal proceedings against Mr. Al-Daylami, including

- a) the specific charges against him;
- b) the legal basis of the court that tried him, its composition, and any other information relevant to its legality and independence;
- c) information regarding his ability to consult with his lawyers and access (both by him and by his lawyers) to the evidence on which the charges were based;
- d) information as to whether the hearings of the trial were held in public.

**Response of the Government of Yemen dated 14 December 2005:**

The Permanent mission of the Republic of Yemen indicates that all the procedures of arrest of Mr. Yahya Al-Daylami and his colleague Mohamed Miftah have been carried out in a legal way and under the supervision of the Attorney General. What is more, none of the two accused persons has submitted any complaint of mistreatment and one of them is still continuously writing from his cell a column in the "Balagh"

newspaper which explains that they are not deprived of their fundamental rights including those to receive visitors and keep a continuous contact with them.

We should like to inform you that the specialized court would have taken instant measures in case of the confirmation of the occurrence of any abuse concerning the procedures of arrest and interrogation especially that the case has come to the appeal phase at the criminal court (the possibility of appeal). In addition, the judiciary body in our country is totally independent in all the spheres of its competence and no other body can interfere in the judicial affairs.

#### **Additional response of the Government of Yemen dated 28 December 2005**

In reference to the concise reply we have already sent on 14 December 2005 on the case of the arrest of Mr. Yahya Al-Daylami, we have the honor to enclose herewith a detailed reply we have received from the related authorities in our country containing some clarifications to the questions mentioned in your note verbale dated October 10<sup>th</sup> 2005.

The Permanent Mission hopes that constructive dialogue continues between our government and your committee in a positive atmosphere for the promotion of human rights and for further cooperation.

#### Detailed reply

With reference to your memorandum No. 290, dated 28 October 2005, transmitting a report signed by five Special Rapporteurs about the case of Yahya al-Daylami and making a number of allegations about breaches of the relevant international instruments which our country has ratified and of the Constitution and laws of Yemen, we should like to provide the following detailed clarifications of the aforementioned allegations.

(b) Point 1: Allegation that Al-Daylami was arrested without an arrest warrant

This allegation has no basis in truth; the accused was arrested in the capital, Sana'a, on 13 October 2004, pursuant to arrest warrant No. 2004/45, which was issued by the Department of Public Prosecutions in accordance with article 189 of the Yemeni Code of Criminal Proceedings No. 13 of 1994. The accused person's home was searched pursuant to search warrant No. 2004/34, which was issued by the Department of Public Prosecutions in accordance with article 132 of the Yemeni Code of Criminal Proceedings.

(c) Point 2: Allegation that the accused was held in incommunicado detention for eight months

There is no truth to any of the allegations made in this regard. The accused was allowed to meet with his family and relatives, and his lawyer was granted permission

to see the case file, the evidence and the other substantiating documentation pursuant to an order issued by the judge of the competent criminal court.

(d) Point 3: Allegation that the trial failed to meet international standards and that the court lacked competence and independence

We should like to explain that the court to which the case was referred was the competent criminal court. In accordance with a decision of the Higher Judicial Council, the court is an integral part of the judicial authority and, like other courts, it was established in accordance with the Judicial Authority Act and the Constitution. The court has heard numerous cases, including cases of terrorism, sabotage and kidnapping, and it has handed down sentences against members of Al-Qaida. There is no truth, therefore, to the allegation that the court lacks competence and independence.

(e) Point 4: Allegation that the lawyers for the accused were forced to withdraw from the case on 30 January 2005

In our estimation, this was a manoeuvre designed to stir up public opinion, and there was no other motive behind it. We should also point out that lawyers are entitled to withdraw from a case. As for the allegation that they were not allowed to meet with their client, there is no truth to this either, as mentioned in point 3 above.

(f) Point 5: Concerning the verdict convicting the accused of maintaining intelligence contact with a person associated with a foreign power

The accused confessed to the crime of maintaining intelligence contact with a foreign power, and there are documents written in his own hand to substantiate this. The offence of maintaining intelligence contact with a foreign power is a crime against State security for which the legally prescribed penalty, as laid down in article 127 of the Yemeni Code of Criminal Proceedings No. 12 of 1994, is capital punishment.

The accused furthermore established a hostile, secret and illegal society in violation of the Yemeni Political Parties and Political Organizations Act No. 66 of 1991. The accused confessed to having established this hostile, secret society and the documents pertaining to the society were written in his own hand.

- According to article 128, paragraph 1, of the Criminal and Penal Code No. 12 of 1992: “The death penalty shall be imposed on anyone who works for a foreign State or one of its agents or who maintains intelligence contact with such State or agent with a view to damaging the Republic’s political, diplomatic or economic standing.”

- Article 131, paragraph 2, of the above-mentioned Code prescribes a term of imprisonment of not less than 3 and not more than 10 years for using or attempting to use violence, threats or any other unlawful means to change or alter the composition of the legislative, executive or judicial authorities, to prevent them from exercising their constitutional powers, or to force them to take a particular decision.
  
- Article 129 of the Act stipulates: “Anyone who incites, or conspires or attempts to commit, any of the crimes listed in this section shall be subject to the same penalty as that prescribed for the crime, even if his act does not give rise to any consequences.”

The court convicted the accused at a public session held on 21 Rabi` II A.H. 1426, corresponding to 29 May A.D. 2005. A sentence of death was pronounced upon the convicted person, Yahya Hussein al-Daylami, and Mr. Al-Daylami was afforded the right to appeal within 15 days from the date of the verdict.

After the verdict by the court of first instance, the case was referred to the competent criminal appeals division of the Central Appeal Court, which held several sessions, the last of which took place on 3 December 2005. The Appeal Court ruling confirmed the criminal court’s initial verdict and ordered the judgement to be referred to the Yemeni Supreme Court.

- (g) Point 6: That capital punishment is a sensitive matter and that the penalty should only be imposed within the narrowest possible limits, for the most serious crimes, and during trials that meet international standards of justice and afford all the safeguards established in international instruments for persons facing this penalty

On this point, we should like to make the following clarifications:

- A. Capital punishment is one of the penalties established in the Yemeni Criminal and Penal Code, as explained hereunder:
  - The Yemeni Constitution provides many vital safeguards, and the laws in force fully protect human rights, particularly the right to security of person and the right to life. These safeguards are largely consistent with the international safeguards guaranteeing protection of the rights of persons facing the death penalty that are set forth in Economic and Social Council resolution 1984/50 of 25 May 1984, the nine paragraphs of which appear in the Compilation of International Instruments published by the United Nations at New York in 1994.

Capital punishment, according to Islamic jurisprudence, is an essential part of the Islamic penal system. The justification for retaining this punishment is that it deters people from committing capital offences. In other words, as far as Islamic law is concerned, the death penalty is a legitimate deterrent against wrongdoing.



