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**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,
Dato' Param Cumaraswamy, submitted in accordance with
Commission on Human Rights resolution 2002/43**

Addendum

Situations in specific countries or territories *

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

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Introduction

1. This report contains brief summaries of the urgent appeals and communications transmitted to governmental authorities between 1 December 2001 and 31 December 2002, as well as replies to the allegations received between 1 January 2002 and 31 December 2002. In addition, the Special Rapporteur takes note in this chapter of the activities of other mechanisms which are related to his mandate. Where appropriate, the Special Rapporteur has briefly described developments in particular countries or territories even when no communications have been exchanged and, where possible, updated the facts up to the time of submission of this report. Where he has deemed it necessary, the Special Rapporteur has included his own observations. He wishes to emphasize that the appeals and communications reflected in this chapter are based exclusively upon 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.

2. In preparing this report, the Special Rapporteur has taken note of the reports submitted to the Commission by the country special rapporteurs/representatives and independent experts.

Afghanistan

3. The Special Rapporteur has been monitoring the restructuring of the system of justice in the light of the provisions of the Agreement on Provisional Arrangements in Afghanistan pending the Re-Establishment of Permanent Government Institutions ("the Bonn Agreement"), signed on 5 December 2001 in Bonn. Section II (2) of the Agreement provides that:

"The judicial power of Afghanistan shall be independent and shall be vested in a Supreme Court of Afghanistan, and such other courts as may be established by the interim administration. The interim administration shall establish, with the assistance of the United Nations, a Judicial Commission to rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions."

4. Pursuant to this Agreement a Judicial Commission was set up in May 2002. The Special Rapporteur planned to undertake a mission to Kabul in September 2002 to meet the members of the Commission and other actors in the administration of justice, to assist in the discharge of the mandate of the Commission. However, in August 2002, the Special Rapporteur was informed that the Commission had suspended its work and the Chairman had resigned. Hence the Special Rapporteur was advised to wait until a new Commission was formed. In November 2002, by presidential decree, a new Commission was established.

5. At the invitation of the International Development Law Organisation (IDLO), the Special Rapporteur attended, from 16 to 17 December 2002, a round table discussion in Rome on "The Role of Law in a Modern Afghanistan." The objectives of the round table were to assist the Judicial Commission with the challenges it faces in establishing a pluralistic democracy, an independent judiciary, and a new constitutional order. Experts, including Muslim and non-Muslim scholars world were invited to present their research and opinions. Members of the Judicial Commission, the Chief Justice, the Minister of Justice and the Attorney General of Afghanistan were present, among others. The Special Rapporteur addressed the round table and presented a paper on the "Role of the Judiciary within the Administration of Justice in a Democracy".

6. Several recommendations were adopted at the conclusion of the discussion, including:

- The rebuilding of the legal and judicial system in Afghanistan is a task to be performed by the Afghan people in the first place;
- The reconstruction of Afghanistan's legal and judicial system should proceed on the basis of Islamic principles and values, Afghan legal traditions and customs and Afghanistan's international legal obligations;
- Core human rights as well as those recognized by Islamic jurisprudence should be enshrined in the constitutional and legal framework;
- The legal and judicial system should contain easily accessible and effective mechanisms for the enforcement of human rights;
- The judiciary should be recognized as a separate, independent, adequately funded (with particular emphasis on the salaries judges), fully protected and equal branch of the State, together with the executive and the legislature, in order to ensure access to justice and fairness for all people in Afghanistan;
- An independent judiciary should also be transparent and accountable;
- Adequate attention should be paid to the development of education and training for judges, lawyers, prosecutors and court personnel;
- All rights and principles that are fundamental for due process and fair trial should be fully incorporated into the legal and judicial system;
- The State should ensure access to justice, including legal aid and right to defence counsel;

The round table also strongly recommended that the international community should provide on an urgent basis financial and other assistance, coordinated through the Judicial Commission, for a modern and effective legal and judicial sector to ensure the rule of law, peace and progressive security throughout the country and the reconstruction of Afghanistan.

7. These recommendations were presented to a conference on “Rebuilding the Justice System in Afghanistan” organized by the Government of Italy on 19 and 20 December 2002, also held in Rome. This conference was attended by a large number of donor Governments that are supporting the development of Afghanistan. The President of Afghanistan, Hamid Karzai, the Foreign Ministers of Italy and Afghanistan and the United Nations Advisor of the Special Representative of the Secretary-General in Afghanistan officiated. The Special Rapporteur also attended the two-day conference. At its conclusion the conference adopted a Final Statement in which the participating States, inter alia, declared their commitments to assist, in a generous, efficient and coordinated way, the Afghan Government and the Judicial Reform Commission in restoring the justice system and the rule of law in Afghanistan.

8. Conferences and resolutions aside, the realities of the situation on the ground in Afghanistan are a matter of concern. Rebuilding a legal system devastated after 23 years of war is no easy task. The Special Rapporteur has heard very recently, subsequent to the meetings in Rome, that the restructuring of the judicial system is being hampered by a lack of international action and domestic political infighting. Courts are desperately short of trained staff and funds, and judges, particularly outside of Kabul, are being intimidated by warlords. Various international organizations have evaluated the situation in Afghanistan and identified the problems and made recommendations. All these efforts, though well intentioned, are potentially overlapping, resulting in wastage of human and financial resources. Nevertheless, it is still uncertain whether there is a body coordinating all these efforts with the requisite political will to implement the required reforms. At the present pace the reforms envisaged in the Bonn Agreement may not be achieved in the established time frame.

9. The Special Rapporteur urges the Commission to address this situation urgently.

Algeria

Communications to the Government

10. On 12 September 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on human rights defenders concerning a human rights lawyer, **Mahmoud Khelili**. According to the information received, Mr. Khelili's son, Ahmed, had received an anonymous death threat on 2 September 2002 on the same day as Mr. Khelili appeared in court in Oran to defend a person who had accused top officials in the army of trafficking in cocaine. Mahmoud Khelili's other son, Karim, had also in the past been detained and arrested by the authorities in an attempt to intimidate Mr. Khelili.

Observations

11. The Special Rapporteur regrets that to date the Government has not responded.

Argentina

Communications to the Government

12. On 19 February 2002, the Special Rapporteur sent a communication regarding proceedings initiated against **nine members of the Supreme Court**, following its judgement of 1 February 2002 declaring unconstitutional a government decree which imposed restrictions on the withdrawal of bank deposits. According to the information received, the Impeachment Committee of the lower house of Parliament (the Chamber of Deputies) admitted several impeachment requests, some of which had been presented several years previously. Reportedly, the accusations were still pending before the Chamber, which had to act before the process could move to the Senate. It was reported that the President of the Supreme Court, Julio Nazareno, and the Vice-President, Eduardo Moliné, stated that they had been pressured to give up their positions. It was also alleged that the impeachment process was simply a formality and that members of the Senate believed that it was necessary to remove most of the judges.

13. On 4 July 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on human rights defenders concerning a lawyer, **Claudio Pandolfi**. According to the information received, Mr. Pandolfi, who works for the human rights organisation *Coordinadora contra la Represión Policial e Institucional*, had received threatening phone calls on 29 and 30 June 2002. It was alleged that this was in connection with his investigations of incidents that had taken place in Avellaneda, Buenos Aires, on 26 June 2002.

14. On 7 November 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on human rights defenders concerning a lawyer, **Laura Figua**. According to the information received, on 28 October 2002, Ms. Figua's house was broken into but the police failed to do anything, even though they were only 30 metres away. Ms. Figua had also been threatened repeatedly in the past. Also on same day, the house of prosecutor **Emilio Ferrer** was also broken into, allegedly because he was working on a case of disappeared persons in area of Pozo de Vargas in the province of Tucumán.

Communications from the Government

15. The Government sent three communications, dated 21 February 2002, 13 and 21 March 2002, in reply to the Special Rapporteur's communication of 19 February 2002. The Government forwarded the reply of the President of the Parliamentary Impeachment Commission of the Chamber of Deputies of the Nation, which drew attention to article 53 of the National Constitution. This article provides that only the Chamber of Deputies is entitled to bring impeachment proceedings in the Senate against members of the Supreme Court in cases of misconduct, crimes committed in the exercise of their functions and ordinary crimes. It acts only as the prosecutor once it has been mandated to do so by a two-thirds majority of the members present and voting and after an indictment has been handed down by the Parliamentary Impeachment Commission. The rules governing the proceedings in the Chamber of

Deputies guarantee due legal process and the rights of the defence. The Chamber of Deputies must neither depart from the facts of the case nor base its accusations on circumstances or motives which are irrelevant to it. The Senate then acts as the judge and tries the case, and has an absolute obligation to be impartial and to afford the persons indicted the right to a full defence. Both the substantive rules establishing the grounds for dismissal, as well as the rules of procedure, were drafted and in force prior to the offences being tried, thereby guaranteeing the principles of the presumption of innocence and the right to a fair hearing.

16. On 8 April 2002, the Government sent information concerning lawyer Matilde Bruera (E/CN.4/2002/72, annex, para.3). The Government stated the Special Operations Unit of the Santa Fe Provincial Police Department had conducted extensive investigations as a result of the lodging of a complaint before the District Criminal Court of First Instance in the 8th District of Rosario by Mrs. Bruera. On 4 April 2001, the case was transferred to the 3rd Federal Court of the City of Rosario, pursuant to a decision of the Supreme Court. The investigations had not resulted in the identification of the person responsible for the threats against Mrs. Bruera. On 7 March 2002, the Chamber of Deputies issued a declaration of solidarity with Matilde Bruera and Rodolfo Scholer and condemned the threats made against them. [0]

17. On 1 August 2002, the Government replied to the Special Rapporteur's joint urgent appeal of 4 July 2002. The Government stated that on the day the incidents took place officials from the Provincial Office for the Promotion and Protection of Human Rights and the Secretariat for Human Rights of the Province of Buenos Aires visited Police Station No. 1 in Avellaneda and requested a list of those individuals detained and their situation, as well as information concerning the authority who had ordered the detention. Those officials then took steps to identify and release the 160 detainees. As a result of investigations so far nine police officers have been suspended, four of whom have been detained, however, two have escaped and are the subjects of an arrest warrant. Three of those who have been arrested have been charged with double homicide and the other has been charged with complicity in a multiple offence and the failure to fulfil the duties of a public official.

Observations

18. The Special Rapporteur thanks the Government for its response.

Azerbaijan

Communications from the Government

19. On 21 February 2002, the Government replied to the Special Rapporteur's communication of 26 October 2001 (E/CN.4/2002/72, annex, para. 12) concerning lawyer **Aslan Ismailov**. The Government stated that the adoption of the Legal Profession and Legal Practice Act was a logical outcome of judicial and legal reform in Azerbaijan. Also, the Bar Association is a fully independent and self-regulating body, and procedures for the admission of members are still being worked out. The handling of Mr. Ismailov's case, lies exclusively within the jurisdiction of the Bar Association and his licence to work for the Visa law firm has been extended to 2004. It is also noted that Mr. Ismailov actively participated in an international seminar in

Baku in 2001, which discussed the Legal Profession and Legal Practice Act and questions of legal ethics.

Observations

20. The Special Rapporteur thanks the Government for its response.

Bangladesh

Communications to the Government

21. On 25 July 2002, the Special Rapporteur sent an urgent appeal concerning an attack on a lawyer, **Rabindra Ghosh**. According to the information received, on 1 July 2002, Mr. Ghosh had been attacked while filming a meeting of the Bar Association of the Supreme Court. It was alleged that one of the attackers accused him of having links to the Indian Government and told him that “if you do not leave the country, we will show you the consequences.” It was further reported that Mr. Ghosh had received repeated threats in recent months.

Communications from the Government

22. On 31 October 2002, the Government replied to the Special Rapporteur’s urgent appeal of 25 July 2002, and advised that a police inquiry had been established by the Dhaka Metropolitan Police. The inquiry revealed that there had been an altercation between some rowdy young lawyers and Rabindra Ghosh. The Government further stated that Mr. Ghosh did not wish to lodge a formal complaint regarding the incident as he had advised the police that he had submitted a complaint to the Supreme Court Bar Association and was awaiting its decision before pursuing the matter further.

Observations

23. The Special Rapporteur thanks the Government for its response.

Belarus

Communications to the Government

24. On 27 November 2002, the Special Rapporteur sent an urgent appeal concerning **Vera Stremkovskaya**, a human rights lawyer who was allegedly prohibited by the Minsk Municipal Bar Association from leaving Belarus to participate in international conferences abroad, including a meeting of the independent lawyers’ associations in Brussels on 10 and 11 October 2002 and a meeting of the Democratic Forum in Seoul, on 11 to 14 November 2002.

Observations

25. The Special Rapporteur regrets that the Government has not responded to this communication or to the recommendations made in the Special Rapporteur’s mission report (E/CN.4/2001/65/Add.1).

Brazil

Communications to the Government

26. On 30 July 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on human rights defenders concerning threats to the Brazilian Lawyers' Association (Orem dos Advogados Brasileiros) in the State of Espírito Santo. According to the information received, on 23 July 2002, an anonymous caller had threatened the head of the Association, **Dr. Agisandro da Costa Pereira**. On 25 July 2002, a bomb exploded in the offices of the Association while it was holding a ceremony for new members. Subsequent to the explosion another anonymous phone call was received, the caller allegedly stating that "We're going to blow you all up in one go."

27. On 10 October 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning **Cristiano Arantes e Silva**, of Comarca de Xinguara, State of Pará, who had received death threats related to his activities as a judge. This reportedly included anonymous letters and phone calls addressed to him and his wife. On 24 September 2002, four shots were allegedly fired at his house.

Observations

28. The Special Rapporteur regrets that to date the Government has not responded.

Central African Republic

Communications to the Government

29. On 15 February 2002, the Special Rapporteur sent an urgent appeal concerning the trial of those suspected of having taken part in the attempted coup d'état of 28 May 2001. According to the information received, when the trial started on 4 February 2002, before the criminal court of Bangui, many of the accused had not been granted access to an attorney. It was also alleged one of the accused, **Jean-Jacques Demafouth**, former Minister of Defence, had not been able to meet with his lawyers since his arrest on 25 August 2001 and that his lawyers were not given an opportunity to study the case file before 12 February 2002. It was reported that capital punishment could be imposed if the accused are found guilty.

30. On 26 April 2002, the Special Rapporteur sent a second urgent appeal concerning the trial of those suspected of having taken part in the attempted coup d'état. According to the information received, one of the defence lawyers, Mr. Zarambaud, was removed from the case by the Criminal Court of Bangui without giving a reason. Following the court's decision, the Bar Association of the Central African Republic decided on 7 March 2002 to withdraw from the case in protest. Since the law provides that during a criminal trial the accused must have legal counsel, the court case has been suspended.

Observations

31. The Special Rapporteur regrets that to date the Government has not responded.

Chad

Communications to the Government

32. On 25 September 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture and the Special Representative of the Secretary-General on human rights defenders concerning a lawyer, **Jacqueline Moudeina**. According to the information received, Ms. Moudeina had been injured in the leg during a demonstration, when a grenade was launched by anti-riot police. Ms. Moudeina was one of 100 demonstrators who had tried to deliver a letter to the French Ambassador to express their discontent over the French Government's support to the Déby regime during the last elections.

