



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2004/60/Add.1
4 March 2004

ENGLISH/FRENCH/SPANISH

COMMISSION ON HUMAN RIGHTS
Sixtieth session
Item 11 of the provisional agenda

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY**

**Report of the Special Rapporteur on the independence of judges and lawyers,
Leandro Despouy, submitted in accordance with
Commission on Human Rights resolution 2003/43**

Addendum

Situations in specific countries or territories *

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

Contents

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 5	3
Algeria	6	3
Argentina	7 - 10	4
Belarus	11	5
Bolivia	12 - 14	5
Brazil	15	6
China	16 - 19	6
Colombia	20	7
Cuba	21 - 22	8
Egypt	23 - 26	8
Guatemala	27 - 33	10
Haiti	34 - 35	11
Honduras	36 - 37	12
India	38	13
Indonesia	39 - 42	13
Iran (Islamic Republic of)	43 - 46	15
Israel	47 - 50	17
Lebanon	51 - 52	18
Liberia	53	18
Malawi	54	18
Mauritania	55- 56	19
Mexico	57 - 65	19
Nicaragua	66	22
Saudi Arabia	67 - 69	23
Serbia and Montenegro	70 - 71	23
Sri Lanka	72 - 74	24
Sudan	75 - 80	25
Swaziland	81 - 82	27
Syrian Arab Republic	83 - 86	27
Tajikistan	87	28
Tunisia	88 - 91	29
Turkey	92 - 94	30
Turkmenistan	95 - 98	31
Uganda	99	32
United States of America	100 - 109	32
Uruguay	110 - 113	35
Uzbekistan	114 - 118	36
Venezuela	119	38
Viet Nam	120 - 121	38
Yemen	122 - 123	39
Zimbabwe	124 - 127	39
Palestinian Authority	128	41

Introduction

1. The present report contains summaries of the urgent appeals and communications transmitted to governmental authorities between 1 January and 31 December 2003, as well as replies received during the same period. In addition, the report contains summaries of the press releases issued during the current reporting period. Due to restrictions on the length of the report, the Special Rapporteur has been obliged to summarize the details of all correspondence sent and received. As a result, requests from Governments to publish their replies in their totality could regrettably not be accommodated.
2. The Special Rapporteur wishes to emphasize that the urgent appeals and communications reflected in the present report are based exclusively on information that has been transmitted to him directly. Where information was insufficient, the Special Rapporteur was not in a position to act. He also recognizes that problems concerning the independence and impartiality of the judiciary are not confined to the countries and territories mentioned. In this regard, he wishes to emphasize that readers of the present report should not interpret the omission of a particular country or territory as indicating that the Special Rapporteur considers that there are no problems with the independence of judges and lawyers in that country or territory.
3. The Special Rapporteur wishes to inform the Commission that during the period under review a total of 70 urgent appeals, communications and press releases were transmitted to 39 countries or territories.
4. At the time of submitting the present report the Special Rapporteur has received responses from the Governments of Bolivia, Lebanon, Mexico, Sudan and Turkey to urgent appeals or communications sent during the reporting period but these replies were either not able to be translated in time or were received after 31 December 2003, so they will be reflected in future reports to the Commission.
5. The Special Rapporteur would like to point out that all communications, allegations and press releases sent before 25 July 2003 were transmitted by his predecessor, Dato' Param Cumaraswamy.

Algeria

Communication reçue

6. Dans une lettre envoyée le 4 décembre 2002, le Gouvernement algérien a répondu à une lettre envoyée le 12 septembre 2002 par le Rapporteur spécial, conjointement avec la Rapporteuse spéciale sur les exécutions extrajudiciaires, sommaires ou arbitraires, concernant le cas de **Ahmed Ali Khelili** (E/CN.4/2003/65/Add.1, para. 10). Selon les informations envoyées par le gouvernement, M. Khelili n'aurait pas cru bon de saisir la justice et porter à sa connaissance les faits allégués, prévenant ainsi la justice de procéder à une enquête et de vérifier si les allégations étaient fondées ou non. Le gouvernement souligna que, selon la législation algérienne, une personne qui s'estime être victime d'agissements contraires à la loi a la faculté de déposer une plainte, soit devant le Procureur de la République, soit directement par la voie de plainte avec constitution de partie civile, devant le Doyen des juges d'instruction, ce que Khelili n'aurait pas fait.

Argentina

Comunicación enviada

7. Mediante comunicación del 24 de julio de 2003, el Relator Especial agradeció las respuestas que el Gobierno había enviado en 2002 (E/CN.4/2003/65/Add.1, párr. 15), y solicitó las informaciones concernientes al estado del proceso de acusación contra nueve magistrados de la Corte Suprema de Justicia.

Respuestas del Gobierno

8. El Gobierno contestó a la comunicación del Relator Especial de fecha 24 de julio de 2003 y proporcionó la información siguiente: la existencia de graves denuncias respecto de la falta de independencia e imparcialidad de la Corte Suprema de Justicia creó una gran desconfianza en la ciudadanía respecto de todo el sistema de administración de justicia. Se mencionaba la falta de legitimidad de la Corte ya que debido a su composición existía una “mayoría automática” para favorecer al gobierno de turno. Además, la designación de los jueces de la Corte estuvo viciada por un visible elemento partidista y sin los antecedentes, la trayectoria pública y el prestigio necesario para ocupar el cargo. La situación afectó en forma grave el principio democrático de separación de poderes del Estado, dado que los jueces designados para implementar el aumento de los miembros de la Corte tenían notorios vínculos con el Poder Ejecutivo a cargo del Gobierno. Frente a ello, hubo numerosos pedidos de juicios políticos contra los jueces de la Corte en la Cámara de Diputados, los que fracasaron al no contar con suficiente apoyo político. Con la asunción del Presidente Néstor Kirchner el 25 de mayo de 2003 se reactivaron los pedidos de juicio político contra miembros de la Corte; así la Cámara de Diputados inició el juicio político al juez de la Corte Julio Nazareno, quien renunció a su cargo en julio de 2003. Asimismo, la Cámara de Diputados aprobó la suspensión en sus funciones del juez de la Corte Eduardo Moliné O’Connor en octubre de 2003.

9. Como una manera de impedir en el futuro la repetición de actos como los mencionados en el párrafo anterior, que afectaron la credibilidad del sistema de administración de justicia, el Gobierno nacional instaurado a partir del 25 de mayo de 2003 ha establecido reformas en el proceso de designación de los jueces. En el caso de los magistrados de la Corte Suprema, el nuevo sistema aprobado por Decreto Presidencial n° 222/03 hace referencia a la importancia de la creación de ciertos mecanismos que permitan a los ciudadanos, individual o colectivamente, a los colegios y a las asociaciones que agrupan a sectores en el ámbito profesional, académico o científico de que se trata, a las organizaciones no gubernamentales con interés y acciones en el tema, hacer conocer en forma oportuna sus razones, sus puntos de vista y objeciones que pudieran tener respecto del nombramiento a producir. El Senado de la nación también ha tomado medidas iniciales para asegurar la transparencia en la aprobación de las designaciones. Por Decreto Presidencial n° 588/03 se extendió el mismo sistema de evaluación pública de la Corte para los candidatos a cargos de jueces, fiscales o defensores públicos a nivel nacional y federal.

10. En 2003 el Presidente dispuso la adhesión a la Convención sobre la Imprescriptibilidad de los Crímenes de Guerra y de los Crímenes de Lesa Humanidad. Por otra parte, en agosto de 2003 el Congreso Nacional sancionó la Ley 25.779 por la que se declaran “insanablemente nulas” las leyes denominadas de Obediencia Debida y Punto Final. Frente a estas medidas el propio Alto Comisionado adjunto sostuvo que “es alentador ver el trabajo que se está realizando para que la justicia se imponga a pesar de que algunos hicieron lo posible en el pasado para evitarlo. El Gobierno argentino ha demostrado voluntad para acabar con la impunidad...”.

Belarus

Communications received from the Government

11. On 30 January 2003, the Government replied to the Special Rapporteur's communication dated 27 November 2002 (E/CN.4/2003/65/Add.1, para. 24) and advised that in accordance with the Minsk City Bar Association, the lawyer, **Vera Stremkovskaya**, was accorded leave without pay and medical benefits, at her request, in order to attend the Council of Europe international conference on lawyers' associations and human rights in Brussels in October 2002 and the Democratic Forum in Seoul in November 2002. The Government further advised that the Minsk City Bar Association imposed no restrictions on Ms. Stremkovskaya's capacity to attend or speak at international gatherings and she is currently performing her professional duties without restriction. The Government also provided some statistical information about the increased activities of the Minsk City Bar Association.

Bolivia

Comunicación enviada

12. El 2 de abril de 2003, el Relator Especial, junto con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias y el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, envió un llamamiento urgente en relación con la situación de **Cliver Rocha**, responsable de la Unidad Regional del Centro de Estudios Jurídicos e Investigación Social (CEJIS) en Riberalta y asesor de la Central Indígena de la Región Amazónica de Bolivia (CIRABO), quien habría sido agredido el 13 de marzo de 2003 en las puertas del juzgado agrario de Riberalta cuando se retiraba de una audiencia pública. El abogado Cliver Rocha habría sido perseguido a la salida del juzgado, golpeado en reiteradas oportunidades en la parte posterior de la cabeza y amenazado de muerte.

13. El 7 de mayo de 2003, el Relator Especial, junto con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias y el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, enviaron un llamamiento urgente en relación con la situación de **Cliver Rocha**, quien habría sido golpeado el 23 de abril de 2003 por dos individuos no identificados que lo habrían seguido en una motocicleta cuando salió de su despacho. Mientras lo golpeaban, los agresores le habrían repetido que abandonara la zona.

Respuestas del Gobierno

14. Mediante comunicación del 24 de septiembre de 2003, el Gobierno proporcionó información en relación con los llamamientos urgentes que el Relator Especial, junto con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias y el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, enviaron el 2 de abril y el 7 de mayo de 2003 en relación con las amenazas y agresiones contra el abogado Cliver Rocha. Según el Gobierno, de acuerdo con los informes de la policía provincial del Beni, una

vez recibida la denuncia se habría dado traslado de su contenido al ministerio público. Asimismo informó que extrañamente el cuadernillo de la investigación (denuncia, declaración y certificado médico) no habría retornado a la policía provincial del Beni, razón por la cual se habría hecho necesario obtener nuevamente una declaración informativa policial con el fin de dar trámite a la investigación. Para tal fin, se habría citado al demandante para obtener una nueva declaración. Dicha petición no habría obtenido respuesta, hecho ante el cual se habría procedido al envío de las actuaciones al ministerio público, quien a su vez habría ampliado el plazo de término de la investigación por 10 días, después de los cuales, pese a la insistencia del encargado del caso, Cliver Rocha no habría proporcionado información argumentando como motivo principal una reacción negativa por parte de los indígenas a quien él patrocina.

Brazil

Communications to the Government

15. On 17 April 2003, the Special Rapporteur sent a communication concerning two judges, **Judge Antonio José Machado Dias** from Sao Paulo State, who was murdered on 14 March 2003, and **Judge Alexandre Martins de Castro Filho** from Espirito Santo State, who was murdered on 25 March 2003. According to the information received, Judge Dias was responsible for trials involving accused persons from the First Capital Commando, a criminal faction that operates within the prisons of Sao Paulo State. Judge Castro Filho was involved in many cases against members of organized crime in Espirito Santo. Both judges had received death threats in the past and, unfortunately, only two days before his death, Judge Dias had apparently dismissed his bodyguards as he felt his safety was no longer an issue.

China

Communications to the Government

16. On 9 January 2003, the Special Rapporteur sent a communication concerning two lawyers, **Sizhi Zhang** and **Huigen Li**, Chinese nationals from Beijing, who were asked by Lolo Tsering, the brother of Tibetan Tenyin Delek Rinpoche (aka A'an Zhaxi), to defend Mr. Rinpoche, who received the death sentence on 2 December 2002. (Mr. Rinpoche received a two-year reprieve of the sentence following an appeal filed on 13 December 2002). According to the information received, Mr. Zhang and Mr. Li were preparing to travel to Dhartsedo in Sichuan Province, where Mr. Rinpoche was imprisoned, when on 29 December 2002 they were informed by Judge Jinghong Wang of the Sichuan Provincial Court that their services were no longer required as two local lawyers had already submitted documents on behalf of Mr. Rinpoche. It appears that Judge Wang may have been pressured by Sichuan Provincial authorities to prevent the two Beijing lawyers from representing Mr. Rinpoche. There was concern that the local lawyers may be pressured by the Sichuan authorities, which would impede Mr. Rinpoche's right to an adequate defence and a fair trial. A petition was filed in the Sichuan Provincial High Court to consider the issue of Mr. Rinpoche's legal representation.

17. On 24 February 2003, the Special Rapporteur sent a communication concerning **Wang Bingzhang**. According to the information received, on 22 January 2003 Mr. Wang's trial took place in secret and on 10 February the Shenzhen Intermediate People's Court in Guangdong Province found him guilty of various spying and terrorism charges and sentenced him to life imprisonment.

Reportedly, Mr. Wang was held incommunicado for months following his detention in July 2002 and was denied adequate legal representation.

Communications from the Government

18. On 29 April 2003, the Government replied to the Special Rapporteur's communication dated 9 January 2003 and advised that during the trial of first and second instance, the defendant, Mr. Rinpoche, secured and retained the legal services of **Chen Shichang** and **Yu Jianbo**. Subsequently, members of Mr. Rinpoche's family engaged two different lawyers. However, since the defendant had already exercised his right under 32 of the Code of Criminal Procedure to choose his own counsel, the court of second instance was unable to authorize the lawyers appointed by the family members. The Government stated that it was inaccurate to allege that the Sichuan Provincial People's Court was pressured by the local government to disqualify the lawyers from Beijing appointed by the defendant's family. The Government added that China was a State governed by the rule of law and that the Chinese judicial system operated in accordance with the principles of independence and impartiality.

19. On 29 April 2003, the Government replied to the Special Rapporteur's communication dated 24 February 2003. The Government advised that on 10 January 2003 proceedings commenced against Mr. Wang in the Shenzhen Intermediate People's Court, which decided to hear the case in closed session as it dealt with State secrets (pursuant to article 152 of the Civil Suits Act). According to the court of first instance, Mr. Wang engaged in espionage by collecting military information, publishing books on how to conduct terrorist activities and actively engaging in the recruitment and planning of terrorist acts. The Government advised that on 10 February 2003 Mr. Wang was sentenced to life imprisonment for espionage and to ten years' imprisonment for organizing and heading a terrorist organization. The People's Higher Court in Guangdong Province, the court of second instance, ruled the evidence was credible and sufficient and the punishment appropriate and consistent with the law. The appeal was rejected and the verdict upheld. The Government advised that the proceedings in this case were in compliance with the law at every stage, in particular articles 6 and 7 of the Criminal Law of the People's Republic of China granting China exclusive jurisdiction over this case. The Government further advised that Mr. Wang's legal rights were fully respected during the investigation and prosecution stages; he had exercised his right to appeal and was represented by counsel during the review stage, which was conducted in a fair and unbiased manner.