Under Yemeni law, the death penalty is imposed only for the most serious and grave offences, i.e. offences against human life such as murder (see articles 234, 235, 246 and 249 of the Criminal and Penal Code). Islamic jurists agree that the penalty of *qisas* (retaliation) is more likely to protect human life, because it provides a better safeguard of life and applies to everyone equally, both young and old, poor and rich, strong and weak. Thus, we can understand the great significance of the holy verse which reads: “And there is life for you in retaliation, O men of understanding, that ye may ward off (evil).” The death penalty is imposed for offences against the independence, unity or territorial integrity of the State, for undermining the defence forces of the nation, and for assisting the enemy or maintaining unlawful contact with a foreign State with a view to revealing the nation’s secrets (arts. 125-128 of the Criminal and Penal Code).

- In order to protect the human right to life from any arbitrary act, article 234 (s) of the Criminal and Penal Code enumerates the situations in which the death penalty may be imposed as follows:
  - “Anyone who deliberately takes an innocent life shall be subject to the penalty of *qisas* unless the aggrieved party forgives him for his actions. If forgiveness is granted unconditionally or on condition of payment of *diyyah* (blood money), or if the perpetrator dies before being sentenced, the court shall order the payment of *diyyah*. No account shall be taken of any expression of forgiveness uttered by the victim prior to the commission of the act. The penalty of *qisas* can only be pronounced at the request of the aggrieved party and provided that legal evidence of guilt has been provided. Where either or both of these conditions are not met and the court is convinced by the circumstantial evidence against the accused, or if a penalty of *qisas* cannot be imposed or is waived for reasons other than an act of forgiveness, the perpetrator shall be subject to a term of imprisonment of not less than 3 and not more than 10 years. The sentence may be increased to capital punishment, if the perpetrator is a known criminal or if the murder was committed in a brutal manner, against two or more persons, or by a person who had already committed intentional murder, or if it was carried out in preparation for, or to cover up, another crime, or against a pregnant women, a public employee, or a public servant in or during the course of his duties, even if the penalty of *qisas* no longer applies because the perpetrator has been forgiven.”
  - Article 343 of the Code of Criminal Proceedings stipulates: “If the sentence is death or *qisas* involving loss of life or limb, the Department of Public Prosecutions, even if no appeal is made by the opposing party, shall refer the case to the Supreme Court, together with a note indicating its own views on the case. In such circumstances, the Supreme Court may review the merits of the case.”
  - Article 469 of the Code of Criminal Proceedings stipulates that no verdict pertaining to any crime may be carried out until a competent court has handed down a final and binding verdict. Article 479 of the Code provides that the penalty of death, *hadd* penalties (penalties that are mandatory under Islamic law)

and *qisas* penalties cannot be applied without the approval of the President of the Republic. Article 480 provides that the President of the Republic will issue a decision ordering the application of a *hadd* penalty or a *qisas* penalty. As for death sentences, he will issue a decision ordering the execution or replacement of the sentence or granting the condemned person a pardon.

- Article 484 of the Code of Criminal Proceedings, et al., stipulate that the penalty of death, and *hadd* and *qisas* penalties leading to loss of life or limb cannot be carried out on official holidays or on religious holidays of the convicted person. A stay of execution is granted to pregnant women until their confinement, and to nursing mothers until the child has completed breastfeeding at the age of 2, provided that the child has someone else to care for him or her. The woman will remain in prison until the time of execution.
  
- The Yemeni legislator, recognizing the grave nature of the death penalty as a radical punishment which is irremediable, requires the courts, before imposing such a sentence, to verify the evidence of guilt, and to ensure that all the sharia and legal conditions for the imposition of such a sentence have been satisfied and that there are no grounds for waiving the *qisas* penalty or exonerating the accused. The relevant criminal division of the Supreme Court usually investigates murders committed without a compelling reason. Death sentences can be quashed, if the court for any reason fails to discharge its responsibilities for granting the accused the right to a defence such as to constitute a dereliction of its legal obligations. Some of the judicial principles established on the death penalty are illustrated hereunder.
  1. The Supreme Court may not confirm a *qisas* penalty handed down by a court of first instance, if the appeal court has imposed the penalty of *diyah* (payment of blood money). According to criminal division ruling No. 26 of 1999: “The Supreme Court may not confirm a death sentence issued by a court of first instance, if a different sentence was handed down at appeal. It must confirm or quash the sentence issued at appeal.”
  2. “If an aggrieved party renounces the right to demand *qisas*, he shall be bound by such decision. If the aggrieved parties request *qisas* and then one of their number renounces this penalty, the court may not impose a penalty of *qisas* but only one of *diyah*” (Criminal Court ruling No. 101 of 24 July 2004).
  3. “An accused person who escapes must be allowed to defend himself against *hadd* or *qisas* penalties” (art. 289 of the Code of Criminal Proceedings).
  4. An oath cannot be taken as evidence when imposing the penalty of *qisas*. The Supreme Court established that an oath cannot be taken as evidence, even at the perpetrator’s request and where the court determines that the status of the opposing parties has changed, because the status of the parties cannot be changed as proceedings move through the different stages of jurisdiction.

5. Another important judicial principle is that circumstantial evidence cannot be accepted when imposing a *qisas* penalty (ruling 119 of 1998 issued by the Criminal Division).

6. One of the principles or rules established by the Supreme Court for quashing or confirming a sentence is that if one of the aggrieved parties is a minor who is the offspring of the culprit, the enforcement of the sentence must be deferred until the minor reaches his majority, in case the minor forgives the perpetrator upon reaching his majority. Should this happen, the death penalty will be replaced by the penalty of *diyah*. This is clearly in the interests of the convicted person (Criminal Division Supreme Court ruling 1419/35).

***(i) Discretionary power of the court to apply punishment***

1. Article 109 of the Criminal and Penal Code indicates that the court can exercise discretion when imposing penalties: “The court assesses the appropriate penalty by choosing between the maximum and minimum penalties prescribed for the crime, having due regard to all the attenuating or aggravating circumstances, especially the degree of culpability, the motives for the crime, the gravity of the act, the circumstances in which it occurred, the perpetrator’s past record and personal standing, his behaviour after committing the crime, his relationship with the victim and whether or not he has already compensated the victim or his heirs. When imposing a fine, the court assesses the perpetrator’s economic status. If the penalty for the crime is death and there are extenuating circumstances, the court may impose a prison sentence of not more than 15 and not less than 5 years.” It is clear that the court has the freedom to reduce the penalty within the limits set by law. It may inform the accused of circumstances that would lead to the reduction of the sentence, even if the latter does not invoke them in his defence owing to ignorance or the absence of a defence lawyer.

2. The law requires the court to explain to the accused all the restrictions on the imposition of a *hadd* penalty. Failure to do so renders a conviction null and void. In this regard, article 46 of the Criminal and Penal Code stipulates: “The court, when hearing *hadd* offences, must explain to the accused all the restrictions relating to the imposition of a *hadd* penalty. A conviction will be rendered null and void, if it is established that the court failed to provide this information.”

