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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin*

Addendum

Communications to and from Governments

* The present report is being circulated in the languages of submission only.

Contents

	<i>Paragraphs</i>	<i>Page</i>
Introduction.....	1–4	3
Communications transmitted, replies received and statements made to the press.....	5–125	3
Bahrain.....	5–12	3
Egypt.....	13–15	5
Iran (Islamic Republic of).....	16–18	6
Iraq.....	19–22	7
Israel	23–27	9
Lebanon	28–41	10
Morocco.....	42–46	19
Pakistan.....	47–50	21
Peru.....	51–57	22
Russian Federation.....	58–66	24
Spain	67–81	27
Sri Lanka	82–91	30
Syrian Arab Republic	92–93	32
Turkey.....	94–113	32
United Arab Emirates	114–120	37
United Kingdom of Great Britain and Northern Ireland.....	121–123	39
United States of America.....	124–127	40

Introduction

1. The present report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism contains summaries of communications transmitted to Governments as well as replies received between 1 January and 31 December 2009. In addition, the report covers press releases issued in 2009.
2. During the period under review the Special Rapporteur corresponded with Governments, either separately or jointly with other Special Procedures mandate-holders, in 19 communications and he issued one press release, relating to a total of 15 countries.
3. During the course of 2009, the Special Rapporteur received eleven replies from ten Governments in response to communications sent in 2009 and 2008 (the latter are reflected in the previous report, A/HRC/10/3/Add.1). Most of the Governments offered detailed substantive information on the allegations received. The Special Rapporteur underlines that it is crucial that Governments share their information and views with him on the allegations received. The Special Rapporteur encourages cooperation from those Governments which have not yet provided replies to his communications. Replies received after 31 December 2009 will be reflected in a future report to the Human Rights Council.
4. The Special Rapporteur acted upon information received from reliable sources concerning individual cases of alleged breaches of human rights and fundamental freedoms in the context of countering terrorism. In addition, he also took action with respect to legislative developments and proposals undertaken by a number of Member States. The Special Rapporteur recognizes that problems concerning human rights and fundamental freedoms in the context of countering terrorism are not only confined to the countries mentioned.

Communications transmitted, replies received and statements made to the press

Bahrain

A. Communication sent to the Government

5. On 2 February 2009, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a communication regarding **Ahmed Yousef Al-Same'a**, aged 26, **Mohammed Jamil Taher Al-Same'a**, aged 22, and **Ali Jamil Taher Al-Same'a**, aged 28, all from Sanabis village; **Mohamed Abdullah Abdulhusain Al-Shargi**, aged 32, **Mohamed Ja'afar Isa Ebrahim**, aged 32, **Hassan Jassim Mohammed** and **Fathi Jassim Makki Jassim**, all from Jidahfs village; **Yaseen Ali Mushaima**, aged 21 from Daih village; **Hasan Ali Fateel**, aged 27 from Sar village; **Mohammad Khalil Ibrahim Al-Medawob**, aged 28 from Jeblat Hebshi village; **Mohammed Hassan Saleh Al-Jazeera**, aged 20 from Karranah village; **Mohsen Ahmed Al-Gassab**, aged 31, and **Mohamed Salaman Abdul-Rasool**, all Bahraini citizens, currently detained at Dry Dock Jail; **Abdul-Redha Hassan Al-Saffar**, **Sami Ahmed Muftah**, aged 30 from Tubly village, **Sayed Ali Sayed Shubber**, aged 30 from Jed Haffs Village, **Ali Abdulhadi Mushamai**, aged 19 from Al-Daih Village, **Abbas Jameel Taher Al-Samee**, aged 19 from Sananbis village, **Hussain Ali Jummah**, aged 15 year from Hamad Town and **Abdulredah Taher Al-Samee**, aged 26 from al Sanabis village.

6. According to the allegations received:

On 15 December 2008, National Security officers from the arrested 13 persons (the first thirteen names identified above) for their alleged involvement in a terrorist attack. They were held in incommunicado detention until 28 December 2008, when an official television channel showed a video about some unrest and confessions of several of the detainees named above. On the next day, a number of newspapers printed names and pictures of the arrested people and their confessions.

None of the detainees has been charged with a particular offense to date. While some of these 13 individuals being held at Dry Dock Jail, after 28 December 2008, did have access to their lawyers and families, at least Mohammad Khalil Ibrahim Al-Medawob, Mohammed Jamil Taher Al-Same and Yaseen Ali Mushaima are still in incommunicado detention.

During their custody, some of the detainees were subjected to blindfolding, sleep deprivation, standing for long hours, beatings, electrocution of armpits and genital organs, suspension with tied hands for prolonged periods and verbal abuse to extort confessions.

On 21 December 2008, Abdul-Redha Hassan Al-Saffar, who had been involved in organizing sit-ins with the relatives of the 13 detainees, was also arrested in Mahooz village and has not yet been charged with any offense.

In addition, between 12 and 19 January 2009, National Security officers arrested six other individuals, **Sami Ahmed Muftah, Sayed Ali Sayed Shubber, Ali Abdulhadi Mushamai, Abbas Jameel Taher Al-samee, Hussain Ali Jummah** and **Abdulredah Taher Al- Samee**. They have since been held incommunicado reportedly in relation to the same case.

7. The mandate holders expressed concern regarding the physical and psychological integrity of all the detainees and appealed to the Government of Bahrain to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. They also drew the attention of the Government to paragraph 12 of General Assembly Resolution A/RES/61/153 of 14 February 2007, which “reminds all States that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person;” and to article 12 of the Convention Against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture. They also recalled Human Rights Council Resolution 7/7, which requires States to ensure that any measure taken to combat terrorism complies with their obligations under international human rights law and urges States to ensure due process guarantees, consistent with all relevant international instruments.

8. They further asked for clarification regarding the legal basis of arrest and detention of the 20 individuals named above and whether a court has determined the lawfulness of the detention. They requested the Government to provide details and results of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case and for the specific wording of the provisions that constitute an alleged terrorist offence pursuant to the relevant legislation.

B. Reply from the Government

9. By letter dated 2 March 2009, in response to the communication of 2 February 2009, the Government indicated that in December 2008, Bahrain's police prevented terrorist attacks on the country that were likely to cause considerable damage, injuries and possible loss of life. Evidence suggests that members of the group in question were trained abroad in the manufacture of explosives and the use of weapons and explosive devices, with the aim of using such training within Bahrain. As a result of the investigation, a number of suspects were arrested by the police in mid-December, and the plot was foiled. The arrest, detention and questioning of all suspects was carried out in accordance with the legal procedures and safeguards in force, and subject to the supervision of the independent judiciary and Public Prosecution. Interviews took place in the presence of the suspects' lawyers, who were also allowed to meet and confer with their clients. The suspects also confirmed that they had not been subjected to any form of ill-treatment, and medical examinations were carried out to verify this fact.

10. All the accused were held in public prisons, subject to the supervision and follow-up of the Public Prosecution, in accordance with the law, which also provides for periodic medical checks and care. Those detained are also permitted regular exercise, including outdoors, as well as visits from and contact with family members. Mr. Ahmed Al Sameea's wife gave birth to a baby, and he was allowed to visit her in the hospital without a police escort. Concerns regarding the well-being of any of the individuals are unfounded.

11. A number of charges were brought against those accused, including establishing and joining a group whose aim was to undermine Bahrain's constitution and laws through the use of terrorism, manufacture and possession of explosives, and providing support and finance to the group, despite knowledge of its purpose. The accused appeared in court on 23 February 2009 and denied all the major charges against them. Their lawyers made a number of allegations regarding the treatment of their clients in custody, and the Court ordered that they produce evidence to support those claims. The next hearing is scheduled for late March.

12. Mr. Al-Saffar was not arrested because of any political activity, but based on evidence linking him to the aforementioned terrorist group, and his links to active members thereof. The accused were not arbitrarily detained. They were arrested, detained, investigated and charged in accordance with the law. Their custody and trial is overseen by the independent judiciary and the Public Prosecution, and specific legal avenues are available to them or to their lawyers to raise any grievances they may have. Such allegations will be investigated by the Courts.

Egypt**Press statement by the Special Rapporteur**

13. On 24 April 2009, following an official visit to Egypt from 17 to 21 April 2009, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism issued a statement, in which he expressed his appreciation for the cooperation extended to him by the Government of Egypt. He was able to have open and extensive discussions with key stakeholders regarding the country's counter terrorism law and practices. The primary purpose of this visit was to engage with officials and experts regarding a counter terrorism law that is intended to replace the state of emergency, scheduled to end on 28 May 2010. The Special Rapporteur had productive meetings with the Minister of Legal and Parliamentary Affairs and the ministries of foreign affairs, interior and justice. He also met with the Chief of the Egyptian Supreme Constitutional Court, the Public Prosecution and high level representatives of the Egyptian

Council of Human Rights and Parliament, including the President of the People's Assembly. In addition, the Special Rapporteur benefited from consultations with lawyers, academics, non governmental organizations and the international community.

14. The willingness of the Government to discuss the challenging subject of upholding human rights while countering terrorism is most encouraging. The Special Rapporteur therefore indicated that he wishes to continue the dialogue with Egypt with a view to submitting a full public report on its counter-terrorism law and practice by the end of 2009. The report, which will contain a set of findings and recommendations, will then be considered by a future session of the Human Rights Council. In this context, he discussed with the authorities his wish to visit Egypt again in the near future for the purpose of finalizing the report."

15. *Acknowledgements.* The Special Rapporteur appreciates the cooperation of the Government of Egypt. He also thanks all his interlocutors for sharing their insights and ideas.

Iran (Islamic Republic of)

Reply from the Government

16. By letter dated 8 April 2009, the Government responded to a letter sent on 18 July 2008, indicating that Mr. Farzad Kamangar, Mr. Ali Heydariyan and Mr. Farhad Vakili were charged and arrested for membership in PEJAK, a terrorist organisation, for carrying 37 kg of trinitrotoluene (TNT) and two grenades and for forging identification cards. Their dossiers were brought up in Branch 30 of the Tehran Court of Revolution, in the presence of their defence lawyers. The above-mentioned individuals had prepared the munitions for acts of terrorism. They were found as "Mohareb" and sentenced to death. Pursuant to the objection by their lawyers, their cases were referred to Branch 31 of the Supreme Court, which reinstated the verdict on 9 May 2008. The verdict is based on the terrorist activities of the individuals in question; any allegation on the judgments' connection with social activities is baseless. They enjoyed the right to a fair trial and enough time for review and examination of their cases through legal proceedings. Any allegation of torture or incommunicado detention is baseless.

17. The PEJAK terrorist group has repeatedly been carrying out armed terrorist acts resulting in loss of lives. Secondly, the considerable amount of explosives, together with 27 detonators (for bomb explosions) found, indicate the serious intention to carry out terrorist acts. The role of Mr. Kamangar in this has been proven in court. Furthermore, on the basis of the national laws of the Islamic Republic of Iran and due to the special situation in the neighbouring countries which have occasionally resulted in mischievous acts and disturbance of people's lives and security in border areas, stricter legislation and regulations are enforced.

18. Mr Kamal Gholami and Mr. Ali Haydariyan were seen by police patrol on 19 August 2006, when they were transferring explosives to a room, rented by Mr. Kamangar, in Sepehr building, Razi square in Tehran. They ignored a warning by police officers and clashed with them. As a result, Mr. Heydariyan was arrested and Mr. Gholami escaped. According to information received, he has been seen in northern Iraq. Upon the confession of Mr. Ali Heydariyan, who is one of the senior members of the terrorist group of PEJAK inside the country, his collaborators, particularly Mr. Farhad Vakili and Mr. Farzad Kamangar were arrested. Further investigation revealed that, on 19 August 2006, Mr. Kamangar and Mr. Gholami had transferred the explosives from the headquarters of the PKK terrorist group in northern Iraq to Tehran. During a search of Mr. Farhad Vakili's residence and garden on 7 November 2006, 17 kg of TNT and 25 detonators and 2 war

grenades were found. It was also established that Mr. Ali Heydariyan was the technician responsible for the provision of bombs and reconnaissance of explosion targets; Mr. Kamangar was in charge of the logistics for hiding and covering the PKK members who were dispatched from Iraq to Iran for carrying out terrorist attacks.

Iraq

A. Communication sent to the Government

19. On 1 December 2009, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a communication regarding a group of persons arrested and held in secret detention for prolonged periods in connection with accusations against Mr. Al-Dainy, a former member of Parliament, namely **Omar Ibrahim Jasem**, aged 20; **Ryad Ibrahim Jasem**, aged 31; **Alaa Khayr Allah Al-Maliki**; nine individuals arrested on 22 February 2009 and still in detention: **Abbas Kazem Khamis**; **Rahman Ahmed Kareem**; **Wissam Ibrahim Jasem**; **Farkad Jamal Taha Yassine**; **Ali Adel Taha Yassine**; **Shaker Al Bayati**; **Haytham Khaled Barbooty**; **Mahmoud Maksoud**; and **Mohamed Hussein Ghadban**. According to the information received:

Mr Ryad Ibrahim Jasem was arrested on 11 February 2009, at around 9 a.m., not far from his home by a group of Iraqi armed soldiers. Upon arrest, he was violently handcuffed and blind-folded. The soldiers then searched his house, destroyed all the furniture and took a considerable sum of money. Mr Alaa Khayr Allah Al-Maliki was arrested on 17 February 2009. Whereas their whereabouts are unknown, unofficial sources indicate that they have been held in the Baghdad Brigade prison in the Green Zone, where they were subjected to ill-treatment and threats against them and their families.

In the morning of 22 February 2009, officers from the 2nd Battalion of the 54th Brigade, linked to the Baghdad Brigade surrounded Mr Al-Dainy's office and arrested the above listed nine individuals, and Messrs Mahmoud Kareem Farhan, Ahmed Majeed Kachkoul, and Hashem Kareem Ibrahim, aged 27, who were later released. They asked for the identity cards of everybody present at the office. Mr Khamis collected all the cards and passed them over to the Colonel, who refused to explain why he had asked for them. The responsible Colonel then went back to his car, where he remained for over an hour. Following this, a force of 40 men from the Baghdad Brigade attacked the office. They tied the hands of the eleven individuals present in the office, blindfolded and beat them. When the eleven requested to see the arrest warrants, the officers stated that they did not need such orders, as they were subordinate to the Prime Minister's Office. The responsible Colonel called the official television channel (Al Iraqiya), which came to record the event. The soldiers then collected all the documents in the office including the petitions from alleged victims, as well as the licensed weapons. Subsequently, the group was taken to a place it did not know, but which was later identified as Al-Muthana Airport, where the base of the Baghdad Brigade is located. The individuals were put in single cells. In the early hours of 23 February 2009, they were transferred to another Baghdad Brigade location in the Green Zone. Upon arrival there, the group was informed of the accusations against the individuals: supporting the insurgents and providing them with weapons; transferring explosives; bombing cars; and killing and evicting people from their homes; and participating in the bombing of Parliament in 2007.