Observations

33. The Special Rapporteur regrets that to date the Government has not responded.

China

Communications to the Government

34. On 16 September 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture, the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on human rights defenders concerning the alleged detention of **Dr. Wan Yanhai**, the founder and coordinator of the AIZHI (AIDS) Action Project, on 24 August 2002 by State security authorities. The Special Rapporteur expressed concern that that Dr. Wan Yanhai, whose detention was allegedly in a secret place, had limited or no possibility to contact his family and friends or to benefit from legal representation of his choice during this time.

Communications from the Government

35. On 28 November 2002, the Government replied to the Special Rapporteur's joint urgent appeal of 16 September 2002. The Government stated that Dr. Wan Yanhai was legally detained and questioned on suspicion of the offence of unlawfully transmitting secrets abroad. Further, Dr. Wan Yanhai had requested in writing that his family members were not to be notified should he be detained and that he had voluntarily renounced his right to counsel. The Government stated that Dr. Wan Yanhai acknowledged his unlawful activities and voluntarily admitted his guilt. In return for this acknowledgment and for his cooperation, the Beijing City State Security Bureau granted Dr. Wan Yanhai a discharge on the condition that he make a statement of repentance.

Observations

36. The Special Rapporteur thanks the Government for its response.

Colombia

Communications to the Government

37. On 4 July 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative of the Secretary-General on human rights defenders concerning threats to the Corporación Colectivo de Abogados “Jose Alvear Restrepo”. According to the information received, a poster had been put up in universities accusing the organization of being the legal arm of a paramilitary group, the National Liberation Army (Ejército de Liberación Nacional). The poster had also called for solidarity with members of the national army who were involved in cases alleging the commission of human rights abuses brought by the organization.

38. On 25 October 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning Operation Orion in Medellín. According to the information received, this operation, led by the police and the army, had resulted in the detention of 200 persons. Some of the lawyers of the detained persons alleged that during the arrest and investigation stage, the legal rights of their clients were neither guaranteed nor respected.

Communications from the Government

39. On 23 July 2002, the Government replied to the Special Rapporteur’s communication of 4 July 2002. The Government stated that upon being notified of the poster concerning the activities of the organization, Jose Alvear Restrepo, the Office of the Vice-President of the Republic issued a public statement rejecting threats, attacks and other forms of intimidation against a non-governmental organization involved in the promotion and protection of human rights. The Ministry of the Interior issued a similar public communication. The Government also stated that the Inter-American Commission on Human Rights had ordered protective measures for the organization and as a result its installations would be strengthened and the case will be reviewed by the Risk Evaluation and Regulation Committee of the Ministry of the Interior. The Government also stated that a preliminary investigation into the Administrative Department for National Security had been closed because of a lack of evidence of its responsibility for the threats against the organization.

40. On 5 December 2002, the Government replied to the Special Rapporteur’s joint urgent appeal of 25 October 2002. The Government stated that the Office of the Vice-President of the Republic had identified a number of criminal armed groups (including FARC, CAP, ELN and AUC) that had settled down in La Comuna 13 due to its strategic location in Medellín. Due to the presence of these groups, crime rates had dramatically increased in La Comuna. Under these circumstances it was decided to launch Operation Orion on 16 October 2002 in order to restore public order. The Government advised that the following was the result of the operation: basic security was restored in the most severely affected areas; 20 persons who had been abducted were released; arms and munitions were found; a number of bombs and explosives had been deactivated; and 319 persons had been arrested (244 of whom were still in

detention upon the order of the prosecutor). The Office of the General Prosecutor and the Ombudsman monitored the investigation and the Government advised that it has asked the General Prosecutor to guarantee the legal rights of the detainees.

Observations

41. The Special Rapporteur thanks the Government for its response. He continues to be concerned over the high level of violence and threats to the security of judges and lawyers.

Czech Republic

Communications from the Government

42. Following the Special Rapporteur's previous communications (E/CN.4/2002/72, annex, paras. 40-42) the Government, in a communication dated 6 March 2002, informed the Special Rapporteur of the new Law on Courts and Judges, to take effect on 1 April 2002. The new law requires that each judge must possess certain qualifications which are to be reassessed regularly and that judges who lack these qualifications may be removed from office. Judges are appointed by the President for an unlimited term. Each judge is assessed three years after appointment, and then every five years. The assessment is carried out by the president of the court. The Judicial Council gives its views on the evaluation report by the president. If performance does not appear to meet the required standards, a special panel will be appointed to review the judge's final decisions made during the period in question. If the panel considers the judge's performance unsatisfactory, the Professional Qualifications Council will reassess the judge's qualifications. The Council comprises members of the Supreme Court and the High Courts, public attorneys, legal counsels, jurists, notaries, etc. The decisions of the Professional Qualifications Council can be reviewed by the Supreme Court. A judge may then be removed from office only after the Supreme Court decides that he or she lacks the necessary qualifications. The Government submits that to ensure a fully impartial review, the process involves the judicial and executive branches as well as independent experts.

43. As regards the impartiality of judges, the Government states that the new legislation retains all safeguards previously contained in the 1991 law on the courts. Section 86 of the law regulates the liability of judges for disciplinary breaches. The most severe disciplinary sanction is removal from office. The legislation regulating disciplinary proceedings (Act No. 7/2002) will also enter into force on 1 April 2002. The disciplinary courts are the High Courts in Prague and Olomouc, and appeals can be lodged with the Supreme Court. Disciplinary proceedings can be initiated by the Minister of Justice (against any judge) or the president of a court (against any member of the court). Under the Law on the Courts and Judges, continuing education is obligatory for all judges, except for Supreme Court judges.

Observations

44. The Special Rapporteur thanks the Government for its response. He continues to be concerned about the extensive powers that the Minister of Justice has over

appointments, the exercise of judicial functions, the evaluation of the performance of judges and discipline of judges.

Democratic Republic of the Congo

Communications to the Government

45. On 21 March 2002, the Special Rapporteur sent an urgent appeal, together with the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions, concerning the military court trial of 115 persons accused of having participated in the assassination of President Kabila on 16 January 2001. It was alleged that most of the accused had been kept in secret detention for over a year before having been formally charged and that they had not been allowed contact with their lawyers. It was alleged that, even at the beginning of the trial, some of the accused had still not been in contact with their lawyers and that most of the lawyers for the accused had not been given access to the case files. It was reported that if convicted, the accused would face the death sentence.

46. On 27 May 2002, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General on human rights defenders, the Special Rapporteur on torture and the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo concerning a lawyer, **Willy Wenga Ilombe**. According to the information received, on 20 February 2002, Mr. Ilombe, who is a member of the Centre africain pour la paix, la démocratie et les droits de l'homme (ACPD), was arrested based upon a summons signed by Magistrate Likulia, prosecutor of the Cour d'ordre militaire (COM). On 22 February 2002, Mr. Ilombe was interrogated by four magistrates of the court concerning his relationship with Major Kamwanya Bora Uzima, one of the presumed assassins of former President Kabila. Subsequent to this, Mr. Ilombe was placed in detention for threatening the security of the State. It is alleged that these actions preceded the publication of a report by the ACPD denouncing the lack of the independence of the judiciary in the country.

47. On 18 July 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on torture, the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo concerning the President of the Bar Association of Kasaï-Oriental, **Mpinga Tshibas**. According to the information received Mr. Tshibas was arrested by the National Information Agency (agence nationale de renseignement) after he held a press conference concerning abuses of power by the State. After his arrest he was transferred to Kinshasa. Neither his place of detention nor the reasons for the arrest are known.

48. On 29 October 2002, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General on human rights defenders and the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo concerning lawyer and Chairman of the Board of Directors of the Congolese Human Rights Observatory (OCDH), **Sebastien Nkokesha Kayembe**.

According to the information received, Mr. Kayembe was abducted on 15 October 2002 by armed men in uniform and was severely tortured and accused of being “the devil’s lawyer” and of “representing people who killed Mzee” (former President Kabila). Mr. Kayembe was part of a team of lawyers who represented the accused assassins. It was alleged that Mr. Kayembe had unsuccessfully tried to persuade the court to prosecute members of Minister Mwenze Kongolo’s Cabinet of Security and Public Order. In addition, the Special Rapporteurs were informed that Mr. Kayembe was so badly injured that he can no longer practise his profession.

Observations

49. The Government continues to ignore all communications from the Special Rapporteur.

Ecuador

Communications to the Government

50. On 15 April 2002, the Special Rapporteur sent a communication concerning the failure of the Ecuadorian authorities to implement a decision of 14 December 2001 handed down by Constitutional Judge **Juan Omar Mina Quintero**, fourth Civil Judge of Eloy Alfaro and San Lorenzo. In his judgement, Judge Quintero confirmed an earlier judgement setting aside the criminal proceedings brought against Abdala Bucaram Ortiz, and declared the detention orders against him null and void.

Communications received from the Government

51. On 22 May 2002, the Government replied to the Special Rapporteur’s communication dated 15 April 2002. The Government stated that the decision of 14 December 2001 by the judge of the Fourth Civil Court, Eloy Alfaro and San Lorenzo, in the province of Esmeraldas, had been declared by the President of the Supreme Court on 26 December 2002 as being null and void and having no effect whatsoever. The Government stated that this decision was based upon article 95(2) of the Constitution, which states that judicial decisions adopted during a trial shall not be open to applications for *amparo*, as well as article 2 of the plenary decision of the Supreme Court, which was published in the Official Gazette (*Registro Oficial*) No. 378 on 27 July 2001, by which acts prohibited by the Constitution are null and void.

52. On 15 August 2002, the Government sent further information concerning the case of Mr. Bucaram. Firstly, the Fourth Civil Court lacked jurisdiction over the application for *amparo* since the application should have been submitted in the place where the decision being challenged had been enforced. Secondly, the summons was not properly served on the respondent, Dr. Enrique Garcia Roman, and as a result the respondent was unable to follow prescribed legal procedures. Thirdly, the fact that no summons was served in accordance with the Ecuadorian Code of Civil Procedure meant that the decision of 14 December 2001 was null and void and that the detention order served on Mr. Bucaram consequently remains in force.

Observations

53. The Special Rapporteur thanks the Government for its responses. He has not received any further communication from the complainant.

Egypt

Communications to the Government

54. On 20 February, the Special Rapporteur sent an urgent appeal concerning the detention on 20 January 2002 of eight men in Damanhour, Al-Beheira, allegedly for debauchery. According to the information received on 23 January 2003, a lawyer who had been instructed by friends of the eight men was refused access to the detainees by the police and was only informed that three men had been released, without specifying their identity. It was reported that on 26 January 2002, the accused appeared before a judge who extended their detention for 45 days. It is alleged that the lawyer for the accused was barred access to the hearing, and he has not yet been able to gain access to his clients.

55. On 26 February 2002, the Special Rapporteur, jointly with the Special Representative of the Secretary-General on human rights defenders, sent a letter welcoming the judgement by the Court of Cassation, which ordered the retrial of **Saadeddin Ibrahim** and his co-accused, on whose behalf the Special Rapporteurs had intervened on 22 May 2001 (E/CN.4/2002/72, annex, para. 58).

56. On 26 September 2002, the Special Rapporteur sent a communication concerning the conviction of 51 alleged members of an Islamist group by Egypt's Supreme Military Court on 9 September 2002. According to the information received, it was alleged that the accused are civilians but were tried before a military court and denied the right to be tried before an independent and impartial tribunal. Further, they are denied the right to appeal to a higher court as verdicts by military courts can only be reviewed by the Military Appeals Bureau, which is not a court.

Communications from the Government

57. On 6 March 2002, the Government replied to the Special Rapporteur's letter of 26 February 2002. The Government stated that Mr. Ibrahim and his co-defendants had been released pending retrial. The Government also asserted that all safeguards for a fair trial will be guaranteed in accordance with Egypt's long-standing traditions. The Special Rapporteur has learnt that Mr. Ibrahim and his co-defendants were tried for the third time on 3 February 2003 and Court has reserved judgement to be delivered on 18 March 2003.

58. On 10 October 2002, the Government replied to the Special Rapporteur's letter of 20 February 2002. The Government stated that on 11 March 2002, the court in Damanhour, Al-Beheira, sentenced the accused to three years in prison on charges of debauchery and imposed a fine of 300 Egyptian pounds. The defendants filed an appeal which was heard by the Court of Appeal on 12 April 2002. The Court of Appeal annulled the lower court ruling on the grounds that that the court could not be confident about the investigation or the confessions made to the police. The Government stated that all accused persons received legal representation and their defence lawyers requested a stay of proceedings, which was granted by the court.

Observations

59. The Special Rapporteur regrets that he has not received a response to his earlier communication of 19 November 2001 (E/CN.4/2002/72, annex, para.59). However he has since received information that the four men were sentenced on 3 February 2002 to three years' imprisonment. The Special Rapporteur awaits a response to his communication of 26 September 2002.

Equatorial Guinea

Communications to the Government

60. On 27 May 2002, the Special Rapporteur sent a communication to the Government concerning the dissolution of the Bar Association (Colegio de Abogados). According to the information received, on 10 May 2002, the Minister for Justice and Religion had issued a resolution dissolving the Bar Association due to the absence of a presidential decree recognizing its creation. It was alleged that the resolution stated that this action was taken pursuant to the activities of several members of the organization that were not in accordance with the objectives of the organization and had the effect of transforming it into a platform for their political and personal views. The information also stated that the resolution of the Minister created a General Council of Lawyers, to be chaired by the Minister, which would be responsible for the preparation of a new statute to regulate the activities of lawyers and the holding of new elections for the governing council. Current members of the association could not be candidates in the election.

Other developments

61. The Special Rapporteur also received information concerning the arrest and trial of 144 people for threatening state security. They included members or former members of the armed forces and relations of leaders of the *Fuerza Democrática Republicana* (FDR). These individuals appeared to have been arrested solely because of their alleged links with the FDR.

62. As a result of these developments, on 12 June 2002 the Special Rapporteur sought a mission. There was no response from the Government.

63. The Special Rapporteur has been informed that the trial was held between 22 May 2002 and 9 June 2002, and that 67 individuals were convicted and sentenced to between 6 years 8 months to 20 years in prison. Amnesty International in its report on its trial observation concluded, inter alia, that "at all stages of the proceedings there were numerous irregularities both in terms of how the case was investigated and how the judges and the prosecution behaved..."

Observations

64. The situation in this country continues to be of concern.

Guatemala

Communications to the Government

65. On 16 January 2002, the Special Rapporteur sent a communication concerning the killing of a justice of the peace, **Geovany Ávila Vásquez**, in the municipality of Gualán, Zacapa, on the night of 11 January 2002. According to the information received, the Mr. Ávila Vásquez had been killed by 17 bullets while driving his vehicle. The Special Rapporteur also expressed his concern about death threats received by a prosecutor, **Miguel Ángel Bermejo**, who was in charge of investigating acts of corruption within the Ministry of Internal Affairs. Reportedly, the police had discovered the existence of a plan to murder the prosecutor.

66. On 29 August 2002, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary and arbitrary executions and the Special Representative of the Secretary-General on human rights defenders concerning death threats against a lawyer, **Luis Roberto Romero Rivera**. According to the information received, Mr. Romero Rivera received a threatening phone call on 23 August 2002, in connection with his legal representation of the Myrna Mack Foundation. In addition, shots were allegedly fired at Mr. Romero Rivera's house, although no one was injured. It was also stated that the Inter-American Court for Human Rights had recommended security for Mr. Romero and other members of the Myrna Mack Foundation during the course of the trial against General Edgar Augusto Godoy Gaytán, Colonel Juan Guillermo Liva Carrera and Colonel Juan Valencia Osorio, who had been accused of being behind the murder of Myrna Mack. It was alleged that this security had not been provided.