3. If the court reduces the penalty, it is not legally obliged to state its reasons for doing so in the judgement, since the legislator grants the court the freedom to reduce a sentence and to weigh up the factors that prevent it from doing so, provided that it does not exceed the limits established by law in this regard and that its decision is reasonable and logical.

B. We should like to confirm that the Yemeni judiciary is an independent authority which is completely independent of the other State authorities. As established in the Constitution of the Republic of Yemen and the legislation and laws in force, no authority whatever may interfere in its rulings and decisions. This means that the executive bodies of the governmental and legislative authorities have no

influence over the conduct of trials or the final judgements of the courts. The only body empowered to reduce a sentence is the court itself. It does this whenever evidence is provided during a trial proceeding and pleadings that the accused deserves a lighter sentence than that handed down by a lower court. Such evidence must be laid before the competent courts at different levels of jurisdiction, either by the accused or his defence lawyer. Likewise, the relatives of the victim (the aggrieved party) may pardon the perpetrator of the crime. In that event, the court will replace the death penalty (*qisas*) with *diyah*, in accordance with the prevailing law. It may then impose a prison sentence, at its discretion, since crimes are offences under public law.

(h) Point 8: Allegation that the physical and mental integrity of the accused was not protected

We should like to affirm that article 48 (a) of the Yemeni Constitution prohibits physical, psychological and mental torture as well as inhuman treatment. The accused was protected during all stages of proceedings, and the paragraph makes no explicit reference to any practices perpetrated against him.

(i) Point 8:

The question of the suspension of the death penalty is linked to the procedures used for conducting the case, as laid down in the Constitution and the law, and depends on the powers vested in courts and other bodies. With regard to fair trial standards, as indicated in the preceding paragraph, the court which heard the case is part of the Yemeni judiciary and its decision is not final, since the law permits the accused to appeal to a higher court, even if the accused considers the verdict to be correct.

(j) Point 9:

The accused was not sentenced to death for exercising his freedom of opinion, expression or belief, but rather for maintaining unlawful contact with a foreign State, maintaining intelligence contact with its agents in order to damage the Republic's political and diplomatic standing, and for taking part in a criminal conspiracy against the constitutional authorities. These activities are punishable under articles 21, 128, paragraph 1, 129, 131, paragraph 2, 135, and 136, of the Criminal and Penal Code.

(k) Point 10: Legal basis of the trial

1. Maintaining unlawful intelligence contact with a foreign power with a view to damaging the political and diplomatic standing of the Republic.

2. Participating in a criminal conspiracy against the constitutional powers with a view to changing the authorities established by the Constitution, preventing them from discharging their functions, and altering the system of government.

***(i) Legal texts***

- The Criminal and Penal Code No. 12 of 1994 (arts. 128, para. 1, 129, 131, para. 2, 135, and 136).
- The accused was prosecuted by the Department of Public Prosecutions in accordance with article 221 of the Code of Criminal Proceedings No. 12 of 1994.
- With regard to the composition of the court, the court hearing the case was the competent court established in accordance with the Constitution and the Judicial Authority Act; it was not a special or extraordinary court.

(l) Point 11: Question as to whether or not the trial was held in public

We should like to explain that the trial was conducted in accordance with the law and the sessions were held in public in the presence of all the relatives of the accused, his family and others. Members of the press and journalists from satellite channels were also in attendance. Under article 154 of the Constitution, trials must be held in public, unless the court decides to hold them *in camera* for reasons of public order or public morals. In any case, the verdict must be pronounced in open court. The first sitting was held on 20 December 2004 in the courtroom of the criminal court which subsequently handed down the sentence.

**Zimbabwe: Deaths Following Use of Tear Gas at Porta Farms**

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

**Subject(s) of appeal:** 6 females (3 juveniles); 5 males (2 juveniles)

**Character of reply:** Allegations rejected but without adequate substantiation

**Observations of the Special Rapporteur**

The Special Rapporteur appreciates the response of the Government of Zimbabwe to his communication. However, the SR noted in his letter to the Government that many of those who died following the use of tear gas at Porta Farms had preexisting illnesses. He thus regrets that Zimbabwe failed to conduct the investigations needed to assess whether the tear gas induced their deaths.

**Allegation letter sent on 20 December 2004**

On 2 September 2004, riot police, "war veterans" and members of the youth "militia" reportedly went to Porta Farm, on the outskirts of Harare to evict some 10,000 people,

many of whom have been living there since 1991. The police fired tear gas directly into the homes of the Porta Farm residents. According to the information received, Fungai Livson's one-day-old son (he had not been given a name); Ronald Job Daniel (5 months); Matilda Matsheza, (5 months); Yolanda Rungano (5 months); Monalisa Banda (7 months); Kuyeka Phiri (aged 30); Viola Mupetsi (aged 30); Julia Nheredzo (aged 32); Raphael Chatima (aged 40) Vasco John (aged 65) and Angeline Nhamoinesu (aged 46) died of the consequences of the use of tear gas. Many of the victims had preexisting illnesses. Allegations indicate that the Zimbabwe Republic Police denied that any Porta Farm residents died following the events of 2 September.

### **Response of the Government of Zimbabwe dated 31 January 2005**

The Government provides the Special Rapporteur with the following information: on 2 September 2004, at 1200 hours casual workers from Harare City Council led by the Director of Operations, Construction and Maintenance in the Ministry of Local government and National housing reported at ZRP Norton seeking Police assistance to maintain peace and order during demolition of structures at Porta Farm squatter Camp. Police officers were deployed where the demolition exercise was being carried out. Two human rights activist, Obert Chinhamo of amnesty International and Masawuko Maruwacha also arrived at the camp. The two addressed the squatters inciting them to attack the police. As a result the squatters started attacking the casual workers and the police with stones and sticks. In order to control the situation which had gone out of hand, the police decided to use tear smoke in order to disperse the crowd after about 45 minutes. Obert Chinhamo and Masawuko Maruwacha were arrested for inciting public violence. They appeared in court and were remanded out of custody to 21 February 2005. They are out on Z\$100 000 bail each.

#### Comments:

Porta Farm squatter camp was established by the Ministry of Local Government and National Housing for vagrants living in Harare and was meant to cater for a limited number of people. The population has swelled becoming a health hazard for the camp as well as the Harare population as the camp is near the city's major water supply. The use of tear gas was necessary to control and calm the residents who had been incited into violence. No death or injury on part of the crowd were recorded or noted by the Police after controlling the crowd. In fact, one police officer and eight Harare City Council casual workers were injured. No deaths have been recorded in connection with the tear smoke incident and the police have received no formal complaint in connection with this matter. No investigations have been instituted into the alleged deaths being raised in the Human Rights Inquiries document. The residents of this squatter camp have relied on NGOs for basic needs and as is common in such environs the effects of HIV-Aids continue to take a huge toll on the backdrop of poor diets.