Mr Omar Ibrahim Jasem was arrested on 25 February 2009, together with Mr Odey Hassan Mansoor, aged 28, and Mr Hossein Gattouf Mansoor, aged 38, who

have subsequently been released. Following their arrests, the three men were taken to the Anti-Terrorism Directory in Al-Masbah District under the Ministry of Interior, headed by General Rahman, where they were not interrogated, but were subjected to ill-treatment. On 10 March 2009, the small group was transferred to the Baghdad Brigade Prison, located in the Green Zone. Two months later, in May 2009, interrogations started. Mr Odey Mansoor and Mr Hossein Mansoor learned that they were suspected of having put on fire a commercial centre in Al-Shorja Bazaar and of killing 53 people in Diyala Governorate.

All the persons arrested in connection with Mr Al-Dainy were held in incommunicado detention at Baghdad Brigade prison in the Green Zone, without notification of their families or their location, at least until May 2009, but the location of some others is still not known. They were severely ill-treated, including by beating with cables, suspension from the ceiling with either the feet or hands upwards for up to two days, or electroshocks. Some had black bags put over their heads and were suffocated for several minutes until the bodies became blue several times in a row. Also, some had plastic sticks introduced in the anus. They were also threatened with the rape of members of their families. They were forced to sign and fingerprint pre-prepared confessions, which were collected on 24 February 2009. As a result of the ill-treatment, several of them had visible injuries on several parts of their bodies. Many have lost considerable weight. Mr Ryad Ibrahim Jasem suffers from liver failure as a result of the torture sustained.

Several names of those alleged responsible for the torture are known to the Special Rapporteur.

On several instances, when human rights commissions or prosecutors came to inquire about the torture allegations, the Commander of the Brigade threatened to kill them if they raised any allegations and refrain from complaining. A medical doctor who visited them, also beat them and forcibly put cream on their injuries.

When some of the detainees were in May brought before an investigating judge, he ignored the allegations of torture and sent them back for further interrogations. In mid-June, after having been threatened again, the Al-Dainy guards were gathered and taken to a caravan one after the other in front of a man wearing a mask, who they however immediately recognized as the investigator. They had to sit down in front of the camera and were asked about their treatment. They all answered that they had not been tortured, that they had been well treated and that the food was perfect.

On 4 May 2009, Mr Kachkoul was transferred from the military camp. He was then transferred to Atasfirat Prison near the Al-Shaab stadium in the Green Zone and allowed to meet with a lawyer on 12 May. On 3 June 2009, he was taken to Al-Baladeyat Prison and released on 15 July 2009, without ever having been put on trial for the offences of which he had been accused. Mr Mahmoud Kareem Farhan was released on 22 June 2009. The whereabouts of the remaining nine individuals arrested on 22 February 2009 (Abbas Kazem Khamis; Rahman Ahmed Kareem; Wissam Ibrahim Jasem; Farkad Jamal Taha Yassine; Ali Adel Taha Yassine; Shaker Al Bayati; Haytham Khaled Barbooty; Mahmoud Maksoud and Mohamed Hussein Ghadban) are still unknown. They are presumed to be detained in Baghdad Brigade Prison and in Al-Tasferat Prison in the Green Zone.

Mr Ibrahim was released on 18 May, Mr Odey Mansoor on 16 July, and Mr Hossein Mansoor on 17 September 2009. Furthermore, Mr Omar Jasem was transferred on 30 September 2009 to a detention facility for minors, the Al-Ahdath

Prison in the Al-Eskan/Tobchi area. He was able to meet with his parents on 4 October 2009.

20. With a view to the long-term secret and incommunicado detention of the above named individuals and the serious allegations of torture and ill-treatment, the mandate holders expressed concern for the physical and mental integrity of the twelve individuals who remain in detention, and in particular of those whose whereabouts are not known. They further recalled the obligation of each State to protect the right to physical and mental integrity of all persons, in particular paragraph 7.c of Human Rights Council Resolution 8/8 of 18 June 2008, which reminds all States that “Prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person;” and articles 9 and 14 of the International Covenant on Civil and Political Rights.

21. They requested clarification regarding results of any investigations, medical examinations, and judicial or other inquiries carried out in relation to the above mentioned persons and the legal basis for the arrest and continued detention of Mr Omar Ibrahim Jasem; Mr Ryad Ibrahim Jasem; Mr Alaa Khayr Allah Al-Maliki; Mr Abbas Kazem Khamis; Mr Rahman Ahmed Kareem; Mr Wissam Ibrahim Jasem; Mr Farkad Jamal Taha Yassine; Mr Ali Adel Taha Yassine; Mr Shaker Al Bayati; Mr Haytham Khaled Barbooty; Mr Mahmoud Maksoud; and Mr Mohamed Hussein Ghadban.

B. Reply from the Government

22. As of 31 December 2009, there had been no response to the Special Rapporteur’s correspondence.

Israel

A. Reply from the Government

23. By letter dated 7 May 2009, the Government responded to a letter sent on 28 July 2008, that according to information from the relevant authorities, the High Court of Justice heard a petition brought by Mr. Shawan Jabarin against the commander of the Israeli Defense Force (IDF) in the West Bank, regarding a travel ban imposed on Mr. Jabarin. During the proceedings, and with the consent of Mr. Jabarin’s Lawyer, the Court examined ex-parte secret evidence brought by IDF’s attorneys. For that purpose, the Court held two sessions, in which comprehensive and thorough examination of the evidence was carried out, and possibilities to deal with the security restrictions regarding the evidence in a more proportionate way were also examined.

24. The Court stated that an ex-parte hearing makes it harder on the petitioner’s attorney to deal with the allegations against his client brought by the respondent, and it also makes it more difficult on the Court who wishes to conduct an open and effective discussion with the representatives of both sides, and therefore it makes the Court the “representative” of the petitioner during the ex-parte hearing.

25. The Court cited the High Court of Justice decision of 22 June 2007, in which the Court stated that, alongside his work as general manager of a human rights organization, Mr. Jabarin is active in a terrorist organization, which denies the most basic rights of all – the right to life (H.C.J. 5182/07 Shawan Rateb Abdulla Jabarin v. the Commander of Israel Defense Forces in the West Bank (22.6.2007)). The Court also mentioned that in a decision dated 7 July 2008, the High Court of Justice was persuaded that Shawan Jabarin is a senior activist in the “Popular Front for Liberation of Palestine” terrorist organization (H.C.J.

5022/08 Shawan Rateb Abdulla Jabarin v. the Commander of Israel Defense Forces in the West Bank (7.7.2008)).

26. In regard to the present Petition, the Court sated that the evidentiary materials regarding the involvement of Mr. Jabarin in the activity of terrorist organizations are substantial and reliable. The Court further stated that since the petitioner's last appeal, additional negative evidence has been collected. According to the Court, that negative legal infrastructure confirms the position of the security forces that the travel ban imposed on Mr. Jabarin was not a measure of punishment, but was carried out for relevant security considerations.

27. For the reasons mentioned above, the Court found no reason to intervene in the respondent decision not to allow the Petitioner to travel abroad ((H.C.J. 1520/09 Shawan Rateb Abdulla Jabarin v. the Commander of Israel Defense Forces in the West Bank (10.3.2009)).

Liban

A. Correspondance par le Rapporteur Spécial

28. Le 30 janvier 2009, le Rapporteur spécial conjointement avec la Présidente-Rapporteur du Groupe de Travail sur la détention arbitraire, le Rapporteur spécial sur l'indépendance des juges et des avocats et le Rapporteur spécial sur la torture ont envoyé une lettre concernant les personnes nommées ci-dessous. Selon les informations reçues,

Amer Abdullah Hallak, âgé de 28 ans, né au Liban, de nationalité palestinienne (carte d'identité de réfugié: A 022557), résident à Sidon, aurait été arrêté le 30 décembre 2005 à Sidon derrière l'hôpital de Dalaa par des membres du service de renseignement des forces de l'ordre interne sans mandat d'arrêt. Ils auraient bandé ses yeux et l'auraient d'abord emmené au poste de police Al Bastah et ensuite dans les locaux du service de renseignement à Beirut, où il aurait été détenu pendant cinq mois. Après avoir été battu, il aurait perdu l'ouïe. Il aurait aussi été menacé. Il aurait été transféré à la prison de Roumieh le 31 mai 2006.

Bora Mohammed Fouad, âgé de 35 ans, nationalité syrienne, résident à Alep en Syrie et à Al Mahallet, aurait été arrêté le 3 janvier 2006 à Kornishe el Mazraa, Beirut, dans une cabine téléphonique, par des membres du service de renseignement des forces de l'ordre interne sans mandat d'arrêt. Il aurait été transféré dans les locaux du service de renseignement, où il aurait été détenu pendant cinq mois en régime cellulaire au sous-sol. Là-bas, on l'aurait menacé de « traitements d'Abu Graib », privé de sommeil pendant 72 heures et forcé à rester debout pendant ce temps. Finalement, on l'aurait transféré à la prison de Roumieh. Il craint d'être renvoyé vers la Syrie et de disparaître comme M. Hamad Turkey Al Rda (voir le dernier cas ci-dessous).

Faissal Asaad Hashim Akbar, âgé de 31 ans, citoyen de l'Arabie Saoudite, étudiant, résident à Ras Tanuraen en Arabie Saoudite, et à Mahallat Ramle, Beirut, aurait été arrêté le 3 janvier 2006 à Al Houda Ave, Mahallat Ain Romana, Beirut, par des membres du service de renseignement des forces de l'ordre interne sans mandat d'arrêt. Il aurait été emmené dans les locaux du service de renseignement à Beirut, où il aurait été détenu pendant à peu près cinq mois dans le sous-sol en régime cellulaire. Il aurait été battu et suspendu pendant de longues périodes entre autre par plusieurs officiers, dont les noms ont été communiqués aux mandataires. Il aurait aussi été privé de sommeil et empêché d'aller aux toilettes pendant cinq jours. Finalement, on l'aurait transféré à la prison de Roumieh.

Fuad Ahmed Al Masri, âgé de 39 ans, Musaytbeh, nationalité libanaise, demeurant à Route Al Djadida, aurait été arrêté le 30 janvier 2006 par des membres du service de renseignement des forces de l'ordre interne sans mandat d'arrêt. Il aurait été emmené dans les locaux du service de renseignement à Beirut, où il aurait été détenu pendant cinq mois. Il aurait été transféré à la prison de Roumieh le 31 mai 2006. Il aurait été libéré le 4 septembre 2008. Pendant sa détention, on aurait bandé ses yeux et il aurait été soumis à la technique dite du « Faruj », battu avec des barres en bois et en métal sur les jambes et les mains et forcé à rester debout pendant toute la nuit. Suite à ce traitement, il souffrirait de problèmes cardiaques, de tension élevée, des pertes de mémoire et de dépression.

Hani Hashim Al-Shanti, âgé de 28 ans, né à Riyadh, nationalité libanaise (numéro de carte d'identité: 10000015618623), résident dans la rue d'Ahdab à Beirut, aurait été arrêté le 1er janvier 2006 dans le bâtiment Al Hart à Mahallat Al Bousha, Beirut par des membres du service de renseignement des forces de l'ordre interne sans mandat d'arrêt. Ils lui auraient bandé les yeux, l'auraient menotté et emmené dans leurs locaux à Beirut, où il aurait été détenu pendant à peu près cinq mois dans le sous-sol en régime cellulaire et finalement transféré à la prison de Roumieh.

Hassan Mohammed Nabah, âgé de 34 ans, nationalité libanaise, résident à Mahallat Ramle, Beirut, aurait été arrêté le 3 janvier 2006 à Kornishe el Mazraa à Beirut par des membres du service de renseignement des forces de l'ordre interne sans mandat d'arrêt. Il aurait été emmené dans les locaux du service de renseignement à Beirut, où il aurait été détenu pendant cinq mois au sous-sol en régime cellulaire. Il aurait été soumis à la technique dite du « Faruj » pour une période prolongée. On lui aurait bandé les yeux, attaché les mains derrière le dos et placé un sac plastique sur le visage. De plus, on l'aurait mis sur une chaise pendant une semaine et privé de sommeil. Finalement, il aurait été transféré à la prison de Roumieh.

Moaz Abdelghani Shousha, âgé de 28 ans, de nationalité syrienne, demeurant à Alep en Syrie, aurait été arrêté le 4 janvier 2006 à la Place de Saadoun, quartier de Abu Samra à Tripoli. Il aurait été transféré à la station de police d'Al Bastah et ensuite dans les locaux du service de renseignement à Beirut, où il aurait été détenu pendant cinq mois en régime cellulaire au sous-sol jusqu'à son transfert à la prison de Roumieh, où il serait détenu à ce jour. Il craint d'être renvoyé vers la Syrie et de disparaître comme M. Hamad Turkey Al Rda (voir le dernier cas ci-dessous).

Mohammed Abderrazzak Al-Wafaei, âgé de 25 ans, de nationalité syrienne, demeurant à Alep en Syrie, aurait été arrêté le 3 janvier 2006 dans le quartier de Kornishe el Mazra à Beirut sans mandat d'arrêt par des membres du service de renseignement des forces de l'ordre interne. Ces derniers l'auraient emmené dans leurs locaux à Beirut, où ils l'auraient détenu pendant cinq mois au sous-sol en régime cellulaire. Plusieurs officiers, dont les noms ont été communiqués aux mandataires, l'auraient forcé à rester tout nu, menacé de viol, piétiné, battu avec des barres en bois et en métal et privé de sommeil pendant cinq jours. Il aurait finalement été transféré à la prison de Roumieh. Il craint d'être renvoyé vers la Syrie et de disparaître comme M. Hamad Turkey Al Rda (voir le dernier cas ci-dessous).

Mohammed Ahmed Qoja, âgé de 24 ans, de nationalité syrienne, demeurant à Alep en Syrie, aurait été arrêté le 3 janvier 2006 dans le quartier de Kornishe el Mazra à Beirut sans mandat d'arrêt par des membres du service de renseignement des forces de l'ordre interne. Ces derniers l'auraient emmené dans leurs locaux à

Beirut, où ils l'auraient détenu pendant cinq mois au sous-sol en régime cellulaire et finalement transféré à la prison de Roumieh. Il craint d'être renvoyé vers la Syrie et de disparaître comme M. Hamad Turkey Al Rda (voir le dernier cas ci-dessous).