Colombia

Comunicación enviada

20. El 18 de julio de 2003, el Relator Especial envió un llamamiento urgente en relación con la situación del abogado **José Ramiro Orjuela Aguilar**, quien vendría siendo objeto de constantes intimidaciones y amenazas contra su vida y su integridad personal. De acuerdo con las informaciones recibidas, el 10 de febrero de 2003 la oficina de Ramiro Orjuela, habría sido objeto de un allanamiento bajo la acusación de pertenecer a la red urbana de las Fuerzas Armadas Revolucionarias de Colombia (FARC). Tales hechos guardarían relación con el trabajo jurídico que el Sr. Orjuela Aguilar adelanta con detenidos políticos. Asimismo se informó de que el mismo día de su asesinato, el 11 de mayo de 2003, el abogado José Absalon Achury, amigo personal del Sr. Orjuela Aguilar, le habría llamado con el fin de informarle sobre las intimidaciones de que habría sido objeto y en las cuales se señalaba que el abogado Ramiro Orjuela y él estaban en el "mismo

paquete para ser asesinados”. Tales intimidaciones guardarían relación con la salida de la cárcel de Ignacio González Perdomo, defendido del abogado Achury. Igualmente se ha informado sobre las averiguaciones que se habrían efectuado el día 12 de mayo de 2003 en la antigua oficina del Sr. Orjuela Aguilar por parte del Cuerpo Técnico Investigativo de la Fiscalía (CTI) las cuales harían presumir la existencia de un proceso judicial contra José Ramiro Orjuela Aguilar.

Cuba

Comunicación enviada

21. El 19 de mayo de 2003, el Relator Especial, junto con el Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión y el Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente relativo a la situación de 78 personas que habrían sido arrestadas el 18 de marzo 2003 y habrían sido procesadas en juicios sumarios a puerta cerrada. Estos juicios habrían tenido lugar entre los días 3 y 7 de abril 2003, bajo el marco de la Ley de protección de la independencia nacional y economía de Cuba y la Ley de reafirmación de la dignidad y soberanía cubanas. Presuntamente, 75 de las personas detenidas habrían recibido sentencias de 6 a 28 años de prisión, mientras que otras 3 se encontrarían bajo arresto domiciliario.

Respuestas del Gobierno

22. Mediante comunicación del 2 de septiembre de 2003, el Gobierno proporcionó información en relación con el llamamiento urgente que el Relator Especial había enviado el 19 de mayo de 2003 en relación con la situación de los ciudadanos **Ariel Singler Amaya, Enrique Pérez Morell, Juan Felipe de la Torre Requejo, Yoheni Junco Sardinas, Yoani Junco Sardinas, Justo Julio Sierra Silva, Raúl Arencibia Fajardo y Oscar Elías Biscet González**. Según el Gobierno, los ciudadanos mencionados habrían sido detenidos por violar la legislación penal vigente, asimismo informó que a los detenidos se les habría impuesto una multa administrativa y posteriormente habrían sido puestos en libertad. El Gobierno también informó que durante la detención, traslado y permanencia de en la unidad de policía habrían sido respetados los requisitos del debido proceso y observado las normas del procedimiento penal vigentes. Asimismo se informó de que el 7 de marzo de 2003, los detenidos **Orlando Zapata Tamayo, Virgilio Morantes Guelmes** y Raúl Arencibia Fajardo habrían sido dejados en libertad provisional pendientes de juicio. Por su parte, Elías Biscet González habría permanecido en prisión al haberse probado su responsabilidad por el delito de instigación para delinquir y otras tipificaciones delictivas directamente dirigidas a lesionar la soberanía y el orden constitucional.

Egypt

Communications to the Government

23. On 9 April 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on violence against women, its causes and consequences regarding the arrest and detention of hundreds of anti-war demonstrators who attended anti-war rallies held across Cairo between 20 and 25 March 2003. They were reportedly accused of various offences, including participating in illegal gatherings and threatening public security. It is reported that the total number and location of the detainees, many of whom have been held incommunicado, remain unknown.

Among those reported to be detained are activist Ms. **Manal Ahmad Mustafa Khalid** and lawyer **Ziad Abdel Hamid al-Uleimi**, Ms. **Nivin Ahmad Samir**, two other lawyers, Mr. **Gamal Abd al-Aziz** and Mr. **Yassir Farrag**, four members of Parliament, **Mohammed Farid Hassanein**, **Hammdeen Sabahi**, **Abdel Azim al-Maghrabi** and **Haidar Baghdadi** and a number of students, including **Marwa Faruq**, **Samir Fuli**, **Mahmud 'Izzat**, **Shaymaa Samir** and **Nourhan Thabet**. While many of the hundreds of people initially detained have been released it is reported that at least 68 people have been served with detention orders of between 4 and 15 days and have reportedly been tortured or ill-treated (electric shocks and beatings) in police custody, including gender-based violence (threatened with rape) or have been subjected to excessive force upon detention by security forces. Reportedly, at least seven civilian detainees were transferred to the State Security Prosecution Office where due process is limited during the trial procedure and the right to appeal is denied as under these exceptional procedures there is no avenue for appeal and a conviction can only be overturned by order of the President of the Republic in his capacity as Military Governor under Egypt's emergency laws.

24. On 10 April 2003, the Special Rapporteur sent a communication concerning Dr. **Neesem Abdel Malek**, former director of the Cairo El-Khanka Mental Hospital, who was reportedly unjustly sentenced to 25 years' imprisonment with hard labour by a military court. The prison sentence was reduced from 25 to 10 years in January 2000 but the ongoing concern is that it was an arbitrary sentence of imprisonment by a military tribunal under "state of emergency" regulations and therefore without any right to appeal. Of general concern is the fact that in February 2003, the Government of Egypt extended this "state of emergency" for a further three years, which automatically refers any civilian to a military court by presidential decision if the case falls under the general category of "acts of terrorism".

25. On 2 October 2003, the Special Rapporteur sent a joint urgent appeal 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 the situation of human rights defenders regarding **Ashraf Ibrahim**, an active member of the anti-war movement in Egypt. According to the information received, Mr. Ibrahim's case was referred to the Higher Emergency State Security Court on 10 August 2003 on charges of belonging to an organization seeking to overthrow the Government and of disseminating false information abroad (articles 80(d) and 86 respectively of the Penal Code). His trial, along with that of other co-defendants, was scheduled to begin on 16 December 2003. Of particular concern is that the Higher Emergency State Security Court, a tribunal established under the emergency law, allows no appeals to a higher judicial body and, as a result, a verdict can only be overturned or modified by the President of the Republic.

Communications from the Government

26. On 22 April 2003, the Government replied to the Special Rapporteurs' joint urgent appeal of 9 April 2003. The Government stated that it was not true that thousands of citizens were prevented from demonstrating against the war in Iraq. The only people arrested were those who breached public security and public order, for example those who destroyed public or private property. Those persons were questioned by the Department of Public Prosecutions and released once the investigation was complete. The Government further claimed that no one is currently being held in detention in connection with the demonstrations against the war in Iraq.

Guatemala

Comunicación enviada

27. El 16 de abril de 2003, el Relator Especial envió un llamamiento urgente en relación con el atentado contra **Manuel de Jesús Barquín Durán**. De acuerdo con las informaciones recibidas, el 10 de abril de 2003, Manuel de Jesús Barquín habría detenido su camioneta en una estación de servicio de Santa Cruz, departamento de Zacapa, a unos 125 kilómetros de Guatemala, cuando un grupo de hombres no identificados habría disparado contra el automóvil. Según informes, los hombres habrían disparado varias veces con sus rifles AK-47 desde otro vehículo y a continuación habrían abandonado el lugar. Manuel de Jesús Barquín Durán habría salido de la camioneta varios minutos antes del atentado, pero su guardaespaldas, **José Alfredo González Méndez**, que todavía se encontraba en el interior del vehículo, habría resultado gravemente herido. La camioneta habría recibido 37 impactos de bala. Manuel de Jesús Barquín Durán afirmarí que durante las dos semanas anteriores a este incidente habría recibido reiteradas amenazas de muerte.

28. El 1º de julio de 2003, el Relator Especial, junto con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente relativo a las amenazas de muerte y actos de hostigamiento contra **Thelma de Lam**, fiscal especial para los defensores de los derechos humanos, y **Marines Martínez**, fiscal auxiliar para los defensores de los derechos humanos. Según las informaciones, el 20 de junio de 2003, tres hombres armados habrían entrado en la casa de Marines Martínez, exigiendo verla. Una de las empleadas les habría dicho que no se encontraba en casa, ante lo cual la habrían encargado de decirle que «si sigue investigando va a recibir una sorpresa esta noche». Asimismo se informó de que hombres no identificados habrían tratado de entrar en el domicilio de Thelma de Lam asegurando ser electricistas con el pretexto de arreglar una avería, no obstante se habría terminado negando el acceso a tales individuos. El 23 de junio, Thelma de Lam habría recibido dos llamadas anónimas en su teléfono portátil. El primer interlocutor le habría dicho que «tuviera cuidado con lo que está haciendo», y el segundo que «terminase su trabajo con el ministerio público».

Respuestas del Gobierno

29. Mediante comunicación del 22 de julio de 2003, el Gobierno de Guatemala proporcionó información en relación con el comunicado de prensa del Relator Especial del 17 de julio de 2003 sobre la decisión de de la Corte de Constitucionalidad respecto de la acción de amparo promovida por el General Efraín Ríos Montt. El Gobierno guatemalteco pide asistencia para solucionar la situación en la cual se encuentran los miembros de dicha Corte. También, suele recordarle que la recomendación contenida en el inciso i) del apartado b del párrafo 169 del informe del Relator Especial sobre la misión cumplida en Guatemala (E/CN.4/2000/61/Add.1) no puede ser aplicada solo por el Gobierno, debe ser tomada por la totalidad del pueblo guatemalteco mediante elecciones libres.

30. Mediante comunicación del 13 de agosto de 2003, el Gobierno de Guatemala proporcionó información en relación con el llamamiento urgente que el Relator Especial había enviado el 16 de abril de 2003 en relación con el atentado contra el fiscal especial Manuel de Jesús Barquín Durán. Según el Gobierno, el ministerio público adelantaría la investigación por el delito de asesinato en grado de tentativa. Asimismo se informó de que Manuel de Jesús Barquín Durán habría renunciado formalmente a su cargo como fiscal especial, para asumir una posición como suplente en el Congreso de la República. El Gobierno también informó de que el Sr. Barquín Durán,

a pesar de contar con un servicio de seguridad personal privado, habría aceptado la seguridad perimetral ofrecida en los alrededores de su residencia en la capital y en la residencia de su familia en el municipio de San Benito, departamento de El Petén.

31. Mediante comunicación del 10 de diciembre de 2003, el Gobierno de Guatemala proporcionó información en relación con el llamamiento urgente que el Relator Especial, junto con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, había enviado el 1º de julio de 2003 en relación con las amenazas de muerte y actos de hostigamiento contra Thelma de Lam, fiscal especial para los defensores de los derechos humanos, y Marines Martínez, fiscal auxiliar para los defensores de los derechos humanos. Según el Gobierno, la Fiscalía especial de delitos cometidos contra miembros o integrantes de los grupos pro derechos humanos habría iniciado la investigación y persecución penal correspondiente.

Comunicado de prensa

32. El 8 del julio de 2003, por comunicado de prensa, el Relator Especial ha mostrado su preocupación por los problemas presupuestarios del Instituto para la Defensa Pública Criminal de Guatemala. El Relator Especial fue informado recientemente de que la Coordinadora Nacional para la Modernización del Sistema de Justicia de Guatemala tiene problemas en unos de los sectores bajo su responsabilidad, el Instituto para la Defensa Pública Criminal. La continuidad del Instituto es cuestionada debido a la falta de recursos. A consecuencia de ello, el Instituto ha advertido de que no podrá implementar o continuar algunos de los programas como el de la oficina de la defensa, oficina del fiscal, el centro de administración de la justicia, los centros de ayuda legal de las estaciones de policía y los servicios de ayuda legal usados fundamentalmente por la población indígena. En el año 2002, la Corte Suprema de Justicia puso de relieve las dificultades en el ejercicio de sus funciones debido a las reducciones de presupuesto. El Relator Especial comparte las preocupaciones expresadas por ambas instituciones. La inadecuada financiación del importante Instituto para la Defensa Pública Criminal perjudicaría seriamente el acceso de los ciudadanos a la justicia y pondría en peligro el imperio de la ley en Guatemala. El Relator Especial urge al Congreso de la República y al Ministerio de Hacienda a dar el debido tratamiento a la falta de recursos dedicados a la judicatura en general y a actuar urgentemente par aumentar el presupuesto del Instituto par la Defensa Pública Criminal afín de que pueda continuar trabajando y sirviendo a los ciudadanos.

33. El 17 del julio de 2003, por comunicado de prensa, el Relator Especial expresó su profunda preocupación sobre la independencia, imparcialidad e integridad de la justicia tras la decisión de la Corte de Constitucionalidad de validar la candidatura del General Efraín Ríos Montt. No solo la decisión fue tomada a pesar de juzgamientos previos de inhabilitación por parte de la Corte Suprema de Justicia y del Tribunal Supremo Electoral fundados sobre el artículo 186 de la Constitución, sino que dicha Corte utilizó el mismo precepto constitucional par vedar anteriormente la candidatura del general en 1995. Además, esta última decisión va en contra de la recomendación concreta del Relator Especial que figura en su informe sobre la misión cumplida en Guatemala en agosto de 1999(E/CN.4/2000/61/Add.1, párr. 169 *b i*)).

Haiti

Communications envoyées

34. Le 14 février 2003, le Rapporteur spécial, conjointement avec la Rapporteuse spéciale sur les exécutions extrajudiciaires, sommaires ou arbitraires, a envoyé un appel urgent au Gouvernement

haïtien relatif à la situation de **Pierre Josiard Agnant**, juge d'instruction et président de l'Association nationale des magistrats haïtiens. Selon l'information reçue, Pierre Josiard Agnant aurait été arrêté au sein même du Ministère de la justice le 10 février 2003, sur ordre du Ministre de la justice, Calixte Delatour, qui lui reprocherait d'avoir « libéré trop vite Salim Barthrony », un individu accusé d'être impliqué dans un trafic illicite de stupéfiants, alors que l'accusation n'aurait semble-t-il pas pu fournir de preuves suffisantes pouvant conduire à une condamnation de ce dernier. Il a par ailleurs été rapporté que le juge Agnant aurait été immédiatement mis en indisponibilité et placé en résidence surveillée. Deux voitures flanquées de sept agents de police lourdement armés monteraient la garde devant son domicile de Santo, situation qui porte à craindre pour la vie du magistrat et de sa famille.