#### Response to particular issues in the report:

It is not correct that there were 10,000 people at the squatter camp. There are only about 3 000 residents at this camp. It is also not correct that "war veterans" and the "youth militia" were part of the eviction team. These two terms have been misused for ulterior motives. Indeed the ZRP has denied that there were any deaths as a result of

the use of tear gas at the settlement. It is not the tear gas that caused the deaths but the existing illnesses they suffered from. Police investigations reveal that those mentioned in the inquiry died as a result of natural causes. The death of Raphael Chatima was reported to the Police and a sudden death docket has been opened under Norton Reference SDD 31/04. Chatima is believed to have died due to diarrhea and backache. It should be noted that no post mortem were carried out in all the other cases mentioned in the report. It should be appreciated that people residing in squatter camps usually bury their deceased without having to go through the procedures of reporting to the police and obtaining post mortem reports.

List of people who died at Porta Farm:

Fungai Livson's son: 4 months old. Died on 2/09/04 from pneumonia

Ronal Job Daniel : no record

Matilda Matsheza: 5 months old. Died on 6/09/04 from intussception

Yolanda Rungano: 6 months old. Died on 2/09/04 from general body weaknesses

Monalisa Banda, 6 months old. Died on 6/09/04 from incessant coughing. No medical assistance sought.

Kuyeka Phiri: no record

Viola Mupeti, aged 30, died on 6/09/04 from tuberculosis under home based care.

Julia Nheredzo: aged 32, died on 5/09/04. Home based care patient. Discharged from Mashambazhou Care Unit.

Raphael Chatime: aged 40, died on 2/09/04 from diarrhoea and backache.

Vasco John, aged 65, died on 5/09/04 from chronic diarrhea

Angelina Nhamoinesu, aged 33, died on 20/09/04. Cardiac patient.

### **Liberation Tigers of Tamil Eelam: Post-Ceasefire Killings**

**Violation alleged:** Violations of the right to life during armed conflicts contrary to international humanitarian law

**Subject(s) of appeal:** General

**Character of reply:** No response (recent communication)

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

The Special Rapporteur had the opportunity to meet with representatives of the Liberation Tigers of Tamil Eelam during his visit to Sri Lanka in November –

December 2005 and looks forward to receiving a response concerning these allegations.

#### **Allegation letter sent 21 November 2005**

Since assuming this mandate, I have received numerous reports of assassinations allegedly committed by the LTTE since the entry into force in February 2002 of the Agreement on a Ceasefire Between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam (“the Ceasefire Agreement”). The victims are members or supporters of other Tamil parties or paramilitary formations, government officials, and persons who may have come into conflict with the LTTE. I am also aware that numerous LTTE cadres and supporters have themselves been victims of killings by other actors involved in the conflict.

I note that the LTTE has publicly denied responsibility for killings on many occasions, but in a number of cases there is circumstantial evidence strongly suggesting your organization’s involvement. In other cases the LTTE has reportedly provided protection to the perpetrators of killings without accepting that they were carried out on its behalf. I recognise that the apparent failure of both the Government of Sri Lanka and your organization to investigate the killings does not assist in clarifying the circumstances.

In view of my report to the Commission on Human Rights regarding the visit to Sri Lanka, I would therefore be grateful for your cooperation and your observations on the following matters:

1. Can you provide me with any information on killings that have taken place since the ceasefire and any steps taken to investigate these cases? Does the LTTE consider any of the killings justified? If so, on what grounds?
2. I am aware that the LTTE operates its own law enforcement machinery in areas of Sri Lanka under its control. Has this law enforcement machinery taken any steps to investigate the killings, identify the perpetrators, and bring them to justice in any of the cases listed in the annex? If no inquiries have taken place or if they have been inconclusive please explain why.
3. What steps might be taken to prevent extrajudicial, summary and arbitrary killings by any party, or to ensure their more effective investigation?
4. Does the LTTE continue to apply the death penalty through its court system and on what grounds? What safeguards are in place with respect to these cases?

While I do not intend to prejudge the accuracy of the reports I have received or the responsibility of the LTTE for any of these acts, I urge the LTTE to immediately and definitively put an end to all assassinations by its forces or on behalf of them,



whatever the purported justification for such killings might be. Such acts are not only violations of the Ceasefire Agreement you have concluded with the government, but are incompatible with international law. (Depending on the incident, either the norms of international human rights law, in particular Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights, or of international humanitarian law might apply.)

### **Palestinian Authority: Death Sentences**

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

**Subject(s) of appeal:** General

**Character of reply:** No response

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

The Special Rapporteur regrets that the Palestinian Authority has failed to cooperate with the mandate he has been given by the United Nations Commission on Human Rights.

### **Urgent appeal sent on 28 February 2005**

On 17 February 2005, the President of the Palestinian Authority, Mahmoud Abbas, ratified several death sentences of Palestinians found guilty of "collaborating" with Israel or of other criminal charges. Fears have been expressed that these people could be at risk of imminent execution. It is my understanding that the Palestinian Penal Code applying in the West Bank enables imposition of capital punishment for seventeen offenses, while in the Gaza Strip, fifteen offenses warrant the death penalty. Reports indicate that both penal laws are implemented by ordinary civil courts. The Palestinian Authority also reportedly imposes the death penalty pursuant to the PLO Revolutionary Penal Code, of 1979, which provides for capital punishment for forty-two offenses and is applied by military courts and state security courts operated by the Palestinian Authority. Reports indicate that these special courts are in fact responsible for the vast majority of death sentences imposed by the Palestinian Authority. Concerns have been expressed that the number of offenses for which the death penalty may be imposed is extremely wide and thus inconsistent with the requirement that the list be limited to the internationally recognized category of the most serious crimes. Fears have been expressed that the above-mentioned persons were sentenced to death after trials that may have fallen short of international fair trial standards. Indeed, it is alleged that the trials before the special courts deny the accused the basic rules of due process. It has been suggested that the trials could in effect be characterized as "field trials" held before military judges often summarily and in which the defendants are not given any significant opportunity to present a defense. Moreover, the defendants are denied the right to appeal against their sentences to a higher court, in violation of international human rights standards. The death sentences are reportedly only subject to ratification by the President and may be carried out within hours or days of the trial. In view of what would appear to be several major flaws in the procedures followed I would respectfully urge your Excellency to stay the execution of all pending or future death penalty sentences, to review all previous cases resulting in death sentences and

to release or retry those individuals found to have been unfairly convicted, taking all necessary measures to ensure that the trials comply with internationally recognised fair trial standards. I would greatly appreciate receiving any clarification on these trials, on the sentencing and the review process.