Malik Mohammed Nabah, âgé de 27 ans, nationalité libanaise, demeurant à Beirut, aurait été arrêté le 3 janvier devant sa résidence, sans mandat d'arrêt, par des membres du service de renseignement des forces de l'ordre interne. Ces derniers l'auraient emmené dans leurs locaux à Beirut, où ils l'auraient détenu pendant cinq mois au sous-sol en régime cellulaire. Plusieurs officiers, dont les noms ont été communiqués aux mandataires, l'auraient suspendu pendant plusieurs heures et battu, auraient placé un sac plastique sur son visage et l'auraient menacé. Il aurait finalement été transféré à la prison de Roumieh.

Tareq Rajaa Nasser, âgé de 22 ans, de nationalité syrienne, demeurant à Alep en Syrie et dans le quartier de Mahallat Ramle à Beirut, aurait été arrêté le 3 janvier 2006 dans le quartier de Kornishe el Mazra à Beirut sans mandat d'arrêt par des membres du service de renseignement des forces de l'ordre interne. Ces derniers l'auraient emmené dans leurs locaux à Beirut, où ils l'auraient détenu pendant cinq mois au sous-sol en régime cellulaire. Plusieurs officiers, dont les noms ont été communiqués aux mandataires, l'auraient menacé d'abus sexuel et d'arrêter sa femme et sa mère également. Finalement, il aurait été transféré à la prison de Roumieh. Il craint d'être renvoyé vers la Syrie et de disparaître comme M. Hamad Turkey Al Rda (voir le dernier cas ci-dessous).

Hamad Turkey Al-Rda, âgé de 25 ans, de nationalité syrienne, résident dans le quartier de Khaldeh, au sud de Beirut, aurait été arrêté le 16 janvier 2006 à Khaldeh par des membres du service de renseignement des forces de l'ordre interne sans mandat d'arrêt. Ils l'auraient emmené dans leurs locaux à Beirut, où ils l'auraient détenu pendant cinq mois au sous-sol en régime cellulaire et finalement transféré à la prison de Roumieh. Il aurait été extradé par les services de sécurité libanais vers la Syrie en juin 2006, où il aurait disparu.

Tous les individus nommés ci-dessus auraient été torturés, maltraités, menacés et battus pendant leur détention. Ils seraient accusés d'avoir constitué un gang au Liban et d'appartenir à un groupe terroriste, plus précisément de soutenir la résistance en Iraq et d'entretenir des liens avec Al Qaeda. Leurs dossiers seraient traités par un tribunal militaire, bien qu'ils n'aient pas la qualité de militaires et bien que l'infraction dont ils seraient accusés ne soit pas qualifiée de militaire.

En dépit du fait que les avocats de toutes les personnes mentionnées ci-dessus auraient informé le tribunal militaire des traitements auxquels les accusés auraient été soumis pour les forcer à signer des aveux, aucune enquête n'aurait été ordonnée.

29. Les mandataires ont exprimé leurs craintes que les aveux et témoignages obtenus suite à de mauvais traitements pourraient être utilisés comme éléments de preuve pendant les procédures devant le tribunal. Ils ont alors fait appel au Gouvernement du Liban afin que les droits de Amer Abdullah Hallak, Bora Mohammed Fouad, Faissal Asaad Hashim Akbar, Hani Hashim Al-Shanti, Hassan Mohammed Nabah, Moaz Abdelghani Shousha, Mohammed Abderrazzak Al-Wafaei, Mohammed Ahmed Qoja, Malik Mohammed Nabah, et Tareq Rajaa Nasser soient respectés et qu'ils ne soient pas privées arbitrairement de leur liberté et d'un procès équitable. Ces droits sont protégés par les articles 9 et 10 de la Déclaration universelle des droits de l'homme, ainsi que les articles 9 et 14 du Pacte international relatif aux droits civils et politiques. Ils ont également rappelé que l'article 15 de la Convention contre la torture stipule que « Tout Etat partie veille à ce que toute déclaration dont il est établi qu'elle a été obtenue par la torture ne puisse être invoquée comme un élément de preuve dans un procédure, si ce n'est contre la personne accusée de

torture pour établir qu'une déclaration a été faite. » L'Assemblée Générale, dans le paragraphe 7 de sa Résolution A/RES/61/153 du 14 février 2007, a réitéré cette demande.

30. A l'égard des M. Bora Mohammed Fouad, M. Shousha, M. Al Wafaeie, M. Qoja, M. Nasser et M. al-Rda, qui craignent d'être renvoyés vers la Syrie, où ils pourraient risquer d'être soumis à la torture, les mandataires ont attiré l'attention du Gouvernement du Liban qu'en vertu de l'article 3 de la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, «aucun Etat partie n'expulsera, ne refoulera, ni n'extradera une personne vers un autre Etat où il y a des motifs sérieux de croire qu'elle risque d'être soumise à la torture.» Le Comité des droits de l'homme a indiqué dans son Observation générale No. 20 sur l'article 7 que «les Etats parties ne doivent pas exposer des individus à un risque de torture ou de peines ou traitements cruels, inhumains ou dégradants en les renvoyant dans un autre pays en vertu d'une mesure d'extradition, d'expulsion ou de refoulement.»

31. Ils ont aussi rappelé les Principes directeurs applicables au rôle des magistrats du parquet, adoptés par la huitième Congrès des Nations Unies pour la prévention du crime et le traitement des délinquants qui s'est tenu à La Havane (Cuba) du 27 août au 7 septembre 1990 et les Principes fondamentaux relatifs à l'indépendance de la magistrature, adoptés par le septième Congrès des Nations Unies pour la prévention du crime et le traitement des délinquants qui s'est tenu à Milan (Italie) du 26 août au 6 septembre 1985, et confirmés par l'Assemblée générale dans ses résolutions 40/32 du 29 novembre 1985 et 40/146 du 13 décembre 1985. A cet égard, ils ont de plus souligné que le Comité de droit de l'homme, dans le paragraphe 22 de son observation générale n° 32, a évoqué que « Le jugement de civils par des tribunaux militaires ou d'exception devrait être exceptionnel, c'est-à-dire limité aux cas où l'Etat partie peut démontrer que le recours à de tels tribunaux est nécessaire et justifié par des raisons objectives et sérieuses et où, relativement à la catégorie spécifique des personnes et des infractions en question, les tribunaux civils ordinaires ne sont pas en mesure d'entreprendre ces procès. » Cet argument était aussi soutenu par le Comité dans sa décision relative à la communication no 1172/2003 (Madani vs. Algérie). Dans cette décision, le Comité a stipulé qu' « Il incombe à l'Etat partie poursuivant des civils devant des tribunaux militaires de justifier une telle pratique. Le Comité estime que l'Etat partie doit démontrer, relativement à la catégorie spécifique des personnes en question, que les tribunaux civils ordinaires ne sont pas en mesure d'entreprendre ces procès, que d'autres formes alternatives de tribunaux civils spéciaux ou de haute sécurité ne sont pas adaptées à cette tâche et que le recours à des tribunaux militaires garantit la pleine protection des droits de l'accusé, conformément à l'article 14. [...] la simple invocation des dispositions juridiques internes pour le procès par les tribunaux militaires de certaines catégories de délits graves ne peut justifier, aux termes du Pacte, le recours à de tels tribunaux. »

32. Les mandataires ont aussi prié le Gouvernement de Liban de prendre toutes les mesures nécessaires pour assurer la protection des droits et des libertés des individus mentionnés, de diligenter des enquêtes sur les violations qui auraient été perpétrées et de traduire les responsables en justice. Ils ont finalement demandé au Gouvernement d'indiquer la base légale ayant prévalu à la détention des personnes détenues et les charges exactes et poursuites judiciaires concrètes à l'encontre des personnes susmentionnées, et notamment si celles-ci sont basées sur des provisions qui contiendraient une référence au terrorisme. Ils ont demandé de clarifier comment est défini dans la législation libanaise un acte terroriste, et de fournir les dispositions pertinentes et d'indiquer les raisons pour lesquelles les tribunaux civils ordinaires n'ont pas été en mesure d'entreprendre les procédures actuellement en cours contre les individus nommés ci-dessus.

B. Correspondance du Gouvernement

33. Par lettre datée du 26 février 2009, le Gouvernement a fourni une réponse :

- La première partie exposera les principes de base de la justice militaire au Liban, en réponse aux interrogations.
- La deuxième partie contiendra notre réponse au sujet des cas précis évoqués dans cette lettre.

I. Principes de base de la justice militaire libanaise

34. Le législateur libanais a institué un type particulier de juridiction qu'il a dénommée tribunal militaire. Elle se distingue de certaines institutions similaires en place dans d'autres pays par le fait que parmi les magistrats qui y rendent la justice et veillent à la protection des droits des parties et, notamment, ceux de la défense, il y a à la fois des magistrats civils et des magistrats militaires. En outre, cette juridiction a été créée aux fins de répondre à des situations spécifiquement libanaises. Elle est compétente pour connaître des affaires de terrorisme, d'espionnage et d'atteinte à la sûreté de l'État (on trouvera en annexe une description succincte en anglais de la structure de la justice militaire au Liban). Les lois de base auxquelles il est donné effet dans le cadre de la procédure devant la justice militaire sont identiques à celles qu'applique la justice pénale ordinaire, telles qu'elles figurent dans le Code de procédure pénale et le Code pénal (voir à ce propos l'article 99 de la loi sur la justice militaire). À ces textes s'ajoutent quelques lois spéciales telles que la loi sur la justice militaire, la loi sur les armes et les munitions et la loi sur le terrorisme du 11 janvier 1958. Le législateur libanais a veillé à ce que les dispositions du Code de procédure pénale, du Code pénal et de la loi sur la justice militaire appliquées dans les affaires jugées par le Tribunal militaire assurent le respect des droits de la défense et la protection de l'intégrité des accusés et garantissent, à cet effet, la régularité des enquêtes et, partant, des procès. Quelques exemples de ces dispositions sont donnés ci-après:

- Le principe de base qui sous-tend les procès pénaux au Liban et qu'il n'y a pas de crime ni de peine ni de mesure préventive ou rééducative en l'absence d'un texte de loi (art. 1, 6 et 12 du Code pénal);
- À ce principe s'ajoute celui de la non-rétroactivité des lois, sauf dans le cas d'un nouveau texte plus clément, et d'autres mesures donnant aux condamnés la possibilité de retrouver leur place dans la société, dont, entre autres, le sursis à exécution, la confusion des peines, l'amnistie générale et individuelle et le remplacement d'une peine privative de liberté par des mesures préventives telles que le contrôle judiciaire ou l'interdiction de se rendre dans certains lieux (voir à ce propos l'article 111 du Code de procédure pénale);
- Les libertés publiques, l'intégrité de la personne et les droits de la défense sont garantis à toutes les phases de l'enquête préliminaire, de l'instruction et du procès. Le législateur a prévu des sanctions à l'encontre de quiconque viole les droits de l'accusé, prive arbitrairement une personne de sa liberté ou porte atteinte à son intégrité (actes qui, comme nous le verrons plus loin, frappent automatiquement de nullité la procédure engagée);
- Les procès se déroulent en principe en public (art. 54 et suiv. de la loi sur la justice militaire);
- La police judiciaire, dont fait partie le service d'enquête de la Direction des renseignements de l'armée libanaise et celui de la section des renseignements de la Direction générale des forces de sécurité libanaise, opère sous l'autorité du Bureau du procureur général. Un délai maximum est fixé pour la garde à vue dans les locaux de la police judiciaire. Il ne peut être prolongé qu'avec l'accord du

Procureur général pour une période déterminée, conformément à l'article 47 du Code de procédure pénale, qui dispose ce qui suit: «Les officiers de police judiciaire, en tant qu'agents du Bureau du Procureur général, exécutent les tâches qui leur sont confiées par le Procureur général consistant notamment à enquêter sur les infractions autres que les flagrant délits, à identifier les auteurs de ces infractions et leurs complices, à établir les preuves en retrouvant les objets du crime, en recherchant des indices sur les lieux de l'infraction, en procédant à un examen scientifique et technique des empreintes et en entendant les témoins, sans prestation de serment, les accusés ou les suspects. Au cas où une des personnes entendues garde le silence, l'officier de police judiciaire se contentera d'en faire état dans le procès verbal. Toute déclaration obtenue par la force et nulle et non avenue (...) Il est en outre interdit aux officiers de police judiciaire de placer un suspect en garde à vue sans l'autorisation du Procureur général. La durée maximale de la garde à vue est de 48 heures et peut être prolongée une seule fois d'une durée identique sur décision du Procureur général. La période de la garde à vue est déduite de la durée de la peine en cas de condamnation.»;

- Les personnes gardées à vue jouissent de droits énoncés à l'article 47 du Code de procédure pénale en vertu duquel, le suspect ou l'accusé exerce dès son arrestation des droits suivant:
 - 1) Droit de prendre contact avec un membre de sa famille, son employeur, un avocat de son choix ou une de ses connaissances;
 - 2) Droit de rencontrer un avocat, qu'il aura choisi au moyen d'une simple déclaration consignée dans un procès verbal, sans qu'un mandat officiel soit nécessaire;
 - 3) Droit aux services d'un interprète assermenté, s'il ne maîtrise pas l'arabe;
 - 4) Droit de demander directement ou par l'intermédiaire de son avocat ou d'un membre de sa famille au Procureur général de charger un médecin de l'examiner. Lors qu'une telle demande est faite, un médecin doit être désigné sur le champ. À l'issue de l'examen, qui sera effectué en privé, ce dernier présente au Procureur général un rapport dans un délai maximum de vingt-quatre heures. Dès qu'il reçoit ce rapport, le procureur général doit en envoyer une copie au détenu; en cas de prolongation de la garde à vue, un nouvel examen médical peut être demandé par le détenu ou une des personnes susmentionnées.

L'officier de police judiciaire est tenu d'informer le suspect, dès son arrestation, de ses droits énoncés ci-dessus et de faire état de cet acte dans le procès verbal.

- En cas de flagrant délit, plusieurs dispositions garantissent le respect des droits du détenu, dont celui d'être examiné par un médecin, et fixent la durée de la garde à vue, qui ne peut être prolongée que pour une période déterminée, en fonction de la nature de l'infraction. Parmi ces dispositions figurent l'article 32 du Code de procédure pénale, qui stipule ce qui suit: «Lorsque parmi les personnes présentes se trouve un individu sur lequel pèsent de lourdes présomptions, le Procureur général ou l'Avocat général ordonne qu'il soit arrêté, interrogé et gardé en détention pour les besoins de la justice pendant quarante-huit heures au maximum, cette période pouvant être prolongée de quarante-huit heures supplémentaires si l'enquête l'exige.
- L'accusé a le droit d'être assisté par un avocat durant son interrogatoire. L'accusé lui-même, son conseil ou un membre de sa famille peut demander un examen médical. Le cas échéant, le Procureur général ou l'Avocat général est tenu de faire immédiatement droit à cette demande et l'examen doit être effectué sans qu'aucun

officier ou agent de police judiciaire soit présent. Le rapport du médecin est remis à la partie qui l'a demandé avec copie à l'accusé dans un délai maximum de vingt-quatre heures.».