Communications reçues

35. Le 23 octobre 2003, le gouvernement a envoyé une lettre accusant réception de la communication du Rapporteur spécial en date du 14 février, mais à ce jour, date de rédaction du présent rapport, aucune réponse substantive n'a été reçue.

Honduras

Comunicación enviada

36. El 8 de octubre de 2003, el Relator Especial, junto con la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias, el Relator Especial sobre la cuestión de la tortura, la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, envió un llamamiento urgente en relación con la situación de peligro en la que se encontrarían **Marcelino Miranda, Leonardo Miranda y Marcelino Martínez Espinal**. Según las informaciones, el 22 de julio de 2003 personas no identificadas habrían llevado a cabo averiguaciones sobre el abogado Marcelino Martínez que incluirían detalles sobre su vehículo. También se informó de que los mismos individuos habrían realizado comentarios despectivos en relación con el abogado. Asimismo se informó de que el 18 de septiembre de 2003 un vehículo Toyota rojo con los cristales tintados y sin placas de matrícula habría seguido el automóvil de Marcelino Martínez cuando se dirigía a efectuar una visita a dos dirigentes indígenas detenidos en la prisión de Gracias. Finalmente, se informó de que estos actos de intimidación afectarían a la labor de Marcelino Martínez, quien habría manifestado que por razones de seguridad personal no se sentiría capaz de continuar con sus visitas a los dirigentes indígenas detenidos.

Respuestas del Gobierno

37. Mediante comunicación del 19 de diciembre de 2003, el Gobierno informó a la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos respecto al llamamiento urgente enviado el 8 de octubre sobre el caso de Marcelino Miranda y Leonardo Miranda y del abogado Marcelino Martínez Espinal. El Gobierno estableció que varias investigaciones acerca de las denuncias habían sido iniciadas. Con respecto a los delitos cometidos contra los hermanos Leonardo y Marcelino Miranda, el Gobierno informó que requerimiento fiscal fue presentado ante el juzgado de primera instancia de Letras Departamental de Gracias contra 28 personas por suponerles responsables de cometer delitos de abuso de autoridad, torturas, lesiones y daño en perjuicio de Marcelino Miranda, Leonardo Miranda y la comunidad indígena de Planes de Montaña Verde. Hizo saber que en la audiencia inicial que se celebró el

23 de septiembre, el juez ordenó el sobreseimiento definitivo a favor de los imputados. Con fecha de 29 de septiembre la Fiscalía interpuso recurso de reposición y subsidiaria apelación ante la Corte de Apelaciones de Santa Rosa de Copán y el 29 de octubre la misma Corte reformó el sobreseimiento definitivo dictado por el juzgado de primera instancia y ordenó que el mismo se decreta de manera provisional. Con respecto a las acusaciones contra Marcelino Miranda y Leonardo Miranda, el Gobierno hizo saber que próximamente se dictará sentencia por cargos de tentativa de homicidio y asesinato, y con respecto al cargo de lesiones y atentado, se dictó sentencia absolutoria a la que el ministerio público luego interpuso recurso de Casación ante la Corte Suprema de Justicia, que aún está pendiente de sentencia. Respecto a las amenazas contra el abogado **Jose Leonardo Miranda Espinoza**, el Gobierno informó de que una denuncia fue interpuesta el 16 de octubre ante la Dirección General de Investigación Criminal de Gracias Lampira y un requerimiento de investigación había sido emitido el 28 de octubre a la Dirección General de Investigación Criminal. La investigación sigue en curso.

India

Communications to the Government

38. On 24 July 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture regarding **Ayub Khan Pathan, Abdul Latif Pathan, Shamshad Begum A Pathan and Mehzabin Ayub Khan Pathan**. Mr. Ayub Khan Pathan was reportedly arrested on 15 June 2003 and Mr. Abdul Latif Pathan on 25 June 2003 by crime branch police officers of the Gujarat police. According to the information received, the wives of two of the detainees filed a habeas corpus petition in the Gujarat High Court on 7 July 2003, but were subjected to pressure by the superintendent of police to make them to withdraw it, and their husbands were threatened with death. On 11 July 2003, the women reportedly filed a complaint with the High Court which claimed that their husbands had been detained without due legal safeguards and that they had been subjected to torture and other forms of ill-treatment. It is said that at the hearing, the crime branch denied that they were in their custody. The High Court reportedly dismissed the habeas corpus petition and Ayub Khan Pathan and Abdul Latif Pathan were allegedly remanded to police custody. They are believed to be currently held in police detention without access to their lawyers and their relatives since 9 July 2003.

Indonesia

Communications to the Government

39. On 10 April 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the question of torture regarding **Susyanti, An'am Jaya, Sahabuddin, Ansar Suherman, Hariansyah and Muhammad Akman**, who were reportedly arrested on 25 January 2003 in Sulawesi Tenggara Province. The six activists were reportedly charged under articles of the Indonesian Criminal Code which punish "insulting the President and Vice-President" (article 134) and "hate-sowing" (articles 154 and 155) with imprisonment for up to six and seven years respectively. It is alleged that two days before their arrest they had participated in a peaceful demonstration organized by a coalition of Indonesian organizations known as the Governing Front of the Poor (*Front Pemerintah Rakyat Miskin, FPRM*) in Kendari Town, Kendari Sub-district. According to the information received, they were initially detained at Kendari Police Resort (Polres Kendari), where they are believed to have been beaten and kicked. According to the information

received, complaints from the lawyers of the accused about being ill-treated resulted in one police officer being transferred. The six detainees were reportedly moved on 19 March 2003 to Kendari Prison (Rumah Tahanan Kendari) where they are also said to have been beaten.

40. On 25 June 2003, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary General on the situation of human rights defenders and the Special Rapporteur on the question of torture regarding **Nuraini**, Volunteer Coordinator of the Commission for Involuntary Disappearances and Victims of Violence in Aceh (Kontras), **Zakaria Ismail**, and **Zulkifli**, who were reportedly arrested on 19 June 2003 in Lueng Dama Village, Pidie District, by members of the military from Delima Sub-district Military Command and police officers from Delima Police Sector (Polsek Delima), including members of the Police Mobile Brigade (Brimob). At the time of their arrest, Nuraini and Ismail were allegedly blindfolded and beaten and their house searched. Both are believed to have been subsequently taken to Polsek Delima. Zulkifli is alleged to have been detained at the same time. According to the information received, Mr. Ismail has been accused by the military commander of Pidie District of being a former member of the armed group Free Aceh Movement (GAM) and Zulkifli of being a fund-raiser for GAM. Concern has been expressed that since the declaration of a military emergency on 19 May 2003, members of Kontras and other human rights organizations have been directly warned by the local military commander that they will be targeted for arrest. These three individuals are thought to be currently detained in Nanggroe Aceh Darussalam Province (NAD), where they have allegedly been denied access to their relatives and lawyers.

41. On 9 July 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention regarding **Gustaf Ayomi**, **John Hilipok**, **Welmus Asso** and **Elias Asso**, who were reportedly arrested by the police on 7 July 2003 during a pro-independence ceremony in the town of Wamena, Jayawijaya District, Papua Province. They had been participating in the demonstration outside the local Parliament building at which the Morning Star flag, a symbol of support for Papuan independence, was raised. A police patrol arrived and tried to break up the ceremony. According to the police, they opened fire after the demonstrators attacked them. It is alleged that during this intervention, **Iyut Heselo** was killed. Welmus Asso and Elias Asso were reportedly shot at and then taken to the local hospital. According to the information received, Gustaf Ayomi and John Hilipok were taken to the Wamena Police Resort (Polres). It is reported that they had no access to lawyers.

Communications from the Government

42. On 7 August 2003, the Government sent a detailed reply to the Special Rapporteurs' joint urgent appeal of 9 July 2003 about the "pro-independence ceremony" in Wamena, Province of Papua. According to the Government's response, on 7 July 2003, Jayawijaya police were informed that a number of people gathered inside the compound of the regency's legislative council and were allegedly attempting to hoist separatist flags. It was reported that two police units were dispatched to the area where they interrupted a ceremony involving several men armed with traditional weapons, who were raising three New Melanesian flags to mark what they called the "New Melanesian" anniversary. The Government indicated that a number of other individuals were posted as lookouts and were gathered approximately 500 metres away from the flagpoles. The Government submitted that efforts by the police to persuade the demonstrators to disperse failed and that the crowd gathered around the flagpoles in a show of defiance. The police report affirmed that several

policemen approached the group in order to persuade them to lower their flags peacefully. The Government further indicated that, after negotiating with the men identified as **Welmus Asso, Gustaf Ayomi, Hery Asso, Jean Hesegen** and **Yut Heselo** for about an hour, the latter became increasingly aggressive and eventually attacked their interlocutors using arrows and machetes, and forcing the police to fire three warning shots. The Government of Indonesia also indicated that Yut Heselo was fatally wounded, while Hery and **Welmus Asso** were injured and evacuated to a hospital in Wamena for treatment. According to the Government's response, the Papuan police did not arrest Elias Asso and John Hilipok since, according to police records, the five men taken into custody in the wake of the incident were Hery and **Welmus Asso, Gustaf Ayomi, Jean Hesegen** and **Mayus Togostli**, all from Wamena. They were reportedly questioned by the police regarding their involvement in the case and subsequently charged with violating articles 106 and 110 (offences against the State), as well as article 212 (attacking the security forces) of the Penal Code, and Law 12/1951 (possession of firearms and sharp weapons). The Government submitted that the detainees were not held incommunicado and that they were accompanied by a lawyer throughout the investigation process. The Government further indicated that on its behalf, the Coordinator Minister for Political and Security Affairs, Susilo Bambang Yudhoyono, ordered a thorough investigation in order to shed light on the incident. In this respect, the separatists in custody allegedly informed investigators that the flags were raised following an order issued by Matias Wenda, a leader of the rebel Free Papua Movement (OPM), reportedly in an attempt to foster dissent and incite people to violence. The Government of Indonesia underlined that, while accepting the right of the people to protest peacefully and to voice dissent, it cannot tolerate armed resistance, especially when directed against government officials and employees. Therefore, it ordered the security forces to act firmly against anyone breaking the law. It was reported that the Government of Papua repeatedly made it clear that secessionist activities such as flag-raising ceremonies would not be tolerated and that any offender would be dealt with firmly by the police, in accordance with the law. Finally, the Government submitted that police intervention is fully justified in such cases and that the Jayawijaya Police acted according to proper procedures in this case.

Iran (Islamic Republic of)

Communications to the Government

43. On 24 January 2003, the Special Rapporteur sent a further urgent appeal regarding lawyers of the Bar of Tehran, **Mohammed- Ali Dadkah** and **Abdolfateh Soltani** (E/CN.4/2003/65/Add.1, paras. 75, 77 and 78) who were imprisoned as a result of their defence work on behalf of political prisoners. The lawyers stated publicly that their clients had been tortured while in custody to extract confessions from them. According to the information received, on 20 May 2002, Mr. Dadkah was sentenced to imprisonment for five months and banned from practising law for 10 years. The trial took place behind closed doors, giving rise to fears that Mr. Dadkah did not receive a fair trial. In December 2002, the sentence was upheld by a court of appeals. The charge was based on a speech which Mr. Dadkah had made in court in November 2001, in defence of various political prisoners and journalists from the banned Freedom of Movement of Iran who were arrested during two round-ups in March and April 2001. Mr. Dadkah had been expelled by the President of the Revolutionary Tribunal in the course of his defence speech and was therefore unable to carry out the defence of his clients for the rest of the trial. The other lawyer, Mr. Soltani, who defended 15 members of a dissident religious nationalist group charged with trying to overthrow Iran's Islamic system, turned himself in on 21 January to begin a four-month prison sentence he received on 9 July 2002. He has also been banned from practising law for five years. The main charge against Mr. Soltani is that he claimed in his defence speeches that his clients had suffered from ill-

treatment while being interrogated. Both lawyers have appealed the rulings and the appeals are pending.

44. On 12 March 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture regarding **Abbas Abdi**. It is reported that he was held in incommunicado detention for an indeterminate amount of time. It was reported that Mr. Abdi's lawyer prepared an appeal against the eight-year prison sentence handed down in January 2003. However, he was not permitted to be present at the interrogation of his client and was not provided with transcripts afterwards. In addition, an interrogator was allegedly present at their last meeting despite repeated assertions by the lawyer that it should take place in private. Mr. Abdi's lawyer has not been permitted access to his client and no information concerning the condition of Mr. Abdi has been made available by the prison authorities.

45. On 29 September 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, regarding **Mehdi Said Asgari, Maziyar Aslani and Ali Khaleqi**. According to information received, the first two were reportedly arrested on 9 August 2003 in their homes in Tehran by members of the Revolutionary Guard. Ali Khaleqi was reportedly arrested by members of the Revolutionary Guard on 1 September 2003. It is believed that their arrest was connected with their membership of the banned opposition group, *Hezb-e Mellat-e Iran* (Iran Nation Party). It is believed that Mehdi Said Asgari and Maziyar Aslani may be detained at Tehran's Evin Prison, but their whereabouts have not been confirmed. It is further reported that they have been denied access to their family and to legal representation. Ali Khaleqi's place of detention is reportedly not known. Furthermore, it is alleged that all three men have been tortured while in custody.

46. On 5 December 2003, the Special Rapporteur sent a joint urgent appeal 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 the situation of human rights defenders concerning Mr. **Nasser Zarafchan**, a lawyer of the Bar of Tehran. According to the information received, on 18 March 2002, Mr. Zarafchan was reportedly sentenced to three years in jail by the Military Tribunal of Tehran for "being in possession of weapons and alcohol" and to two years in prison for his statements to the press regarding the lawsuit of the alleged murders of intellectuals, which ended in January 2002. Following an appeal this decision was reportedly upheld by the Military Court of Tehran on 15 July 2002, and on 25 November 2003, Mr. Nasser Zarafchan's appeal to the Supreme Court was dismissed, thereby confirming his five-year prison sentence. It has been alleged that the case against him was fabricated by the police and that his sentence reportedly aimed at sanctioning his activity as a lawyer for the families of the intellectuals murdered by intelligence services agents in 1998. Reports indicate that Mr. Zarafchan is being detained at Evin Prison, and that he was not allowed to meet his lawyer, Mrs. Chirin Ebadi, during the process. There was concern that Nasser Zarafchan may have been targeted in retaliation for his work as a lawyer and a human rights defender.