**United Nations Stabilization Mission in Haiti (MINUSTAH): Morts lors de l'Opération du 6 Juillet 2005 à Cité Soleil**

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

**Objet de l'appel :** 23 personnes

**Caractère de la réponse:** Réponse largement satisfaisante

**Observations du Rapporteur Spécial**

Le Rapporteur Spécial apprécie les renseignements détaillés qui lui ont été fournis par la Mission des Nations Unies pour la Stabilisation en Haïti (MINUSTAH) relatifs à l'enquête menée au sujet des morts survenues pendant ou à la suite de l'opération du 6 juillet 2005 à Cité Soleil. Le Rapporteur Spécial regrette que les circonstances semblent avoir empêché l'éclaircissement de certains faits; il souhaiterait recevoir tout renseignement récent pouvant devenir disponible à ce sujet.

Le Rapporteur Spécial prend note du fait que la MINUSTAH a totalement passé en revue la planification de son opération de même que ses règles d'engagement. Le fait que la mission ait pris l'initiative d'enquêter sur chaque mort survenue au cours de cette opération crée un précédent important en matière de responsabilité et de transparence pour les missions des Nations Unies.

**Lettre d'allégation du 12 août 2005**

Allegation letter sent concerning information I have received concerning deaths that occurred in connection with the MINUSTAH security operation that took place 6 July 2005 in the Bois-Neuf and Drouillard areas of Cité Soleil. According to information received, the MINUSTAH forces surrounded the community with armored personnel carriers, cutting off exit routes before the operation commenced. The forces then began firing into houses, a church, and a school with machine guns, armored personnel carrier cannons, and tear gas. At least 23 persons were killed by MINUSTAH forces during this operation. These casualties included persons, including at least two young children, who posed no threat to the MINUSTAH forces.

I have also noted that MINUSTAH's press statement of 22 July 2005 states that 'MINUSTAH has reason to believe that "Dread Wilme" was killed together with four of his associates', that there may have been collateral "civilian casualties", and that 'MINUSTAH has received unconfirmed information from the Haitian National Police and other sources that gangs were seen killing civilians following MINUSTAH's operation'.

Without pre-judging the accuracy of the allegations received, I would like to appeal to you to ensure that all deaths that occurred in connection with the operation of 6 July 2005 are promptly, independently and thoroughly investigated.

As Special Rapporteur I am concerned that international standards for the use of lethal force and the investigation of deaths be observed. In law enforcement operations to apprehend criminals, MINUSTAH's planning and execution must be guided by the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which was adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. These principles obligate MINUSTAH to 'as far as possible, apply non-violent means before resorting to the use of force and firearms' (§ 4) and to '[e]nsure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment' (§ 5(c)).

Note further that '[i]n any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life' (§ 9) and that '[e]xceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles' (§ 8). I would like also to draw your attention to the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in resolution 34/169 (1979), which more succinctly stresses the limited role for lethal force in law enforcement operations.

Moreover, when MINUSTAH forces are engaged in situations of armed conflict, their actions must be guided by the Secretary-General's Bulletin on the Observance by United Nations Forces of International Humanitarian Law. This instrument obligates MINUSTAH to take 'all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life' (§ 5.3) with respect to those civilians not taking 'a direct part in hostilities' (§ 5.2).

International law further requires a 'thorough, prompt and impartial investigation' into cases of unnatural death connected to law enforcement operations. (See Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, ECOSOC resolution 1989/65, § 9). I was thus pleased to note in your 22 July 2005 press statement that MINUSTAH would investigate allegations of 'the use of unnecessary force on its part, as well as of the killings allegedly perpetrated by gangs following its operation'.

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

1. Please provide copies of reports produced by the investigations mentioned in MINUSTAH's 22 July 2005 press statement of MINUSTAH's use of force and of subsequent killings by gang members.
2. Please provide copies of all autopsies, ballistics tests, and other reports.
3. Please provide copies of arrest warrants or other criminal proceedings that had been commenced with respect to Emmanuel Wilmer a/k/a Dread Wilmé and other targets of the operation.

4. Please provide the number and names of casualties that resulted from the operation.
5. Which of these persons were intentionally killed by MINUSTAH forces? On what basis were they targeted?
6. Which of these persons were accidentally killed by MINUSTAH forces? What were the circumstances surrounding their deaths?
7. Which of these persons are believed to have been killed by gang members? Please provide the evidence surrounding these allegations.
8. What were the aims of this operation?
9. On what basis was it decided to use the military component rather than the police component of MINUSTAH in this operation?
10. What weapons were used in the course of this operation?
11. What measures were taken to minimize the risk to members of the communities in which the operation was conducted?
12. Please provide a copy of the rules of engagement that were in effect during this operation.

I undertake to ensure that your response to each of these questions is accurately reflected in the report I will submit to the Commission on Human Rights for its consideration.

By way of conclusion, let me assure you that I am fully aware of the need to ensure a secure environment in which the electoral process can take place. I also recognise that the Security Council has given MINUSTAH a mandate to, *inter alia*, provide increased security in and around Port-au-Prince. It is, however, essential to note that the Security Council has also repeatedly stressed the importance of promoting human rights, extending the rule of law, and protecting civilians from violence for the process unfolding in Haiti. With all this in mind, I would be grateful for your cooperation in the above matters.

**Réponse de la Mission des Nations Unies pour la Stabilisation en Haïti du 30 novembre 2005**

Par lettre en date du 12 août 2005 qui ne m'est malheureusement parvenue que le 5 octobre dernier, vous avez sollicité tous renseignements utiles de ma part, relativement à l'opération menée le 6 juillet 2005, sous le nom de code "Iron fist", par les forces de la MINUSTAH dans la commune de Cité Soleil, quartiers Bois-Neuf et Drouillard.

J'ai immédiatement donné suite à votre requête, en mettant en place, sous la coordination du chef de la section des droits de l'homme, une équipe pluridisciplinaire chargée de collecter et d'analyser la documentation disponible à la mission et de me donner les éléments de réponse nécessaires.

Conformément à votre demande, je suis donc en mesure de vous fournir les renseignements suivants.

#### Contexte général de l'opération du 6 juillet – la situation de Cité Soleil

Si la situation sécuritaire dans l'ensemble du pays, depuis le déploiement effectif de la Mission, a été décrite comme globalement satisfaisante par la grande majorité des personnes et institutions, tant nationales qu'internationales, la zone métropolitaine de Port-au-Prince, et plus particulièrement la commune de Cité Soleil, a constitué une exception notable à ce constat.

Décrite comme "le plus grand bidonville du pays", pourvue d'une population oscillant entre 250.000 et 400.000 personnes selon les évaluations démographiques, Cité Soleil constitue le pire exemple dans le pays de la misère et du dénuement totaux dans lesquels les gouvernements successifs haïtiens ont abandonné une certaine catégorie de la population, sans se soucier de satisfaire ses besoins vitaux.