67. On 12 December 2002, the Special Rapporteur sent a communication concerning General Prosecutor **Carlos David de León Argueta**. According to the information received, Mr. Argueta had received death threats by letter and telephone since assuming this position in May 2002. On 5 December 2002, some men shot at Mr. Argueta's car but he was not injured. It was alleged that these threats were a result of his decision to assign prosecutors to investigate cases of corruption and organized crime involving high-ranking army officials.

Communications from the Government

68. On 1 February 2002, the Government provided comments from the Supreme Court of Justice on the Special Rapporteur's mission to Guatemala in May 2001 (E/CN.4/2002/72/Add.2). The Special Rapporteur was informed that, in general, the report was received in a fairly positive light because the Special Rapporteur expressed his satisfaction with various judicial developments. The Supreme Court of Justice took issue with three specific points. Firstly, with respect to the Efraín Mogollón case, the Supreme Court stated that the Special Rapporteur's recommendation would be contrary to the Guatemalan legal system. Secondly, to state that MINUGUA supports the prevention of lynching programmes is inaccurate since MINUGUA is more of an observer and not a proactive actor such as INGUAT, the Peace Secretariat, the Ministry of Education and the Public Prosecutor's Department. Finally, the Supreme Court clarified the fact that the ruling that stripped 23 deputies of their congressional

immunity was the result of a ruling on 5 March 2001 by the Supreme Court of Justice and not the Constitutional Court.

69. On 9 December 2002, the Government replied to the Special Rapporteur's joint urgent appeal of 29 August 2002 concerning lawyer Luis Roberto Romero Rivera. The Government confirmed that, as ordered by Inter-American Court for Human Rights, the Government had provided 24-hour security to Mr. Romero Rivera.

70. On 17 December 2002 the Government forwarded a communication from the President of the Judiciary and of the Supreme Court of Justice in relation to lawyer Erica Lorena Aifán Dávila. On 16 October 2002, the Supreme Court of Justice appointed Ms. Dávila as a first instance judge in the municipality of Lxchiguan in the Department of San Marcos and she commenced her functions on 14 November 2002.

Other developments

71. In paragraph 92(a)(ii) of his mission report (E/CN.4/2002/72/Add.2) on Guatemala, the Special Rapporteur recommended that the trial of the persons accused of Myrna Mack's murder in 1990 be expedited. The Special Rapporteur is pleased to note that on 3 October 2002, the third sentencing court convicted Colonel Juan Valencia Osorio on charges that he had ordered her murder and sentenced him to 30 years' imprisonment. The two co-accused were acquitted of all charges.

Observations

72. The Special Rapporteur expresses concern over the increased incidence of physical attacks on judges and calls upon the Government to increase security for judges and prosecutors.

Honduras

Communications to the Government

73. On 4 December 2001, the Special Rapporteur sent a joint urgent appeal, together with the Special Representative of the Secretary-General on human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions, concerning lawyer **Cristián Callejas**. According to the information received, Mr. Callejas had received death threats in connection with cases he had presented to the courts against State agents accused of human rights violations. Allegedly, unknown persons had fired shots into the air outside Mr. Callejas' house and he had also received threatening phone calls.

Indonesia

74. The Special Rapporteur refers to his mission report (E/CN.4/2003/65/Add.2).

Iran (Islamic Republic of)

Communications to the Government

75. On 31 January 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on freedom of opinion and expression concerning lawyer **Mohammad-Ali Dadkah**. According to the information received, on 28 January 2002, Mr. Dadkah appeared before the Tehran High Court on charges of defamation in relation to a plea entered on behalf of several defendants made in November 2001. It was reported that at the November hearing, Mr. Dadkah had been expelled by the President of the Revolutionary Tribunal before finishing his statements and had thus not been able to provide an adequate defence for his clients. The President of the Tribunal then reportedly filed a criminal complaint against Mr. Dadkah for defamation and making statements.

76. On 30 April 2002, the Special Rapporteur sent a further communication concerning **Nasser Zarafchan**, on whose behalf he intervened on two previous occasions. According to the information received, in March 2002, Mr. Zarafchan had been sentenced to five years' imprisonment and 70 lashes by the Judicial Organization of the Armed Forces, pursuant to charges of disseminating confidential information. It was reported that these charges stem from Mr. Zarafchan's legal representation of the families of several Iranian writers and activists who were assassinated in 1998 and, more specifically, from his publication of information about the assassinations. It has also been alleged, however, that Mr. Zarafchan criticized both the shortcomings of the official investigation and the absence of vital information in the court files, even though he never discussed publicly the contents of these files.

77. On 29 May 2002, the Special Rapporteur sent another joint urgent appeal with the Special Rapporteur on freedom of opinion and expression concerning lawyer, Mohammed-Ali Dadkah. The Special Rapporteurs had received further information that Mr. Dadkah had been sentenced to five months in prison and suspended from the practice of law for a period of 10 years. It was alleged that this sentence was related to his representation of individuals who had been arrested in March and April 2001.

78. On 15 July 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture concerning a lawyer, **Mr. Soltani**. According to the information received, on 9 July 2002, Mr. Soltani had been sentenced by the First Instance Tribunal of Iran to four months imprisonment and suspended from legal practice for a period of five years. It was alleged that this sentence related to statements made by Mr. Soltani in court in March 2002, alleging that his client had been tortured. It was further alleged that Mr. Soltani's lawyer, **Seyfzadeh Mohammad** had also been sentenced to four months' imprisonment and suspended from legal practice for three years.

79. On 20 August 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture and the Special Representative of the Secretary-General on human rights defenders concerning lawyer **Nasser Zarafchan**. According to the information received, Mr. Zarafchan had been detained prior to the hearing of his appeal against a decision of the Military Court of Tehran of 16 July 2002. That decision had confirmed a sentence of five years' imprisonment and 70 lashes for the

offences of possession of firearms and alcohol, and the dissemination of confidential information. It was alleged that the latter charge actually resulted from his activities as a lawyer in the case involving the murder of several writers and activists in 1998. The information further stated Mr. Zarafchan was suffering from liver cancer and that in detention he was being subjected to medical tests to determine whether he is fit to undergo the flogging sentence.

80. On 4 October 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning **Said Masouri**, who had been sentenced to death, a sentence upheld by the Supreme Court. According to the information received, Mr. Masouri was an activist and supporter of the People's Mojahedin Organization of Iran, an armed political group opposed to the current Government. Mr. Masouri had been charged with acting against State security, membership of a proscribed organization, and contravening other security provisions. Allegedly, Mr. Masouri was ill-treated and was threatened with summary execution if he refused to make a televised confession; further, he had reportedly not been allowed to choose his own lawyer and was allocated one by the court.

Observations

81. The Special Rapporteur notes that in a press release dated 25 July 2002, the Government extended full cooperation to the Office of the High Commissioner for Human Rights and extended an open invitation to the thematic rapporteurs of the Commission. While this is welcome, the Special Rapporteur urges the Government as a first step to respond to the Special Rapporteur's communications. None of the communications enumerated herein or in last year's report (E/CN.4/2002/72, annex, paras. 98-99) have been responded to.

Israel

Communications to the Government

82. On 2 May 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture, the Special Rapporteur on the freedom of opinion and expression and the Chairman-Rapporteur of the Working Group on Arbitrary Detention concerning **Marwan Barghout**. It was alleged that on 15 April 2002, Mr. Barghout had been detained by Israeli forces in Ramallah and since his arrest he had been prevented from sleeping and denied food, water and medical treatment. Mr. Barghout had also been denied access to his lawyer, with the exception of a single meeting on 16 April 2002. Since that time he had been kept in complete isolation.

83. On 7 May 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture concerning three Israeli detainees who were reportedly arrested around 30 April 2002, on suspicion of planning attacks against Arabs and other security offences. It was alleged that they were being held in incommunicado detention at an unknown location and that an order prohibiting meeting with counsel had been issued by the General Security Service (GSS). This order was issued initially for four days but had been extended for an additional six days.

84. On 12 June 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture concerning **Ramzi Kobar**, a field researcher with the Palestinian Society for the Protection of Human Rights and the Environment (LAW), and the General Director of LAW, **Khader Shkirat**. According to the information received, Mr. Shkirat had been scheduled to meet with his client, Marwan Barghouti, on 9 June 2002 at 3:30 p.m. at the Petra Tikva Detention Centre. Upon arrival, he was told that he would have to wait because his client was being interrogated, and subsequently he was refused permission to see his client because he was reportedly late for the scheduled appointment. The information also stated that at this stage Mr. Shkirat witnessed his car being searched by members of the GSS and when he returned to his vehicle he was informed that Ramzi Kobar had been arrested for the purpose of interrogation.

85. On 19 November 2002, the Special Rapporteur sent a joint urgent appeal with the Chairman-Rapporteur of the Working Group on Arbitrary detention concerning **Dr. Khaled N. Diab**, a United States citizen of Arab origin and Head of International Relief at the Qatar Red Crescent Society. According to the information received, Dr. Diab had been arrested at Ben Gurion Airport, Israel and Immigration authorities told him that he would be detained for at least eight days. It was alleged that during this period Dr. Diab was neither allowed to make phone calls nor was he permitted to contact a lawyer; further, the reason for his detention stemmed from the fact that the Immigration authorities had observed several entries in his passport to countries in situations of armed conflict, including Afghanistan and the Occupied Territories. Dr. Diab claimed that he had to travel to those various places for work purposes.

Observations

86. The Special Rapporteur regrets that the Government has not responded to any of the communications.

Italy

Communications to the Government

87. On 23 January 2002, the Special Rapporteur sent an urgent appeal concerning a nationwide protest staged by hundreds of magistrates at the beginning of the judicial year, to show their concern about government attempts to undermine the independence of the judiciary. Judge **Francesco Saverio Borelli**, Milan's most senior judge, was reported to have said that the Government's planned reforms of the judiciary were aimed at bringing prosecutors under the control of the executive. He also complained about the removal of police escorts from prosecutors and judges, and about political interference in current trials. Allegations were also made that the Government was trying to delay trial proceedings against Prime Minister Silvio Berlusconi on charges of bribery. It was reported that the Government is considering legal action against Judge Borelli. In view of the situation, the Special Rapporteur requested an urgent mission.

88. On 29 April 2002, the Special Rapporteur sent a communication after learning that the National Association of Magistrates (NAM) had called for a nationwide strike on 6 June 2002 in protest against planned reforms by the Government affecting the

administration of justice which would allegedly have implications for the independence of judges and prosecutors. Reportedly, since the announcement on 20 April 2002 a dialogue had begun between the Ministry of Justice and NAM.

89. On 2 August 2002, the Special Rapporteur sent an urgent appeal concerning a bill proposing changes to the Italian Code of Criminal Procedure. According to the information received, the proposed law would permit the transfer of a case to another court on the basis of a “legitimate suspicion” that a local situation could affect the fairness of the trial. It was alleged that this law could be used in some cases involving prominent politicians currently before the courts in Milan. It was also alleged that these changes could contribute to the extended delays in the Italian court system.

Communications from the Government

90. On 1 November 2003, the Government replied to the Special Rapporteur’s letter of 2 August 2002 regarding draft bill No. 1578/S, on transfer of a case from a court to another on grounds of “legitimate suspicion”.

Observations

91. The Special Rapporteur refers to his mission report (E/CN.4/2003/65/Add.4), which contains his observations on this legislation.

Kenya

92. The Special Rapporteur is concerned about several developments in September/October 2002. Pursuant to the Constitution of Kenya Review Act, a Constitution of Kenya Review Commission (CKRC) was formed with a comprehensive mandate to review the Constitution and inter alia, draft a bill for a new Constitution. For this purpose, the Commission sought the assistance of eminent Commonwealth judicial experts.

93. Shortly after the CKRC published a short report on its recommendations, and before publication of the draft bill, two Kenyan judges, from the Court of Appeal and the High Court, filed a suit against the Commission seeking 17 orders by way of judicial review. The orders sought included directions to stop the publication and dissemination of the draft bill and to prevent any public discussion or debate of the report or the bill.

94. In August 2002, two lawyers filed a similar suit and obtained an injunction from a High Court judge against the CKRC pending determination of the suit. The CKRC ignored the injunction and proceeded to publish the report. Contempt proceedings were filed against the members of the Commission. Similar injunctions were ordered in the suit filed by the two judges, which were also ignored by the CKRC. A serious constitutional crisis developed with certain judges coming forward to use the judicial process to thwart constitutional reforms.

95. The Special Rapporteur continues to monitor developments. In 1999, the Special Rapporteur sought a mission, however, the Government responded that it was not necessary.

Lebanon

Communications to the Government

96. On 27 December 2002, the Special Rapporteur sent an urgent appeal concerning Judge **Fadi Nashar**. According to the information received, Judge Nashar was shot from behind and seriously wounded inside the Palais de Justice in Beirut on 23 December 2002. A suspect was arrested.

Observations

97. The Special Rapporteur has not received a response.

Liberia

Communications to the Government

98. On 30 April 2002, the Special Rapporteur sent a joint urgent appeal, with the Special Rapporteur on extrajudicial, summary, or arbitrary executions, the Chairman-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on torture, the Special Rapporteur on freedom of opinion and expression and Special Representative of the Secretary-General on human rights defenders concerning Lawyer, **Tiawan Gongloe**. According to the information received, Mr. Gongloe had been taken by police to police headquarters where he was questioned, stripped naked and severely beaten throughout the night. It was also alleged that the police had threatened him by calling him a dissident whom they would deal with and kill. This encounter allegedly occurred in connection with a speech Mr. Gongloe had given in Guinea on "Political activities for the attainment of peace and development in the Mano River Union."

Observations

99. The Special Rapporteur regrets that he has not received a response.

Libyan Arab Jamahiriya

Communications to the Government

100. On 6 March 2002, the Special Rapporteur sent a further letter concerning the trial of 98 persons accused of membership in the Muslim Brotherhood (see also E/CN.4/2002/72, annex, para.104). According to information received, the trial was held behind closed doors and relatives were not allowed to attend the proceedings, although on a number of occasions they were allowed to meet with the defendants after the court hearing. Further, at the hearing on 18 March 2001, the judge told the detainees to write to their families and ask them to appoint lawyers to defend them. The detainees were then given a list of lawyers to choose from. The appointed lawyers then reportedly wrote to the court for permission to meet with their clients before the second hearing and to obtain a copy of the case files. Both requests were reportedly refused, and at the second hearing, on 29 April 2001, the lawyers were not allowed to enter the court. The court then reportedly appointed lawyers from the office of the

people's counsel, who are in the employment of the court. According to the information received, the first time these lawyers met with their clients was on 17 June 2001, at the fourth court hearing. It was also reported that at the eighth court hearing, on 16 February 2002, the court convicted all of the accused and handed down death sentences for two of them, while sentencing the other accused to various terms of imprisonment, including life imprisonment.

Observations

101. The Special Rapporteur regrets that he has not received a response.

Malawi

102. The Special Rapporteur notes that in paragraph 112 of his last report (E/CN.4/2002/72, annex, para. 112), he stated that the disciplinary charges against judges **Dunstain Mwangulu** and **George Chimasula Phivi**, had been referred to the Judicial Service Commission and a hearing was scheduled for 16 January 2002.