Israel

Communications to the Government

47. On 28 February 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders regarding Mr. **Daoud Dirawi**, who was reportedly detained on the evening of 21 February 2003 in Jerusalem. According to the information received, Mr. Dirawi was taken by Israeli soldiers to Qeshle Police Station in Jerusalem. Fatmi Dirawi, his wife, was reportedly told by officers at the police station that her husband would be held for 24 hours and then brought before a judge. The following morning, she was reportedly told that her husband had been taken away by personnel from Shin Bet (the Israeli Secret Intelligence Service), that he would be detained for interrogation purposes for 12 days, that his place of detention would not be revealed and that he would not be able to meet with a lawyer during this period.

48. On 24 July 2003, the Special Rapporteur sent a joint communication with the Special Rapporteur on the question of torture regarding the detention of several individuals who are being held at the Russian Compound Detention Center (RCDC) in Jerusalem. According to the information received between 9 and 11 June 2003, **Yasser Ali Abu Dia**, **Bassam Sharawi** and **Yunes Abu-Sneineh** were reportedly arrested and held in incommunicado detention. It is reported that after their arrest they were held at a number of locations, first in the Etzion Camp, then transferred to the General Security Services (GSS) Interrogation Unit at RCDC. It is alleged that during that period they did not have access to a lawyer as an Order Prohibiting Meeting with Counsel had been in place and that a petition to the High Court of Justice for its removal had been rejected on 22 June 2003.

Communications from the Government

49. On 30 July 2003, the Government replied to the Special Rapporteurs' joint urgent appeal of 19 November 2002 (E/CN.4/2003/65/Add.1 para. 85). The Government advised that Dr. Diab was arrested on suspicion of involvement in terrorist activities against the State. As Dr. Diab is an American citizen, the United States authorities were notified immediately upon his arrest and detention. Upon examination of his case by the relevant Israeli authorities, Dr. Diab was released on 26 November 2002 and he left the country.

50. On 21 October 2003, the Government replied to the Special Rapporteurs' joint urgent appeal of 7 May 2002 (E/CN.4/2003/65/Add.1, para. 83). The Government stated that the three detainees are members of a terrorist cell and were arrested on 30 April 2003 and indicted by the Jerusalem District Court for their involvement in placing a cart of explosives in east Jerusalem on 29 April 2002. The detainees' meeting with their legal counsel was lawfully postponed in accordance with Israeli law (by order of the Supreme Court sitting as the High Court of Justice) on the basis that the meeting would impede efforts to find additional explosive devices and capture other members of the cell. According to the Government, since the expiration of the order postponing the meeting, the detainees have been free to confer with their lawyers.

Lebanon

Communications from the Government

51. On 10 February 2003 the Government replied to the Special Rapporteur's urgent appeal of 27 December 2002 (E/CN.4/2003/65/Add.1, para. 96) regarding the attempted murder of Judge Fadi Nashar and advised that according to the investigation conducted by the judicial authorities the attempted murder of Judge Nashar was an isolated incident with no political or judicial implications. This incident has been referred to a public hearing at which the defendant has been afforded all means of defence and freedom of speech.

52. On 9 September 2003 the Government sent additional information to the Special Rapporteur concerning Judge Fadi Nashar (E/CN.4/2003/65/Add.1, para. 96) in handwritten Arabic but it could not be translated for technical reasons. On 26 December 2003 the Government sent a typed copy of the court decision but unfortunately the decision could not be translated in time for this report but will be summarized in next year's report to the Commission.

Liberia

Communications to the Government

53. On 29 April 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on the situation of human rights defenders concerning **Sheikh K.M. Sackor**, the Executive Director of Humanist Watch, a non-governmental human rights organization, who was reportedly arrested on 25 July 2002 in Monrovia. According to the information received, on 23 October 2002, the Minister of National Defence announced that a military tribunal had convened and had concluded that he was a prisoner of war. It is reported that the consideration of his case by a military court was held in camera and in the absence of the accused and that no evidence was produced against him or tested before a competent, independent and impartial court. Fears have been expressed that the categorization of Sheikh K.M. Sackor as a prisoner of war has no legal foundation and that he is being kept in detention because of his alleged criticism of the Government and his activities in defence of human rights. It is further alleged that despite the announcement made by the Government on 28 October 2002 that he would be released under certain conditions, Sheikh K.M. Sackor is reportedly still held in incommunicado detention in an unknown place.

Malawi

Communications to the Government

54. On 26 June 2003, the Special Rapporteur sent a joint urgent appeal with the Chairman-Rapporteur of the Working Group on Arbitrary Detention regarding **Fahad al Bahli**, a Saudi national; **Ibrahim Habaci**, a Turkish citizen, **Arif Ulasam**, also a Turkish citizen; **Mahmud Sardar Issa**, a Sudanese national and **Khalifa Abdi Hassan**, a Kenyan national, who were reportedly arrested on 21 June 2003 in Blantyre in a joint operation by Malawi's National Intelligence Bureau and the United States Central Intelligence Agency. These five persons were all legal residents of Malawi and engaged in businesses and teaching at Islamic schools. It is alleged that they have not been charged with any offence, that their defence lawyers have been denied

access to them, and that they are being held in incommunicado detention in an unknown place. It has also been alleged that on 24 June 2003, the authorities failed to bring them before the Blantyre High Court, in spite of an express order from a High Court judge.

Mauritania

Communication envoyée

55. Le 18 juillet 2003, le Rapporteur spécial, conjointement avec la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme et le Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression, ont envoyé un appel urgent sur la suspension présumée pour trois ans du bâtonnier **Mahfoudh Ould Bettah** par le Conseil de l'Ordre de Mauritanie, le 7 juillet 2003. Le 27 juin 2002 à Nouakchott, M^e Bettah, bâtonnier depuis plus de 12 ans, connu pour son action en faveur des droits de l'homme, aurait été réélu bâtonnier de l'Ordre national des avocats de Mauritanie à la majorité absolue. Ce scrutin aurait été invalidé, en violation du Code de procédure pénal mauritanien, et un second tour aurait été organisé par les autorités. Des pressions auraient été exercées sur les avocats, et les partisans de M^e Bettah auraient préféré ne pas prendre part au vote, contestant les irrégularités de la procédure. Le 16 décembre 2002, un bâtonnier proche du pouvoir aurait été officiellement reconnu par le Parquet général. Le 24 avril 2003, le Conseil de l'Ordre aurait cité à comparaître M^e Bettah, aux motifs qu'il se considérerait bâtonnier en violation des résultats des élections du second tour de juin 2002. Cependant, l'audience du Conseil de discipline prévue pour le 12 mai 2003 pour la radiation de M^e Bettah ne se serait pas tenue et depuis, il n'aurait reçu aucune nouvelle citation. Sa suspension serait intervenue le 7 juillet 2003, sans convocation ni comparution. Des craintes ont été exprimées que cette suspension, qui intervient peu de temps avant l'ouverture d'une série de procès à l'encontre d'opposants politiques, ne constitue une tentative de restreindre l'indépendance du barreau.

Communication reçue

56. Le 28 août 2003, pour faire suite à la correspondance du Rapporteur spécial en date du 18 juillet 2003, le Gouvernement mauritanien renvoie aux faits déjà énoncés dans sa première réponse du 18 novembre 2002. Il rappelle qu'aucun recours n'a été introduit après la notification du procès-verbal des élections au poste de bâtonnier de l'Ordre national des avocats à tous les candidats, M^e Mahfoudh Ould Bettah compris. Les nouvelles instances de l'Ordre n'ont pris leurs fonctions qu'à expiration de ces délais de recours. Suite aux manquements répétés de l'intéressé et à son attitude intransigeante durant la tentative de médiation conduite par deux anciens bâtonniers, le Conseil a dû prendre des mesures disciplinaires à l'encontre de l'intéressé. Le gouvernement n'a à aucun moment interféré dans cette affaire, et rappelle son attachement à la notion de l'Etat de droit.

Mexico

Comunicación enviada

57. El 14 de febrero de 2003 el Relator Especial, junto con la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias, el Relator Especial sobre la cuestión de la tortura y la Representante especial del Secretario General sobre la situación de los defensores de los derechos humanos, envió un llamamiento urgente en relación con la situación de inseguridad en la que se encontrarían **Blanca Guadalupe López**, el detenido **Víctor Javier García** y su esposa, **Miriam García**, quienes habrían sido víctimas de una serie de amenazas y actos de intimidación. El

9 de noviembre de 2001 Víctor Javier García y **Gustavo González Meza**, esposo de Blanca Guadalupe, habrían sido detenidos por un grupo de personas no identificadas en Ciudad Juárez, Estado de Chihuahua. Según informes, habrían sido torturados hasta que confesaron el asesinato de ocho mujeres jóvenes en Ciudad Juárez. **Mario Escobedo Anaya**, abogado de Gustavo González Meza, habría muerto por disparos a manos de la policía judicial del Estado. Según informes oficiales, la policía habría actuado en defensa propia porque el abogado habría disparado primero. Según informes, esta versión se contradice con la de testigos, quienes afirmarían que Mario Escobedo Anaya no habría disparado a la policía. Dichos acontecimientos se han producido a pesar de que la Comisión Interamericana de Derechos Humanos (CIDH) dictó medidas de protección para Miriam García, Blanca Guadalupe y el abogado **Sergio Dante** en septiembre de 2002.

58. El 6 de marzo de 2003, el Relator Especial, junto con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos y el Relator Especial sobre la cuestión de la tortura, envió un llamamiento urgente respecto a la situación de **Samuel Alfonso Castellanos** y **Beatriz Casas Arellanas**, abogados de la organización Acción de los Cristianos para la Abolición de la Tortura (ACAT), en Oaxaca, **Carlos Cruz Mozo** e **Inocencio López Michel**, miembros de la Organización Indígena de Derechos Humanos de Oaxaca (OIDHO), quienes habrían sido objeto de amenazas de muerte mediante una carta encontrada el 1.º de marzo de 2003 en la oficina de ACAT-Oaxaca. El mismo día, tres desconocidos armados habrían seguido al Sr. Castellanos. Estas amenazas e intimidaciones habrían sido el objeto de una denuncia ante la Procuraduría General de Justicia del Estado (PGJE) y la Comisión Estatal de Derechos Humanos.

59. El 23 de abril de 2003, el Relator Especial, junto con la Representante Especial del Secretario General sobre la situación de los defensores de los derechos humanos, el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas y el Relator Especial sobre la cuestión de la tortura, envió un llamamiento urgente en relación con la situación de **Samuel Alfonso Castellanos Piñón**, quien habría recibido otra amenaza de muerte el 31 de marzo de 2003. La carta habría sido enviada a la oficina regional de ACAT. En la carta el abogado habría sido advertido de que si no dejaba de trabajar como abogado defensor de los acusados de la masacre de 26 indígenas en la población de Agua Fría, sería asesinado. Las amenazas habrían empezado cuando Samuel Alfonso Castellanos Piñón y sus colegas habrían denunciado públicamente que las personas acusadas de la masacre de Agua Fría fueron torturadas durante la investigación.

60. El 24 de julio de 2003, el Relator Especial, junto con la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias, envió un llamamiento urgente respecto de la situación de peligro en la cual se encontrarían **David Meza** y **Jesús Argueta**. De acuerdo con las informaciones recibidas, tras ser detenido David Meza habría sido torturado y obligado a firmar una confesión en la que se reconocía autor del asesinato. Al día siguiente se habría retractado de dicha confesión, afirmando que habría sido torturado y amenazado de muerte por agentes de policía. Asimismo, se informó de que mientras estaban bajo la custodia de la policía judicial de la PGJE no habrían podido acceder a familiares o a un abogado de su elección. En cuanto a Jesús Argueta, se informó de que habría sido sometido a una presión psicológica indebida para hacerle confesar el asesinato.

Respuestas del Gobierno

61. Mediante comunicaciones de 29 de abril y 9 de diciembre de 2003, el Gobierno proporcionó información en relación con el llamamiento urgente que el Relator Especial había enviado el 23 de abril de 2003 en relación con la situación de Samuel Alfonso Castellanos Piñón. Según el Gobierno, como consecuencia de la queja presentada por la Comisión Estatal de Derechos Humanos del Estado

de Oaxaca el 4 de marzo de 2003, se habría implementado una medida cautelar coordinada entre la PGJE y la Dirección de seguridad pública del Estado con el fin de brindar medidas de seguridad. También se informó de que la policía preventiva del Estado habría implementado rondines periódicos de vigilancia a las instalaciones de ACAT y OIDHO así como en los domicilios particulares de Samuel Alfonso Castellanos Piñón, Beatriz Casas Arellanes, Carlos Cruz Mozo e Inocencio López Michel. Asimismo se informó de que se habría ordenado la prestación de un servicio de escolta puesto a disposición de las mencionadas personas así como el inicio de las investigaciones correspondientes.

62. Mediante comunicaciones de 8 de agosto y 11 de noviembre de 2003, el Gobierno proporcionó información en relación con el llamamiento urgente que el Relator Especial había enviado el 24 de julio de 2003 en relación con la situación David Meza. Según el Gobierno, al rendir su declaración el Sr. Meza habría estado asistido en todo momento por un defensor de oficio y por un representante de derechos humanos. Asimismo se informó de que el propio Sr. Meza habría manifestado que no habría recibido ningún tipo de presión por parte de elementos de la PGJE .

63. Mediante comunicaciones de 28 de octubre y 17 de noviembre de 2003, el Gobierno proporcionó información en relación con el llamamiento urgente que el Relator Especial, junto con la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias, el Relator Especial sobre la cuestión de la tortura y la Representante especial del Secretario General sobre la situación de los defensores de los derechos humanos, había enviado el 14 de febrero de 2003 en relación con la situación de inseguridad en la que se encontrarían Blanca Guadalupe López, Víctor Javier García y su esposa Miriam García. Según el Gobierno, la orden de detención contra Víctor Javier García habría sido proferida con base en todos los elementos de prueba recabados y ante la presunta intención del implicado de abandonar la ciudad. Una vez detenido, habría sido conducido a las instalaciones de la subprocuraduría de la zona norte ubicadas en la calle Barranco Azul, y al rendir su declaración sin coacción alguna y asistido por un defensor, habría admitido su responsabilidad e involucrado en los hechos a Gustavo González Mesa, quien posteriormente habría sido detenido y conducido a las instalaciones de la mencionada subprocuraduría. Según el Gobierno, al dictar el auto de formal prisión el juez instructor habría destacado que la violencia encontrada en los cuerpos de los indiciados no constituía la razón por la cual hubieran firmado las primeras declaraciones y habría corroborado que al momento de la detención no habrían existido las lesiones que posteriormente se habrían exhibido en la declaración preparatoria. Ante este hecho el Gobierno no descarta que las lesiones hubiesen sido auto infligidas, ya que por la levedad de las mismas no habrían sido la causa para confesar los hechos. Asimismo, el hecho de que las declaraciones sean idénticas y congruentes con los hechos objetivos del caso permitiría inferir la autoría material de los hechos. El Gobierno también informó que el incidente de desvanecimiento de datos promovido por la defensa habría sido decretado improcedente en virtud de que las conclusiones del aludido dictamen no eran necesariamente el único medio de prueba para establecer la ocurrencia del delito. Asimismo se informó de que las etapas de instrucción y defensa habrían sido agotadas y que el ministerio público habría ofrecido pruebas tendientes a acreditar el pago de la reparación del daño. Con relación a la acción de amparo promovida por los detenidos, el Gobierno informó que el tribunal federal habría revocado la resolución que la concedía y habría procedido a negar el amparo y protección de la justicia federal, reiterando la demostración de la probable responsabilidad en la comisión de los delitos de violación agravada y homicidio. De esta manera se habrían confirmado las actuaciones ministeriales y las practicadas ante el tribunal. Con relación a las medidas cautelares respecto de Blanca Guadalupe López, Víctor Javier García y Myriam García, el Gobierno informó que a pesar de que dichas medidas habrían caducado, el Gobierno continuaría con los rondines policíacos en el exterior de las direcciones de los beneficiarios a fin de salvaguardar su integridad física. Asimismo

se estaría gestionando el traslado de Víctor Javier García a un centro de readaptación en Ciudad Juárez, Estado de Chihuahua.