Dans un tel contexte de délabrement chronique, de nombreuses bandes armées se sont développées dans la zone durant la dernière décennie. Si certaines d'entre elles agissent généralement par pur gangstérisme, d'autres ont établi, en particulier depuis l'ère Aristide, des relations de type utilitaire avec certaines organisations politiques et certains secteurs de la vie économique. Ces gangs jouent ainsi le rôle de "supplétifs" et sont rémunérés en conséquence par leurs commanditaires. Outre la rémunération de leurs "activités", les membres de ces gangs ont, la plupart du temps, bénéficié d'une impunité totale. L'influence de ces activités illégales sur une certaine amélioration des conditions économiques des populations pauvres de Cité Soleil constitue, par ailleurs un élément important du constat.

La chute brutale du régime Aristide a amené une redistribution des cartes à Cité Soleil. Le départ des "protecteurs" gouvernementaux et le tarissement corrélatif des sources de financement ont profondément désorienté les bandes pro-aristidiennes. Conséquence directe de cette situation, une véritable guerre de gangs pour la survie individuelle et le contrôle des zones a été engagée. L'intensification des opérations de rétablissement de l'ordre menées à Cité Soleil et dans d'autres quartiers qualifiés "sensibles" ont, durant le premier semestre de l'année 2005, permis la mise hors d'état de nuire de certains chefs de bandes, mais n'ont pas permis un retour à une situation normale. En revanche, ces opérations ont, de fait, induit l'émergence de nouveaux leaders et, dans une certaine mesure, participé à la redistribution des cartes évoquées ci-dessus.

Par ailleurs, Cité Soleil était devenue au fil du temps la plus importante base arrière des opérations de kidnapping, et la plupart des victimes survivantes interrogées ont déclaré avoir été séquestrées - et souvent maltraitées - dans cette zone.

Autre phénomène extrêmement préoccupant, la proximité immédiate de Cité Soleil de la zone d'activités économiques de Port-au-Prince constituait, dans le climat de non droit qui y régnait, une menace quotidienne pour cette activité essentielle à la fragile économie du pays entier. Les attaques armées quotidiennes contre les camions et les locaux des entreprises, les pillages, les kidnappings des employés, mettaient en péril imminent la survie de la seule zone d'activités économiques du pays.

### Emmanuel "Dread" Wilmé

Le 30 mars 2005, Thomas Robinson alias "Labanyé", puissant chef de gang de Cité Soleil considéré comme proche de certains milieux d'affaires de tendance anti-aristidienne de Port-au-Prince, était assassiné sur instructions de Dread Wilmé, chef de gang lié aux milieux radicaux aristidiens, permettant ainsi à ce dernier de prendre le contrôle exclusif de la zone.

Les 10 et 11 avril 2005, lors de deux échanges de feu avec la Police Nationale d'Haiti, deux anciens militaires, Ravix Rémissainthe et Jean René Anthony alias "Grena Scnen", considérés à l'époque comme faisant partie des plus dangereux chefs de gangs, étaient abattus. Ces deux gangsters dont la base se trouvait hors de Cité Soleil, dans la zone de Delmas 33, avaient précédemment engagé des négociations avec Dread Wilmé dans le but de conclure une alliance destinée à renforcer leurs positions et à étendre géographiquement leur domaine d'intervention.

Suite à ces incidents, un retour au calme certain a été constaté pendant plusieurs semaines en zone métropolitaine de Port-au-Prince. Cependant, l'activité criminelle a fini par reprendre et Dread Wilmé est alors devenu, de l'avis de tous les observateurs de l'époque, le véritable "chef d'orchestre" de ces activités, disposant de lieutenants fidèles qui assuraient un quadrillage de la zone de Cité Soleil utilisée comme base arrière des activités illicites.

Les rapports de renseignements de divers services de la MINUSTAH, notamment ceux de la Sécurité, ainsi que les dossiers de police de la PNH ont permis de documenter les activités criminelles du gang de Dread Wilmé dans les mois qui ont précédé sa mort.

Ainsi, outre l'assassinat de "Labanyé" et celui de "Mac Kensie", chef de gang du quartier de Bel-Air dont Dread Wilmé souhaitait prendre le contrôle, il a notamment été retenu à l'encontre du gang qu'il dirigeait les activités criminelles suivantes, dans les seuls six mois précédant l'opération :

- Arrestation et séquestration, en janvier 2005 d'un groupe de militaires de la MINUSTAH suivies de vols aggravés. Ces militaires n'étaient pas ce jour là en service.

- Planification et participation à l'évasion massive au Pénitencier national (19 février 2005) au cours de laquelle près de 500 personnes se sont évadées et un gardien de prison a été tué.
- Planification et participation à l'incendie volontaire du marché "Tite Beuf" le 31 mai 2005 au cours duquel 10 marchands ont trouvé une mort cruelle, les portes de ce marché ayant été volontairement cadenassées avant la mise à feu.
- Nombreux kidnappings d'haïtiens et d'étrangers planifiés et exécutés durant plusieurs mois avant l'opération du 6 juillet.
- Divers assassinats de membres de gangs adverses ou autres
- Assassinat, durant la visite du Conseil de Sécurité en Haïti en avril 2005, d'un casque bleu philippin à Cité Soleil, alors qu'il travaillait à l'installation d'un container.
- Plus généralement, menaces et attaques répétées à l'encontre de nos troupes, de la population civile et terrorisation de celle de Cité Soleil que des check points établis par le gang empêchaient de quitter la zone.
- Durant le mois de juin 2005, nos rapports de renseignement ont fait état de démarches entreprises par Dread Wilmé en vue d'acquérir des armes lourdes destinées à être utilisées contre les véhicules blindés de la MINUSTAH

Cette liste n'est évidemment pas exhaustive.

Pour ces faits, Dread Wilmé et certains de ses hommes faisaient l'objet d'avis de recherche judiciaires et/ou de mandats d'arrêt.

#### Planification de l'opération du 6 juillet 2005

Au vu de ce qui précède, l'évaluation que nous avons faite de la dangerosité du gang de Dread Wilmé et de ses associés, tant à l'égard de l'ordre public qu'à celui des populations civiles et des personnels civils et militaires de la MINUSTAH, nous a amenés à considérer que dans le cadre des obligations qui nous sont faites par la résolution 1542 du Conseil de Sécurité, la prévention des activités criminelles de ce gang était devenue une urgente priorité. Nous avons donc pris une décision en ce sens en retenant le principe de l'opération "Iron fist".

L'objet clairement établi de cette opération était de démanteler le gang de Dread Wilmé et de procéder à des saisies massives d'armes dont nous avons localisé les caches à Cité Soleil.

L'opération en elle-même a été longuement et soigneusement planifiée. J'ai personnellement participé à six réunions de préparation et mis en avant l'absolue nécessité que l'action de nos troupes s'effectue dans le cadre du strict respect de la légalité internationale, des droits de l'homme et de la protection des populations civiles. Cet aspect humanitaire de la préparation de l'opération est plus particulièrement reflété dans l'annexe D (assistance humanitaire) du plan d'opérations établi le 30 juin 2005 par le Commandant de la force (annexe 1 jointe).