35. Il convient aussi d'apporter les précisions ci-après sur d'autres dispositions qui régissent le déroulement de la procédure devant le juge d'instruction militaire:

- En ce concerne l'état de santé du détenu, l'article 74 du Code de procédure pénale fait obligation au juge d'instruction de s'assurer de l'identité de l'accusé en vérifiant son nom et son prénom, son âge, son lieu de naissance, le nom de ses parents, son domicile, sa situation sociale et familiale et ses antécédents judiciaires. Il est en outre tenu de faire appel à psychologue et à un médecin pour obtenir des renseignements sur la personnalité de l'accusé. Si ce dernier ou son conseil réclame un examen psychique ou physique au juge d'instruction la demande ne pourra être rejetée que par une décision motivée;
- Le Code de procédure pénale confère à l'accusé le droit d'être assisté par un avocat pendant l'interrogatoire. Le juge d'instruction ne peut donc l'interroger en l'absence de son avocat. Il est tenu de rappeler ce droit à l'accusé au début de chaque audience et avant d'entamer l'interrogatoire. En cas de non respect de cette règle, l'interrogatoire et toute la procédure qui s'ensuit sont nuls et non avenue (voir le dernier paragraphe de l'article 76, et les articles 78 et 79 du Code de procédure pénale);
 - Il est essentiel que l'accusé soit, lorsqu'il répond aux questions du juge, à l'abri de toute pression tant matérielle que morale. S'il choisit de garder le silence, le juge ne peut l'obliger à parler (article 77 du Code de procédure pénale);
 - L'accusé, qui ne maîtrise pas l'arabe a le droit aux services d'un interprète assermenté, le but étant d'assurer qu'il comprenne les questions qui lui sont posées et y réponde correctement.
- Le Code pénal contient plusieurs articles érigeant en infraction l'atteinte à la liberté de la personne et l'arrestation arbitraire, ainsi que le fait de placer une personne dans un lieu de détention ou dans un établissement de correction sans mandat délivré par un juge ou en l'absence d'une décision de justice. En outre, tout retard dans la présentation d'un détenu ou d'un prisonnier à un juge compétent constitue une infraction pénale (voir les articles 367 à 369 du Code pénal).

36. À cet égard on peut lire ce qui suit à l'article 48 du Code de procédure pénale: «En cas de violation des règles relative à la garde à vue d'un accusé ou d'un suspect, l'officier de police judiciaire responsable est passible de poursuites pour séquestration, en application de l'article 367 du Code pénal et encourt aussi des sanctions disciplinaires, que l'infraction ait été commise devant témoin ou non.» S'agissant des pressions ou des actes de torture que pourrait subir l'accusé, l'article 401 (section II, intitulée «Extorsion d'aveux et d'informations») contient ce qui suit: «Quiconque inflige à une personne un traitement interdit par la loi en vue de lui faire avouer une infraction ou de lui arracher des informations à propos de celle-ci sera puni de trois mois à trois ans d'emprisonnement. Si le traitement infligé a causé une maladie ou des lésions, la peine sera d'un an d'emprisonnement au minimum.». De nombreux textes de loi prévoient la nullité des résultats de l'interrogatoire en cas de violation des garanties juridiques (voir à ce propos les articles 47 et 76 du Code de procédure pénale). Ces textes de loi ont été maintes fois appliqués par les tribunaux.

37. D'autre part, le Comité international de la Croix rouge (CICR) a commencé à jouer un rôle notable dans l'inspection des lieux de détention. Le 20 février 2007, le Bureau du

Procureur général près la cour d'appel, la Direction générale des forces de sécurité intérieure et le commandement de l'armée/Direction des renseignements, d'une part, et le CICR, de l'autre, se sont mis d'accord sur un protocole visant à permettre à cet organisme de visiter toutes les prisons, en application du décret no 8800 (Journal officiel no 58 du 17 octobre 2002), de s'enquérir de l'état de santé physique et mentale des prisonniers et de s'informer sur le traitement qui leur est réservé. Le mécanisme fonctionne déjà et des visites d'inspection ont lieu régulièrement. Ce sont là quelques uns des principes qui régissent la justice militaire au Liban.

II. Cas précis évoqués dans les lettres du Rapporteur spécial sur la question de la torture et du Rapporteur spécial sur l'indépendance des juges et des avocats

38. S'agissant des allégations précises sur lesquels les deux rapporteurs spéciaux appellent l'attention dans leurs lettres, nous tenons avant de répondre, à faire quelques remarques.

1. Observations générales

39. La justice libanaise, y compris la justice militaire, veille à appliquer tous les principes mentionnés plus haut. Il y a lieu, à ce propos, de noter ce qui suit:

- Comme nous l'avons déjà indiqué, un article du Code pénal traite expressément du délit de torture, et les tribunaux libanais n'hésitent pas à l'appliquer lorsque les conditions requises sont réunies;
- Les aveux obtenus sous la torture ne sont pas admis en tant que preuve par les tribunaux;
- Il n'y a aucun cas de détention au secret ou arbitraire dans les locaux du Ministère de la défense. Les personnes qui y sont détenues le sont conformément aux règles générales appliquées en cas d'arrestation et d'interrogatoire dans tous les autres lieux de garde de vue, quels qu'ils soient;
- L'ouverture d'une enquête par la justice en cas d'actes de violence mentale ou physique infligés à des personnes pour leur arracher des informations ou des aveux est tributaire d'une plainte déposée par la victime présumée. La justice n'a jamais failli à son devoir d'ouvrir une enquête pour vérifier le bien fondé d'une accusation portée contre les services de sécurité par un détenu et a toujours laissé l'affaire suivre son cours jusqu'au bout;
- Le placement de personnes dans la prison de la Direction générale des forces de sécurité intérieure est légal et constitue une mesure indispensable dans certaines situations graves et lorsqu'il y a lieu de protéger l'intégrité des détenus et de les garder sous étroite surveillance;
- Les personnes détenues dans la prison du Ministère de la défense sont examinées régulièrement par le médecin de la prison;
- Les avocats et les membres de la famille des personnes détenues dans la prison peuvent librement rendre visite à ces dernières;
- Bon nombre d'enquêtes menées par les services compétents de la Direction des renseignements sont classées sans suite;
- La section libanaise du CICR est autorisée à se rendre dans tous les lieux de détention, dont la prison de la Direction générale des forces de sécurité intérieure, qui ne diffère des autres lieux de détention que par les mesures de sécurité plus strictes qui y sont appliquées.

2. Réponses au sujet des cas signalés

40. En ce qui concerne l'affaire Hassan Nabah et consorts, l'examen du dossier a permis de constater ce qui suit:

- L'enquête préliminaire a été menée par la section des renseignements de la Direction générale des forces de sécurité intérieure sur décision du Procureur général près la cour d'appel sur la foi d'informations faisant état d'opérations de transport d'armes effectuées par un groupe d'individus;
- Les suspects ont été placés en garde à vue dans les locaux de la police judiciaire à différentes dates, en fonction de l'évolution de l'enquête, sur ordre du Procureur général près la cour d'appel. Ils ont ensuite été déférés devant le Procureur général militaire. Les enquêteurs ont régulièrement informé de l'évolution de l'enquête le Procureur général, qui en a supervisé toutes les étapes jusqu'à la fin comme l'exige la législation libanaise;
- Les interrogatoires ont commencé le 30 décembre 2005 et ont pris fin le 13 janvier 2006. L'enquête a été constamment supervisée par le Procureur général près la cour d'appel qui a été régulièrement informé de tous ses détails;
- L'enquête préliminaire a concerné de nombreuses personnes. Le Procureur général près la cour d'appel a ordonné le placement de certaines d'entre elles en détention provisoire et a laissé les autres en liberté surveillée;
- Les accusés ont reçu une convocation; certains se sont présentés spontanément aux autorités, d'autres ont été amenés par la force;
- La convocation des accusés, leur présentation aux autorités, leur interrogatoire et la notification du Procureur ont eu lieu le même jour ou au plus tard le lendemain;
- Les accusés placés en détention provisoire ou en liberté surveillée ont été présentés dès la fin de l'enquête préliminaire, le 13 janvier 2006, au Procureur général militaire. Ils ont ensuite été déférés le jour même devant le Commissaire du Gouvernement auprès du tribunal militaire. Ce dernier les a, à son tour, renvoyés, le 13 janvier 2006, devant le premier juge d'instruction militaire pour répondre du chef d'association et de conspiration entre eux et avec d'autres en vue de constituer une bande pour commettre des actes terroristes, de faux et d'usage de faux, de transport d'armes et de munitions de guerre, infractions visées à l'article 335 du Code pénal, aux articles 5 et 6 de la loi du 11 janvier 1958, aux articles 463, 459 et 460 du Code pénal et à l'article 72 de la loi sur les armes et les munitions. Il a été demandé au premier juge d'instruction militaire de les écrouer;
- Le premier juge d'instruction militaire a entendu, en présence de leurs avocats, les accusés, qui ont fait des déclarations sans qu'aucune pression n'ait été exercée sur eux et des ordonnances de mise en détention ont été prononcées à leur encontre en leur présence, dans le strict respect des règles. Il convient de signaler qu'aucun des accusés n'a contesté la déclaration préliminaire qu'il avait faite dans les locaux de la police judiciaire ou ne s'est plaint de torture;
- Le 12 juin 2006, le premier juge d'instruction militaire a prononcé la mise en liberté sous caution du dénommé Hamad Turki Al-Rada;
- Le 5 mars 2005, le premier juge d'instruction militaire a émis un acte d'inculpation à l'encontre des accusés, se fondant essentiellement sur leurs aveux, les déclarations des témoins et les éléments issus de l'enquête. Le juge ne s'est donc pas uniquement appuyé sur les résultats de l'enquête préliminaire (on trouvera en annexe une copie de l'acte d'inculpation émis par le premier juge d'instruction militaire dans cette affaire);

- Les accusés ont été ensuite déférés devant le tribunal militaire permanent le 9 mars 2007, où leur procès se déroule dans le plus strict respect des règles;
- Le tribunal militaire permanent a veillé tout au long du procès à respecter les droits de la défense, et tous les accusés ont été défendus par des avocats, ce qui témoigne du souci de la justice militaire de respecter scrupuleusement les droits de la défense;
- Cette affaire relève pleinement de la compétence de la justice militaire, conformément aux dispositions de la loi sur le terrorisme du 11 janvier 1958, sachant que le tribunal militaire permanent est une juridiction spéciale dont les caractéristiques ont déjà été exposées plus haut;
- Lors des perquisitions effectuées au domicile des accusés, des armes et des munitions de guerre, du matériel militaire, des composants électroniques et des minuteriers branchés à des fils électriques devant servir à fabriquer des explosifs ont été trouvés;
- Des délégués du CICR ont déjà rendu visite aux accusés et continueront de le faire régulièrement;
- Il est faux d'affirmer que les accusés ont été battus. Aucun d'entre eux n'a d'ailleurs déposé de plainte en bonne et due forme à ce propos.

41. En conclusion, il y a lieu de réaffirmer que les accusés sont soumis à une procédure équitable et que leurs droits fondamentaux sont garantis. Les réponses que nous vous faisons parvenir dans la présente communication réfutent les allégations que les droits des personnes détenues dans le cadre des affaires dont il est question dans la lettre sont protégés, que l'enquête les concernant s'est déroulée dans le respect des règles et que les affirmations selon lesquelles elles ont été torturées sont sans fondement.

Maroc

A. Correspondance par le Rapporteur Spécial

42. Le 23 octobre 2009, le Rapporteur spécial conjointement avec la Rapporteuse spécial sur l'indépendance des juges et des avocats et le Rapporteur spécial contre la torture ont envoyé une lettre sur la situation de **Sidi Mohamed Bourouis**, né le 17 avril 1969 à Tlemcen, commerçant, demeurant Al Kalaa supérieure, N° 81, Tlemcen Algérie, **Sadji Al Ouassini**, né le 12 janvier 1966 à Maghnia, commerçant, demeurant rue O N° 46, Maghnia, Algérie, et **Khaled Laidouï**, né le 5 avril 1950, demeurant Hai Bouhenak, N° 11, Tlemcen Algérie, tous les trois membres allégués du Front Islamique du Salut. Selon les informations reçues,

Les trois personnes susnommées auraient fui l'Algérie après l'annulation des élections remportées par le Front Islamique du Salut en 1992. Frontaliers du Maroc voisin, ils s'y seraient réfugiés mais n'auraient pas déposé de demande formelle d'asile.

Arrêtés en septembre 1995, ils auraient été accusés par les services de sécurité marocains de soutien au terrorisme et condamnés par le tribunal militaire de Rabat le 10 janvier 1996 à une peine de 14 années de réclusion. Ils n'auraient jamais eu la possibilité de bénéficier du droit de faire appel de leur condamnation. Ensuite, ils auraient purgé la totalité de leur peine de détention et auraient été libérés le 15 octobre 2009.

En même temps, les trois hommes auraient appris qu'ils avaient été condamnés par les juridictions algériennes d'exception, mises en place à la suite des événements du janvier 1992. Selon un jugement de la cour spéciale d'Oran en date du 12 juillet 1993, M. Sidi Mohamed Bourouis aurait été condamné à la peine de mort. MM. Sadji Al Ouassini et Khaled Laidaoui auraient également été condamnés par les mêmes juridictions d'exception à des peines d'emprisonnement à perpétuité.

Les autorités algériennes ayant requis des autorités marocaines que ces personnes leurs soient délivrées, car elles feraient l'objet de poursuites en Algérie, ils risqueraient de faire l'objet d'un renvoi forcé du Maroc vers l'Algérie. Il paraît que la demande formulée par les autorités algériennes serait en contravention avec une loi d'amnistie (l'Ordonnance n° 06-01 du 27 février 2006) portant mise en œuvre de la Charte pour la paix et la réconciliation nationale.

43. Etant donné les allégations sérieuses que ces trois personnes, suite à un renvoi en Algérie, seraient en danger d'être arrêtés et soumis aux traitements cruels et inhumains, les mandataires ont exprimé des craintes quant à l'intégrité physique et mentale des MM. Sidi Mohamed Bourouis, Sadji Al Ouassini et Khaled Laidaoui. Ils se sont ensuite référés aux dispositions pertinentes de la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, à laquelle le Maroc a adhéré, notamment l'article 3, selon lequel «aucun Etat partie n'expulsera, ne refoulera, ni n'extradera une personne vers un autre Etat où il y a des motifs sérieux de croire qu'elle risque d'être soumise à la torture.»