64. Mediante comunicación del 10 de noviembre de 2003, el Gobierno proporcionó información adicional en relación con la muerte de **Digna Ochoa y Plácido**. Según el Gobierno, la fiscalía especial para el caso habría desarrollado la investigación mediante indagatorias con el fin de establecer las circunstancias relacionadas con el homicidio mediante tres líneas de investigación: militares, Guerrero y entorno social, familiar y personal. De acuerdo con la investigación, durante la vinculación de Digna Ochoa al instituto Pro Juárez, su participación como abogada habría sido reducida de manera tal que no existiría evidencia objetiva de que su intervención jurídica hubiese propiciado o causado afectación de los intereses de alguna persona o autoridad relacionada que permitiese establecer vinculación con su muerte. A lo anterior se adjunta la renuncia de Digna Ochoa al instituto Pro Juárez el 31 de octubre de 2000, en medio de un presunto ambiente de tensión y desacuerdos, primordialmente por su inconformidad de salir del país y por las supuestas dudas, por parte de algunos compañeros, respecto del último incidente de amenaza. Otras informaciones recaudadas habrían permitido afirmar que el arma de fuego hallada en el lugar de los hechos habría pertenecido a la víctima y según los testimonios en torno a la presencia de personas desconocidas ésta se encontraría justificada como un hecho ordinario y normal, pues se trata de un domicilio que cuenta con despachos de abogados por lo que resultaría cotidiana la entrada y salida de personas desconocidas para los propios habitantes. Con relación a las amenazas, el conocimiento de las averiguaciones que se adelantan por parte de la Procuraduría General de Justicia continúan en curso, sin embargo las inspecciones habrían permitido determinar la probabilidad de que el contenido de algunos de los escritos hallados o de los que se tiene conocimiento hubiese sido creado por la propia Digna Ochoa. Finalmente el Gobierno informó de que la decisión de la fiscal encargada del caso de no ejercer la acción penal al no demostrarse plenamente la existencia del delito de homicidio encontraría soporte en los análisis de peritos en materia de psicología y estudio psicodinámico de la personalidad. La mencionada resolución habría sido autorizada el 17 de septiembre de 2003 por parte del coordinador de agentes auxiliares del procurador.

65. Mediante comunicación del 11 noviembre de 2003 el Gobierno proporcionó información adicional concerniente al llamamiento urgente que el Relator Especial había enviado el 14 de febrero de 2003 en relación con la situación de Gustavo González Meza. Según el Gobierno, la causa de la muerte determinada en la autopsia fue: tromboembolia cardiopulmonar, coagulación intravascular diseminada y hemangiomas múltiples, los cuales habrían ocurrido después de la intervención quirúrgica efectuada con base en una valoración médica ordenada, 15 días antes del fallecimiento por el jefe del servicio medico de la prisión del Cereso mediante la cual se habría detectado la existencia de una hernia inguinal. Asimismo, de acuerdo con el testimonio de varios internos Gustavo González Meza habría manifestado su deseo de operar una hernia inguinal que padecía debido al dolor que la misma le generaba. Según el Gobierno, no se habrían apreciado huellas de violencia ni desorden en la celda del detenido al momento del hallazgo de su cuerpo.

Nicaragua

Respuestas del Gobierno

66. Mediante comunicación del 14 de enero de 2003, el Gobierno proporcionó información en relación con el llamamiento urgente que el Relator Especial, junto con la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias, envió el 7 de octubre de 2002 en relación con la situación de la juez **Juana Méndez Pérez**. Según el Gobierno, en el curso de las averiguaciones se

habría logrado la individualización de uno de los presuntos autores de las amenazas. Asimismo el Gobierno informó que en la actualidad la juez Juana Méndez Pérez y su familia contarían con doce agentes policiales encargados de brindar protección permanente.

Saudi Arabia

Communications to the Government

67. On 7 July 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of migrants regarding **Sarah Dematera**, citizen of the Philippines, who was sentenced to death by a judgement issued on 14 November 1993 for bludgeoning to death the wife of her employer, four days after starting her job as a domestic servant in Saudi Arabia. Ms. Dematera reportedly stated she was a witness to the killing and described the alleged perpetrator as an Arab male, who ordered her to move and cover the body, clean the murder weapon and wipe up the blood. She is said to have always protested her innocence. Ms. Dematera's trial took place on 4 October 1993 in Islamic Court No. 39/4 and, reportedly, she was not assisted by a lawyer or an interpreter during the court proceedings. She reportedly does not speak Arabic and has very limited fluency in English. It is also reported that the Philippines consular officials did not have access to her during the proceedings. According to the information received, the Saudi Ministry of Foreign Affairs informed that the execution has been postponed until the minor children of the deceased reach the age of majority when they can decide, along with other heirs, whether to request the execution of the accused. The family of the accused could accept monetary compensation in lieu of execution of the death sentence.

Communications from the Government

68. On 17 February 2003, the Government provided some preliminary comments regarding the Special Rapporteur's report on his mission to Saudi Arabia (E/CN.4/2003/65/Add. 3). The Government advised that with respect to certain recommendations contained in the report (paras. 109 (a) and (c), 110 (a) and (b) and 111(c), (f) and (g)) these recommendations were being applied, implemented or adopted.

69. On 30 October 2003, the Government replied to the Special Rapporteurs' joint urgent appeal of 7 July 2003 and advised that the fifty-fifth session of the Commission on Human Rights decided to discontinue consideration of this case. The Government further advised that information previously sent concerning an explanation of the procedure of the enforcement of the death penalty is a sufficient explanation concerning this case.

Serbia and Montenegro

Communications to the Government

70. On 23 May 2003, the Special Rapporteur sent a communication concerning detainees in Serbia who were denied prompt access to a lawyer as a result of amendments made on 11 April to the Law on Organized Crime passed during the state of emergency declared on 12 March 2003 (upon assassination of Prime Minister Zoran Djindjic) and subsequently lifted on 22 April. These amendments enabled the police to prevent detainees from contacting a lawyer for a period of up to two months. Reportedly, over one thousand people were detained on suspicion of involvement in

the assassination or in organized crime. These detainees are permitted access to counsel upon examination by an investigating judge but, according to the information received, only approximately three hundred detainees have appeared before an investigating judge.

Communications from the Government

71. On 16 December 2003, the Government replied to the Special Rapporteur's communication of 23 May 2003. The Government transmitted a response by the Public Prosecutor on the implementation of the Law on Organized Crime during the state of emergency in the Republic of Serbia. The response outlined in detail certain provisions of the Code of Criminal Procedure (CPC) defining the status of a person under investigation and his or her rights with regard to due process of the law, in particular the right of defence. Article 229 of CCP sets out the rights of an accused person upon arrest, including the right to counsel, within 24 hours, of one's own choice and pro bono if necessary and the length of time that a suspect can be held (48 hours) before being released if there is no investigation. According to the information received, provisions of CPC apply to organized crime offences unless otherwise provided for in the "Law on the organization and powers of governmental agencies in suppressing organized crime", which enables an authorized official of the Ministry of the Interior to hold persons in preventative detention, ordinarily lasting up to 24 hours, exceptionally for 30 more days, for information and evidence gathering. Article 15(d) of this law provides that the Minister responsible for home affairs may propose, after he is satisfied with the soundness of the recommendation made, that the detained person be held for a further period of 30 days. The Government advised that during the state of emergency, 2,264 persons were brought before investigative judges and 1,720 were remanded in custody. At the time of the response 1,286 detainees were no longer in detention and 434 persons were still in custody.

Sri Lanka

Communications to the Government

72. On 7 February 2003, the Special Rapporteur sent an urgent appeal concerning threats made against **two district judges**, the former President of the Bar Association, **Desmond Fernando**, and editor **Victor Ivan Ravaya**. According to the information received, on 24 January 2003 posters with slogans against the two district judges and Mr. Ravaya were pasted to buildings in the premises of the Supreme Court. There was concern that this threatening act might be related to the legal action instituted by the two district judges against the Chief Justice and the Judicial Service Commission on the grounds that they had obstructed the holding of the 60th anniversary celebrations of the Judicial Service Officers' Association as the posters were displayed on the same day as this case was being heard before the court.

73. On 4 April 2003, the Special Rapporteur sent a letter requesting a mission to Sri Lanka.

Communications from the Government

74. On 3 January 2003, the Government provided further information to the Special Rapporteurs' joint urgent appeal of 13 September 2002 (E/CN.4/2003/65/Add.1, paras. 174 and 175) regarding the case of **Nandani Sriyalantha Herath**. This response followed interim observations transmitted by the Government on 10 October 2002. According to the Government's response an investigation was initiated by the Criminal Investigations Department (CID) on 21 June 2002. The investigation revealed that Ms. Herath was arrested by the Wariyapola Police on 8 March

2002 and was allegedly tortured while in custody. On the advice of the Attorney-General, Ms. Herath was medically examined by a number of medical officers. The Attorney-General further instructed CID to conduct an investigation into the alleged threat to **Priyantha Gamage**, the counsel of Ms. Herath, and **Nishanta Kumara**, human rights activist, by the Wariyapola Police. Ms. Herath's lawyer allegedly stated that on or about 2 September 2002, four unknown persons had come to his house and enquired whether he was appearing for the case of Ms. Herath. He therefore allegedly believed that these persons had come to threaten him but did not make a complaint to the police as information available was not sufficient. Investigations were also reportedly conducted into the allegation of assault on Mr. Kumara. He reportedly only stated that, when he was returning home by bus on the night of 10 July 2002, a person called Sunil pointed a knife at him threateningly, asking whether he was the one working for Ms. Herath. Investigations were also conducted into the allegation of threats against two other lawyers who had previously appeared on behalf of Ms. Herath. The lawyer who had withdrawn from handling Ms. Herath's case is said to have stated that his client did not carry out his instructions properly and that therefore he, on his own initiative, withdrew from handling the case. He further allegedly informed that there were no threats or intimidation whatsoever from anyone in this respect. It was finally stated that the Attorney General was considering the possibility of pressing criminal charges against those responsible for the alleged torture of Ms. Herath.

Sudan

Communications to the Government

75. On 14 May 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding the death sentence of **Al-Taher Ahmad Hamdan**, a fifteen-year-old boy, by a court in Nyala, South Darfur state. According to the information received, Mr. Hamdan along with 25 other men were found guilty of killing 30 people and injuring a further 28 persons in a raid on the village of Singita, South Darfur, on 31 December 2002. It is alleged that under the procedures for special courts in South Darfur, which were reportedly set up by decree of the Wali of South Darfur in 2001, defendants are not permitted to be represented by lawyers except by special permission. Consequently, all 39 accused persons were reportedly defended by three lawyers who were not able to communicate with their clients. It is also reported that the lawyers were only able to access the case file five days before the trial opened on 17 March 2003. There were also concerns regarding the independence of the judges involved in the trial (one being from the police and another from the army) as the defence lawyers were reportedly only allowed to ask a limited number of questions to both the accused and witnesses whereas the prosecutors were able to ask an unlimited number of questions.

76. On 3 July 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding **Tibin Abdel Rahman Isaag, Alhadi Abaker Hammad, Abaker Ahrran, Abader Adam Bakheet, Isaag Abaker, Saeed Abdella Abaker, Mohamed Abdel Rahman Ibraheam, Easa Mohamed Adam and Mohamed Abdella Yahya**, who were reportedly sentenced to death by hanging by a Special Court in the city of Kass, South Darfur state. There was concern that the death penalty has been imposed following a judicial process that did not respect international standards for a fair trial. According to the information received, all nine men were reportedly arrested on 13 November 2002 and accused of taking part in an attack on the village of Alibya, 30 km west of Kass, which is populated by members of the Fur ethnic group. Seven people were reportedly killed and 10 injured when a militia of between 150 and 300 men attacked the village in 2002. It is reported that no other alleged

members of this militia have yet been arrested. The nine men reportedly deny having taken part in the attack. Of the 18 prosecution witnesses who testified at the trial, none could allegedly confirm that the accused had participated in the attack. According to the information received, the procedures for special courts in South Darfur, which were set up by decree of the *wali* (Governor) of South Darfur in 2001, do not permit the defendants to be defended by lawyers except by special permission. The nine defendants were reportedly represented by one lawyer, who was authorized to attend the trial as a "friend" and who was allegedly allowed to ask the prosecution witnesses only three or four questions during cross-examination. The men were reportedly found guilty by a panel of judges and were sentenced to death on 12 June. Allegedly, the nine people accused have appealed to the Special Appeal Court in Nyala. Should their appeal prove unsuccessful, they may then appeal to the Supreme Court in the capital Khartoum and then to the Constitutional Court.

77. On 8 July 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention regarding **Gazi Suleiman**, a lawyer and Chairperson of the Sudan Human Rights Group, who was reportedly arrested on 2 July 2003 by officers of the National Security Agency (NSA) and questioned about the Khartoum Declaration (*E'laan El Khartoum*). According to the information received, this document, which has been signed by 18 leading political parties, 14 civil society groups and 78 prominent individuals, gives support to the Intergovernmental Authority on Development (IGAD) Peace Process, the Machakos Protocol and the Cairo Declaration, which calls for Khartoum to become the national secular capital of the Sudan and for respect of all Sudanese citizens, irrespective of race, religion or political affiliation. Since his arrest, Mr. Suleiman's whereabouts are reportedly unknown.