Selon les renseignements en notre possession, le contrôle de Cité Soleil par le gang de Dread Wilmé s'effectuait par zones. Ainsi, Dread Wilmé contrôlait personnellement les zones de Bois Neuf et de Drouillard. Son adjoint direct, Amaral Duclona dit "Amaral" avait le contrôle de la zone de Bellecou. Enfin, Evans, autre "lieutenant" de Wilmé exerçait son contrôle sur la zone de Boston.

Compte tenu de la dissémination géographique des différentes unités du gang, du fait que les zones de Boston et Bellecou étaient plus peuplées avec en conséquence un risque élevé de victimes collatérales, du fait enfin que la zone contrôlée par Wilmé avait été, puis plusieurs mois désertée par ses habitants habituels, le Commandant de la force a pris la décision opérationnelle de limiter l'intervention de la MINUSTAH à une zone unique, à savoir Bois Neuf et Drouillard, fief de Dread Wilmé.

Vu la puissance de feu du gang, et anticipant une réaction violente de ses membres à nos tentatives d'arrestations et de saisies d'armes, il a été considéré que cette opération ne pouvait être planifiée comme une opération de police ordinaire. C'est la raison pour laquelle la force militaire a été principalement impliquée dans l'action, les unités de police constituées de l'UNPOL (FPU) n'étant intervenues qu'en appui tactique.

Par ailleurs, les relevés photographiques aériens avaient permis de constater que les membres du gang avaient entrepris de nombreux travaux de fortification du site, notamment creusement de profondes tranchées de protection, dans le but de résister à toute intervention de la MINUSTAH.

Plusieurs incidents de sécurité intervenus dans les semaines précédant l'opération "Iron fist" ont démontré que notre évaluation de la puissance de l'armement des gangs était objectivement fondée. Lors du dernier en date, intervenu le 5 juillet veille de l'opération, un véhicule blindé APC des FPU pakistanais a été la cible de tirs provenant de Cité Soleil, tirs dont certains ont transpercé le blindage du véhicule et crevé un de ses pneus (annexe 2 jointe - Rapport hebdomadaire FPU du 10 juillet 2005).

Il a donc été décidé d'affecter à cette opération 440 casques bleus de différentes nationalités agissant comme forces opérationnelles et environ un millier d'hommes supplémentaires afin de sécuriser le périmètre d'action.

La date du 6 juillet précédemment retenue pour le lancement de l'opération a été confirmée et les premiers éléments sont arrivés sur le terrain avant le lever du jour

#### Déroulement de l'opération "Iron fist"



Débutée le 6 juillet 2005 à 411 30 du matin, l'opération s'est achevée le même jour à 16 h. Cette opération a été personnellement dirigée sur le terrain par le Lieutenant-Général Augusto Heleno, Commandant en chef de la force de la MINUSTAH.

Les documents joints (plan d'opérations précité, rapport d'évaluation du JMAC-annexe 3) décrivent précisément les différentes phases de l'opération et les modalités de son exécution.

En résumé, immédiatement après sécurisation du périmètre, la première phase opérationnelle avait pour but d'encercler le quartier général de Dread Wilmé situé impasse Chavannes à Bois Neuf, d'en désarmer les occupants et de procéder à la saisie du stock d'armes qui était censé s'y trouver.

Les phases ultérieures avaient pour objet de poursuivre les perquisitions et arrestations dans la zone de Bois Neuf, puis d'étendre le rayon d'opérations à la zone de Drouillard également sous le contrôle de Wilmé.

Dans les faits, dès la première phase, le contingent péruvien chargé de sécuriser le Quartier Général de Dread Wilmé a été pris sous le feu intense des gangs à 20 mètres de l'objectif et n'a pu atteindre cet objectif que 90 minutes plus tard, permettant ainsi au gang de déménager le stock d'armes qui n'a pu, de ce fait, être saisi. Les Péruviens, tout comme d'autres contingents engagés au cours de l'opération, n'ont pu entreprendre leur périlleuse retraite qu'en effectuant des tirs de réplique nourris face aux attaques armées de toutes parts.

Les suites de l'opération ont été similaires et ont contraint les forces de la MINUSTAH à faire un usage extensif de leurs armes, en situation incontestable de légitime défense.

Il n'aura pas fallu moins de 7 heures pour achever la seule phase de sécurisation de la zone de Bois Neuf.

Au cours de l'opération "Iron fist", la force militaire a utilisé les armes suivantes:

- Fusils d'assaut, calibre 5.56
- Fusils d'assaut, calibre 7.62
- Pistolets 9 mm
- Grenades Lacrymogènes, fumigènes, offensives
- Mortier de 60 mm (utilisé pour des tirs de diversion sur la plage déserte voisine)

Le décompte des munitions utilisées est le suivant:

- Environ 22.700 cartouches d'armes automatiques
- 78 grenades de tous modèles
- 5 obus de mortier

Au cours de l'opération, 7 personnes affiliées au gang de Dread Wilmé ont trouvé la mort, comme conséquence directe des échanges de tirs avec la MINUSTAH. Il s'agit de:

- Emmanuel "Dread" Wilmé
- Edouard Mauvais Mauvais
- Un nommé "Charles"
- Un nommé "Ti Jade"
- Un nommé "Sydney"

D'après les renseignements que nous avons pu recueillir ultérieurement sur le terrain, ces 5 personnes sont déclarées avoir été retrouvées mortes après l'effondrement du Quartier général de Bois Neuf dans lequel elles étaient retranchées. Selon nos informations, leurs cadavres auraient été emportés après notre départ aux fins d'inhumation par des membres de gangs.

Par ailleurs, à l'extérieur, deux snippers non identifiés ont été découverts morts par la brigade brésilienne, probablement victimes de tirs de réplique des forces de la MINUSTAH.

L'intensité de la résistance des gangs durant toute l'opération a contraint nos forces à effectuer immédiatement un retrait après la fin des échanges de feu, nous privant ainsi de la possibilité de faire une évaluation précise des dégâts sur le terrain.

La violence de ce que l'on doit appeler des combats, l'extrême lenteur et difficulté de progression de nos forces sur le terrain et les multiples situations dans lesquelles certaines de nos unités se sont trouvées en grave danger ont montré que la puissance de feu des gangs et leur détermination étaient allées bien au-delà des prévisions les plus pessimistes que nous avons pu formuler antérieurement.

En tout état de cause, l'ensemble des rapports et renseignements relatifs au déroulement de l'opération permet d'affirmer que, dès les premiers tirs à l'initiative des gangs, les forces de la MINUSTAH se sont trouvées tout au long de la journée en état de légitime défense et n'ont fait usage de leurs armes que dans ces circonstances, avec la proportionnalité nécessaire, conformément aux règles d'engagement et aux standards internationaux relatifs aux droits de l'homme et à la protection des populations civiles.