44. Concernant la situation en Algérie, les mandataires ont rappelé que le Comité contre la torture des Nations Unies, dans ses observations finales du 13 mai 2008 (CAT/C/SR.827 et SR. 828), s'est montré préoccupé du maintien de l'état d'urgence en Algérie- toujours en vigueur à ce jour- et des informations selon lesquelles les services du Département du renseignement et de la sécurité relevant du ministère de la défense (DRS) seraient à l'origine de nombreux cas de torture et de traitements cruels, inhumains et dégradants commis sur le territoire de l'État partie.

45. Quant aux jugements par les juridictions algériennes d'exception, les mandataires ont attiré l'attention du Gouvernement de l'Algérie sur l'article 14 du Pacte international relatif aux droits civils et politiques et sur le paragraphe 22 de l'observation générale n° 32 du Comité des droits de l'homme, qui a évoqué que « Bien que le Pacte n'interdise pas le jugement de civils par des tribunaux militaires ou d'exception, il exige que de tels procès respectent intégralement les prescriptions de l'article 14 et que les garanties prévues dans cet article ne soient ni limitées ni modifiées par le caractère militaire ou exceptionnel du tribunal en question. Le Comité note par ailleurs que le jugement de civils par des tribunaux militaires ou d'exception peut soulever de graves problèmes s'agissant du caractère équitable, impartial et indépendant de l'administration de la justice. » Tel est le cas avec les jugements en absentia pris par les juridictions algériennes d'exception. De plus, ils ont souligné que l'article 14, paragraphe 7 du Pacte international relatif aux droits civils et politiques stipule que «Nul ne peut être poursuivi ou puni en raison d'une infraction pour laquelle il a déjà été acquitté ou condamné par un jugement définitif conformément à la loi et à la procédure pénale de chaque pays. » Même si le Comité des droits de l'homme note dans le paragraphe 57 de son observation générale n° 32 que cette disposition n'oblige pas à respecter le principe ne bis in idem à l'égard des juridictions nationales de deux États ou plus, cela ne doit pas, toutefois, dispenser les États de chercher, par la conclusion de conventions internationales, à éviter qu'une personne ne soit jugée de nouveau pour la même infraction pénale.

B. Correspondance du Gouvernement

46. Au 31 décembre 2009, le Rapporteur n'a pas reçu de réponse.

Pakistan

A. Communication sent to the Government

47. On 2 October 2009, the Special Rapporteur, jointly with the Chairperson Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a communication regarding Mr. **Mustafa Setmariam Nassar**, aged 42, Spanish citizen of Syrian origin and author of a number of books and other publications on Islam and “jihad”. According to the allegations received,

On an unknown date in October 2005, Mr. Mustafa Setmariam Nassar was apprehended in Pakistan by forces of the Pakistani intelligence on suspicion of having been involved in a number of terrorist attacks, including the 11 September 2001 attacks against the United States and the 11 March 2004 bombings in Madrid. He was detained in Pakistan for a certain period of time accused of involvement in both incidents. He was then handed over to authorities of the United States of America under their exclusive control. While no official news of Mr. Nassar’s whereabouts has been received since his apprehension in October 2005, it is alleged that in November 2005, he was held for some time at a military base facility under United States of America authority in Diego Garcia, an overseas territory of the United Kingdom. It is now assumed that he is currently being held in secret detention in the Syrian Arab Republic.

In the early 1980s, Mr. Mustafa Setmariam Nassar fled the Syrian Arab Republic following his alleged involvement in a failed attempt by the Muslim Brotherhood to overthrow the government then in power. In 1985, he arrived in Spain where he married Helena Moreno Cruz, a Spanish citizen, thereafter obtaining Spanish citizenship.

Official United States of America documents and web postings, as well as media reports, indicate that the United States of America authorities had been interested in Mr. Mustafa Setmariam Nassar before his disappearance in 2005. The then United States of America administration pursued Mr. Mustafa Setmariam Nassar at least since November 2004, when it offered a five million United States dollar reward for information relating to his capture as part of its “Rewards for Justice” program. In January 2005, the United States of America Embassy in Pakistan reiterated this offer by posting a notice for a reward for the same amount of money in a prominent newspaper in Pakistan. Around the time of his reported capture, the United States of America Government removed Mr. Nassar’s name from the “Rewards for Justice” list, and withdrew the proposed reward for information leading to his arrest. It also removed his name from the Federal Bureau of Investigation’s (FBI) “most wanted” list. The website of the United States National Counterterrorism Center reports that Mr. Nassar was captured in Pakistan in November 2005 (www.nctc.gov/site/profiles/capture.html (last visited 23 September 2009)). This may suggest that Mr. Mustafa Setmariam Nassar was in fact captured and that the Government of the United States of America was either involved in his capture or is cognizant of his current whereabouts.

In June 2009, in response to a request made through Interpol by Spanish Judge Baltazar Garzon for information relating to Mr. Mustafa Setmariam Nassar’s whereabouts, the FBI informed that Mr. Nassar was not in the United States of America at that time. The FBI did not, however, address whether Mr. Nassar may be held in United States of America custody elsewhere or whether it knew where he was then held.

Following queries by non-governmental organizations as to the whereabouts of Mr. Mustafa Setmariam Nassar, the Central Intelligence Agency (CIA) responded on 10 June 2009 stating that “the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request” and that even if the CIA was in a position to answer the request that the records would be classified and protected from disclosure by United States laws.

48. The mandate holders recalled articles 9 and 10 of the Universal Declaration of Human Rights and the non-refoulement provisions contained e.g. in paragraph 6.d of Human Rights Council Resolution 8/8 of 18 June 2008, which urges States not to expel, return (refouler), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture and; the Council recognizes in this respect that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement.

49. They also asked for the legal basis for the arrest and the detention of Mr. Mustafa Setmariam Nassar and for details and results of investigation and judicial or other inquiries carried out in relation to the case of Mr Mustafa Setmariam Nassar.

B. Reply from the Government

50. On 5 October 2009, the Permanent Mission acknowledged receipt of the communication and indicated that the letter had been transmitted to the relevant authorities for follow-up, but as of 31 December 2009, no substantive response to the Special Rapporteur’s correspondence had been received.

Perú

A. Comunicación enviada por el Relator Especial al Gobierno

51. El 23 de enero de 2009, el Relator Especial, envió una carta al Gobierno, junto con el Relator Especial sobre la promoción del derecho a la libertad de opinión y de expresión y la Relatora Especial sobre la situación de los defensores de los derechos humanos, en relación con un caso contra los defensores del medio ambiente. Según la información recibida:

Hacia el 15 de diciembre de 2008, el Fiscal Superior habría dictaminado que el caso contra los defensores del medio ambiente sea transferido a la DIRCOTE – PIURA para continuar con las investigaciones, y eventualmente denunciar el caso ante el Poder Judicial. Lo anterior, según los informes, habría sido debido a una apelación por parte de los denunciantes de la FUCSC contra la decisión del Fiscal de la instancia inmediata inferior de archivar el proceso contra los 35 defensores de derechos humanos.

Esta decisión de continuar con las investigaciones por terrorismo se produce tras la publicación por el gobierno, el 27 de diciembre del 2008, del Decreto Supremo N° 024 que declara de “necesidad pública” la concesión de 35 derechos mineros al consorcio chino Zijin, propietario del proyecto minero Río Blanco Cooper S.A.

Se alega que la decisión de reabrir el caso contra los 35 defensores por parte del Fiscal Superior está relacionada con sus actividades legítimas en la defensa del medio ambiente, frente a una actividad que pone en riesgo los recursos naturales en su comunidad. En vista de lo aquí resumido, se expresa preocupación por el derecho a un debido proceso de los 35 defensores.

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

53. En relación con la información aquí resumida, reiteraron los derechos fundamentales de la libertad de expresión así como también el de la libertad de reunión y asociación pacífica establecidos en los artículos 19, 21 y 22 del Pacto Internacional de Derechos Civiles y Políticos. Habiendo reconocido que la necesidad de combatir el terrorismo, incluyendo la preparación de actos terroristas, puede implicar restricciones legítimas a estos derechos, quisieron resaltar que todas esas limitaciones deben ser aplicadas de acuerdo con criterios precisos establecidos por ley y de acuerdo con los principios de proporcionalidad y necesidad, y que por ningún motivo deben ser utilizados para limitar los derechos que son fundamentales para una sociedad democrática. Expresaron, asimismo, la opinión que las medidas de contraterrorismo no deben ser utilizadas contra miembros o defensores/defensoras de las comunidades indígenas que actúan en defensa de los derechos económicos, sociales y culturales pertenecientes a pueblos indígenas.

54. En relación con la criminalización adecuada del crimen del terrorismo aprovecharon la oportunidad para reiterar la caracterización acumulativa de los crímenes terroristas tal como los ha elaborado el Consejo de Seguridad en su resolución 1566 (2004), y el principio, como lo ha expresado el Relator Especial sobre la promoción y la protección de los derechos humanos y las libertades fundamentales en la lucha contra el terrorismo, de que el terrorismo debe ser definido por sus inexcusables métodos de violencia contra las personas y su intención de crear miedo entre la población general más que a través objetivos políticos u de otro tipo, los cuales a menudo coinciden en parte con los objetivos de los movimientos sociales que no tienen nada que ver con actos terroristas (A/HRC/6/17, para. 73).

55. También quisieron llamar la atención del Gobierno en relación a las siguientes disposiciones sobre la situación de los defensores de los derechos humanos:

- El artículo 12, párrafos 2 y 3, estipula que el Estado garantizará la protección, por las autoridades competentes, de toda persona, individual o colectivamente, frente a toda violencia, amenaza, represalia, discriminación, negativa de hecho o de derecho, presión o cualquier otra acción arbitraria resultante del ejercicio legítimo de los derechos mencionados en la presente Declaración. A este respecto, toda persona tiene derecho, individual o colectivamente, a una protección eficaz de las leyes nacionales al reaccionar u oponerse, por medios pacíficos, a actividades y actos, con inclusión de las omisiones, imputables a los Estados que causen violaciones de los derechos humanos y las libertades fundamentales, así como a actos de violencia perpetrados por grupos o particulares que afecten el disfrute de los derechos humanos y las libertades fundamentales.
- El artículo 9, párrafo 1, establece que en el ejercicio de los derechos humanos y las libertades fundamentales, incluidas la promoción y la protección de los derechos humanos, toda persona tiene derecho, individual o colectivamente, a disponer de recursos eficaces y a ser protegida en caso de violación de esos derechos.

56. Los mandatarios destacaron que es su responsabilidad de acuerdo con los términos del mandato que les ha entregado la Comisión de Derechos Humanos y prorrogados por el

Consejo de Derechos Humanos, intentar conseguir clarificación sobre los hechos llevados a su atención. Recalaron que es su deber informar al Consejo de Derechos Humanos, sobre si son exactos los hechos a los que se refieren las alegaciones presentadas; sobre si fue presentada alguna queja; así como sobre la base legal de la reapertura del caso contra los 35 defensores. Del mismo modo, en lo relativo a conocer cuáles son los actos sometidos a investigación, y a cuales son las provisiones legales y los correspondientes castigos aplicables según el caso determinado; así como a que cargos, si existe alguno, han sido elevados, a cual es la definición de terrorismo prevista en la legislación; y a como se asegura que las provisiones legales relacionadas al contraterrorismo no son utilizados para restringir innecesariamente el disfrute del derecho de reunión y asociación pacífica.

B. Comunicación del Gobierno

57. Hasta el 31 de diciembre de 2009 ninguna respuesta fue recibida por el Relator Especial.

Russian Federation

A. Communication sent to the Government

58. On 13 January 2009, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a communication to the Government regarding the in relation to Mr Murad Akhmedovich Gasayev, aged 34, ethnic Chechen, currently in a Moscow temporary detention isolator.

According to the allegations received, on 31 December 2008, the Spanish authorities extradited Mr Gasayev to the Russian Federation. The extradition request was based on charges of membership in an armed group named Khalifat and Mr. Gasayev's participation "in several terrorist attacks against representatives of the state and law enforcement officers in the North Caucasus," including a June 2004 attack on a Ministry of the Interior building in Nazran, Ingushetia. Reportedly, Murad Gasayev was named as a participant in the Nazran attack by a person convicted of involvement in the same attack while under interrogation. However, that person later retracted his testimony alleging that it was given under duress.

In August 2004, before leaving the Russian Federation, Murad Gasayev had reportedly been ill-treated for three days by officers of the central office of the Federal Security Service in Ingushetia. It is our understanding that diplomatic staff of the Spanish Embassy in Moscow, in accordance with the conditions of extradition agreed upon by the Russian Federation and Spain in this specific case, will carry out the monitoring of the conditions of detention and treatment of Mr Gasayev while in custody. Furthermore, it is our understanding that Mr Gasayev reportedly suffers from ill health and is accordingly in need of special treatment.

59. The mandate holders appealed to the Government of the Russian Federation to take all necessary measures to guarantee Mr. Gasayev's right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) and recalled the Russian Federation's obligation to protect the right to physical and mental integrity of all persons, set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They also drew the

Government's attention to consistent allegations of torture and other ill-treatment in relation to persons suspected or convicted of terrorism-related offences in the Russian Federation as referred to by the Special Rapporteur on torture in paragraph 533 of his report A/HRC/7/3/Add.2.

60. They further asked the Russian authorities to indicate the legal basis for the detention of Mr Gasayev and to explain which measures have been taken in order to secure the independent and effective monitoring of the conditions and treatment of Mr Gasayev during custody and of his trial. They requested clarification concerning the details of the conditions regarding private communication, as well as the number and time of visits, which the diplomatic staff of the Spanish Embassy in Moscow are subjected to, when carrying out the monitoring tasks agreed upon by the Russian Federation and Spain in this case and what measures have been taken in order to secure that Mr Gasayev has regular access to and is allowed to communicate in private with a lawyer of his own choice; that he receives regular medical examinations by forensic doctors as well as medical treatment that is adequate to his health problems; and that he is allowed to receive visits by family members since his return to the Russian Federation. Lastly, they asked what investigations have been carried out with regard to allegations that the statement by another person, forming the basis for the extradition request by the Russian Federation of Mr Gasayev, was given under duress.