Communications from the Government

78. On 3 July 2003 the Government sent a general response to the Special Rapporteurs' joint urgent appeal of 3 December 2002 (E/CN.4/2003/65/Add 1., para. 182), explaining its position on how Sudanese courts comply with the following regulations: 1. elderly people aged 70 years and over are not subject to execution; 2. a minor aged 18 years or less is not subject to execution or conscription into the armed forces; 3. a pregnant woman is subject to execution only after two years have elapsed since the delivery of her baby; 4. a woman breastfeeding her baby is liable to execution only after two years of breastfeeding.

79. On 29 July, 9 September and 22 October 2003, the Government responded to the Special Rapporteurs' urgent appeal of 8 July 2003 advising that lawyer Gazi Suleiman was released on 14 July 2003 and claimed he was well treated. The Government further advised that Mr. Suleiman was nominated for the 2003 United Nations Prize in the field of human rights.

80. On 27 October 2003, the Government replied to the Special Rapporteurs' urgent appeal of 14 May 2003 and advised that the juvenile Ahmad Amar Adam Hamdan was not sentenced to death since the Sudan Constitution does not provide for the death penalty to juveniles under 18 years of age. The Government stated that he was committed to a reformatory institution to serve a three-year term beginning on 26 April 2003 and that he was granted the right to appeal that verdict. The Government further submitted that, as far as the 23 detainees were concerned, they were sentenced to death but that all of them lodged an appeal with the Court of Appeal, which was being considered by the competent judicial authorities.

Swaziland

Press releases

81. On 15 April 2003 the Special Rapporteur issued a press release to express concern over the continued deterioration of the rule of law in Swaziland. The Special Rapporteur cited such recent developments as the resignation in protest at this situation of the Chief Justice of the High Court, Stanley Sapire, the effective demotion of Judge Thomas Masuku and the possible impending deportation of two senior members of the Law Society of Swaziland, including the President, Paul M. Shilubane, for holding dualnationality. He expressed further dismay that members of the Law Society of Swaziland, in an act of protest, decided not to appear in court before any judges recently appointed by the Government. The justice system cannot function in this environment of mistrust. Another issue of increasing concern is the continued use of the controversial 1998 Non-Bailable Offences Act, which denies magistrates the discretion to grant bail and which has led to a crisis of overcrowding in prisons. This situation puts additional strain on a prison system that is already at a breaking point. The Special Rapporteur welcomed the International Bar Association's report on Swaziland released on 2 April urging the Government to establish a national plan of action to address serious flaws in the justice system and to implement the urgently needed reforms, including a new draft constitution. The Special Rapporteur called upon the Government to take immediate steps to avert an impending crisis. Swaziland needs today, more than ever, a separation of powers between its executive and judicial branches of government in order to function as a fully democratic nation.

82. On 27 June 2003 the Special Rapporteur issued a press release to express concern over recent developments in Swaziland where a number of lawyers have been charged with contempt of court and at least two lawyers have been convicted for the same offence for refusing to appear before two recently appointed judges. He had also learnt that the entire executive body of the Law Society has been summoned to appear in court to answer charges of inciting lawyers not to appear before these judges. The Law Society adopted a resolution calling upon its lawyers not to appear before these judges because their appointments were constitutionally flawed. If indeed the appointments of these judges are constitutionally flawed then the Law Society is quite right in taking the position that it took. Flawed judicial appointments would certainly not give legal legitimacy to the courts in which the judges sit. Such courts would certainly undermine the rule of law. Judges should be mindful of the legitimacy of the courts in which they sit and should see to it that their appointments meet all the constitutional requirements instead of ordering lawyers to appear before their unconstitutional courts to answer charges of contempt of court for failing to appear before them. How can there be contempt of court when that court is not constitutional and has no legitimacy? The Special Rapporteur called upon the Government and its competent agencies to stop these threats and harassment of the Law Society and its lawyers and instead to take measures to review the appointments of the judges concerned. The charges against these lawyers and the executive body of the Law Society should be withdrawn. Further, the convictions against the lawyers who failed to appear before these courts should be set aside.

Syrian Arab Republic

Communications to the Government

83. On 16 April 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture and the Special Representative of the Secretary-General on

the situation of human rights defenders regarding **Hassan Saleh** and **Marwan 'Uthman** who have reportedly been transferred from the Criminal Section to the Political Section of 'Adra Prison, to the north of Damascus where they have allegedly been denied visits by lawyers, relatives and doctors. According to the information received, the Military Court recently changed the charge against both prisoners from "membership of an unauthorized organization" to "inciting sectarian strife", which meant that the case had to be referred to the Supreme State Security Court (SSSC), which, in turn, added the charge of "attempting to sever a part of the Syrian territories". It was alleged that in June 2002, SSSC indefinitely banned the defendants' lawyer Anwar al-Bunni from appearing before SSSC. Other lawyers are now said to be following the case and will represent Mr. Saleh and Mr. 'Uthman. The concern is that SSSC operates outside the ordinary criminal justice system and is only accountable to the Ministry of the Interior. In addition, its verdicts are not subject to appeal and its trials are not conducted in accordance with the Code of Criminal Procedure.

84. On 26 June 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention regarding **Abdel Rahman Shaghouri** who was reportedly arrested by secret police agents without warrant on 23 February 2003 at a checkpoint between the town of Qunaytra and Damascus. It is believed that his detention is linked to his accessing web sites and passing on information of a political nature about his country. It is reported that since his arrest he has been denied access to his lawyer and relatives and that he is currently held at the Military Security Branch prison in Damascus.

Communications from the Government

85. On 22 May 2003, the Government replied to the Special Rapporteurs' urgent appeal of 16 April 2003 and stated that Mr. Saleh and Mr. 'Uthman were members of an outlawed political party and were responsible for inciting acts of violence and unrest and for distributing literature that was critical of national policy and in breach of the Associations Act. Both men are being tried before the courts.

86. On 15 September 2003, the Government replied to the Special Rapporteurs' urgent appeal of 26 June 2003 and advised that the competent authorities had arrested Mr. Shaghuri for using the Internet and distributing articles to persons outside the country. The competent authorities believe that in view of the contents of those articles the accused was in breach of State security and was arraigned before the Higher State Security Court to admit or deny the charge.

Tajikistan

Communications to the Government

87. On 11 June 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the question of torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention regarding **Shamsuddin Shamsuddinov**, deputy chairman of the Islamic Renaissance Party of Tajikistan. It was reported that he was arrested on 30 May 2003 at his home in Chkalovsk, northern Tajikistan, by unknown persons. He was allegedly last seen at the Chkalovsk Airport. On 4 June 2003, the Chief Prosecutor, Sharif Kubanova, informed the press that Shamsuddin Shamsuddinov had been arrested and accused of having committed serious crimes. He is reportedly being held at a detention centre in Dushanbe, and has been permitted neither family visits nor access to legal counsel.

Tunisia

Communications envoyées

88. Par une lettre datée du 30 décembre 2002, qui a été omise dans le rapport précédant (E/CN.4/2003/65/Add.1) pour des raisons techniques, le Rapporteur spécial, conjointement avec le Rapporteur spécial sur la torture et la Représentante spéciale du Secrétaire général concernant la situation des défenseurs des droits de l'homme, ont informé le gouvernement qu'ils avaient reçu des renseignements selon lesquels **Mokhtar Yahiaoui**, juge, président du Centre tunisien pour l'indépendance de la justice (CTIJ) et membre du comité de liaison de l'Association internationale de solidarité avec les prisonniers politiques (AISPP), aurait été agressé et enlevé par des agents de police en civil le 11 décembre 2002, alors qu'il se rendait chez son avocat à Tunis. Il aurait été hospitalisé suite à cette agression. Par ailleurs, le cabinet de **M^e Bhiri**, son avocat et membre du bureau exécutif du CTIJ, et celui de sa femme, **M^e Akermi**, secrétaire générale de l'AISPP, auraient été encerclés par un important dispositif policier le 13 décembre 2002. A cette occasion, les deux avocats auraient été agressés par des agents de police, et **leur enfant de 13 ans** frappé au visage. **Lassad Joughri**, membre fondateur de l'AISPP, présent au moment des faits, aurait été frappé et hospitalisé. Plusieurs avocats, dont **M^{es} Abderraouf Ayadi, Sihem Rostom, Néjib Ben Youssef, Mokhtar Triffi, Mohamed Goumani** et **Youssef Rezui**, auraient par la suite également agressés ou autrement empêchés d'accéder au cabinet de leurs confrères, **M^{es} Bhiri** et **Akermi**. En outre, **M^e Samir Dillou**, membre fondateur de l'AISPP, aurait été arrêté à son cabinet le 13 décembre 2002 et interrogé pendant plusieurs heures. Il aurait reçu un coup à la tête qui lui aurait fait perdre connaissance. Finalement, il était allégué qu'un certain nombre de personnes, dont **Abdallah Zouari** et **M^e Said Mechichi**, auraient été empêchées de participer à la célébration du 54ème anniversaire de la Déclaration universelle des droits de l'homme, organisée par la Ligue tunisienne des droits de l'homme (LTDH) durant la soirée du 13 décembre 2002.

89. Le 21 janvier 2003, le Rapporteur spécial a envoyé un appel urgent relatif à l'agression dont auraient fait l'objet, le 13 décembre 2002, les avocats **Saïda Akremi Bhiri** et **Nourredine Bhiri**, ainsi que leurs enfants, par des prétendus policiers en civil non identifiés. Mme Bhiri aurait été conduite de force au Ministère de l'intérieur où elle aurait été longuement interrogée. Son bureau serait toujours encerclé par des agents de sécurité qui empêchent tout autre avocat d'y accéder. Deux autres avocats, **Samir Ben Amor** et **Samir Dilou**, auraient également été arrêtés le même jour. Le 17 décembre 2002, l'avocat **Mohamed Jmour**, en sa qualité de secrétaire général de l'Ordre national des avocats de Tunisie, aurait tenté d'accéder au bureau de Mme Akremi. Il aurait cependant été attaqué par quatre agents qui surveillaient le bâtiment. Ceux-ci l'auraient traîné dans la rue tout en le rouant de coups et en l'insultant. D'autres avocats, tels que **Anwar Oled Ali, Youssef Rezjai** et **M. Ayadi**, auraient également été violemment agressés peu après. Le bâtonnier de l'Ordre national des avocats de Tunisie, M. Bechir Essid, aurait, sans succès, protesté auprès du Ministère de l'intérieur contre ces agressions. Le Conseil national de l'Ordre aurait déposé une plainte nominative contre les auteurs de ces agissements. Le Parquet n'aurait cependant pas donné suite à cette affaire. Par ailleurs, le 19 janvier 2003, la tenue de l'assemblée générale extraordinaire du barreau tunisien convoquée par le Conseil national de l'Ordre pour discuter de la situation d'insécurité dans laquelle se trouvent les avocats, aurait été empêchée par certains de ses adhérents, membres actifs de la cellule professionnelle « Avocats » du parti au pouvoir, le RCD, qui en auraient bloqué l'entrée.

90. Le 22 juillet 2003, le Rapporteur spécial, conjointement 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 concernant la situation des défenseurs des droits de l'homme, ont envoyé un appel urgent relatives aux atteintes présumées portées à la liberté de réunion en Tunisie, ainsi que sur l'agression dont aurait fait l'objet M^e **Radhia Nasraoui**, avocate et présidente de l'Association de lutte contre la torture en Tunisie. Selon les informations reçues le 13 juillet 2003, un groupe de prétendus policiers en civil aurait empêché la tenue d'une réception organisée par la Ligue tunisienne des écrivains libres, en faisant un barrage aux abords du domicile de M. Jalloul Azzouna, écrivain et président de la Ligue, où devait avoir lieu la réception, obligeant ainsi tous les invités à faire demi-tour. Arrivés peu après, M^e Nasraoui et M. Azzouna auraient réussi à passer le barrage. C'est alors que M^e Nasraoui aurait été violemment frappée et M. Azzouna, qui tentait de la défendre, aurait été malmené. M^e Nasraoui, qui souffre de contusions aux bras, aurait décidé de porter plainte. Des craintes ont été exprimées que cette attaque ne soit une réponse à la création par M^e Nasraoui de l'Association de lutte contre la torture en Tunisie, dont l'enregistrement aurait été refusé le 26 juin dernier.

Communications reçues

91. Le 28 juillet 2003, le gouvernement a répondu qu'aucune plainte n'avait été déposée quant à la supposée agression de M. Yahyaoui (E/CN.4/2003/65/Add.1 par. 205 et 210 à 217), et en réponse à l'appel du Rapporteur spécial en date du 21 janvier 2003, il souligne d'abord de l'absence de preuves soutenant les accusations formulées contre les autorités. Il indique qu'aucune des associations visées n'a d'existence juridique légale; par conséquent, aucune personne physique ne peut prétendre les représenter. Il ajoute, d'une part, que l' AISPP a induit en erreur plusieurs ONG et défenseurs des droits de l'homme suite à une annonce erronée, les obligeant par la suite à exprimer des regrets et des excuses officielles. D'autre part, le LTDDH, par décision judiciaire, est uniquement limitée à l'organisation d'assemblées générales électorales. S'agissant du vol perpétré au préjudice du cabinet de M^e Noureddine Bhiri, le gouvernement déclare que les auteurs ont été interpellés. Quant à M. Yahyaoui, il ne s'est pas conformé aux démarches administratives requises par les autorités concernant le renouvellement de son passeport suite à la modification de sa situation professionnelle. Le gouvernement souligne également qu'aucune plainte personnelle n'a été déposée auprès des autorités à la suite des prétendues agressions dont ont été victimes toutes les personnes mentionnées dans cet appel urgent. Il stipule enfin que M. Adallah Zouari était un détenu de droit commun, et non d'opinion, suite à sa condamnation pour des infractions graves du même ordre. Sa libération conditionnelle, par décision judiciaire, ne s'étend pas à l'application de la peine complémentaire qui fixe son lieu de résidence, restreignant ainsi ses possibilités de déplacement.

Turkey

Communications to the Government

92. On 19 December 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on adequate housing, the Special Representative of the Secretary-General on the situation of human rights defenders and the Representative of the Secretary-General on internally displaced persons concerning **Sezgin Tanrikulu**, Chairman of Diyarbakir's Bar Association, **Sabahattin Korkmaz**, **Burhan Deyar** and **Habibe Deyar**, all lawyers of the Diyarbakir's Bar Association. According to the information received, on 5 December 2003 the Diyarbakir Heavy Penal Court held its second hearing against these four lawyers, who were indicted on 3 June 2003

under article 240 of the Turkish Penal Code and article 59/1-2 of the Law on the Legal Profession for “professional misconduct” and “abuse of legal responsibility” in connection with their representation on compensation cases of 96 villages from the Kulp and Lice Districts reportedly burned down in 1993 and 1994. The case was adjourned to 24 December and there was concern that it was launched against the lawyers to intimidate and prevent them from denouncing the forced evictions and house demolitions allegedly carried out against the Kurdish population living in southern and south-eastern Turkey.