103. The Special Rapporteur has since been informed that the charges against the two judges were dropped.

Malaysia

104. The Special Rapporteur would like to update developments since his last report (E/CN.4/2002/72, annex, paras. 115-125).

105. Former Deputy Prime Minister **Anwar Ibrahim** continues to serve his sentence of 15 years imprisonment. His appeal in the first trial was finally heard by the Federal Court (the highest appellate court in the country) on 4 February 2002, which delivered its judgement on 10 July 2002 affirming the conviction and sentence. This judgment was seen in several quarters, including by the Special Rapporteur, as a travesty of justice. Mr. Ibrahim has thus exhausted all his legal avenues concerning his conviction and sentence at the first trial.

106. On 9 August 2002 Mr. Ibrahim filed a motion in the Federal Court for review of the same judgement citing several grounds as warranting such a review. No date has yet been set by the Court for hearing of this application.

107. The appeal against his conviction and sentence of nine years' imprisonment for sodomy charges at the second trial is still pending before the Court of Appeal (the first appellate court). The High Court (The Court of First Instance) convicted and sentenced him on 8 August 2000. A notice of appeal was filed within a month. The petition of appeal, however, was filed only on 25 July 2001 because of a delay on the part of the trial judge in making available the notes of evidence he had recorded. Since then more than 1 ½ years have lapsed, yet the Court of Appeal has still not set a date for the hearing of the appeal. The injustice in this whole saga was aggravated by the denial of bail to Mr. Ibrahim pending his appeals. Moreover, the sentence of six years imprisonment at the first trial was ordered by the court, and confirmed by the Federal Court, to run from the date of conviction, thereby failing to take into account

the prolonged period he was kept in custody pending trial. It was during that period, soon after arrest, that he was brutally beaten by the then Inspector General of Police.

108. With regard to his medical condition the Government continues to refuse permission to undergo spinal surgery in Germany (E/CN.4/2002/72, annex, para. 118). Instead, the Government has indicated that he could undergo the surgery domestically. The Special Rapporteur was informed that Mr. Ibrahim is taking painkillers to relieve his back pain. In this regard, the Committee on the Human Rights of Parliamentarians of the Inter-Parliamentary Union at its 100th session held in Geneva from on 20 to 23 January 2003, adopted a decision in which it reaffirmed that recommendations of a national human rights commission carry special weight and should not be dismissed by the competent authorities; called therefore once again on the authorities, in particular the Malaysian Parliament as a guardian of human rights, to give full support to the clear recommendations of the National Human Rights Commission so as to obtain permission for Mr. Anwar Ibrahim to follow his personal choice of medical treatment abroad.”

109. In another development on September 2002, the Federal Court, in what is considered a “landmark” judgement, adopted the “objective test” in the judicial review of detentions without trial on police orders under the Internal Security Act. The Court held that in adjudicating on the legality of detention it could now go beyond the mere documentation papers to consider whether there were any elements of mala fide.

110. Following this decision, a High Court in Malaysia ordered the release of a suspected militant detained administratively for alleged involvement with Kumpulan Militant Malaysia, alleged to have indirect connections to the al-Qua'idah network. The judge ordered the release of the suspect as there was no evidence of the suspect's involvement with the terrorist group.

111. The suspect, upon release, was promptly rearrested and served a two-year detention on the basis of an order signed by the Home Minister.

112. These decisions led to the Minister in the Prime Minister's Department, Dato' Dr. Rais Yatim, reportedly saying that the Internal Security Act needed tightening “to curb judicial scrutiny of the reasons for detention.” He added, “to me this is a dangerous trend. We have to be quick to redress this inadequacy; we cannot allow a laissez-faire attitude in security matters.”

Mauritania

Communications to the Government

113. On 29 July 2002, the Special Rapporteur sent a communication concerning alleged interference in the elections for the President of the National Bar Association (l'ordre national des avocats de Mauritanie). According to the information received, the election was characterized by several irregularities contrary to Law 95-024 on the National Bar Association, including the public display of votes and the invalidation of postal votes. Subsequent to the vote, it was alleged that the police surrounded the offices of the Bar Association to force a second vote. In the second vote, on 4 July

2002, the supporters of the winner of the first election refused to participate and a member of the governing political party was subsequently elected as the new President of the Association

Communications from the Government

114. On 18 November 2002, the Government replied to the Special Rapporteur's communication of 29 July 2002. The Government stated that the newly appointed President of the Bar Association, Mr. Ould Bettah, is the person who organized the elections and then complained about them. After the first round of elections neither of the two candidates obtained the necessary majority, and thus a second round was mutually agreed upon. The votes received by mail were not counted during the first round as the secrecy of the vote had been compromised since lawyers had put their names on the ballots. Consequently, those votes were declared null and void. The Government stated that overall, the elections took place much as they had in past, and there was nothing political behind the elections. None of the lawyers or the President filed a formal complaint before the Supreme Court, which is the only court competent to rule on electoral matters. The appeal period has now passed.

Observations

115. The Special Rapporteur thanks the Government for its response.

Mexico

Communications to the Government

116. On 25 March 2002, the Special Rapporteur sent a communication concerning lawyer **Bárbara Zamora**, who worked together with the late Digna Ochoa and who is now the lawyer Ms. Digna Ochoa's family. According to the information received, she had received a message by electronic mail saying: "collisions, accidents, lawyers, urgencies..." words similar to one of the first anonymous letters that lawyers Digna Ochoa and Pilar Noriega received in 1996. It was also alleged that not all the preventive measures that Ms. Zamora had requested from the Inter-American Court of Human Rights have been implemented.

117. On 10 April 2002, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General on human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning lawyer **Leonel Guadalupe Rivero**. It was reported that Mr. Rivero's bodyguards, who had been appointed by the Government after the death of Ms. Ochoa, were attacked on 6 April 2002 in front of Mr. Rivero's house and their weapons taken from them.

118. On 23 July 2002, the Special Rapporteur sent a joint urgent appeal with the Special Representative of the Secretary-General on human rights defenders concerning lawyer **Arturo Requensens Galnares**. According to the information received, Mr. Galnares, a member of the organization ACAT – Action of Christians for the Abolition of Torture, had faced harassment and received threats in connection with his work

defending victims of torture, forced disappearances and extrajudicial killings. On 16 July 2002, Mr. Galnares noted a car containing five persons parked in front of his house. On 17 July 2002, he received a telephone call in which he heard the sound of a gunshot.

Communications from the Government

119. On 12 and 21 February 2002, the Government sent information concerning José Francisco Gallardo Rodríguez. The Government informed the Special Rapporteur that Mr. Gallardo Rodríguez was released on 7 February 2002, when the two sentences he was serving were commuted to the time he had spent in prison. Mr. Gallardo Rodríguez' release was made possible by a presidential decree signed on 7 February 2002, commuting the sentences on the basis of article 89, subparagraph 1, of the Constitution of the United Mexican States and articles 123, 178 and 871 of the Code of Military Justice. Under the latter two articles, it is the sole prerogative of the head of the executive to grant this privilege. The decision also allows Mr. Gallardo Rodríguez, if he sees fit, to take appropriate action through the domestic courts. In addition, from the moment he was released, Mr. Gallardo Rodríguez has been afforded personal protection of a preventive nature, with a guard reporting to officers of the Federal Crime Prevention Police.

120. On 29 April 2002, the Government replied to the Special Rapporteur's joint urgent appeal of 10 April 2002. The Government stated that according to information received from relevant sources, the assault of the bodyguards of Leonel Guadalupe Rivero Rodríguez was apparently carried out by mistake, a consequence of federal agents' failure to comply with security regulations. The attack therefore was not intentional. The Government reassured the Special Rapporteur that the injuries to the agents were minor and that two other agents of the Federal Investigation Agency were dispatched to permanently relieve the individuals involved in the incident.

121. On 30 April 2002, the Government replied to the Special Rapporteur's communication of 25 March 2002. The Government stated that as a result of an offer by the Government Procurator of the Federal District and a decision of the Inter-American Court of Human Rights, Ms. Zamora was offered protection to ensure her physical safety. After consultation with Ms. Zamora, a guard was placed outside her offices on 27 November 2002 and after negotiations, the Government and Ms. Zamora had agreed upon the action and assistance necessary for the installation of closed-circuit equipment in her offices. With respect to the threats against Ms. Zamora, the Government stated that a preliminary investigation was opened on 19 March 2002. Further, at a meeting between the Government Procurator of the Federal District and Ms. Zamora, she indicated her rejection of measures being implemented to protect her physical integrity. On 19 November 2002 the Government provided an update on this case and advised that Ms. Zamora now has increased security, as surveillance cameras had been installed in her office.

122. On 1 October 2002 and 5 November 2002, the Government replied to the Special Rapporteur's communication of 23 July 2002. The Government stated that the Federal District Government Procurator's Office had immediately initiated a preliminary investigation into the threats and harassment of Arturo Requensens Galnares and that the investigation was ongoing. The Inter-American Commission for

Human Rights had requested protection for Mr. Galnares and his mother, Guadalupe Galnares Meeza, and this was granted by the Minister for Foreign Affairs and is being provided by judicial officers from the Federal District Government Procurator's Office. In addition, protection was also being provided to Mr. Galnares at the ACAT.

123. On 30 October 2002 the Government responded to the Special Rapporteur's recommendations contained in his mission report (E/CN.4/2002/72/Add.1). The Government stated that the Special Rapporteur's recommendations were incorporated into the international mechanisms and recommendations developed by the External Relations Secretariat which were being considered by the Inter-Secretarial Commission. Further, it was reviewing the recommendations because it wanted to develop an overall policy to strengthen human rights, as publicly announced by President Fox on 20 August 2002. The Interdepartmental Commission on Government Policy on Human Rights replaced the old Commission and has a broader mandate which includes members of civil society. The recommendations of the Special Rapporteur will be an important reference for the second phase of the technical cooperation programme being undertaken with OHCHR.

124. On 22 November 2002, the Government sent information to the Special Rapporteur regarding information it had received as a result of an unannounced visit conducted on 12 October 2002 by the National Institute of Migration, the Office of the General Prosecutor, the Preventative Police and observers from the National Commission on Human Rights to a detention centre in Iztapalapa. The Government advised that irregularities had been found resulting in an investigation by the Office of the General Prosecutor into potential administrative and criminal offences.

125. On 18 December 2002 the Government provided confidential information on the case of Digna Ochoa. The Government asked that the information remain confidential as the case is still pending. In August 2002, a special prosecutor was assigned to this case.

126. The Special Rapporteur also received a lengthy report on his mission report compiled by the Supreme Court of Mexico.

Observations

127. The Special Rapporteur has not heard anything further about the extent to which the Government has implemented the recommendations made in his mission report (E/CN.4/2002/72/Add.1).

128. As for the response of the Supreme Court of Mexico to his report, the Special Rapporteur did not respond as he felt that the report was prompted by, and more of a response to, the media reports on the Special Rapporteur's report.

Nepal

Communications to the Government

129. On 22 January 2002, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on Torture and the Chairman-Rapporteur of the Working

Group on Arbitrary Detention concerning **Sita Baidik** a 33-year-old bookseller, and her husband, **Padam Prasad Baidik** a 36-year-old lawyer. Ms. Baidik was reportedly arrested at her book stall in Tulsipur town, Dang district, in mid-western Nepal on 16 January 2002 and taken to the police office in Tulsipur. When her husband attempted to see her in custody, he was allegedly arrested as well. The Chairman of the Appeal Court Bar Association went to the police station to make inquiries on their behalf and was reportedly advised that they had both been handed over to army officers from an army camp in the district, called Bahini Adda, where they were said to be held in incommunicado detention. They had reportedly not been charged with a criminal offence. It is believed that they might have been arrested because of their previous student activities with the Nepal National Free Students Union or their alleged membership or support of the Communist Party of Nepal (CPN) (Maoist). The Terrorist and Disruptive Activities (Prevention and Control) Ordinance is said to grant wide powers of arrest, and to allow the holding of persons arrested under the Ordinance for up to 90 days, extendable for another 90 days with the permission of the Home Ministry. Fears were expressed that the above-named persons might be at risk of torture or other forms of ill-treatment in view of the incommunicado nature of their detention in an unknown location.

130. On 29 July 2002, the Special Rapporteur sent an urgent appeal concerning the arrest of lawyer **Tikajung Shahi**. The Special Rapporteur had received information that Mr. Shahi had been arrested on 29 May 2002 at his office, the Legal Remedy Centre, in Nepalgunj, Banke district. It was further reported that at the time of his arrest, security personnel stated that he was being taken for interrogation. It is alleged that the authorities had not confirmed his whereabouts and that his location still remained unknown.

131. On 8 August 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture concerning the arrest of lawyer **Hari Prasad Phuyal**. The Special Rapporteurs had received information that Mr. Phuyal had been arrested on 22 May 2002 at his home in Himalipath, Biratnagar, held for two days at the district police office and then transferred to Morang prison. It was alleged that Mr. Phuyal had been arrested for his work as a lawyer representing members of the armed CPN.

132. On 29 August 2002, the Special Rapporteur sent a joint urgent appeal with the Chairman-Rapporteur of the Working Group on Arbitrary Detention concerning the arrest of lawyer, **Raman Kumar Shrestha**, who worked at a Legal Relief Centre which reportedly defends victims of social or political injustice. The Special Rapporteur had received information that he had been arrested on 23 August 2002 on the way to his office in Kanuni Uddhar Kendra, Bagbazar, Kathmandu, by members of the army. His house was searched and his wife was told that her husband had been arrested to help them with an inquiry, but did not give her any further explanation for his arrest. Fears have been expressed that Mr. Shrestha may have been arrested because of his professional legal activities or because the authorities suspect him of being a supporter or sympathizer of the CPN. It was added that lawyers appearing on behalf of Maoist suspects have repeatedly been targeted by the authorities.

Observations

133. The Special Rapporteur regrets there has been no response from the Government.

New Zealand

Communications from the Government

134. On 2 April 2002, the Government provided further information concerning the case of **Moti Singh** and confirmed the establishment of the Lay Observer procedure for complaints about judicial conduct not upheld by the judiciary's own internal review. The Government informed the Special Rapporteur that the Cabinet had concluded after careful consideration that there was no legal basis for the payment of compensation to Mr. Singh, and that there was no basis for a possible removal of Judge Bouchier. Cabinet decided, however, to request a retired judge from the Court of Appeal to look into procedure followed in the investigation of Mr. Singh's complaint. In his report, the judge concluded that the procedure followed had generally been adequate and appropriate, but suggested three aspects for further consideration: the need for some measure of consultation with the complainant, the need for additional consultation with Judge Bouchier, and the need for advice to the Attorney-General of the nature of the complaint and its internal resolution. The judge also gave as his opinion that the Chief District Court Judge should have given a more fulsome apology.

135. On 28 June 2002, the Government sent further information concerning Moti Singh. The Government stated that the Chief District Court Judge had written to Mr. Singh to inform him that he had received the report of the investigating judge and discussed it with Judge Bouchier. The Government also attached a copy of the letter sent to Mr. Singh informing him of the Government's decision in his case.

Observations

136. The Special Rapporteur thanks the Government for the serious considerations it gave to his concerns over the then disciplinary procedure. He appreciates the Government's efforts in further reviewing the process adopted in the complaint by Moti Singh and the appointment of Justice Henry to that effect. The Special Rapporteur also appreciates the transparency in this process, particularly the disclosure of the report of Justice Henry to Mr. Singh.