61. In a letter sent to the Russian Federation's Government on 5 August 2009, the Special Rapporteur thanked the authorities for their response of 21 April 2008 to an earlier communication submitted to them on 14 February 2008 concerning certain provisions of the Federal Counter-Terrorism Act No 35 – FZ of 6 March 2006, as amended on 27 July 2006 and proposed a process of consultations concerning the compatibility of that legislation and its implementation with international human rights law, indicating that such a process could cover, among others the following issues:

- The scope and implications for counter-terrorism measures of the principle of legality, reflected in article 15 of the International Covenant on Civil and Political Rights and General Comment No. 29 by the Human Rights Committee. In this matter, the Special Rapporteur expressed concern that the Russian Government may have a narrow understanding of ICCPR article 15 and the ensuing State obligations;
- The use of force in the conduct of counter-terrorism operations, and the principles governing such use of force. The Special Rapporteur was concerned about allegations by non-governmental organizations, or in the media, that the occurrence of arbitrary or disproportionate use of force remains frequent and affects members of the general population, in addition to direct terrorist suspects;
- Arrest and detention in the context of countering terrorism and extremism, in particular to prevent any arbitrary deprivation of liberty, secret detention or disappearances, and to secure effective access to a court for the examination of the lawfulness of any form of detention;
- The issue of non-discriminatory treatment of Muslim and other minority groups and asylum-seekers in the context of counter-terrorism. A related issue is Russia's compliance with the rule of non-refoulement when extraditing or deporting terrorism suspects or other persons to concerned countries;
- The definitions of "terrorist activity" and "terrorist act" etc., and their consequences for legal certainty in the application of the law and for freedom of expression, the media and civil society organizations;

- The question of effective and independent investigation into human rights violations in the context of counter-terrorism measures, including through effective internal and external oversight mechanisms that can target any abuse of power and prevent instances of impunity; and
- Developments in the field of providing compensation to the victims, or families of the victims, of terrorist acts, but also to persons adversely affected by counter-terrorism measures by the State.

62. In the same letter, the Special Rapporteur thanked the Russian Government for its response of 27 March 2009 concerning the case of Murad Gasayev and asked for an update on his the situation.

B. Reply from the Government

63. By letter dated 27 March 2009, the Government replied to the Special Rapporteur's first letter relating to the case of Mr. Gasayev sent on 13 January 2009. On 12 December 2008, the Spanish authorities granted an application by the Office of the Procurator-General of the Russian Federation to extradite Murad Akhmedovich Gasaev to the Russian Federation. Mr. Gasaev is accused of having become a member, in the middle of 2003, of an illegal armed group named Khalifat, led by A.R. Kerimov, which formed part of a criminal society headed by an Arab, Taufiq al-Jeddani. As part of the group, Mr. Gasaev took part in an attack during the night of 21 June 2004 on the Ministry of Internal Affairs of the Republic of Ingushetia and fired shots from an automatic firearm on the land adjoining the Ministry building. In the course of the attack, one staff member of the Ministry of Internal Affairs of Ingushetia was killed, seven people were wounded and the material damage caused was in excess of 10.5 million roubles.

64. Pursuant to a ruling by a judge of the Lenin District Court, Vladikavkaz, of 28 September 2006, that Mr. Gasaev should be remanded in custody, he is being held in a federal public-sector institution, Remand Centre No. 62/2, of the Russian Federal State Penal Correction Service for the Stavropol territory, in Pyatigorsk. On admission to Remand Centre No. 26/2, Mr. Gasaev underwent a medical examination. On 9 February 2009, on the orders of the investigator, a forensic examination was carried out, the results of which showed that Mr. Gasaev was not suffering from any illness that might prevent his detention.

65. According to information provided by the investigator handling the criminal case against Mr. Gasaev, there has been no application by Mr. Gasaev's family to visit him in the remand centre. Their only request was that he should have access to defence counsel, who is currently representing the interests of the accused and is entitled, under Russian law, to visit his client without hindrance and speak to him in confidence. In accordance with Federal Act No. 103 of 15 July 1995 on the Pretrial Detention of Suspects and Accused Persons, Mr. Gasaev was given access to adequate medical care and essential medication.

66. The Office of the Procurator-General has no information on the coercion allegedly used against Mr. Gasaev or the person whose evidence formed the "basis for the extradition" of Mr. Gasaev. In the event that the representatives of the United Nations have any confirmation of this information or any evidence of possible illegality in Mr. Gasaev's treatment, they may submit such information for consideration by the Russian law enforcement agencies. Upon receipt of such information, the relevant investigative bodies will consider it in accordance with the provisions of the Code of Criminal Procedure of the Russian Federation. On the basis of their investigation, a decision will be taken, the legality of which will need to be confirmed by the Office of the Procurator-General.

Spain

A. Comunicación enviada por el Relator Especial al Gobierno

67. El 13 de enero de 2009, el Relator Especial, junto con el Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, envió una carta al Gobierno en relación con el Sr. Murad Akhmedovich Gasayev, de 34 años de edad, de etnicidad Chechena, quien se encontró aislado en detención temporal en Moscú. La solicitud de extradición a la Federación Rusa fue implementada, a pesar de un llamamiento del Relator Especial sobre la tortura enviado el 27 de marzo de 2008 y repetidos llamamientos orales y escritos del Relator Especial sobre la promoción y la protección de los derechos humanos y las libertades fundamentales en la lucha contra el terrorismo hechos durante la visita oficial a España del Relator Especial en mayo de 2008, así como los días 12 y 17 de diciembre de 2008, incluyendo una propuesta para sostener una reunión en Ginebra el 22 de diciembre para discutir esta solicitud de extradición. Según las informaciones recibidas:

El 31 de diciembre de 2008, autoridades españolas extraditaron al Sr. Gasayev a la Federación Rusa, basándose en garantías diplomáticas contra tortura y otros malos tratos. La orden de extradición fue basada en cargos de pertenencia a un grupo armado de nombre Khalifat, y de la participación del Sr. Gasayev en “varios ataques terroristas en contra de representantes del estado y oficiales del mantenimiento del orden en el Cáucaso del Norte,” incluido un ataque en junio de 2004 a un edificio del Ministerio del Interior en Nazran, Ingushetia. Presuntamente, Murad Gasayev fue nombrado como uno de los participantes del ataque de Nazran por una persona condenada por su involucramiento en el mismo ataque, durante un interrogatorio. Sin embargo, esa persona después retiró su testimonio debido a que había sido presentado bajo coacción.

En agosto de 2004, antes de partir de la Federación Rusa, Murad Gasayev había sufrido presuntos maltratos durante tres días por oficiales de la oficina central del Servicio Federal de Seguridad en Ingushetia.

De acuerdo con las condiciones de extradición acordadas por la Federación Rusa y España, el personal diplomático de la embajada española en Moscú llevará a cabo el monitoreo de las condiciones de detención y trato del Sr. Gasayev mientras permanezca en custodia, a fin de asegurar que no sea sometido a ningún trato que pudiera contravenir estándares internacionales. Entendieron, asimismo, que el Sr. Gasayev presuntamente sufre de mala salud y, por tanto, requeriría de un tratamiento especial.

68. En relación con la información a la que se refiere arriba, y con referencia especial a las alegaciones consistentes de tortura y otros malos tratos de las personas acusadas o condenadas por crímenes relacionados con el terrorismo en la Federación Rusa, como fue referido por el Relator Especial sobre la tortura en el párrafo 533 de su informe A/HRC/7/3/Add.2, los Relatores Especiales expresaron su preocupación de que la integridad física y mental del Sr. Gasayev pueda estar en riesgo.

69. Quisieron llamar la atención del Gobierno sobre el artículo 3 de la Convención contra la tortura y otros tratos o penas crueles, inhumanos o degradantes, el cual establece que: “Ningún Estado Parte procederá a la expulsión, devolución o extradición de una persona a otro Estado cuando haya razones fundadas para creer que estaría en peligro de ser sometida a tortura”. Esta obligación no de ser cuestionada, aún haciendo referencia a la seguridad nacional o a la “peligrosidad” de la persona en cuestión, como fue establecido recientemente por el Tribunal Europeo de Derechos Humanos en el caso Saadi v. Italia, párrafo 139. También que en el párrafo 9 de la Observación General 20 sobre la prohibición de la tortura y otros tratos o penas crueles, inhumanos o degradantes, el Comité de

Derechos Humanos ha señalado que “los Estados Partes no deben exponer a las personas al peligro de ser sometidas a torturas o a penas o tratos crueles, inhumanos o degradantes al regresar a otro país tras la extradición, la expulsión o la devolución”. Asimismo, el párrafo 9 de la Resolución A/RES/61/153 de la Asamblea General, “Insta a los Estados a que no procedan a la expulsión, devolución (“refoulement”), extradición o traslado de cualquier otra manera de ninguna persona a otro Estado cuando haya razones fundadas para creer que dicha persona correría peligro de ser sometida a torturas”.

70. Asimismo, el párrafo 6(d) de la Resolución 8/8 del Consejo de Derechos Humanos insta a los Estados a que no procedan a la exclusión, devolución (“refoulement”), extradición o traslado de cualquier otra manera de ninguna persona a otro Estado cuando haya razones fundadas para creer que dicha persona correría peligro de ser sometida a torturas, reconociendo que las seguridades por vía diplomática, cuando se utilicen, no eximen a los Estados de sus obligaciones conforme a la normativa internacional de derechos humanos, el derecho humanitario y el derecho de los refugiados, en particular el principio de la no devolución. Asimismo, órganos internacionales de Derechos Humanos, tales como el Comité de Derechos Humanos y el Comité contra la Tortura han establecido en diversos casos que las garantías diplomáticas no funcionan frente al riesgo de tortura y otros malos tratos (ver, por ejemplo *Agiza v. Suecia*, Comité contra la Tortura, 2003 y *Alzery v. Suecia*, Comité de Derechos Humanos, 2005.) También llamaron la atención del Gobierno sobre el informe A/60/316 del Relator Especial sobre la tortura, relativo a las garantías diplomáticas.

71. Resaltaron que cada Gobierno tiene la obligación de proteger el derecho a la integridad física y mental de todas las personas. Este derecho se establece, *inter alia*, en la Declaración Universal de los Derechos Humanos, el Pacto Internacional de Derechos Civiles y Políticos y la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes.

72. En este contexto, instaron al Gobierno a tomar todas las medidas necesarias a fin de garantizar que los derechos y las libertades del Sr. Gasayev sean respetados, así como para asegurar la efectividad de la función de monitoreo del personal diplomático de la embajada de España en Moscú, en relación con el trato recibido por el Sr. Gasayev.

73. Recordaron, además, que es su responsabilidad, de acuerdo con los mandatos que les fueron otorgados por el Consejo de Derechos Humanos, intentar clarificar los hechos llevados a la atención del Gobierno. En este sentido, solicitaron del Gobierno la cooperación y sus observaciones sobre las medidas llevadas a cabo por la embajada de España en Moscú a fin de monitorear de manera independiente y efectiva las condiciones y el trato recibido por el Sr. Gasayev durante su custodia y su juicio, si lo hubiera. Solicitaron, además, que se les proporcione detalles de las condiciones relativas a la comunicación en privado, así como el número y duración de las visitas a las que se encuentra sujeto el personal diplomático de la embajada de España en Moscú al realizar su labor de monitoreo, como fue acordado entre la Federación Rusa y España en este caso; que medidas se han llevado a cabo por la embajada de España en Moscú para asegurar que el Sr. Gasayev: tenga acceso regular y la posibilidad de comunicarse en privado con un abogado de su elección; se le realicen revisiones médicas regulares por médicos forenses y que reciba tratamiento adecuado a sus problemas de salud; así como que tenga acceso a recibir visitas de sus familiares desde su regreso a la Federación Rusa.

B. Comunicación del Gobierno

74. Por medio de cartas de fecha 05/03/09, 11/06/09 y 5/10/09, el Gobierno indicó que ha creado un mecanismo de supervisión de las garantías diplomáticas solicitadas por la Audiencia Nacional sobre las condiciones de internamiento del Sr. Gasayev. El Mecanismo está compuesto por responsables diplomáticos de la embajada de España en Moscú. La

embajada de España en Moscú ha llevado a cabo tres visitas al Sr. Gasayev. En abril tuvo lugar la visita al centro penitenciario de Paytigorsk de una delegación del Comité para la Prevención de la Tortura y otros Tratos Inhumanos o Degradantes del Consejo de Europa (CPT). Es probable que el juicio del Sr. Gasayev tenga lugar en junio y que se trate de un proceso rápido. El Sr. Gasayev recibió dos visitas el 20 y 25 de abril por parte de funcionarios de los servicios de seguridad rusos para conocer el contenido de sus conversaciones con el personal diplomático español y con los delegados del CPT, pero sin mayores presiones ni coacciones.

75. La embajada mantiene un canal directo y permanente de comunicación con la Fiscalía General de la Federación Rusa, a quien se notifica la fecha y composición de la delegación española. La delegación española está acompañada en su traslado a la ciudad de Pyatigorsk, donde se encuentra detenido el Sr. Gasayev, por responsables de la Fiscalía General y del Servicio Federal de Cumplimiento de Condenas, para facilitar los contactos y seguimiento periódico del trato carcelario. La Fiscalía General está ofreciendo el mayor grado de cooperación y transparencia al personal diplomático, y estos pueden entrevistarse confidencialmente con el Sr. Gasayev.

76. El Sr. Gasayev comparte una celda ordinaria con otros dos reclusos. Dispone de una hora diaria para pasear al aire libre en un patio contiguo a su celda. Su celda dispone de TV, frigorífico, ducha propia y de un sistema de video vigilancia activada 24 horas al día, para garantizar la seguridad de los reclusos e impedir excesos por los funcionarios.

77. Se ha designado un punto de contacto en la embajada española para que la familia del Sr. Gasayev y su abogado defensor puedan mantener comunicación constante con los responsables diplomáticos. Además, las autoridades diplomáticas mantienen contactos fluidos con oficiales de la Defensoría del Pueblo y de la sociedad civil.

78. El Sr. Gasayev tiene derecho a designar un abogado propio y su hermano podrá participar en la defensa como “defensor del pueblo”, figura contemplada en el sistema procesal ruso como pasante del letrado de la defensa. Su hermano también lo visita todos los domingos y le entrega paquetes de comida. El Sr. Gasayev ha sido examinado en dos ocasiones por médicos forenses y afirmó que no había recibido malos tratos. Su estado físico es bueno y está siendo tratado por los médicos de la prisión de una Hepatitis C crónica.

79. Mediante Auto Judicial de 30/06/09, las autoridades rusas archivaron la causa contra el Sr. Gasayev por no haberse podido comprobar su implicación en el ataque terrorista que tuvo lugar en Nazrán en 2004. Sin embargo, dicho auto no habría extinguido la totalidad de las causas penales en su contra, sino que se mantienen vivos los cargos relativos a bandidaje y posesión ilícita de armas por hechos ocurridos en 2003.