#### La question des victimes collatérales

##### Les morts

Il a été allégué par plusieurs ONG de défense des droits de l'homme principalement basées aux Etats-Unis que la MINUSTAH aurait effectué un véritable massacre lors de la journée du 6 juillet. A ce titre, plusieurs enregistrements vidéo pouvant accréditer cette thèse, enregistrements effectués dans les jours ayant suivi l'opération, ont circulé.

Je me dois de contester avec la plus grande fermeté ces allégations. En effet, outre le fait que nos rapports contredisent ces accusations, nous avons pu recueillir ultérieurement plusieurs témoignages concordants d'habitants de Cité Soleil faisant état d'opérations sanglantes de représailles après le retrait de nos forces. Les victimes ciblées étaient, soit des individus soupçonnés d'avoir été des informateurs de la MINUSTAH, soit des personnes qui ont imprudemment manifesté leur joie à

l'annonce de la disparition présumée de Dread Wilmé et de certains de ses proches. A ce titre, un témoin parfaitement digne de foi, habitant de Cité Soleil ayant par le passé occupé des fonctions importantes en Haïti, nous a relaté qu'il avait personnellement reconnu et formellement identifié, parmi plusieurs autres, les cadavres de 17 habitants de la zone assassinés en représailles par les gangs. Il s'agit de :

- Samson Jean Baptiste
- Le nommé "Lira"
- Junior Massissi
- Le nommé Silfra, réparateur de radios
- Le nommé Exano, ancien garde de sécurité
- Jean Robert Saint Soit, garde de sécurité pour la compagnie Patriot security
- Madame Fifi Gros dent
- La nommée Evelyne (de Bois Neuf)
- Monsieur et Madame Grimette (de Drouillard)
- Madame Jean et ses 5 enfants

Ce témoin-clef a souhaité conserver l'anonymat pour des raisons évidentes de sécurité, mais il va de soi que si vous souhaitez poursuivre plus avant vos recherches, je ferai le nécessaire pour vous mettre en contact avec lui. Par ailleurs, contrairement aux habitudes des gangs qui déplacent les cadavres de leurs membres hors du terrain des affrontements, afin de les inhumer rapidement, ces cadavres d'individus dont la mort a été à tort attribuée à la MINUSTAH ont été abandonnés plusieurs jours sur place. Nombre d'entre eux portaient la trace de blessures mortelles à la tête, ce qui tend à confirmer la thèse d'exécutions sommaires.

#### Les blessés

Notre unité conjointe d'investigations spéciales Droits de l'Homme/UNPOL (UMIS) a interviewé les responsables de l'hôpital Saint Joseph de Port-au-Prince administré par l'ONG MSF, institution qui accueille une majeure partie des victimes de violences de Cité Soleil. Ces responsables nous ont indiqué qu'ils avaient relevé, pour la journée du 6 juillet, un nombre particulièrement important de blessés par balles ou autres admis ce jour-là dans leurs services. Ils ont ainsi déclaré avoir reçu le 6 juillet, entre 11 et 19 heures, 27 blessés originaires de la zone de Bois Neuf (rapport UMIS du 15 juillet 2005- annexe 4)

Notre évaluation de ces faits incontestables est la suivante. Il est possible que, vu la longueur de l'opération et la violence des affrontements, un certain nombre de personnes aient été victimes collatérales des tirs croisés. Nous ne pouvons pas exclure que certaines d'entre elles aient pu être atteintes par des projectiles tirés par nos forces, d'autant que la configuration des lieux et la fragilité de construction des maisons (certaines sont construites en carton) peuvent expliquer que des personnes aient pu être blessées à l'intérieur même de leurs domiciles.

Cependant, nous relevons qu'à aucun moment, la MINUSTAH n'a reçu de plainte ou de demande d'indemnisation de la part des victimes, ce qui est pourtant courant dans d'autres circonstances. Ceci suggère que ces victimes ont probablement considéré que nous n'étions pas directement responsables de leur sort.

Il n'en reste pas moins que, si par malheur il y a eu des victimes collatérales de notre fait, nous le déplorons profondément. Je tiens cependant à souligner que le choix d'intervention volontairement limité à une zone peu peuplée et plus généralement les modalités très strictes de préparation de cette opération, ont très largement pris en compte la nécessité d'éviter au maximum les risques de victimes collatérales.

#### Les suites de l'opération "Iron fist"

Cette opération a fait l'objet d'un suivi attentif de la part de différentes composantes de la Mission. Plusieurs enquêtes et évaluations ont été entreprises dans les jours qui ont suivi le 6 juillet. Il s'agit notamment de:

- Rapport de la Force de la MINUSTAH non daté et 4 annexes (annexe 5)
- Rapport de l'UMIS daté du 18 juillet 2005 (annexe 4)
- Rapport du JMAC adressé à DPKO le 21 juillet 2005 (annexe 3)

En revanche, les conditions dans lesquelles les membres de la force ont effectué leur retrait n'ont pas permis la sécurisation du site afin de procéder aux constatations et saisies utiles. Ainsi, les cadavres des membres de gangs ayant été pris en charge par leurs proches après le départ de la MINUSTAH, aucune autopsie n'a été réalisée; de même, il n'a pas non plus été possible de procéder sur le terrain à des saisies de munitions utilisées aux fins d'examen balistique.

Sur le plan de la sécurité et du rétablissement de l'ordre, cette opération a permis de neutraliser une partie du gang de Dread Wilmé. Depuis cette date, les conditions de sécurité ont connu une certaine amélioration et ont, en particulier, permis de relancer au moins partiellement l'activité économique dans cette zone, activité fondamentale pour la survie économique de l'ensemble du pays.

Par ailleurs, certains membres de gangs de la zone ont entamé des discussions en vue de désarmer et de réintégrer la vie civile. Ces discussions sont toujours en cours, notamment avec certains chefs de bandes qui avaient tenté de prendre la place laissée vacante par la mort de Dread Wilmé.

Sur le plan du respect des règles d'engagement et des droits de l'homme, la MINUSTAH considère que, dans le contexte dans lequel s'est déroulée l'opération, les soldats de la force, tant au niveau de la préparation que de l'exécution, n'ont pas enfreint les règles auxquelles ils étaient soumis et ont répliqué proportionnellement et sans emploi excessif de la force aux attaques armées dont ont été les cibles.

La façon dont certaines ONG connues comme proches du secteur aristidien ont présenté la situation, en se fondant sur des manipulations évidentes de l'information, a pu semer un doute légitime sur le respect des normes par les forces de la MINUSTAH. A cet égard, les enregistrements vidéo des cadavres des habitants assassinés en représailles par les gangs, mais dont la mort a été délibérément attribuée à l'action de la MINUSTAH, constituent une manifestation exemplaire de certaines méthodes de désinformation.

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