Nicaragua

Communications to the Government

137. On 13 May 2002, the Special Rapporteur sent a communication to the Government concerning lawyer **Maria Luisa Acosta**. According to the information received, Ms. Acosta's husband was found murdered in their home on 8 April 2002, with his hands tied behind his back and a gunshot wound to the chest. As nothing was stolen from the house, the information alleged that this indicated theft was not the motive behind the attack. It was alleged that Ms. Acosta had been the actual target of the attack, as she had received death threats in connection with her work at the Centro de Asistencia Legal a los Pueblos Indigenas.

138. On 7 October 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning Chief Judge **Juana Méndez Pérez** of the District Criminal Court. According to the information received, Chief Judge Pérez received a threatening phone call on 30 September 2002 directing her to free detainee Bayron Jérez Solis or she and her children would be killed. In addition, a vehicle carrying 6 men followed her and tried to intimidate her.

Communications from the Government

139. On 28 November 2002 the Government replied to the Special Rapporteur's communication of 7 October concerning Chief Judge Pérez. The Government advised that Judge Pérez and members of her family have received 24-hour police protection and there is an ongoing investigation by the National Criminal Investigations Department.

Observations

140. The Special Rapporteur thanks the Government for its response.

Nigeria

Communications to the Government

141. On 21 January 2002, the Special Rapporteur sent a communication regarding the assassination of **Chief James Ajibola Ige**, Minister of Justice and Attorney-General of Nigeria. According to information received, he was killed in his home in Ibadan, Osun State, on 23 December 2001. The main suspect surrendered to the police on 14 January 2002 and reportedly stated that the Osun state deputy governor had ordered the killing. It was also reported that **Mr. Awonusi**, secretary to Chief Justice Muhammadu Uwais, had been killed in Abuja on 8 January 2002.

142. On 25 June 2002, the Special Rapporteur sent a communication concerning the murder of judge **Theresa Inyang-Ngah**. The Special Rapporteur had received information that on 11 June 2002, Ms. Inyang-Nyah, Chief Magistrate of the Calabar judiciary division, Cross River State, was found murdered in her home. It was reported that a police spokesman stated that a political motive for her death could not be ruled out and that she might have been killed in revenge for denying bail to a group of suspects being held in connection with the murder of a local government councillor. The Special Rapporteur was also informed that as a result, the local branch of the Magistrates Association of Nigeria had gone on an indefinite strike.

143. On 4 July 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning threats made to **Justice Nkem Izuako**, High Court, Anambra State. The Special Rapporteurs had received information alleging that following the decision in a case involving the Idemili local government, the judge was visited on several occasions in her home by an official claiming to be from the state Ministry of Justice, who put pressure on her to accept a bribe and revoke her decision. It is alleged that following

her refusal she was told she would be assassinated. Subsequently, whilst travelling to Abuja, she was followed by several individuals and needed to be provided with a police escort. It was further alleged that in December 2001, she was transferred to a judicial division in a rural part of Anambra State in punishment for her refusal to yield to pressure.

144. On 30 August 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning **Ahmadu Ibrahim, Fatima Usman** and **Mallam Ado Baranda** who have been reportedly sentenced to death by stoning. It has been brought to the Special Rapporteur's attention that Mr. Ibrahim, Ms. Usman and Mr. Baranda reportedly did not have legal representation during their trials or when the sentences were handed down. Mr. Ibrahim and Ms. Usman, from New Gawu in Niger State, were reportedly both convicted of adultery and initially received a sentence of five years imprisonment with a fine of N15,000 (around £75). Nevertheless, the state judiciary called for a retrial because it considered this sentence to be inappropriate. Mr. Baranda is reported to have been sentenced to death by stoning in Jigawa State for the rape of a nine-year-old girl. The sentence was pronounced despite outrage expressed by civil society both in and outside Nigeria over the death sentences now regularly handed out by Nigeria's Sharia's courts.

145. On 26 September 2002, the Special Rapporteur sent a communication concerning the murder of two lawyers, **Barnabas Igwe** and his wife, **Abigail Igwe**, in Onitsha on 1 September 2002. According to the information received, Mr. and Mrs. Igwe were killed after returning home from a National Bar Association (NBA) conference where Mr. Igwe, Chairman of the Onitsha branch of the NBA, publicly criticized the Anambra state government's failure to pay the salaries of government workers. In the days preceding the murders, Mr. Igwe had received direct threats from senior officials in Anambra State. The Special Rapporteur was also informed that close colleagues of Mr. and Mrs. Igwe received death threats, including a specific threat on the day after the killings when one colleague was told that "he would be next".

Communications from the Government

146. On 7 November 2002 the Government replied to the Special Rapporteur's communication of 26 September 2002 concerning Barnabas and Abigail Igwe. The Government advised that the case had been conveyed to the appropriate authorities for investigation and a further update will be transmitted without delay.

Observations

147. Despite reminders sent the Government has not responded to the other communications.

Pakistan

Communications to the Government

148. On 28 February 2002, the Special Rapporteur sent an urgent appeal regarding the Anti-Terrorism (Amendment) Ordinance 2002 promulgated by President Musharraf on 31 January 2002, which amended the Anti-Terrorism Act 1997. The Amendment Ordinance provides for the establishment of anti-terrorism courts composed of two civilian serving judicial officers and one military officer nominated by the Federal Government. According to the information received, these courts would have jurisdiction not only to try terrorism-related offences, but also other serious crimes like murder and kidnapping. The Amendment Ordinance provides that these courts will function for a period up to 30 November 2002, but there is a provision for the extension of the period by the Federal Government by simply notifying the Official Gazette. According to information received, there was a previous decision of the Supreme Court of Pakistan to the effect that the establishment of military courts for the trial of civilians is unconstitutional.

149. On 27 May 2002, the Special Rapporteur sent a communication concerning the retrial of **Benazir Bhutto**. The Special Rapporteur had received information that the retrial of Ms. Bhutto had begun on 17 May 2002, at the Rawalpindi Accountability Court, and Mrs. Bhutto was convicted on 21 May 2001 and sentenced to three years' imprisonment in absentia. It was also reported that although Ms. Bhutto was not present during the trial she was represented by her lawyer, Sardar Latif Khosa. It was alleged that despite this, the case was initially adjourned and subsequently witness statements were taken in chambers by Judge Mansoor Ali Khan without her counsel being present.

150. On 25 June 2002, the Special Rapporteur sent an urgent appeal concerning threats to lawyer **Khalil Tahir**. The Special Rapporteur had received information that on 28 May 2002, Mr. Khalil, who works with the National Commission for Justice and Peace, was called at his home and threatened with death unless he stopped defending one of his clients, Ranjha Masih, who had been charged with blasphemy under section 295-C of the Pakistan Penal Code. The information also stated that on 8 June 2002, several individuals came to Mr. Khalil's house inquiring about his whereabouts. The police subsequently arrested one individual who was loitering around Mr. Khalil's house.

Communications from the Government

151. On 8 October 2002, the Government provided a response to the Special Rapporteur's communication of 25 June 2002 concerning the case of Khalil Tahir. The Government advised that it has directed the Ministry of the Interior, the Home Department of the Government of Punjab and the Inspector General of Police of Punjab to ensure the personal safety of Mr. Tahir.

152. On 30 December 2002, the Government provided a response to the Special Rapporteur's communication of 25 June 2002 concerning the case of Benazir Bhutto, advising that Ms. Bhutto was tried in absentia on 17 May 2002 and convicted and sentenced on 21 May 2002 to three years' imprisonment.

Observations

153. The Special Rapporteur continues to receive information regarding concerns over the state of democracy and the rule of law in Pakistan. The continued persecution of Mrs. Benazir Bhutto is a matter of concern. The Government appears to have completely ignored the Special Rapporteur's request for a mission.

Palestinian Authority

Communications sent

154. On 17 May 2002, the Special Rapporteur sent a communication welcoming the statement by the Palestinian Authority that it would abide by the principle of the separation of powers and would rebuild the political system on the basis of democracy, the rule of law and an independent judiciary. Further, the Special Rapporteur welcomed the signing of a law recognizing the independence of the judiciary.

Communications received

155. On 29 May 2002, the Authority replied to the Special Rapporteur's communication of 17 May 2002. The Authority thanked the Special Rapporteur for the communication and stated that the changes come within the framework of the building a Palestinian society on sound and democratic foundations, based on the rule of law and order and the abidance by the principles of the separation of powers.

Peru

Communications to the Government

156. On 27 May 2002, the Special Rapporteur sent a communication concerning the trial of 12 military officers who participated in Operation Chavín Huántar at the Japanese embassy on 22 April 1997. The Special Rapporteur received information that these individuals had been indicted for unlawfully killing seven members of the Revolutionary Movement Tupac Amarua (MRTA), and that a preventive detention order had been issued by Anti-Corruption Judge Cecilia Pollack. The Special Rapporteur was also informed that on 14 May 2002 the Minister for Defence declared his support for 11 of the 12 individuals and denounced their preventive detention. Further, on 16 May 2002, a cross party statement was adopted by the Peruvian Congress expressing concern at the detention of these individuals and expressing support for the armed forces that participated in the aforementioned operation. Also, several draft amnesty laws had been placed before Congress to exempt these individuals from further prosecution.

Communications from the Government

157. On 16 December 2002, the Government replied to the Special Rapporteur's communication of 27 May 2002 concerning Operation Chavín Huántar. The Government advised that on 11 June all the persons concerned had been charged with

second-degree murder and were all released from detention except one. The investigation is ongoing. The Government stated that all the persons involved in the investigation will be provided with all the legal judicial guarantees and the independence of the judiciary will be respected. With respect to the actions taken by the Minister of Defence, Dr. Aurelio Leret de Mola, the Government explained it was his way of expressing his support for his staff who were involved in the case, since they had risked their lives to save 72 other persons taken as hostages by the MRTA.

Other Developments

158. The Special Rapporteur notes the recent ruling in early January 2003 by the Constitutional Court of Peru that some of the country's anti-terrorist laws were unconstitutional. The Court concluded that it was unconstitutional for military tribunals to try civilians. The Court also ruled that life sentences handed down to rebels convicted of terrorism were excessive, and therefore unconstitutional. The ruling affects about 900 people who may file appeals in light of the ruling.

Observations

159. The Special Rapporteur thanks the Government for its response. He urges the Government to respect the decision of the Constitutional Court.

Saudi Arabia

Communications to the Government

160. On 3 May 2002, the Special Rapporteur sent a communication to the Government concerning the situation of seven individuals who had been arrested for a series of bombings that had taken place in Saudi Arabia in 2000 and 2001. The Special Rapporteur had received information that the individuals had been convicted of these crimes after a closed hearing and sentenced to imprisonment. It was alleged that the convictions were based upon confessions which, according to one of their defence lawyers, Ahmed al-Tuwaijeri, had been retracted. It was further alleged that the families of the accused had not been able to communicate with the accused during their detention and were not aware of the legal processes taking place.

Communications from the Government

161. On 1 July 2002, the Government replied to the Special Rapporteur's communication of 3 May 2002. The Government stated that the proceedings against the individuals are continuing and that they are fully represented by lawyers. The judgement to be passed in the case will be made public. In this context, the Government made clear that the executive authority has no influence over the judicial system in Saudi Arabia.

Observations

162. The Special Rapporteur raised this issue with the competent authorities in Riyadh during his mission and has made his observations in his report (E/CN.4/2003/65/Add.3).

South Africa

Communications to the Government

163. On 3 September 2002, the Special Rapporteur sent an urgent appeal concerning the shooting of **Magistrate Tienie Langenhoven** of the Parow Regional Court, Cape Town, on 27 August 2002. According to the information received, Magistrate Langenhoven was seriously injured in front of his home when a passing car fired three shots that hit him in various parts of the body, including the head and the chest. It was further reported that magistrates have previously requested the Government to take steps to improve the security conditions under which they work, including the provision of security guards to patrol their homes and to escort them to their place of work.

164. On 12 December 2002, the Special Rapporteur sent an urgent appeal concerning the attempt on the life of **Justice Nathan Erasmus** of the Cape High Court on 9 December 2002. Reportedly, Justice Erasmus had received a number of written threats, the first back in June 2002 and most recently on 26 November, when he was the judge on several high-profile urban terror cases. According to the information received, there has been little progress in the investigation into the threats against Justice Erasmus.

Communications from the Government

165. On 19 April 2002 the Government replied to the Special Rapporteur's communications dated 8 August 2001 and 4 September 2001. The Government stated that it had taken several measures to strengthen the independence of magistrates and separate their judicial and administrative functions, including the appointment of office managers in certain main areas, and in 90 per cent of offices there was now a practical separation of functions. However, in very small offices this had not been implemented due to funding limitations. Further, magistrates have been integrally involved in the process and as a result have not embarked upon any countrywide action. However, magistrates have commenced proceedings in the High Court, which are currently being considered by the Constitutional Court, concerning their situation.

166. The Government also emphasized that notwithstanding budgetary restrictions, money has been invested to upgrade facilities and magistrates and judges had received substantial salary increases. The Government stated that it is in favour of a single judiciary. With respect to the communication dated 4 September 2001, the Government stated that the letter to regional court presidents was sent as a follow-up to a meeting with lay assessors and was a mere request that should not be construed as an attempt to interfere with the independence of the judiciary. Further, the letter requested information on problems with the use of lay assessors and emphasized that the use of these persons was aimed at fostering greater interaction between courts and communities.

Other developments

167. Earlier in January 2003 the Special Rapporteur received information that the Chief Magistrate of KwaZulu Natal was nearly shot dead in the early morning as he

was leaving home for his court. Earlier, a Ganteng policeman was shot dead inside the Alberton magistrate's court.

Observations

168. The Special Rapporteur expresses grave concern over the increased violence against judicial officers. Despite assurances from the Ministry of Justice that security of judicial officers will be given priority, this does not appear to be the case. Without such security for judicial officers the rule of law will be put at risk.

Spain

Communications to the Government

169. On 1 February 2002, the Special Rapporteur sent a communication concerning the proceedings against three judges, **Carlos Cezón, Juan José López Ortega** and **Carlos Ollero** of Section IV of the Penal Chamber of the National High Court. The judges had ordered the provisional release of a prisoner charged with drug trafficking, on the basis of a psychiatric report indicating that the prisoner was mentally ill and that a suicide risk existed. Subsequently, the accused absconded. According to reports, the Supreme Court agreed to process the complaint presented by the Attorney General against the three magistrates for the crime of wilful neglect of duty. The General Council of the Judiciary (GCOJ) has opened an inquiry against the three judges for carelessness.

Communications from the Government

170. On 28 February 2002 the Government sent a detailed response to the Special Rapporteur's communication of 1 February 2002. The Government stated, as a preliminary matter, that disciplinary or criminal investigations of judges are a rare occurrence and in this instance the Asociación de Abogados Demócratas por Eurpoa is also pressing private criminal charges against the judges concerned. With respect to the specific case mentioned in the Special Rapporteur's communication, the Government stated that on 10 January 2002, the GCOJ opened a formal inquiry into the events concerning the provisional release of the prisoner, and requested reports on each of the judges involved and the forensic physician. On 17 January the GCOJ initiated disciplinary proceedings against the judges for allegedly committing a very serious violation of article 417(9) of the Organization of Justice Act, through negligence in the exercise of judicial power. On 6 February 2002, the three judges were suspended from duty, in accordance with article 384(3) of the aforementioned Act, until the criminal proceedings against them were completed. The disciplinary proceedings were also suspended until that time.