80. La puesta en libertad del Sr. Gasayev se produjo el 28/08/09, al haberse transcurrido el plazo máximo de prisión preventiva así como por el estado de salud del acusado, aquejado de una enfermedad infecciosa. La puesta en libertad lleva anexa la medida cautelar de no poder desplazarse fuera de su ciudad de residencia en tanto no se ponga fin a la investigación judicial.

81. La Fiscalía Rusa ha avanzado la posibilidad de que el Sr. Gasayev se acoja a la amnistía dictada por la Duma en septiembre de 2006 para ciertos delitos de terrorismo en la República de Ingushetia. La embajada de España en Moscú sigue manteniendo contacto fluido y habitual con los responsables de la Fiscalía, así como con los abogados defensores del Sr. Gasayev.

Sri Lanka

A. Communication sent to the Government

82. On 9 October 2009, the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders, sent a communication to the Government of Sri Lanka regarding Mr. **J.S. Tissainayagam**, editor in chief of the North Eastern Monthly magazine. According to new information received:

On 25 August 2009, Mr. Tissainayagam was charged with three counts under the Prevention and Terrorism Act (PTA) and the Emergency Regulations of 2006 in relation to his criticism of the Sri Lankan Army's treatment of civilians in two articles published in the North Eastern Monthly magazine in June 2006.

On 31 August 2009, Mr. Tissainayagam was found guilty by a Colombo High Court judge and sentenced to 20 years of "rigorous imprisonment" under the PTA. Mr. Tissainayagam was found guilty on two counts of intending to "cause communal disharmony" (PTA, section 2), with a mandatory minimum sentence of five years each, and one count of receipt of monies "in the furtherance of any act of terrorism" (Emergency Regulations, regulation 6), with a mandatory minimum sentence of 10 years.

The judge in this case is allegedly the sister of the officer who signed the indictment against Mr. Tissainayagam. One of the main pieces of evidence used against Mr. Tissainayagam was a handwritten confession, which had been submitted to court by the prosecution. The defence counsel challenged the veracity of Tissainayagam's confession on the basis of three accounts: first, Mr. Tissainayagam was threatened and mentally tortured for the police to obtain that statement; second, the confession was not given to an Assistant Superintendent of Police as required by law, and third, the statement reportedly mirrored word for word a statement written on 7 March 2009 by the officer who had been present at the time of Mr. Tissainayagam's detention and who has allegedly been involved in the torture of and threats against Mr. Tissainayagam. The judge denied Mr. Tissainayagam's right to appeal against the admissibility of this forced confession into evidence.

83. The mandate holders voiced concern that the sentencing of Mr. Tissainayagam might be directly related to his work in defense of human rights and constitute an attempt to silence peaceful and legitimate criticisms of the Government. They also were concerned at the definitions of "terrorism" or "terrorist act" in the PTA being vaguely worded or having an overly broad application, and therefore being at variance with Article 15 of the International Covenant on Civil and Political Rights (ICCPR), which enshrines the principle of legality in criminal law and implies that the requirement of criminal liability is limited to clear and precise provisions in the law, so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation which would broaden the scope of the proscribed conduct. Vague or broad definitions of terrorism have a negative impact on other human rights protected under the ICCPR such as Article 19 on freedom of expression. The definitions with the PTA should not be defined so broadly as to negatively impact the peaceful methods used by civil society, including journalists, political and social activists.

84. They recalled General Assembly resolution 57/219 of 18 December 2002 which affirmed that States must ensure that any measure taken to combat terrorism comply with their obligations under international law. Finally, reference is made to Security Council resolution 1456 (2003), paragraph 6, which reiterates that "States must ensure that any

measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.”

85. They further reiterated the principle enunciated in Resolution 2005/38 of the Commission on Human Rights, which calls on States to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, to refrain from the use of imprisonment or the imposition of fines for offences relating to the media, which are disproportionate to the gravity of the offence and which violate international human rights law and to take utmost precaution in ensuring that counter-terrorism is not arbitrarily used as a pretext to restrict the right to freedom of opinion and expression in ways that are contrary to their obligations under international law.

86. In connection to the allegations of admission of forced evidence and the reported conflict of interests of the judge, they pointed to art. 14, para. 1 of the ICCPR, which requires that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". Fairness of judicial proceedings is further established in the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, in particular its principle 6.

87. In relation to the submission of the allegedly coerced confession by the prosecutor to the court, the mandate holders referred to the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 16.

88. Furthermore, the mandate holders recalled a number of provisions of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, namely article 6, points b) and c), article 12, paras 2 and 3.

89. They requested clarification on how the provisions of the PTA and the Emergency Regulations are in compliance with articles 15 and 19 of the International Covenant on Civil and Political Rights, on the legal basis upon which Mr. Tissanayagam was convicted and sentenced to 20 years of hard labour and on the safeguards in place to ensure judicial impartiality and fairness in judicial proceedings, in particular regarding the alleged conflict of interest and admission of coerced evidence.

B. Reply from the Government

90. By letter dated 15 July 2009, the Sri Lankan Government responded to a communication sent on 14 March 2008, parts of which referred to the same case, indicating that Mr. Tissanayagam was indicted by the Attorney General subsequent to an investigation conducted by the Criminal Investigation Department. At the outset of the trial, the Courts conducted a “Voire Dire” inquiry to decide on the voluntariness of the confession given by Mr. Tissanayagam to the Police. After the inquiry, the Courts ruled that the confession was voluntary. The criminal trial in the High Court is proceeding. Mr. Tissanayagam has also filed a fundamental rights application in the Supreme Court alleging violations of his fundamental rights arising from his arrest and detention. The Counsel for Mr. Tissanayagam has initially agreed to limit the hearing to a period of 10 days after the detention order had lapsed. After the hearing, the Counsel for both the petitioner and respondent, the Courts ordered that the period of detention was not illegal and not in violation of the petitioner’s fundamental rights. At this state, the Counsel for the petitioner

had indicated to the Courts that he wishes to further canvas the arrest and detention of the petitioner. The matter is pending in the Supreme Court.

C. Observations

91. The Working Group on Arbitrary Detention also adopted an opinion on the case of Mr. Tissanayagam on 12 September 2008, which declared his detention to be arbitrary (opinion no.30/2008).

Syrian Arab Republic

A. Communication sent to the Government

92. On 2 October 2009, the Special Rapporteur, together with the Chairperson Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a communication to the authorities of the Syrian Arab Republic, which contained the same summary as above (paras. 46-48) In addition to the issues raised in their letter to Pakistan and with a view to allegations that Mr. Setmariam Nassar was being held in secret detention in the Syrian Arab Republic, the mandate holders drew the Government's attention to paragraph 7.c of Human Rights Council Resolution 8/8 of 18 June 2008, which reminded all States that "Prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person;"

B. Communication from the Government

93. As of 31 December 2009, there had been no response to the Special Rapporteur's correspondence.

Turkey

A. Communications sent to the Government

94. On 15 May 2009, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders sent a communication to the Government of Turkey regarding Mr. **Hasan Anlar**, Deputy Secretary General of the Turkish Human Rights Association (Insan Haklari Dernegi - IHD) and member of the IHD Commission of Prisons, Ms. **Filiz Kalayci**, member of the IHD Executive Committee and of the IHD Commission of Prisons, Mr. **Halil Ibrahim Vargün**, former treasurer of the IHD, and Mr. **Murat Vargün**, all four human rights lawyers by profession. According to the information received:

On 12 May 2009, the offices and homes of Mr. Hasan Anlar, Ms. Filiz Kalayci, Mr. Halil Ibrahim Vargün and Mr. Murat Vargün in Ankara were searched by officers of the Anti-Terror Unit of the police on the basis of a search warrant and a detention order against the four lawyers. They were arrested and placed in police custody at the detention centre of the Anti-Terror Forces Unit.

The exact terms of the detention order are not known as their lawyers have not been permitted access to the police investigation files, which is in accordance with the Turkish Code of Criminal Procedure. However, it is known that charges against the four lawyers include the criminal offence of "aiding an illegal

organization". They are to be presented before the Prosecutor's Office within four days.

On 6 February 2009, the IHD published a report on human rights violations in prisons of Turkey to make the public aware of them. The report was also shared with the Turkish authorities. In addition, the four lawyers had been working on cases of human rights violations that occurred in detention. As a consequence they frequently receive complaint letters from prison inmates.

95. The mandate holders expressed concern that the arrests and detention of Mr. Hasan Anlar, Ms. Filiz Kalayci, Mr. Halil Ibrahim Vargün and Mr. Murat Vargün may have been carried out in connection with their activities in the defence of human rights, especially in the defence of prisoners' rights and appealed to the Government of Turkey to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

96. They then recalled General Assembly resolution 63/185, paragraph 1 of which stresses that: "States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law", as do Security Council resolutions 1456 (2003) and 1624 (2005) in paragraphs 6 and 4 respectively. They further referred to the International Covenant on Civil and Political Rights, to which the Government of Turkey is a Party, and in particular Article 9 (4), which requires that "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.", and Article 14 (1), which requires that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law".

97. The mandate holders further recalled the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, in particular articles 1, 2 and 6, points b) and c). They further referred to the Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990. In particular principles 16, 17 and 18. The mandate holders also requested clarification about the results of investigations and judicial or other inquiries carried out in relation to the case, about the specific acts which formed the basis for the charges faced by the four lawyers concerned and for the legal provisions applicable to this offence, and a full definition of an "illegal organisation". They further inquired with regard to the procedural measures, including access to a court to have the lawfulness of their detention examined, the right to access and communicate in private with a defence counsel, and the latter's complete access to files pertaining to the case and the legal basis for the arrest and detention of the four concerned lawyers.

98. On 12 October 2009, the Special Rapporteur, jointly with the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a communication to the Government of the Turkey regarding **M. E., M. Z. Y., A. N., and H. H. A.**, all minors, all Turkish citizens of Kurdish ethnicity, held in Diyarbakir's E-type prison. According to the allegations received.

M. E., M. Z. Y., A. N. and H. H. A. were arrested on 14 July 2008, by police and prison officials during unrest in Diyarbakir, South East Turkey. H. H., M. E. and A. N. were 15 years old when arrested, and M. Z. Y. was 16. Each child was

arrested on the basis of their alleged involvement in demonstrations and for throwing stones, an act for which the authorities have subsequently charged each of the accused with a terrorist crime. During the arrest, the children were beaten with rubber batons, kicked and punched. The beatings continued in the police car and at the police station. They were then transferred to an adult prison in Diyarbakir.

As a result of being beaten, punched and kicked by the police, H. A.'s back has been in constant pain. A. N. was beaten on his knee, as a result of which he is in need of medical treatment. However, he has only received cream and pain killers. In addition, the children suffer from insomnia, mood swings, aggressive and frustrated behaviour, and palpable feelings of nervousness and fear. The minors were not able to complain about any ill-treatment, since the police were always present when the doctor examined them.

Two days after their arrest they were given access to a State lawyer. Once their pre-trial detention was confirmed, their relatives found another lawyer. The judge of the 6th High Criminal Court only gave permission to the lawyer and the parents to attend the trial, but human rights groups and non-governmental organizations were banned. The judge also barred the defence team from using social reports by a pedagogue and a child psychiatrist, although this material may have been relevant and beneficial for the defence. The judge justified his decision on the grounds that the children were aware of the results of their actions and they knew it was a crime, which may contradict the presumption of innocence.

On 17 April 2009, the four children were found guilty and each was sentenced to a 6-year prison term. A date for a hearing to appeal this decision has not been set.

99. The mandate holders expressed concern in relation to the physical and psychological integrity of the above mentioned children and recalled articles 4, 7 and 12 of the Convention against Torture, which require States Parties to ensure that all acts of torture are criminalized and perpetrators of torture prosecuted. They also contain the obligation for the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed. They furthermore underlined that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law.

100. The mandate holders also took the view that each criminal justice system should adequately take into account the special protection needs of alleged minor offenders, including those suspected of terrorism. This is so in order to avoid the risk of negatively influencing children's reintegration in society, or even being counter-productive to the effect of pushing young persons into the ranks of terrorist organizations. They therefore recalled articles 14(4) and 10(2) and (3) of the International Covenant on Civil and Political rights and articles 37 and 40 of the United Nations Convention on the Rights of the Child, regarding the deprivation of liberty of children and fair trial guarantees.

101. Lastly, in relation to the right of defense, the mandate holders referred to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular principles 5 and 7, and to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, in particular principle 6.

102. They also requested clarification regarding the legal basis for the initial arrest and the continued detention of each of alleged victims and the specific articles of the Anti-Terror Law under which each of the alleged victims have been indicted. They further asked questions in relation to results of any investigations, medical examinations, and judicial or other inquiries carried out in relation to the alleged treatment of the alleged victims. They inquired with regard to specific safeguards in place to ensure that the very young age of those accused is taken into account throughout the entire process of criminal proceedings and to statistics on minors who have been convicted of terrorism or subjected to investigations in terrorism cases.

B. Replies from the Government

103. By letter dated 25 February 2009, the Government responded to a communications sent on 5 December 2008, that on 20 October 2009, six minors between the ages of 13 and 15 had been apprehended in Diyarbakir for setting up barricades, burning tyres in the streets, chanting slogans in support of a terrorist organization and throwing stones and molotov cocktails at a police action squad and their cars. The official records of the aforementioned events and apprehension proceedings were kept and video footage was taken by the relevant authorities.

104. According to the Child Protection Law No. 5395 and regulations on detention, the suspects were detained within proscribed time limits. Their families were immediately informed of the situation. All proceedings, including the meetings with their lawyers and families, were carried out separately from the adults, by the Child Unit of the Directorate for Security under the instruction and supervision of the Office of the Chief Public Prosecutor. The statements of the minors were taken by the Public Prosecutor dealing with juvenile offences in accordance with articles 29 and 30 of the Child Protection Law. Their lawyers were present during this process pursuant to the Criminal Procedure Code and other relevant regulations.

105. The Diyarbakir Forensic Institution examined the minors in order to assess whether or not they were capable of comprehending the legal meaning and consequences of their acts and whether they had the capability to control their behaviour as envisaged by article 31 of the Turkish Penal Code. The Diyarbakir Forensic Institution issued a medical report, which concluded that the minors were indeed capable of understanding all consequences of their acts and that they had the ability to control their behaviour.