Communications from the Government

93. On 13 August 2003, the Government provided additional information to the Special Rapporteurs’ joint urgent appeal of 23 May 2002 (E/CN.4/2003/65/Add. 1, paras. 219 and 223) and advised that Salih Yilar’s complaint of ill-treatment was investigated and as a result of this investigation a lawsuit was filed against two policemen and the case was ongoing.

94. On 24 December 2003, the Government provided additional information to the Special Rapporteurs’ joint urgent appeal of 28 June 2001 (E/CN.4/2002/72/Add.1, paras. 185 and 188) concerning 16 persons separately charged with publishing a book entitled *Freedom of Thought 2000*. With respect to the accused **Sadik Tasdogan**, he was acquitted by the Istanbul State Security Court (that decision was upheld by the Court of Cassation on 11 June 2001). The other 15 accused persons were acquitted on 7 September 2001 by the Turkish General Staff Military Court (that decision was not appealed and is therefore final). The other lawsuit filed against these 15 accused persons for “making propaganda for an armed terrorist organization through publication” contrary to the Turkish Penal Code, Anti-Terror Law and Press Law resulted in their acquittal on 29 September 2003 following recent legislative changes undertaken as part of the general reform process.

Turkmenistan

Communications to the Government

95. On 9 January 2003, the Special Rapporteur sent a communication concerning the conviction and sentencing of Turkmen opposition leader and former Foreign Minister **Boris Shikhmuradov** for the 25 November 2002 assassination attempt against President **Saparmurat Niazov**. Mr. Shikhmuradov was arrested on 25 December in Ashgabad and on 29 December the Supreme Court sentenced him, together with three exiled opposition leaders (Mr. Saparmurat Yklymov, the former deputy Minister of Agriculture; Mr. Khudaiberdy Orazov, the former head of the Central Bank of Turkmenistan; and Mr. Nurmukhamed Khanamov, a former ambassador to Turkey- all convicted in absentia), to the maximum prison term of 25 years for attempted assassination and coup d’état. Reportedly, the following day, the Halk Maslikhat, Turkmenistan’s supreme representative body, increased the sentence to life imprisonment, citing a new measure for those found guilty of treason. The trial and conviction of such serious charges were completed in four days after arrest and has raised concerns as to whether the accused were accorded due process recognized under international law. Of concern is the fact that Turkmenistan’s supreme representative body imposed a final sentence over the initial sentence handed down by the court.

96. On 28 January 2003, the Special Rapporteur sent an urgent appeal concerning the trials of many individuals in connection with the recent assassination attempt against the President of Turkmenistan. According to the information received, on 13 January 2003, the trial of

32 individuals, including **Batyr Berdyev, Amanmukhammet Yklymov and Orazmamed Yklymov**, commenced. It is alleged that the defendants were not given adequate time and facilities for the preparation of their defence and for communicating with their legal representative. In particular, it is alleged that the defendants' lawyers were not given sufficient notice of the date of commencement of legal proceedings, that the defendants were not permitted to review the evidence adduced against them and that several lawyers stated in court that they were ashamed of representing their clients. No information has been published about the names of the defendants who appeared before the court, the nature of the charges brought against them and the place of the trial.

97. On 6 June 2003, the Special Rapporteur sent a letter requesting a mission to Turkmenistan.

Communications from the Government

98. On 12 February 2003 the Government replied to the Special Rapporteur's communications of 9 and 28 January 2003 concerning the trial of a number of individuals for committing terrorist acts and making an attempt on the life of the President of Turkmenistan. The Government advised that the investigation was conducted in strict conformity with national legislation and norms of international law. Each defendant was afforded legal representation and the services of a translator and was able to prepare a full defence. The Government believes the investigation was conducted in a transparent manner and initiated extradition proceedings for accused persons who were foreign citizens. The Government further advised that the results of the investigation were reported to the highest representative body in the country, the People's Council of Turkmenistan, which made a political and legal evaluation of the events and that important State decisions aimed at strengthening the security of the country were adopted. The Government claims that the allegations are unsubstantiated and based on false interpretations.

Uganda

Communications to the Government

99. On 13 October 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression regarding information about a public announcement by the Law Council of Uganda made in August 2003, in which the Council stated that it would enforce regulation 22 of the Advocates (Professional Conduct) Regulations of 1977 which reportedly states that all lawyers are to refrain from participating in radio talk shows, making public comments, writing articles or issuing press statements on legal or constitutional matters. Reportedly, the only way to be exempt from this regulation would be to obtain express authorization from the Council, a body which is under the authority of the Ministry of Justice. There is concern that lawyers may be restricted from exercising their right to freedom of expression in their professional capacity.

United States of America

Communications to the Government

100. On 16 June 2003, the Special Rapporteur sent a joint communication with the Special Rapporteur on the question of torture concerning **Jose Padilla**, an American citizen, who has been held incommunicado in military custody in the United States of America as "enemy combatant" without charge, trial or access to his lawyer or family for over one year. According to the

information received, Mr. Padilla was arrested at Chicago Airport on 8 May 2002 and originally held as a "material witness" by the Department of Justice during a grand jury probe into an alleged conspiracy to detonate a radioactive "dirty bomb" on a city in the United States of America. However, on 9 June 2002, the Government reportedly transferred him from the jurisdiction of the criminal justice system to military custody and he has not had access to a lawyer. The transfer to military custody was made on the basis of an order by President Bush designating Mr. Padilla to be an "enemy combatant" closely associated with Al-Qaida, whose detention it said was necessary to prevent him from aiding an attack on the United States. He has been held since that date in solitary confinement on a naval base in Charleston, South Carolina. In December 2002, a United States district court upheld the President's authority to detain enemy combatants, even if American citizens, with a limited right of judicial review. However, the court also ruled that Mr. Padilla was entitled to have consultations with his lawyer in order to respond to the Government's case. The Government appealed, arguing that granting Mr. Padilla access to an attorney would hinder its ongoing process of interrogating him. He reportedly remains without access to his lawyer pending the Government's appeal.

101. On 11 July 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding **Darnell Williams** who, according to our information, was due to be executed by the State of Indiana on 1 August 2003. It is reported that he is seeking commutation of his death sentence and is asking the Governor for a reprieve for the purposes of DNA testing. Mr. Williams has, according to the information received, always maintained that, while he was involved in the crime, he was not present when the shooting occurred and that appeal courts have agreed that his lawyers' performance on this issue was deficient but stated it did not affect the outcome of the trial. At the trial, the prosecution presented the report of a serologist, who had found three blood spots on Mr. Williams' shorts. However, defence lawyers did not hire their own experts to evaluate the blood spots, so their cross-examination with regard to this piece of evidence was limited. Newly discovered information from the State serologist's notes now suggests that the blood may not have come from the victims. A DNA test on these blood spots could therefore support Mr. Williams' claim that he was not present at the shooting. Mr. Williams appeal lawyers have sought to have the blood subjected to DNA testing and the trial prosecutor supports this request. In addition, a witness with exonerating evidence was reportedly interviewed by the prosecution, but Mr. Williams' defence lawyers did not review this evidence despite being aware of the interview tape and therefore this witness did not testify at the trial. According to the information received, appeals against Mr. Williams' death sentence on the grounds of failure by his lawyers to present the jury with evidence of his alleged limited mental competence have been unsuccessful.

102. On 19 December 2003, the Special Rapporteur sent another joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding **Darnell Williams**. According to the information received, the late Governor, Frank O'Bannon, stopped Mr. Williams' scheduled execution on 1 August 2003 in order to allow modern DNA blood testing. Reportedly, the DNA results, released on 12 December 2003, support Mr. Williams' claim that the blood did not come from the victims. The blood evidence was reportedly the key element in the claim that Mr. Williams was at the scene of the shooting, yet despite these new developments, a spokesperson for the Attorney- General reportedly stated that the State of Indiana would press ahead with the execution of Mr. Williams.

Communications from the Government

103. On 1 April 2003, the Government sent a detailed reply to the Special Rapporteurs' joint urgent appeal of 18 September 2002 (E/CN.4/2003/85/Add.1, paras. 254-273) regarding cases of detention of many individuals, particularly non-US nationals, since 11 September 2001. The Government responded that it would refrain from disclosing information on individual cases as the release of this information could jeopardize the conduct of ongoing investigations, the safety and privacy of aliens and public safety and interest. The Government did, however, advise that since 11 September 2001, the United States had mobilized unprecedented resources to prevent further attacks against the country while at the same time safeguarding civil liberties. To this end, the United States Department of Justice has used the full weight of the federal justice system as a method of neutralizing potential terrorist threats by prosecuting those who violated the law and thereby posed a national security risk. In some cases, the Department of Justice had prosecuted individuals for crimes not directly related to terrorism, including enforcement of its immigration laws. In this regard, the investigations in connection with the events of 11 September 2001 led to the arrest and detention of many aliens found in the United States in violation of the Immigration and Nationality Act). Their treatment while in INS custody was consistent with the protection aliens are afforded under United States law.

104. As for the concerns raised on the non-disclosure of a list of individuals detained on immigration law violations or deemed by the Government to have associations or information relating to the events of 11 September and related terrorist investigations, it was reported by the Government that such a policy was based on the professional judgement of senior law enforcement officials, including those from the Criminal Division of the Department of Justice and the FBI with leading roles in 11 September investigations. Disclosure of the identities of detainees would have endangered the ongoing investigations, as well as the detainees themselves, and could have revealed sources and methods of investigation to terrorist organizations.

105. Several measures had been taken to guarantee the nation's continued security and integrity of the 11 September investigations. These include, inter alia, refraining from publicly disclosing some information regarding the detainees and closing their immigration court hearings to the public for as long as the aliens concerned remained of interest to the investigations. Making public such information could have revealed road maps of the investigations and allowed terrorist organizations to alter further attacks plan, to intimidate witnesses and to fabricate evidence.

106. In responding to concerns expressed by the Special Rapporteurs about the resulting detention of non-US nationals, the Government provided some details regarding the number of individuals detained in INS custody as a result of 11 September investigations: as at 28 March 2003, INS had detained 766 aliens on immigration law violations at some time since the events of 11 September 2001 and in connection with the investigations related to those events. Of these 766, 505 had been deported or had left the country voluntarily. Only 1 of these aliens remained in custody as part of active 11 September investigations.

107. As for individuals held on immigration charges in the custody of the Department of Homeland Security (DHS), they were entitled to due process protections in accordance with United States law. All detainees had been notified of the charges against them and were given the right to contest those charges in some type of an immigration proceeding. They were also given lists of pro bono counsels and advised of their right to retain a lawyer at no expense to the Government. They

were also given the opportunity to seek release on bail to continue to prepare their cases, to examine the evidence against them and to apply for discretionary relief from removal, as well as the right of appeal to the Board of Immigration Appeals and to judicial review in the federal courts. In addition, the United States adhered to its obligations under the Vienna Convention on Consular Relations to notify aliens of their rights to consular notification, communication and access.

Press releases

108. On 12 March 2003 the Special Rapporteur issued a press release about the effects of the ruling by the United States' Court of Appeals for the District of Columbia Circuit that Guantanamo Bay detainees cannot invoke the jurisdiction of United States courts because the territory is not part of the country. The Special Rapporteur stated that the decision could set a dangerous precedent as it appears to imply that a Government of a sovereign State could lease a piece of land from a neighbouring State, set up a detention camp, fully operate and control it, arrest suspects of terrorism from other jurisdictions, send them to this camp, deny them their legal rights -- including principles of due process generally granted to its own citizens -- on grounds that the camp is physically outside its jurisdiction. By such conduct, the Government of the United States, in this case, will be seen as systematically evading the application of domestic and international law so as to deny these suspects their legal rights. Detention without trial offends the first principle of the rule of law. The Special Rapporteur stated that the implications of this decision are far-reaching as the war on terrorism cannot possibly be won by denial of legal rights, including fundamental principles of due process for those merely suspected of terrorism.

109. On 7 July 2003, the Special Rapporteur issued a press release to express alarm at the implementation by the Government of the United States of the Military Order (Detention, Treatment and Trial of Certain Non-citizens in the War against Terrorism) President Bush signed on 13 November 2001. Pursuant to this Order, six detainees may be brought to trial before a military commission. These detainees have been described as suspected members of Al-Qaida or "otherwise involved in terrorism directed against the United States". In proceeding to apply these drastic measures to counter terrorism, the Government of the United States is seen as defying United Nations resolutions, including General Assembly resolution 57/219 of 18 December 2002 and Security Council resolution 1456 of 20 January 2003. These resolutions reiterate and affirm that States must ensure that any measures taken to combat terrorism must be in accordance with international law, including international human rights, refugee and humanitarian law.

Uruguay

Comunicación enviada

110. El 26 de febrero de 2003, el Relator Especial, junto con la Relatora Especial sobre la violencia contra la mujer, sus causas y sus consecuencias, envió un llamamiento urgente en relación con el supuesto traslado por parte de la Suprema Corte de Justicia de la juez penal **Ana Lima** a una sede laboral. La Sra. Lima habría participado en programas de formación en derechos humanos para jueces y habría aplicado sus conocimientos en la materia en sus funciones judiciales. Uno de estos casos sería el de la violación de una menor, en el cual con base en las pruebas médicas solicitadas por la juez, se habría sentenciado a cuatro jóvenes. Posteriormente, bajo un procedimiento especial, la Suprema Corte de Justicia habría perdonado a los sentenciados, poniéndolos en libertad sin haber revocado la condena ni la sentencia. La Corte no habría brindado explicaciones respecto a tal decisión. El 9 de noviembre de 2002, la Sra. Lima habría tratado el caso relativo a la solicitud del

Gobierno de España para la extradición de un ciudadano de ese país. El mes siguiente, la Corte habría decidido transferir a la juez a una sede laboral. Esta decisión habría sido percibida como una medida de represalia y castigo en contra de la juez por su implicación en los casos arriba mencionados y como una medida de alerta a otros miembros del poder judicial. Como protesta, la Sra. Lima habría presentado su dimisión.

111. Mediante comunicación del 14 de abril 2003 el Relator Especial expresó al Gobierno de Uruguay su preocupación ante la publicación de la carta de alegación de fecha 26 de febrero 2003 enviada juntamente con la Relatora Especial sobre la violencia contra la mujer, sus causas y sus consecuencias, la cual habría sido difundida en el diario *El Observador* el día 9 de abril 2003.