171. With respect to the criminal proceedings, the Government stated on 10 January 2002 that the Public Prosecutor's Office had filed a complaint with the second Division of the Supreme Court for a violation of article 446(3) of the Penal Code, which provides that a judge or a magistrate who knowingly hands down an unjust sentence or decision shall be punished with a fine of 12 to 24 months of salary and a disqualification from public employment for a period of 10 to 20 years if he/she hands down any other unjust sentence or decision. This complaint was declared

admissible by the Criminal Division of the Supreme Court on 17 January 2002. Preliminary hearings have now commenced and the judges concerned have been charged and are entitled to legal assistance by a lawyer of their choice.

172. On 6 August 2002, the Government sent further information concerning the proceedings against the three judges. The Government stated that on 23 July 2002, the Supreme Court ordered the dismissal of the complaint against the three judges, who are now exempt from any criminal responsibility for their actions. Further, on 29 July 2002, the GCOJ, found that the behaviour of the judges indicated a "lax, careless and ultimately negligent attitude" constituting a serious disciplinary offence. The GCOJ ordered a seven-month suspension for Justice Carlos Cezón González, and six month suspensions for Justices López Ortega and Ollero.

Observations

173. The Special Rapporteur views with concern that while the Supreme Court acquitted the judges for knowingly handing down an unjust decision, the GCOJ found that the same judges were lax, careless and negligent in their judgement. Even if the judgement were manifestly wrong or unjust, surely the proper procedure would have been an appeal to the appellate court.

Sri Lanka

Communications to the Government

174. On 13 September 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention regarding **Nandini Herat**, who was allegedly subjected to sexual torture by 5 police officers, including the officer in charge, while in police custody in Wariyapola, near Kurunegala. It has been reported that the trial of the five police officers for torture began in September before the magistrate's court of Wariyapola. Although the magistrate allegedly issued a warning that the witnesses should not be intimidated, the police officer in charge reportedly went to the remand prison where Ms. Herat was being held, allegedly in order to ask her to withdraw the case. He was reportedly prevented from doing so by prison officials. Other threats were reportedly uttered against Nishanta Kumara, a correspondent of the daily newspaper Ravaya, by Mr. Sunil, a supporter of the ruling United National Party who allegedly threatened Mr. Kumara with a knife and asked if he was "the human rights dog who's trying to send my brother-in-law to prison." Fears have also been expressed that the two lawyers who had been asked to act on Ms. Herat's behalf have withdrawn their services as a result of intimidation.

Communications from the Government

175. On 10 October 2002 the Government sent a response to the Special Rapporteurs' communication of 13 September 2002 concerning Nandini Herat. The Government advised that the Criminal Investigations Department (CID) of the Sri Lanka Police had taken over the investigation on the alleged torture of Ms. Herat. The Government further advised that the Judicial Medical Officer had been directed to

undertake another medical examination of Ms. Herat. The CID was requested to submit the investigation and medical reports by 31 October 2002 in order to consider filing indictments under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act. The Government also advised that the CID had been directed to conduct criminal investigations into the alleged threat against **Priyantha Gamage**, Ms. Heart's lawyer and Nishanta Kumara, human rights activist.

176. On 17 December 2002, the Government sent a response to the Special Rapporteur's communication of 6 August 2001 (see E/CN.4/2001/65, paras. 206-207, 209-210 and E/CN.4/2002/72, annex, para. 166) concerning lawyer, Kumar Ponnambalam, who was shot dead on 5 January 2000. The Government advised that the Crime Detection Bureau of the Police Department was directed to investigate the assassination. On 28 February 2001 the CID took over the inquiry. Based on further investigations, the Attorney-General directed the CID to charge three suspects, one a former reserve police constable, and the court proceedings will commence on 3 January 2003.

Observations

177. The Special Rapporteur is waiting to hear about the outcome of the prosecution of the three accused for the murder of Kumar Ponnambalam.

178. The Special Rapporteur continues to be concerned over the allegations of misconduct on the part of the Chief, Justice Sarath Silva, the latest being the proceedings filed against him and the Judicial Service Commission in the Supreme Court by two district judges which is set for hearing on 27 February 2003.

Sudan

Communications to the Government

179. On 20 February 2002, the Special Rapporteur sent a communication concerning the emergency tribunals that were established in 2001 under the state of emergency to deal summarily with certain specified crimes. These tribunals are reportedly composed of two military judges and one civil judge, the right to legal representation of the accused is seriously restricted and an appeal is only permitted to the district chief justice. In particular, it was reported that on 12 December 2001, an emergency tribunal in Nyala, Southern Dafur, convicted **Abdu Ismail Tong** and **Yousif Yaow Mombai** for the theft of a sum of money and sentenced them to amputation of the right hand. According to the information received, they were denied the right to legal representation throughout the trial.

180. On 26 June 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and the Special Rapporteur on the situation of human rights in the Sudan concerning the sentencing to death by hanging of 14 prisoners by Nyala Special Court No. 1 on 8 May 2002. The Special Rapporteurs had received information that the Nyala Special Court had been established in accordance with article 6(2) of the Law of Emergency and Protection of Public Safety of 1997 and State of Emergency No. 1 of 1998. The information stated that this court is composed

of one civil and two military judges, that lawyers are forbidden to appear before the court and individuals can only appeal the decision of the court when sentenced to death or amputation. The appeal must be made within seven days to the district chief justice whose decision is final.

181. On 23 July 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and the Special Representative of the Secretary General on human rights defenders concerning the trial of 88 people by a special court in Nyala. According to the information received, on 17 July 2002, these individuals, mostly from the Rizeigat community, had been sentenced to death by hanging or crucifixion for crimes committed in clashes between the Rizeigat and Maalyia ethnic groups in Al-Tabet, Southern Dafur. It was alleged that these individuals had been subjected to torture and tried without proper legal representation after their lawyers withdrew in protest of the court's decision to refuse to authorize medical examinations.

182. On 3 December 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture, the Special Rapporteur on violence against women and the Special Rapporteur on the situation of human rights in the Sudan concerning 17 women accused of adultery from the village of Munwashi, 8 km north of Nyala. It was reported that the reason given for the charges of adultery was that all the women were unmarried, but had given birth to babies. Summary trials were reportedly held and on 12 November 2002 **Um Alnas Mohamed Ahmed, Hanan Abdulrahman Mohamed, Hagir Mohamed Ahmed, Nimat Abakr Abdelgadir, Rasha Bahr Aldin Adam, Fatima Abdulla Adam, Gada Mosa Hamid, Shamael Omar Fadl, Hawa Yousif Abdelgadir, Fathia Ahmed Abdulrahman, Laila Adam Siraj, Kaltoum Isam Adam, Rawda Abdelgabar Mohamed** were reportedly found guilty of adultery and sentenced to receive 100 lashes. **Gadah Abdelgabar** was allegedly found guilty of adultery on 14 November 2002 and sentenced to receive 100 lashes. The punishments were allegedly carried out on the same day as the sentencing. It is reported that the women had no opportunity to seek legal advice or to make appeals. No men have reportedly been charged in connection with the incidents. **Zahra Hassan Ali, Asma Mohamed Ahmed** and **Zakia Altayeb** have reportedly not yet been brought to court. Fears have been expressed that, if taken to court and found guilty, these three women would face the same punishment as the other 14 women.

Communications from the Government

183. On 25 July 2002 the Government responded generally to the Special Rapporteur's communications and referred to the increase of terrorism in western Sudan. The Government advised that 63 villages were burned and thousands of people were killed. The Government advised that it had established special courts in Elfashir and Nyala in accordance with the Constitution of 1998, under the state of emergency which was declared in the region to address the situation. The Government further advised that all accused were represented by a number of lawyers throughout the trial. The accused were found guilty of organizing highly dangerous crimes and spreading terror and killing more than 1'000 Sudanese, including women and children. The Government advised that five of the 36 accused in Elfashir were sentenced to death and another 15 accused received similar sentences in Nyala.

Observations

184. Even if crimes are terrorist related, the Government is urged to observe General Assembly resolution 57/219 of 18 November 2002.

Swaziland

185. On 28 November 2002 the Prime Minister made a press statement that his government “does not intend to recognize two judgements of the Court of Appeal (the highest court). One of the two judgements was with regard to a ruling that King Mswati II had no constitutional mandate over Parliament to issue decrees affecting the law. The other ruling was with regard to an order for citing the Police Commissioner for contempt for disobeying a High Court order.

186. This drove the government on a collision course with the judiciary. The entire bench of the Court of Appeal resigned. On 2 December 2002 judges of the High Court stopped work, as a mark of protest, and the Bar Association adopted a position to demonstrate in support of the judges. There were other related developments. The rule of law was in a state of collapse.

187. In the light of the gravity of the situation, the Special Rapporteur issued a press release on 4 December 2002 expressing concern and stating that the refusal of the Government to obey court orders was a blatant breach of what is implied in principle 4 of the Basic Principles on the Independence of the Judiciary and article 26 of the African Charter on Human and Peoples’ Rights

188. In a further development, the Prime Minister ignored a High Court order demanding that he provides an assurance that the government would adhere to court decisions. Instead, in a press statement issued on 3 January 2003 he was reported to have said, “Two recent appeal court judgements will be addressed through consultation between the government and its advisers, in addition to the Head of State (King Mswati). Legal experts will be included in the consultation.”

189. These developments must be viewed with grave concern. The Special Rapporteur urges the Commission to address them appropriately.

Syrian Arab Republic

Communications to the Government

190. On 11 April 2002, the Special Rapporteur together with the Special Rapporteur on torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention sent a joint urgent appeal regarding **Riad Seif**, an independent member of the Syrian People's Assembly who was sentenced to five years’ imprisonment on 4 April by the Criminal Court in the capital Damascus. He was reportedly found guilty of a number of offences, including attempting to change the Constitution by illegal means and inciting ethnic strife. It was reported that Riad Seif was arrested without a warrant, before his parliamentary immunity had been removed. Further, his trial reportedly fell short of international standards for fair trials, as he was allegedly denied an adequate public hearing as well as confidential access to his

lawyers, who were not allowed to call in defence witnesses. It was also reported that several other prisoners, including **Habib 'Isa, Fawaz Tello, Habib Saleh and Kamal al-Labwani** who were also held at 'Adra Prison, on the outskirts of Damascus, began a hunger strike on 19 March. They were reportedly protesting against their continued detention without trial, the denial of access to their lawyers and the denial of appropriate medical care.

191. On 10 May 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture concerning **Riad Turk**. According to the information received, the health of Mr. Turk's, he suffers from diabetes and hypertension, had deteriorated significantly during his detention. He had reportedly been denied access to adequate medical treatment and also access to a lawyer. Further, on 28 April 2002 his trial commenced before the Supreme State Military Court in Damascus. It was alleged that Mr. Turk had not been informed that his trial was to commence and documents related to the trial had not been made available to him.

192. On 29 July 2002, the Special Rapporteur sent a communication concerning lawyer, **Haytham Al-Maleh**. The Special Rapporteur had received information that on 4 July 2002, Mr. Al-Maleh had been suspended from practising as a lawyer for a period of three years by the Disciplinary Council of the Damascus City Branch of the Syrian Lawyers Syndicate. It was alleged that this stemmed from a public statement that Mr. Al-Maleh had made in defence of two of his clients. It was also reported that the Disciplinary Council proceeded against Mr. Al-Maleh in his absence, despite the fact that he had notified the Council that he was unable to appear on the date of the hearing.

Communications from the Government

193. On 25 September 2002 the Government replied to the Special Rapporteur's communication dated 29 July 2002 concerning lawyer Mr. Al-Maleh. The Government advised that that on 5 February 2002 Mr. Al-Maleh was invited to appear before the Disciplinary Council with respect to an article he wrote in a bar association journal but he did not appear on that date and did not provide justification for his absence. The disciplinary Council fixed a new date of 5 March 2002. On that date Mr. Al-Maleh appeared and asked to present a case in his defence. The Council met again on 16 April and Mr. Al-Maleh presented his case. The case was adjourned to 21 June 2002 and on that date Mr Al-Maleh was absent, therefore the council imposed a three-year suspension from practising law.

194. On 28 October 2002 the Government replied to the Special Rapporteurs' joint urgent appeal dated 11 April 2002 addressing the case of Riad Seif. The Government confirmed that Mr. Seif was sentenced to five years in jail on 4 April 2002 for violating the Constitution and six months for organizing a secret society. Both sentences are subject to appeal.

195. On 28 October 2002 the Government also responded to the Special Rapporteurs' joint urgent appeal dated 10 May 2002 concerning the case of Riad Turk. The Government advised that Mr. Turk was charged with committing crimes against State security, the constitution and public order. The Government stated that

Mr. Turk's trial before the High State Security Court commenced on 1 September 2001 and is still pending, as he continues to enjoy his human and legal rights.

Observations

196. The Special Rapporteur thanks the Government for its responses. The Special Rapporteur has received information that Mr. Al-Maleh now faces a military trial in January 2003.

Timor-Leste

197. Following the Special Rapporteur's observations on Timor Leste in his last report (E/CN.4/2002/72, annex, para. 55), he continued to monitor developments in the country.

198. On 21 June 2002, judges in Timor-Leste sent the Special Rapporteur a communication seeking his assistance on two matters which were of some concern to them. The first concerned a draft Statute of Judicial Magistrates which the Government had submitted to Parliament on which the judges alleged that they were not consulted. They were concerned that some of the provisions in the draft would impinge on their independence. Their second concern related to the appointments of some of them. The affected magistrates felt that after 20 May 2002, when Timor Leste became an independent sovereign State under a new Constitution, their appointments expired and they no longer had the jurisdiction to adjudicate on cases. As a result many refused to attend to their judicial duties, thereby virtually paralysing the courts.

199. In view of the seriousness of the situation, on 4 July 2002, the Special Rapporteur wrote to the Foreign Minister, Jose Ramos Horta, expressing his concern and sought an urgent visit to which the Minister promptly responded in a communication dated 8 July 2002, inviting the Special Rapporteur.

200. The Special Rapporteur visited Dili from 11 to 13 July 2002. While there he visited the National Parliament and listened to part of the debate on the bill on the Statute on Judicial Magistrates; he met a group of the concerned judges; judges of the Special Panel for Serious Crimes; representatives of the USAID Rule of Law Programme; the acting Minister of Justice and Vice-Minister for Foreign Affairs; the representatives of the Human Rights Unit and the Special Representative of the Secretary-General for Timor-Leste, Kamallesh Sharma.

201. The concern of the judges regarding their appointments was resolved on 9 July 2002, when Parliament passed Bill M1/02 on the Interpretation of Applicable Law validating their judicial appointments on a transitional basis. From the discussions with the concerned judges, the Special Rapporteur learnt that they had taken a very strict interpretation of the Constitution and thereby overreacted to the situation. Following the Special Rapporteur's visit the judges returned to the courts on 15 May 2002, bringing an end to the six-week shutdown of many courts in Timor-Leste.

202. The Special Rapporteur studied the bill on the Statute of Judicial Magistrates and found that the judges had some justification for their concerns. Some of the provisions would, if passed as law, impinge on their independence. As a matter of

urgency, the Special Rapporteur, on 15 July 2002, addressed a communication to the Minister for Foreign Affairs expressing his initial areas of concerns over the bill.