106. Article 31 of the Turkish Penal Code contains the following provisions: (1) Children who have not reached the age of twelve years at the time of committing the offence are exempt from criminal liability. Criminal prosecution may not be initiated against them; however, security measures specific to children may be implemented. (2) Where a minor is older than twelve but younger than fifteen at the time of the offence shall have no criminal liability if he is incapable of perceiving the legal significance and consequences of his act or where his faculties of autonomous action are not sufficiently developed. However, protective measures specific to children shall be applied. If the minors have the capability to comprehend the legal significance and consequences of their acts and have developed the faculties of autonomous action with respect to the offence in question, they are entitled to receive reductions in their sentences under article 31 of the Turkish Penal Code.

107. The Criminal Court of Peace in Diyarbakir interrogated the minors in the presence of their lawyers and decided to arrest them under article 100 of the Criminal Procedure Code. The Juvenile Delinquency Investigation Bureau of the Diyarbakir Office of the Chief Public Prosecutor carried out an investigation, as a result of which an indictment was issued against the suspects on charges of violating the Law on Meetings and Demonstration Marches No. 2011, damaging public property, committing an offence of behalf of an illegal organization without membership and terrorist propaganda. The Diyarbakir Juvenile Heavy

Penal Court accepted the indictment in view of the investigation file (decision no. 2008/179, dated 11 November 2008) and a case was initiated against them. The first hearing was held on 5 December 2008.

108. Two articles of the Anti-terror Law refer to juveniles:

- Article 9. Offences within the scope of this law are to be tried in state security courts referred to in the first paragraph of article 250 of the Criminal Procedure Code No. 5271, dated 4 December 2004. Cases concerning the afore-mentioned offences initiated against juveniles above the age of 15 are also dealt with by these courts.
- Article 13. Sentences imposed under this law cannot be commuted to a fine, converted to other measures or suspended under article 231 of the Criminal Procedure Code. These provisions shall not apply to children who have not reached the age of 15.

109. In 2006, a total of six cases were initiated against minors aged between 12 and 15 under the Anti-terror Law No. 3713, in 2007, a total of seven cases. No minor aged from 12 to 15 was convicted of any charge under the Anti-terror Law in the period 2006/2007.

110. By letter dated 16 July 2009, the Government responded to the communication sent on 15 May 2009 as follows: during recent counter-terrorism operations, law enforcement officials found some evidence that led to a reasonable suspicion suggesting that Hasan Anlar, Filiz Kalayci, Halil Ibrahim Vargün and Murat Vargün, members of the Turkish Human Rights Association might be involved in the activities of a terrorist organization. Therefore, the Directorate for Security in Ankara requested an authorization for a search warrant in connection with an ongoing investigation No. 2007/181 from the competent court. After consideration of the information submitted to it that set forth grounds for a “probable cause” to obtain evidence of a criminal activity, the 11th Heavy Penal Court of Ankara, by decision No. 2009/460 D. Is dated 11 May 2009, authorized the law enforcement authorities, to search the offices and residences of Hasan Anlar, Filiz Kalayci, Halil Ibrahim Vargün and Murat Vargün. On 12 May 2009, the searches were conducted according to the terms and conditions of the warrant issued by the court and in the presence of a lawyer instructed by the Chief Public Prosecutor and Ankara Bar Association. The relevant information, documents and data storage devices were seized as authorized under the warrant. Since some of these materials were claimed to be protected under attorney-client privilege, they were separately registered in witness of those who were present during the search. They were later put in the evidence bags, sealed and signed by the suspects and lawyer with a non-erasable pen. The materials seized during the search were sent to the Office of the Chief Public Prosecutor of Ankara to be submitted to the court for its consideration.

111. The afore-mentioned persons were detained upon the decision of the Chief Public Prosecutor No. 2007/181. Halil Ibrahim Vargün, Murat Vargün and Hasan Anlar were detained for a total of two days and released on 15 May 2009 after they were heard by the court. Whereas, Filiz Kalayci was released on 15 May 2009, upon a hearing before the court. However, the court imposed restrictions on their freedom to travel abroad.

112. On 27 May 2009 Filiz Kalayci was arrested following the decision of the 11th Heavy Penal Court of Ankara dated 25 May 2009 and No. 2009/491. All stages of the investigation have been carried out in accordance with the procedures prescribed by law and under the instructions of the Chief Public Prosecutor. The searches were carried out in the presence of lawyers. The information, documents and materials seized pursuant to the search warrant were submitted to the Court. The Directorate for Security of Ankara received no information suggesting that a complaint has been lodged by or on behalf of the afore-mentioned persons. No administrative or other judicial inquiry has been launched in

connection with the above-mentioned incidents other than the ongoing investigation commenced by the Office of the Chief Public Prosecutor of Ankara against the four suspects. In the course of these proceedings the suspects were provided with the opportunity to defend themselves by 19 lawyers. According to the registries of the meetings held with their defence lawyers, the suspects had access to lawyers of their choice at every stage of the investigation.

113. The 11th Heavy Penal Court of Ankara placed some restrictions on access to investigation files by the defence lawyers since the investigation is at a critical stage where disclosure of certain information is likely to endanger its purposes. Nevertheless, even under certain courts restrictions the defence lawyers are allowed access to main documents such as expert witness reports, minutes of the statements by the suspects, all documents concerning the judicial proceedings in which the suspects have been present under Article 153/3 of the Criminal Procedure Act. The investigation has been initiated solely on the basis of their suspected involvement in criminal activities of a terrorist organization. It should be underlined that these proceedings have no connection with either the reports issued by the Human Rights Association or any legitimate activities carried out in the defence of human rights.

United Arab Emirates

A. Communications sent to the Government

114. On 16 March 2009, the Special Rapporteur, jointly with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a communication to the Government of the United Arab Emirates regarding Mr. **Naji Hamdan**, a United States citizen of Lebanese origin who was detained in Abu Dhabi, allegedly at the request of authorities of the Government of the United States of America. According to the allegations received:

In early August 2008, United States Federal Bureau of Investigation (FBI) agents asked Mr Hamdan to meet with them at the United States Embassy in Abu Dhabi, which he accepted. During the meeting, two FBI agents who had reportedly specifically come from Los Angeles to Abu Dhabi extensively questioned Mr Hamdan.

On 29 August 2008, agents of the State Security Forces of the United Arab Emirates (UAE) arrested Mr Hamdan at his home in the UAE, where he had moved from the United States in 2006 to start a car repair business. The UAE State Security Forces subsequently held him for three months at an unknown location without the possibility of contact with the outside world, except for one brief phone call with his wife and a visit by the United States Consulate on 19 October 2008. During those three months, Mr Hamdan was detained in a cold basement room, where he was severely and regularly beaten by officers of the State Security Forces, frequently with a stick on the soles of his feet and in the liver area –he suffers from a liver disease. Mr Hamdan was also deprived of sleep for long periods and threatened with reprisals against his wife and his family if he refused to confess to the terrorism accusations against him. As a result of this ill-treatment, he often fainted from the pain. Following 89 days of such treatment and in a state of total physical and mental exhaustion, Mr Hamdan finally signed a lengthy and fabricated confession and documents prepared by the security services which contained false incriminating information.

On 18 November 2008, Mr Hamdan's family filed a petition in the District Court of Columbia against the Government of the United States of America, arguing that he was being held incommunicado in the UAE at the behest of the Government of the United States.

On 26 November 2008, a week after the petition was filed, Mr Hamdan was transferred to Al Wathba prison in Abu Dhabi. He is currently awaiting trial before the UAE Supreme Court on charges of terrorism. Decisions of the UAE Supreme Court cannot be appealed and Mr Hamdan's charges carry life sentences.

On 19 December 2008, Mr Hamdan informed his family that he had been visited by a lawyer, who had been authorized to consult the file laying charges against him but was not allowed to take written notes or obtain a copy of the documents. On 23 December 2008, three lawyers visited him. However, they were not allowed to consult their client's records in a serious manner.

115. The mandate holders recalled Human Rights Council Resolution 7/7, which requires States to ensure that any measure taken to combat terrorism complies with their obligations under international human rights law and urges States to ensure due process guarantees, consistent with all relevant international instruments. They then referred to articles 9 and 10 of the Universal Declaration of Human Rights and paragraph 3 of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture".

116. They furthermore drew the attention of the United Arab Emirates' Government to paragraph 6c of Human Rights Council resolution 8/8 of 2008 urges States "to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made". In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, *inter alia*, in article 5 of the Universal Declaration of Human Rights and in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by General Assembly resolution 3452 of 9 December 1975).

117. They also raised a number of questions regarding the above allegations, i.e. they asked the Government to provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case, to provide the specific wording of the provisions on which the terrorism-related charges in relation to Mr. Hamdan are based. They further requested clarification regarding the legal basis of arrest and whether Mr. Hamdan had been brought before a court to determine the lawfulness of his detention.

118. On 7 August 2009, the Special Rapporteur, jointly with the Vice-Chairperson Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent a communication to the Government of the United Arab Emirates regarding Mr. **Abdelsalam Abdallah Salim**, aged 35, and Mr. **Akbar Omar**, aged 33, both ethnic Uyghurs, presumed to be Chinese nationals. According to the information received,

Mr. Abdelsalam Abdallah Salim and Mr. Akbar Omar were arrested in June 2008 by State Security Officers. They were arrested together with their wives, with whom they have lost contact and whose whereabouts remain unknown. They have been kept in solitary confinement since their arrest, and are currently detained at Al Wathba Prison in Abu Dhabi, United Arab Emirates.

During their detention in State Security premises, Mr. Salim and Mr. Omar were subjected to torture and ill-treatment. The authorities also threatened to deport them to China, where they could face execution, if they did not sign confessions stating they were involved in terrorist operations in the United Arab Emirates. They have now been charged with terrorism, but they have not had access to a lawyer, nor have they been presented before a judge.

119. The mandate holders appealed to the Government of the United Arab Emirates to take all necessary measures to guarantee the right of the above mentioned individuals not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights. They recalled that each Government has the obligation to protect the right to physical and mental integrity of all persons, in particular point 7 of the Basic Principles for the Treatment of Prisoners, which provides that “efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged”. (Adopted by the General Assembly by resolution 45/111 of 14 December 1990). They also referred to paragraph 6 of General Comment 20 of the Human Rights Committee, issued under article 7 of the ICCPR but reflecting also the substance of norms of customary international law, as laid down in the Universal Declaration of Human Rights. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the International Covenant on Civil and Political Rights. (Adopted at the 44th session of the Human Rights Committee, 1992).

B. Reply from the Government

120. As of 31 December 2009, no response from the Government had been received.

United Kingdom of Great Britain and Northern Ireland

A. Communication sent to the Government

121. On 2 October 2009, the Special Rapporteur, together with the Chairperson Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a communication on the case of Mr. **Seitmarium Nassar** to the United Kingdom (UK) authorities, which contained the same summary as reproduced in para.90. In addition to other relevant issues raised above, the mandate holders recalled obligations contained in the Convention against Torture, in particular article, which 3 provides that no State party shall expel, return (refouler), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.

B. Reply from the Government

122. On 23 October 2009, the Government replied to the Special Rapporteur’s correspondence of 12 October 2009, that the United Kingdom Government has no information to suggest that Mr Naser was held on the UK Overseas Territory of Diego Garcia around November 2005. It further stressed that, on the question of rendition through Diego Garcia, the Government’s consistent position has been that permission for a rendition

flight to pass through the UK would not be granted unless the authorities were satisfied that it would accord with domestic law and international obligations. Since 2001 the United Kingdom has not given permission for any rendition flights to pass through UK territory or airspace. As outlined previously, the Government was therefore disappointed, to be informed by the United States Government, in February 2008, of two cases of rendition flights having refuelled at the UK Overseas Territory of Diego Garcia in 2002. This information was contrary to previous assurances. The UK authorities have been clear that they were not aware of the flights at the time, and did not give permission for them to use British territory. The United States has informed the UK Government that the detainees did not leave the plane.

123. The United Kingdom further received firm assurances that, with the exception of these two flights in 2002, there have been no other instances in which United States intelligence flights have landed in the UK, our Overseas Territories or Crown Dependencies with a detainee on board since 11 September 2001. In addition, with regard to the suggestion that Mr Naser was held on Diego Garcia, the United States has informed the United Kingdom that they have not interrogated any terrorist suspect or terrorism-related detainee on Diego Garcia in any case since 11 September 2001, and that allegations of a CIA holding facility on the island are inaccurate. The United Kingdom Government is confident, therefore, that the allegations that Mr Naser was held on Diego Garcia are inaccurate. However, as explained to Mr Nowak and Mr Scheinin on previous occasions the United Kingdom takes any and all such allegations very seriously indeed.

United States of America

A. Communication sent to the Government

124. On 1 April 2009, the Special Rapporteur, together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a communication to the United States authorities regarding the case of Mr. Naji Hamdan (see above, United Arab Emirates, paras. 112-115). In addition to the issues raised in their letter to the United Arab Emirates, the mandate holders indicated that: "With a view to the allegations that the United States might have had a role in the detention and interrogation of Mr. Hamdan in the United Arab Emirates, which, if found to be true, might constitute complicity in the crime of torture in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the United States is a Party, we call on your Excellency's Government to ensure that an independent and thorough investigation into the matter is conducted."

125. On 2 October 2009, the Special Rapporteur, together with the Chairperson Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent a communication to the United States authorities regarding the case of Mr. Nassar, which raised the same issues as reflected in the letter to the United Kingdom (para.119)

B. Reply from the Government

126. On 12 April 2009, the Government of the United States of America responded to the communication sent on 1 April 2009 regarding Mr. Hamdan that it was unable to comment on the allegations due to on-going litigation involving the United States. However, they provided a copy of the Motion to dismiss a habeas corpus petition, which argued that there was lack of jurisdiction and of redressibility under controlling precedent. The memorandum in support of the motion to dismiss refers to the following facts: In August 2008, Mr. Hamdan was arrested by officers of the Government of the United Arab Emirates (UAE). He was subject to detention by the State Security Department for approximately three

months, and subsequently transferred to local police custody and to Al Wathba Prison. He was further charged under domestic UAE law with three terrorism-related offenses (promoting terrorism, participating in the work of a terrorist organization, and assisting a terrorist organization). Furthermore, according to the motion, Mr. Hamdan was provided the ability to retain counsel, which he is pursuing to defend himself in the ongoing criminal proceedings.

127. The Government also provided declarations of a Federal Bureau for Investigation (FBI) official and a State Department official, which indicate that Mr. Hamdan was not being held at the behest of the Government or at their direction. The Government further indicated that in early July 2008, the FBI sought to interview Mr. Hamdan concerning his detention in Lebanon. The meeting took place on 16 July 2008, at the United States embassy, approximately six weeks before his detention by UAE authorities. However, the motion indicates that the FBI has neither interrogated nor observed any interrogation of Mr. Hamdan since he has been in UAE custody. The State Department undertakes regular consular visits.