Respuestas del Gobierno

112. Mediante comunicación del 14 de mayo de 2003, el Gobierno proporcionó información en relación con el llamamiento urgente que el Relator Especial, junto con la Relatora Especial sobre la violencia contra la mujer, sus causas y sus consecuencias, había enviado el 26 de febrero de 2003 sobre el supuesto traslado por parte de la Suprema Corte de Justicia de la juez penal **Ana Lima** a una sede laboral. Según el Gobierno, la decisión respecto al traslado de la Sra. Lima habría tenido como base razones de legalidad y de un mejor servicio de administración de justicia. Asimismo el Gobierno informó de que la decisión no tendría carácter de sanción y no habría representado la modificación de su categoría, rango o retribución ni tampoco del lugar de asignación de las funciones. El Gobierno también informó que la juez habría alegado razones personales como motivo de su renuncia sin que hubiese acudido a la vía contencioso anulatoria para obtener una eventual reparación de los daños que se habrían causado con la decisión administrativa.

113. Mediante comunicación del 15 de mayo de 2003, el Gobierno proporcionó información en relación con la publicación de la carta de alegación de fecha 26 de febrero 2003 enviada juntamente con la Relatora Especial sobre la violencia contra la mujer, sus causas y sus consecuencias. Según el Gobierno, se desconocerían los medios a través de los cuales dicha comunicación se habría hecho pública.

Uzbekistan

Communications to the Government

114. On 11 June 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the question of torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention regarding **Khamila Ismailova**, who was reportedly severely beaten by unknown attackers in her home in Shurchi, Surkhandaria Province, on 13 May 2003. Her husband, **Ergash Choriev**, who was also allegedly assaulted during this incident, reportedly died as a result of the beatings. Ms. Ismailova was allegedly taken to Termez Prison on 3 June 2003 and not allowed to see her lawyer until the following day and only in the presence of the prosecutor. It is believed Ms. Ismailova eventually signed a confession to the murder of her husband and that the police claimed that her injuries were self-inflicted. It is further reported that on 9 June 2003 a new lawyer hired by the family was denied access to her by the Chief of the Investigation Department at the Surkhandaria Province Prosecutor's office. Although according to the domestic law, charges must be brought against a person within 72 hours of his or her detention, it was reportedly not done so in this case.

115. On 4 July 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention regarding **Hairulla Ernazarov**, a citizen of Samarkand Oblast, Narpai region and former journalist for "Halk Suzi" and "Sport" newspapers, who was reportedly arrested on 28 April 2003 by officers of the Service of National Security (SNS) in his apartment in Tashkent City without being given any reason at that time. Three days later, his wife was allegedly informed by a SNS officer that he had been wanted for three years for distributing audio cassettes of an Islamic preacher, Abduvalli-kori. Hairulla Ernazarov was reportedly taken to the Isolation- Investigation Centre of Samarkand SNS. It is alleged that a court proceeding against him began on 17 June 2003. His lawyers were allegedly not permitted to participate in the judicial proceedings. It is believed that he was charged with being connected with "Vahhabism" and being a member of the Hizb-Ut-Tahrir Party. Since his arrest he has reportedly not been allowed to receive visits from his relatives or from his lawyers.

116. On 23 May 2003, the Special Rapporteur sent a letter requesting a mission to Uzbekistan.

Communications from the Government

117. On 5 August 2003 the Government replied to the Special Rapporteur's communication of 4 July 2003. The Government confirmed that **Hairulla Ernazarov** was arrested on 14 May 2003 and that his trial was still ongoing and advised that during the pre-trial investigation Mr. Ernazarov was represented by legal counsel from the Bagishamal district lawyers' association and due process was ensured by the judicial officials of the Samarkand Province. By way of background, the Government advised that on 28 May 2001 a warrant was issued for the arrest of Mr. Ernazarov, who evaded prosecution for nearly two years. The Government stated that Mr. Ernazarov was a member of an unlawful criminal organization engaged in criminal activities in the Tashkent Province designed to undermine public safety and promote extremism and separatism with the aim of overthrowing the Government.

118. On 19 August 2003 the Government replied to the Special Rapporteur's communication of 11 June 2003 with regard to the case of **Khalima Ismailova**. The Government stated that on 13 May 2003 the Surhan-Darya provincial procurator's office instituted criminal proceedings relating to this matter and that the case was being investigated on the basis of evidence of offences covered by articles 25 and 97 of the Criminal Code of the Republic of Uzbekistan. According to the Government's response, in the course of the investigation, a number of different possible scenarios were considered, including that Ismailova was involved in the murder and, on 3 June 2003, she was arrested as a suspect under article 221 of the Code of Criminal Procedure of the Republic of Uzbekistan and, in accordance with article 243 of the same code, she was remanded in custody on 6 June 2003. She was allegedly released from custody on 16 June 2003 as there was insufficient evidence of her involvement in the offence in question. The Government affirmed that, from 3 June 2003, the date of her arrest, the investigative actions relating to her were conducted with the representation of I. Toshkulov, a lawyer from the town of Termiz, and that since 9 June 2003, she was represented by a lawyer named M. Bozorov who was assigned by her family. According to the Government, during the course of the investigation, she never complained about any unlawful methods being used against her. The Government stated that the allegation that Ms. Ismailova was forced to sign a confession to the murder while in custody was unfounded. The Government advised that the Office of the Procurator-General was monitoring the progress of the investigation.

Venezuela

Comunicación enviada

119. El 8 de octubre de 2003, el Relator Especial envió una comunicación en relación con el trámite de aprobación del proyecto de la ley orgánica del Tribunal Supremo de Justicia sometido a la Asamblea Nacional para su discusión definitiva. Según los informes, existirían múltiples inquietudes en cuanto a la constitucionalidad de algunas de las disposiciones contenidas en el proyecto, las cuales, en el caso de ser aprobadas y ejecutadas de manera inmediata, podrían afectar de manera negativa la independencia e integridad del sistema judicial venezolano. Tales disposiciones estarían relacionadas con el aumento del número de magistrados del tribunal supremo; el otorgamiento de facultades para que la Asamblea Nacional por mayoría absoluta pueda aumentar o disminuir el número de magistrados de las salas del Tribunal Supremo de Justicia, así como la facultad para que dicha corporación pueda decretar, por simple mayoría, la nulidad del nombramiento de magistrados del Tribunal Supremo de Justicia. Asimismo, se habría expresado preocupación en relación con los hechos ocurridos el 23 de septiembre de 2003 en la sede de la Corte Primera de lo Contencioso Administrativo. De acuerdo con las informaciones recibidas, funcionarios de la Dirección de los servicios de inteligencia y prevención del Ministerio de Relaciones Interiores y Justicia, portando armas de alto calibre, habrían allanado y ocupado por más de seis horas la sede de la Corte Primera, con base en una orden judicial emitida contra uno de sus funcionarios por el presunto delito de portación ilegítima de documentos judiciales. Se alega que este hecho podría constituir una reacción ante algunas decisiones de la Corte Primera adversas al Gobierno, en casos tales como los de la *Militarización de la ciudad de Caracas*, el 2 de diciembre de 2002; el caso *Policía Metropolitana*, el 13 de diciembre de 2002; el caso *UNAPETROL*, el 12 de julio de 2002 y el caso *Médicos cubanos*, el 21 de agosto de 2003, decisiones ante las cuales el Ejecutivo habría asumido una posición política encaminada a descalificar a la Corte y llamar públicamente al desacato de sus decisiones e irrespeto de sus magistrados.

Viet Nam

Communications to the Government

120. On 8 January 2003, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General on the situation of human rights defenders regarding **Nguyen Khac Toan**. According to the information received, on 20 December 2002 Nguyen Khac Toan was sentenced to 12 years in prison and to three years probationary detention by the People's Court in Hanoi. According to the information received, Mr. Nguyen's conviction and sentencing might be related to the assistance he gave to farmers' representatives in drafting petitions to the National Assembly and to the Government protesting against State confiscation of land and for sharing information about these demonstrations and protests, via the Internet, with Vietnamese human rights groups overseas. It was reported that Mr. Nguyen was charged with "espionage" (article 80 of the Vietnamese Criminal Code). The trial was reportedly closed to the public. According to the information received, his lawyer, Tran Lam, was only able to meet his client twice before the trial and he was not allowed to speak to him in private. Nguyen Khac Taon is detained in Thanh Liet Prison near Hanoi.

Communications from the Government

121. On 12 March 2003, the Government replied to the Special Rapporteurs' joint urgent appeal of 8 January 2003 and stated that Mr. Nguyen Khac Toan was arrested because of his acts of espionage which violated the very national security of Viet Nam and was not at all related to the assistance he gave to farmers' representatives in drafting petitions to the National Assembly and to the Government. The Government further advised that Mr. Nguyen's trial was held publicly on 20 December 2002 by the Hanoi People's Court and he was fully guaranteed his rights to a legal defence of his choice.

Yemen

Communications to the Government

122. On 23 May 2003, the Special Rapporteur sent a communication regarding the explosion that occurred on 14 May 2003 in a courtroom in Ibb causing injuries to Judge **Hizam Mohammed Mufadhal**. According to the information received, the explosion occurred at the same court where Mr. Abed Abdulrazzak Kamel was sentenced to death on 10 May for the murder of three doctors. However, it does not appear that this attack is linked to Judge Mufadhal as he was not the presiding judge. On 14 May Judge Mufadhal was reviewing a number of cases when family members connected to one case entered the court and requested that their case be reviewed on that day. Judge Mufadhal refused to reschedule the case that was set to be heard the week after. Five minutes later the explosion occurred. The judge is said to be in relatively stable condition in hospital. A number of people are reported to have been arrested.

Communications from the Government

123. On 12 December 2003, the Government replied to the Special Rapporteur's communication of 23 May 2003 and stated that the explosion was an act of sabotage and a criminal act designed to disturb security and stability in general and that the independence of the judiciary was not a target. The Attorney-General is carrying out an inquiry and some individuals have been arrested and further investigations are ongoing. Inquiries with security agents have resulted in providing more security and protection for the courthouse. In addition, more measures have been taken to ensure security in all courts in the Republic and to provide lawyers with a secure environment so that they are not disturbed or influenced in any way.

Zimbabwe

Communications to the Government

124. On 17 October 2003 the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression regarding an alleged attack against **Beatrice Mtetwa**, a council member of the Law Society of Zimbabwe, who frequently takes up human rights cases, including some involving the freedom of the press. According to the information received, on 1 October 2003, an attempt was allegedly made to break into Ms. Mtetwa's car and on 12 October 2003, Ms. Mtetwa was allegedly attacked in her car and had a number of personal items stolen. She reportedly called the police about the robbery. On their arrival, the police allegedly accused her of driving while being intoxicated with alcohol and

reportedly took her to Borrowdale Police Station. According to the information received, on the way to the police station Ms. Mtetwa was allegedly beaten by the officers. For three hours while in custody at the police station, she was reportedly also continuously beaten. On 16 October 2003, Ms. Mtetwa reportedly returned to the police station and presented her written statement relating to her charge of assault against the officer in charge. Concern has been expressed that Ms. Mtetwa may have been targeted on account of her human rights work.

Communications from the Government

125. On 25 November 2003, the Government replied to the Special Rapporteur's communication of 17 October 2003 and advised that according to a letter written by the Police Commissioner, Ms. Mtetwa arrived at the police station alleging a potential car jacking but this was apparently not supported by other witnesses' statements. Further, the police claim that Ms. Mtetwa acted in a hostile and possibly intoxicated manner and allegedly assaulted a police officer. According to the police, this police officer pressed charges and an ongoing internal investigation was immediately conducted to establish the circumstances and manner in which the officer handled the matter. The Police Commissioner gave assurances that if a member of the police force has acted outside the bounds of the law there is the possibility of a criminal prosecution or an internal disciplinary trial, possibly resulting in a dismissal.

Press releases

126. On 19 February 2003 the Special Rapporteur issued a press release to express concern over the arrest and detention of another judge in Zimbabwe. On 17 February, Justice **Benjamin Paradza** was arrested and charged with an alleged obstruction of justice and released on bail. In January 2003, soon after Justice Paradza delivered his judgement on the Harare Mayor Elias Mudzuri case, ordering his release, he was intimidated and threatened with reprisal by police intelligence officers. The Government is reported to have alleged that Justice Paradza had attempted to influence a fellow judge in a case involving an application for the release of a passport of an accused in a murder trial. Last September 2002, another judge, retired Judge Blackie was arrested and detained and subsequently charged with obstruction of justice. Prior to his retirement, Judge Blackie had convicted and sentenced the country's Minister of Justice to three months' imprisonment for contempt of court. The Government alleged that Judge Blackie had delivered a judgement quashing an appeal against a jail term imposed on a white woman without concurring with the other judge who sat on the appeal with him. What is common and so blatant about the alleged charges against Justice Paradza and retired Judge Blackie is that fellow judges are used as prime witnesses to prove those charges. While judges are not above the law, subjecting them to arrest and detention in such humiliating circumstances is tantamount to intimidation of the gravest kind. This leaves a chilling effect on the independence of the judiciary. This latest development is but one in a series of institutional and personal attacks on the judiciary and its independent judges over the past two years, which have resulted in the resignations of several senior judges and which have left Zimbabwe's rule of law in tatters. When judges can be set against one another, then intimidated with arrest, detention and criminal prosecution there is no hope for the rule of law, which is the cornerstone of democracy. It paves the way for governmental lawlessness.

127. On 3 July 2003, the Special Rapporteur issued a press release to welcome the withdrawal of all criminal charges against retired Judge Fergus Blackie by the Public Prosecutor in Zimbabwe. This is a step in the right direction towards respect for the independence of the judiciary and the rule of law in Zimbabwe. The Special Rapporteur urged the Public Prosecutor similarly to withdraw the

criminal charge preferred against Justice Benjamin Paradza on 18 February 2003 for alleged obstruction of justice.

Palestinian Authority

Communications to the Government

128. On 6 June 2003, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions regarding Sergeant **Rani Darwish Khalil Shaqqura**, a member of the Palestinian security services from Jabalya refugee camp in the Gaza Strip, who was reportedly sentenced to death by firing squad on 17 May 2003 by a special military court. It is reported that his death sentence must be approved by President Yasser Arafat, after which he could be executed at any time. According to the information received, Mr. Shaqqura was found guilty of the murder on 15 April 2003 of another member of the Palestinian security services, Captain Hani 'Atiya al-Madhoun. It appears there was no legal basis for convening a military court, since such courts usually hear cases of security service employees in connection with offences committed during or as part of their work. However, in this case, the killing was not carried out in the context of Mr. Shaqqura's work in the security services. It was reported that the charge sheet was not presented to the prosecutor until the court reconvened for the second time, on 26 April, and did not bear the signature and stamp of the civilian general prosecutor who had carried out the investigation, making it invalid. The defence lawyer reportedly objected to these and other irregularities. Nevertheless, the court overruled all the points he raised and the defence lawyer reportedly withdrew from the case in protest. Consequently, the court allegedly appointed two security officers to act as defence lawyers for Mr. Shaqqura. However, despite their law degree they are reportedly not registered with the Bar Association and do not practise law. They allegedly received the documents relating to the case only hours before the hearing. According to reports, no witnesses were called to testify in Mr. Shaqqura's defence.