203. At the request of the Government, on 6 August 2002, the Special Rapporteur subsequently submitted a more detailed memorandum expressing his concerns with respect to some of the provisions. The Special Rapporteur has not heard further from the Government nor the Human Rights Unit of UNMISSET in Timor-Leste.

204. The Special Rapporteur reiterates his concerns expressed in his last report (E/CN.4/2002/72, annex, paras. 45-55). The country requires considerable resources, both human and financial to structure a sound administration of justice. The present judges, many of whom are still on probation, require continuous training and more exposure both to law and practice. This includes international human rights law. The courts do not have adequate libraries or up-to-date materials on domestic laws.

Tunisia

Communications to the Government

205. On 4 January 2002, the Special Rapporteur sent a communication concerning the dismissal of **Judge Yahyaoui**. The Special Rapporteur had received information that on 29 December 2001, Judge Yahyaoui had been dismissed by the Disciplinary Council of Magistrates because of his presidency of an association for the independence of the judiciary, created in September 2001. It was alleged that the hearing before the council had not been fair as the lawyers who were representing the judge were refused a postponement in order to adequately prepare the judge's case.

206. On 4 February 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture and the Special Rapporteur on freedom of expression and opinion concerning the appeal hearing in the case of **Hamma Hammami, Abdeljabar Maddouri, Samir Taamallah and Amar Hamroussia**, who had been convicted for membership of the Communist Workers' Party of Tunisia. According to the information received, the police interrupted the hearing and acted aggressively towards the accused, following which the lawyers representing the accused withdrew from the case out of protest. It was reported that the convictions were confirmed by the court. Several persons attending the hearing, including three foreign journalists, were said to have been arrested by the police. The Council of the Bar Association had reportedly called a general assembly and were planning a general strike for 7 February 2002.

207. On 6 March 2002, the Special Rapporteur sent a further communication concerning the dismissal of Mr. Yahyaoui. According to the information received, the Disciplinary Council had failed to issue its decision on the complaints against Mr. Yahyaoui in writing, which would affect his right of recourse before the Administrative Tribunal. It was alleged that the Administrative Tribunal rejected Mr. Yahyaoui's request to order the Council to formulate its decision in writing. Further, Mr. Yahyaoui's counsel, **Abderrazaq Kilani**, has allegedly been put under pressure in order to make him withdraw from the case.

208. On 8 April 2002, the Special Rapporteur sent an urgent appeal with the Special Representative of the Secretary-General on human rights defenders concerning the failure of the Government to allow Judge Yahyaoui to leave the country in order to attend the United Nations Commission on Human Rights.

209. On 15 April 2002, the Special Rapporteur sent a letter requesting an urgent mission to Tunisia.

Communications from the Government

210. On 12 February 2002, the Government replied to the Special Rapporteur's intervention of 4 January 2002. The Government stated that on 9 December 2001, the Judicial Disciplinary Council decided to dismiss Judge Yahyaoui for bringing dishonour on the judiciary and failing to comply with his professional obligations and duty of discretion. The Government stated that this was because he had publicly defamed the courts and failed to observe the neutrality expected of judges under the regulations on the judiciary. The Government recalled that on 6 July 2001, Judge Yahyaoui had published an "open letter" which contained defamatory statements about serving law officers and the courts, which stated, *inter alia*, that "the title of legal officer is associated with injustice, terror and tyranny... The Judicial Service Commission spends its time sowing discord". He then published an article on the Internet, in which he stated that "the Tunisian legal officers who were behind the promulgation of the 1967 regulations on the judiciary do not deserve divine mercy." Pursuant to article 54 of the regulations on the judiciary, the Minister of Justice summoned Mr. Yahyaoui before the Disciplinary Council on 17 July 2001. A reporting member of the Council was designated to take a statement from Mr. Yahyaoui prior to the meeting of the Council.

211. The Government stated that Mr. Yahyaoui was summoned to appear before the Disciplinary Council within the legally prescribed time frame, i.e. eight days before the Council met on 2 August 2001. As prescribed by law, Mr. Yahyaoui appointed two lawyers, Abderrazak Kilani and Fayçal Triki, to represent him. They inspected the case file on 26 and 28 July, respectively. Owing to the seriousness of the charges against him, Mr. Yahyaoui was suspended from his duties pursuant to a decision of the Ministry of Justice dated 14 July 2001, in accordance with articles 24, 50 and 54 of the regulations on the judiciary. On 28 July 2001, Mr. Yahyaoui requested postponement of the Council meeting. The President of the Council acceded to this request. Given that suspension is effective only until such time as the matter comes before the Council, it was lifted by the Ministry of Justice on 31 July 2001. Mr. Yahyaoui was thus reappointed to his post on full pay.

212. According to the Government, on 3 September 2001, Mr. Yahyaoui's lawyer, Maître Kilani, filed a request that a decision should be taken on his client's case. A similar request was filed on 19 October 2001 by Maître Triki. Mr. Yahyaoui publicly stated this request on 23 December 2001 at a meeting of the Association of Tunisian Legal Officers.

213. The next meeting of the Council was then scheduled for 29 December 2001. No new evidence had been appended to the case file as submitted to the Council on 2 August 2001. However, the President of the Disciplinary Council, who is also the

President of the Court of Cassation, gave the defendant another eight days to inspect the case file prior to the meeting of the Council. On 24 December 2001, accompanied by Maître Kilani and, on 26 December 2001, by Maître Triki, Mr. Yahiaoui re-inspected the case file in person. During the eight-day period set aside for the inspection of the case file, no lawyers apart from those instructed to represent the defendant came forward. At the meeting of the Council on 29 December 2001, however, 84 lawyers suddenly submitted their instructions to represent Mr. Yahyaoui and requested that the case be postponed. Although the right of defence was honoured insofar as Mr. Yahyaoui had appointed lawyers who inspected the case file prior to the Council meeting, out of a concern to ensure more safeguards, the Council permitted all the lawyers who had presented themselves to attend the hearing. However, considering that the Council was meeting after a postponement requested by Mr. Yahyaoui himself; that no new material had been appended to the case file originally submitted to the Council; that Mr. Yahyaoui and his lawyers had inspected the same material on four occasions (26 July 2001, 28 July 2001, 24 December 2001 and 26 December 2001); and that another eight-day extension had been granted to the defendant and his counsel to enable them to inspect the case file, the Council took the view that the new request for a postponement was a delaying tactic and consequently rejected the request following a debate in closed session.

214. As to the merits, Mr. Yahyaoui reiterated his written replies when the President gave him the floor at the hearing. The Council, which is composed entirely of legal officers of whom two are elected by their fellow appeal-court judges (i.e. the same rank as the defendant), decided to dismiss Mr. Yahyaoui in view of the serious nature of the libels and their confirmation by the defendant himself.

215. The Government recalls that the Disciplinary Council is a decision-making body and applies a quasi-judicial procedure in its meetings and acts (times fixed for appearance, same reporting judge, right of defence, etc.). The Administrative Court, which has supreme administrative jurisdiction in Tunisia, nevertheless allows applications to set aside decisions of the Disciplinary Council on the grounds that the latter has exceeded its authority and that remedy is open to the defendant.

216. The Government concludes that the disciplinary proceedings against Mr. Yahyaoui have no connection with the right of a legal officer to form associations, or with the right to freedom of expression. Like all other citizens, legal officers enjoy all the rights and safeguards prescribed by law. Moreover, Tunisian legal officers have always been free to form associations. Thus, a professional association of legal officers was formed on 29 October 1971 and it continues to function normally. The matter of the establishment of a "Centre for the Independence of Legal Officers" was never raised during the proceedings and no evidence to substantiate the establishment of this "centre" was appended to the case file.

Other developments

217. The Special Rapporteur received information that on 11 December 2002 Judge Yahyaoui suffered violent blows to his head. The Special Rapporteur expresses his deep concern about the violence against Judge Yahyaoui and other reported threats against Tunisian lawyers in recent months.

Observations

218. The Special Rapporteur has expressed grave concern about the continued threat to the independence of judges and lawyers in Tunisia. His repeated requests for a mission to Tunisia since 1997 have been ignored by the Government.

Turkey

Communications to the Government

219. On 23 May 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the arrest of **Salih Yilar**. According to the information received, Mr. Yilar had been arrested on 14 May 2002 and taken to the Anti-Terror Branch of the Diyarbakir Police Headquarters, where he was allegedly tortured in order to force him to act as an informer. Mr. Yilar was released from custody after being taken to Diyarbakir State Hospital and after other police stations refused to accept him as a prisoner seeing that he had been tortured. Mr. Yilar then met his lawyers to give a statement and was immediately afterwards arrested by the police and informed that the next time both his brother and his lawyers would be arrested and placed in custody unless he signed a prepared statement.

220. On 7 August 2002, the Special Rapporteur sent a communication concerning the trial of **27 lawyers** before the Ankara Penal Court No. 1. The Special Rapporteur had received information that the lawyers were being tried for “professional misconduct” under Article 240 of the Turkish Penal Code, which allows for the punishment of public servants if they abuse their duties or responsibilities. These charges allegedly related to actions by the lawyers, involving the shouting of slogans and the inciting of individuals to resist the police, in the Ankara Penal Court No. 5 on 5 December 2000, where they were representing their clients.

Communications from the Government

221. On 15 October 2002, the Government replied to the Special Rapporteur’s intervention of 7 August 2002 and advised that the case against 27 lawyers was still pending and that none of the accused were in custody.

222. On 29 November 2002 the Government provided further information on this case and advised that all 27 lawyers were acquitted on 31 October 2002, due to lack of evidence.

223. On 6 November 2002, the Government replied to the Special Rapporteurs’ joint urgent appeal of 23 May 2002 concerning Salih Yilar. The Government advised that a decision of non-prosecution was rendered due to lack of evidence. The Government stated that Mr. Yilar was not subjected to torture. However, as a result of the alleged complaint, an investigation was initiated but no evidence or witnesses were found to substantiate this allegation.

Observations

224. The Special Rapporteur thanks the Government for its responses. With regard to the trial of the 27 lawyers for professional misconduct, the Special Rapporteur has seen the report of the International Commission of Jurists who sent an observer to the trial. The trial certainly appeared to be politically motivated, having a chilling effect on the legal profession. The Special Rapporteur urges the Government to observe the United Nations Basic Principles on the Role of Lawyers, and in particular not to identify lawyers with their clients' causes.

United Kingdom of Great Britain and Northern Ireland

Communications to the Government

225. On 25 June 2002, the Special Rapporteur sent an urgent appeal concerning threats made to a lawyer, **Padraigin Drinan**. The Special Rapporteur had received information that several loyalist paramilitary organizations were planning on killing her in revenge for the death of another individual. It was alleged that this information was known to the police but had not been passed onto Ms. Drinan, nor had steps been taken to improve her safety, despite her status as a person protected under the Key Persons Protection Scheme (KPPS).

226. On 26 July 2002, the Special Rapporteur sent an urgent appeal concerning alleged threats to **Geraldine Finucane**. The Special Rapporteur had received information that a loyalist paramilitary organization was planning to attack her at her home, allegedly because of her campaign for an official inquiry into the alleged collusion in the murder of her husband, **Patrick Finucane**. It was further reported that Mrs. Finucane's lawyer had contacted the Police Service of Northern Ireland (PSNI), which informed him that they were not aware of any threat. On 23 July 2002, Mrs. Finucane was contacted by the British-Irish Intergovernmental Conference Joint Secretariat, which informed her that the PSNI had performed a threat assessment and found a high level of risk and that the KPPS was investigating ways to counter the threat. It was alleged that neither the PSNI nor the KPPS contacted Mrs. Finucane to inform her of the steps she should take to guarantee her safety.

227. On 2 October 2002, the Special Rapporteur sent a joint communication with the Special Rapporteur on the human rights of migrants concerning allegations that certain procedural safeguards to guarantee human rights in the criminal justice system were being circumvented under the Anti-terrorism Crime and Security Act (ATCSA). According to the information received, under clauses 21 and 23 of ATCSA 2001, any non United-Kingdom national may be detained without charge or trial for an unspecified period of time when the Secretary of State certifies that he/she has grounds to believe that this person is a suspected terrorist or constitutes a risk to the national security. Since secret evidence can be entirely withheld from those against whom it has been adduced, fears have been expressed that Special Immigration Appeals Commission (SIAC) proceedings violate the right to a fair hearing. The Special Rapporteurs also noted that the ATCSA does not contain provisions guaranteeing the right to immediate access to a solicitor if a person is detained under this Act. Further, there are no explicit provisions under the ATCSA according to which those arrested under it have the right to bring proceedings before a court for a prompt determination of the lawfulness of their detention.

228. The Special Rapporteurs received information that those detained under the ATCSA in Woodhill prison, Buckinghamshire, and Belmarsh prison, London, have had restricted time and facilities to communicate with lawyers and that when legal and social visits were granted, visitors were subjected to strip searches.

229. Finally, the Special Rapporteurs noted that on 30 July 2002, the SIAC found that the targeting of non United-Kingdom nationals was discriminatory and disproportionate and determined that the above-described detention measures were not compatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Special Rapporteurs have been informed that the Government has appealed the judgement.

Communications from the Government

230. In response to the Special Rapporteur's earlier communication dated 13 December 2001 regarding the murder of William Stobie (E/CN.4/2002/72, annex, para. 192), the Secretary of State for Northern Ireland, assured the Special Rapporteur that the Government desired to get at the truth behind the killings of Patrick Finucane and William Stobie and that the best way to achieve this was to complete the Stevens investigation into the Finucane murder and the police investigation into the Stobie murder. The Government confirmed its commitment to appoint a judge of international standing to conduct a review of a number of cases, including that of Patrick Finucane.

231. On 30 July 2002, the Special Rapporteur received a reply to his urgent appeal dated 25 June 2002. The Government stated that the police had contacted Ms Drinan on 19 June 2002 to inform her of a threat from loyalist paramilitaries to target her at the Royal Courts of Justice on the following day. As a result the District Commander for the South Belfast District Command Unit deployed extra patrols in the vicinity of the courthouse and increased court security. Further, as a result of the information contained in the Special Rapporteur's letter, an up-to-date threat assessment was carried out which determined that Ms. Drinan was still under a significant level of threat. The police are carrying out inquiries to determine the source of the threat.

232. On 15 August 2002, the Special Rapporteur received a reply to his urgent appeal of 26 July 2002. The Government stated that they were first informed of the threat to Mrs. Finucane's life when her lawyer, Mr. Madden, contacted PSNI on 18 July 2002. The Government stated that PSNI had no intelligence about such a threat prior to being informed by Mr. Madden and that it is not true that knowledge of the threat had been withheld by Special Branch officers. As a result of the receipt of this information, PSNI carried out a risk assessment. Although it could not confirm the threat from its own intelligence sources, PSNI concluded that there was significant threat based upon the information given to them by Mrs. Finucane's lawyer.

233. The Government also stated that Mrs. Finucane had declined to attend a meeting in Dublin with the Deputy Commissioner of the Garda Síochána, Noel Conroy, and Assistant Chief Constable Alan McQuillan, which would have afforded an opportunity to discuss with her measures for her protection. Further, Mrs. Finucane has been included in KPPS, but, despite a number of approaches, Mrs. Finucane and her representatives had proved reluctant to make contact with the Northern Ireland

Office to facilitate the performance of the necessary work. On 6 August 2002, officials met with Mrs. Finucane's son and brother-in-law to discuss the installation of security measures. As a result, a comprehensive range of measures had been recommended although the family had expressed concern about the effectiveness of one of the main recommendations.

234. On 6 November 2002, the Government replied to the Special Rapporteurs' joint communication of 2 October 2002 concerning the ATCSA legislation. The Government advised that on 25 October 2002, the Court of Appeal unanimously found that Part IV of the Act was not discriminatory. The Government also explained that this Act strikes a balance between the interests of the individual suspected terrorist and the general community.

235. In particular, the Government provided the Special Rapporteur with the following information: "[T]he detainees have the right to an independent and impartial tribunal. Any certificate issued is subject to an appeal to the SIAC ...] which has the power to cancel it if it considers that the certificate should not have been issued. In addition, any persons detained have the right to challenge the derogation to SIAC and the higher courts, which they have tried, unsuccessfully, to do. Further, it is open to a detainee to end his detention at any time by agreeing to leave the United Kingdom."

236. The Government stated that there are further long-term safeguards. Sections 21 to 23 of the Act are temporary provisions which automatically expire after 15 months, subject to renewal for periods not exceeding one year at a time if both Houses of Parliament are in agreement (sect. 29(1)). This ensures periodic review by the legislature, in addition to continuing review by the executive. Further, the detention provisions will end with the final expiry of sections 21-23 of Part IV of the Act on 10 November 2006 (sect. 29(7)). If, in the Government's assessment, the public emergency no longer exists or the extended power is no longer strictly required by the exigencies of the situation, the Secretary of State will, by Order under section 29(2), discontinue the provision.

237. In response to the conditions of detention in both Belmarsh and Woodhill prisons, the Government clarified that prisoners are not being held under a restrictive regime. The Government advised that detainees do not suffer impediments to contact with the outside world. However, due to the security category of detainees, proposed visitors undergo appropriate checks and visits may only be permitted under closed conditions. Visitors are searched upon entry to the prison but this procedure does not imply that the visitor has to strip. In addition, detainees have access to a complaints system. So far, all complaints made by detainees have reportedly been investigated and a response has been given.

Observations

238. The Special Rapporteur was advised that Colin Port, the Deputy Chief Constable who was brought in to lead the investigation into Rosemary Nelson's murder, was no longer involved in the investigation. There is no information on the present state of this investigation.

239. The Special Rapporteur notes that Mr. Justice Peter Cory was appointed by the British and Irish Governments to determine whether there should be public inquiries into the murders of Mr. Finucane, Lord Justice Maurice and Lady Cecily Gibson, Mr. Billy Wright, Rosemary Nelson, Robert Hamill and two senior RUC officers, Chief Superintendent Harry Breen and Superintendent Bob Buchanan. The Special Rapporteur reiterates his concern that the longer a public inquiry is delayed the greater the likelihood that more evidence will be lost. He reminds the Government of the adage “justice delayed is justice denied.”

United Republic of Tanzania

Communications from the Government

240. On 4 April 2002, the Government replied to the Special Rapporteurs’ joint urgent appeal of 30 November 2001 (E/CN.4/2002/72, annex, para. 206) concerning the President, **Rugemeleza Nshala** and two other members, **Tundu Lissu** and **Augustine Mrema**, of the Lawyers’ Environmental Action Team (LEAT). The Government stated that on 24 November 2001, the police made a routine and lawful search of the LEAT premises to look for evidence to support charges of sedition. The search and seizure of documents were conducted in the presence of independent witnesses and representatives of the suspects. The suspects were interrogated and released on bail. The Government stated that these charges were laid because these members of LEAT continued to publicly allege that a massacre had taken place in Bulyanhulu despite the fact that a police investigation concluded that no one had been buried alive in a mine in Bulyanhulu. The Government further added that at no time has the Government exerted any pressure to undermine LEAT’s activities. The Government does not intend to deregister LEAT unless guided by strong reasons to do so. The Government advised that the police investigation against these three members of LEAT is complete and the case is being studied by the Director of Public Prosecutions.

Observations

241. The Special Rapporteur thanks the Government for its response.

United States of America

Communications to the Government

242. On 14 February 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the case of **Alexander Edmund Williams** who was scheduled to be executed in Georgia on 20 February 2002. Both Special Rapporteurs had already sent an urgent appeal concerning Mr. Williams’ case in 2000, on the basis that he had not been represented by a competent lawyer. According to the information received, Mr. Williams suffers from a mental illness and was convicted of the abduction, rape and murder of Aleta Carol Bunch in 1986, when he was 17 years old. In 2000, the Supreme Court of Georgia had stayed Mr. Williams’ execution, but since October 2001 executions in Georgia have resumed, following the Court’s decision on the constitutionality of the method of execution.

243. On 6 March 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture concerning the case of **Tracy Lee Housel**, a British national, who was scheduled to be executed in the State of Georgia on 12 March 2002. He was reportedly sentenced to death in February 1986 for a murder committed in April 1985. It was reported that during the trial Mr. Housel's lawyer failed to present evidence that his client was suffering from serious mental health problems and psychological impairment. It is further alleged that statements taken from Mr. Housel while he was being held in coercive conditions in pre-trial detention were used against him during his trial. Allegedly, he was held in solitary confinement and not allowed to take a shower for the first three months after his arrest. It is also reported that on several occasions, he was given electric shocks from a stun-gun, including when he was standing in a pool of water.

244. On 13 May 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning **Henry Dunn**. According to the information received, Mr. Dunn had been convicted of murder by the 241st District Court, Smith County, Texas, in 1995 and sentenced to death. At the appellate level, the Texas Court of Criminal Appeals appointed a lawyer, Kerry Lee, to represent him. It was alleged that the lawyer had no experience in death penalty cases and during the appellate process submitted a motion to the court, which was subsequently denied, requesting that the appeal be delayed so he could attend a seminar on how to write an appeal brief. It is also alleged that the lawyer failed to appear in court to present oral arguments. Mr. Dunn based his appeal on the grounds that, inter alia, some of the issues were inadequately written up in the trial brief. The court rejected his arguments.

245. On 15 May 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the trial of **Johnny Martinez**, who had been convicted of murder in 1994. According to the information received the lawyer appointed by the Texas Court of Criminal Appeals (TCCA) for his habeas corpus appeal had never performed this kind of appeal before and on several occasion requested permission to withdraw from the case. Further, the lawyer prepared the brief in the case without consulting his client and the brief was only 5 1/2 pages long. The TCCA dismissed the appeal, although one judge raised the issue of adequate legal representation in his dissent. Subsequent to the decision of the TCCA, the lawyer submitted a motion for reconsideration, raising the issue of the inadequacy of his legal representation.

246. On 18 September 2002, the Special Rapporteur sent a detailed joint communication with the Special Rapporteur on torture and the Special Rapporteur on the human rights of migrants regarding the detention of many individuals, particularly non United States nationals, since 11 September 2001. According to the information received, despite being held in custody by the Immigration and Naturalization Service (INS), many detainees were reportedly being investigated by the Federal Bureau of Investigation (FBI) for the commission of criminal offences. However, it was alleged that INS detainees have fewer guarantees in their proceedings than people detained in the context of criminal procedures.

247. The Special Rapporteurs noted with concern the level of secrecy surrounding these detentions and that many cases have been held before closed immigration courts. It was reported that in August 2002, a United States District Judge ordered the Government to disclose the names of people detained in relation to the 11 September 2001 attacks. According to the information received, the court order allegedly did not apply to individuals detained as material witnesses and did not request the disclosure of the dates and locations of arrests and detentions.

248. The Special Rapporteurs had also received information stating that many detainees had not been informed in a language that they understand about their rights, particularly their right to have the assistance of a lawyer or to have a lawyer appointed when they lack sufficient means to pay for it, and in some circumstances had been denied that assistance. In circumstances where individuals had legal representation, it was reported that families and lawyers had great difficulty in locating the whereabouts of the INS detainees as they were not informed when the detainee had been transferred. It was also alleged that lawyers had difficulties in obtaining the information necessary for the performance of their professional duties, for example, information about the date of detention, the basis of detention, whether and when the detainee has been charged with an offence, whether or not the detainee had been subject to interrogation for the commission of criminal offences and information about the continuing status of their case.

249. In connection with the above allegations, the Special Rapporteurs requested specific information on the following individual cases: **Hasnain Javed, Rabid Haddad, Dr Mazen Al-Najjar, Tiffany Hughes, Ali Al-Maqtari, Qaiser Rafiq, Osama Awadallah, Shakir Baloch and Ayub Ali Khan.**

Observations

250. Unlike previous years, the Government has not responded to any of the communications enumerated herein.

Uruguay

Communications to the Government

251. On 23 October 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning journalist **Daniel Cancela**. According to information received, Mr. Cancela produced a documentary series about corruption in the management of the prison system. As a result of Mr. Cancela's investigative journalism, **Judge Pablo Eguren** and other witnesses were allegedly threatened because Judge Eguren was responsible for inquiring into the allegations of corruption.

Communications from the Government

252. On 20 December, the Government replied to the Special Rapporteur's joint urgent appeal of 23 October 2002. The Government expressed its concern about the statements made by the Special Minister of the Interior who confirmed that there were

allegations of corruption among police officers of the National Directorate of Prisons, Penitentiary Centres and Centres for Rehabilitation. An inquiry conducted by the National Directorate of Information and Intelligence Services revealed evidence involving three high-ranking police officers. The Government confirmed that the case was sent to the relevant judicial body for criminal proceedings and advised that everything was done with transparency. The Government further advised that allegations of threats were taken very seriously and the Minister of the Interior proposed police protection to Mr. Cancela and Judge Eguren, but both refused these measures and did not file a complaint regarding the threats. Without a formal complaint from the alleged victims, criminal proceedings cannot be launched.

Observations

253. The Special Rapporteur thanks the Government for its response.

Uzbekistan

Communications to the Government

254. On 22 November 2002, the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on torture concerning the trial of **Iskandar Khudoberganov, Bekzod Kasymbekov, Nosirkhon Khakimov** and **three others**, whose trial had been reportedly suspended in September 2002 and resumed on 19 November 2002. According to the information received, the men were accused of religious extremism and charged with serious anti-State crimes, including "attempting to overthrow the constitutional order" and "setting up an illegal group". Mr. Khudoberganov is reportedly at grave risk of being sentenced to death. At least three defendants were reportedly tortured to force them to "confess" or incriminate other defendants. The judge allegedly said to Mr. Khudoberganov, "Come on, don't deny it. Confess and you'll feel better". Mr. Khudoberganov's lawyers have reportedly been denied access to him since the trial was suspended on 26 September 2002.

Observations

255. The Special Rapporteur awaits the Government's response.

Venezuela

256. The Special Rapporteur received information from the International Bar Association (IBA) regarding the increasing lawlessness and the critical situation in the administration of justice. The IBA sent a high-level delegation to the country from 12 to 18 January 2003 and a report is expected shortly.

Zimbabwe

257. In his last report (E/CN.4/2002/72, annex, paras.215-222) the Special Rapporteur referred to four communications sent to the Government, among them two urgent appeals. The Special Rapporteur also expressed his extreme concern over the deterioration of judicial independence and the rule of law in the country. None of the communications was responded to by the Government. During the year, and in view

of the deterioration of the situation, the Special Rapporteur issued four press statements.

258. The Special Rapporteur also expressed regret that the Government had reneged on its previous agreement for him to conduct a mission.

259. The situation continued to deteriorate in 2002. The Special Rapporteur issued four press statements, on 7 March, 6 June, 2 September and 24 September, drawing attention to and expressing his concern about specific developments. They were:

- a) President Robert Mugabe defied a Supreme Court order delivered on 27 February 2002 striking down electoral legislation enacted by Parliament. **Justice Ebrahim** who presided over the sitting of the Court, resigned. He was the last of the seven Supreme Court judges to step down since the early retirement, under pressure, of **Chief Justice Gubbay**;
- b) The arrest and detention of the President of the Law Society of Zimbabwe and its Executive-Secretary in Harare on 3 June 2002 for alleged possession of “subversive” documents relating to the mass action allegedly planned by the Movement for Democratic Change (MDC);
- c) The violent attack on **Magistrate Walter Chikwanha** in Chipinge, Manicaland. He was assaulted and dragged out of court by a group of “war veterans”, supporters of President Mugabe, because he refused to order custody of several individuals including five members of the opposition party. In the incident the group tried to attack the lawyer who acted for the accused and vandalized his car;
- d) The arrest and detention and charges preferred against retired **High Court Judge Blackie** for alleged corruption and obstruction of justice. The manner in which Judge Blackie was arrested and taken into custody for such alleged offences was most disturbing. There was reasonable cause to believe that this was an act of vengeance by the Government for the earlier conviction for contempt of court and sentencing to imprisonment and a fine of the Minister of Justice on 17 July 2002 by Judge Blackie. The conviction and sentence were subsequently set aside by a Supreme Court Judge;
- e) The ruling of the High Court, since affirmed by the Supreme Court, refusing the official opposition access to the voters’ roll in its electronic form to challenge the legality of the presidential elections in a pending court action;
- f) That President Mugabe had threatened the shadow Minister of Justice, saying that the only place in Zimbabwe for the Minister was in prison.

Communication from the Government

260. In a four-page letter dated 27 September 2002 addressed to the High Commissioner, with copy to the Special Rapporteur, the Government expressed its concern and displeasure over the press statements. The Government, stated, inter alia, that the Special Rapporteur was biased in his assessment of the Zimbabwe courts; that he “pandered with abundance to the whims of those in the United Nations who

continue to imagine Zimbabwe as an appendage to their countries". The letter contained other derogatory remarks directed against the Special Rapporteur which he does not wish to enumerate here.

261. The Government in the same communication defended the charges against retired Judge Blackie. It stated that the charges arose from the judge's quashing of an appeal against the jail term imposed on a white woman without the concurrence of the other judge who had also sat on the appeal. In terms of the rules of court, Judge Blackie had to seek the concurrence of the other judges before preparing and passing judgement. Justice Makarau, the other judge who had heard the appeal with Justice Blackie, did not even see the judgment prepared by her colleague until after it was handed down.

Response of the Special Rapporteur

262. The Special Rapporteur, in a written communication dated 4 October 2002, responded to the Government's communication but not to the personal attacks against him. With regard to the charges against Judge Blackie, he said:

"With regard to the facts which your Government alleges as the grounds for the charges preferred against retired Judge Blackie, they obviously, if true, are grounds for discipline for judicial misconduct. It may be argued that as Mr. Blackie has retired as a judge he could not be subjected to judicial discipline. However, charging him for the criminal offence of obstructing the course of justice in addition to corruption smacks of selective prosecution.

"In August 2002 a group of so called "war veterans" charged into the court of Magistrate, Walter Chikwanha, in Chipinge, and assaulted him and thereafter chased the lawyer and vandalized his car. This incident was the subject of a press release I issued on 2 September 2002. To date, I have not heard of the so called "war veterans" or anyone else responsible for the assault on the Magistrate being charged for any offence. Was not the assault on a sitting Magistrate a grave act of obstruction of justice? Selecting retired Judge Blackie for prosecution for such an offence, on the alleged facts, which if true, would amount to only judicial misconduct, clearly and must necessarily be perceived as an act of vendetta on the part of your Government."

Observations

263. The trial of Judge Blackie is scheduled to commence on 30 June 2003. The Special Rapporteur reiterates his concern over the deterioration of the rule of law in Zimbabwe and urges the Commission to respond appropriately.
