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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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*

Addendum**

SUMMARY OF COMMUNICATIONS SENT AND REPLIES RECEIVED FROM GOVERNMENTS AND OTHER ACTORS

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

** The present report was submitted later than the indicated deadline, in order to incorporate the latest available information on the subject matter.

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I. INTRODUCTION

1. In the context of his mandate, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health receives a large number of communications alleging violations of the right to the highest attainable standard of physical and mental health and related rights worldwide. Such communications are received from national, regional and international non-governmental organizations, as well as intergovernmental organizations and other United Nations procedures concerned with the protection of human rights.

2. The present annual report of the Special Rapporteur contains, on a country-by-country basis, summaries of communications sent by the Special Rapporteur to States, responses received from States, observations of the Special Rapporteur, and follow-up communications and activities relating to earlier communications, from the period of 2 December 2007 to 15 March 2009 and replies received for the period of 1 February 2008 to 1 May 2009. A number of the communications contained in the present report were sent and received by the former Special Rapporteur, Mr. Paul Hunt, prior to the end of his mandate on 31 July 2008.

3. Where appropriate, the Special Rapporteur has sent joint urgent appeals or letters with one or more special procedures of the Human Rights Council where the allegations raised concerned the right to the highest attainable standard of physical and mental health as well as rights addressed under other mandates.

4. During the period under review, the Special Rapporteur sent a total of **37 communications** concerning the right to the highest attainable standard of physical and mental health to 23 States and to the Global Fund to Fight AIDS, Tuberculosis and Malaria. Of these **37 communications** transmitted, **13 replies were received from Governments** in addition to 3 replies received in response to communications which were summarized in the prior Communications report (A/HRC/7/11/Add.1).

5. The Special Rapporteur appreciates and thanks the concerned States for these replies. However, he regrets that several Governments have failed to respond, or when they have, have done so in a selective manner that does not respond to all the questions arising from the communication. These communications remain outstanding and the Special Rapporteur encourages Governments to respond to every communication, and all concerns that were raised in each communication.

6. The Special Rapporteur notes with concern the reports that the mandate continues to receive in regard to threats, harassment, and imprisonment of human rights defenders, community representatives and activists working on the right to the highest attainable standard of physical and mental health.

7. The Special Rapporteur believes in the importance of engaging in a constructive dialogue with States aimed at implementing and realizing the right to the highest attainable standard of physical and mental health. The communications sent by the Special Rapporteur have to be understood in this context. In a spirit of cooperation, the Special Rapporteur urges all States and

other actors to respond promptly to the communications, to immediately take appropriate measures, to investigate allegations of the violation of the right to the highest attainable standard of physical and mental health and related rights and to take all steps necessary to redress the situation.

8. To the extent that resources available to the mandate permit, the Special Rapporteur continues to follow up on communications sent and monitor the situation where no reply has been received, where the reply received was not considered satisfactory or where questions remain outstanding. The Special Rapporteur also invites the sources that have reported the alleged cases of violations, to review cases and responses included in this report, and send, when appropriate, follow-up information for further consideration of the cases.

II. GOVERNMENTS

Belarus

Communication sent

9. On **30 January 2009**, the Special Rapporteur on the right to the highest attainable standard of health, together with the Special Rapporteur on Torture and the Working Group on Arbitrary Detention sent an urgent appeal to the Government of Belarus, regarding Mr. Emanuel Zeltser, aged 55, United States citizen, who was detained at Mogilev colony at the time of this communication.

10. Reportedly, Mr. Zeltser was arrested on 12 March 2008 by officers of the State Security Committee (KGB). Following a closed trial he was sentenced on 11 August 2008 to three years' imprisonment on charges of "using false official documents" and "economic espionage." His appeal to the Belarusian Supreme Court was rejected after a closed hearing on 31 October 2008. Following his arrest, Mr. Zeltser was reportedly kept at a KGB facility, where on 13 and 15 March 2008, he was subjected to blows to his head. Consular access was only granted on 27 March 2008. On 4 November 2008 he was reportedly moved to Volodarskaya Ulica detention facility, where allegedly the sanitary situation was poor and the facilities overcrowded, he was denied food and mattress and was deprived of his medication. He was also permanently handcuffed, which adversely affected blood circulation in his hands. His access to daylight and ventilation was greatly restricted.

11. On 11 November 2008, Mr. Zeltser was reportedly transferred to Mogilev colony, where he was hospitalized on 17 November due to a significant increase of his blood pressure. He apparently did not receive the medicine prescribed by the physician. Although Mr. Zeltser suffered from diabetes, high blood pressure, heart problems and severe arthritis, he was deprived of critical medicine and received medical treatment only sporadically while in detention. As a result, Mr. Zeltser's heart condition deteriorated and his private doctor considered that he urgently required heart surgery. He also faced the possibility of having to have his left foot amputated due to weak circulation, worsened by severe diabetes, as well as suffering in constant pain and difficulty walking or feeling his legs due to his arthritis.

Communication received

12. The Special Rapporteur thanks the Government for its reply received on 17 February 2009 and awaits its translation by the United Nations Conference Services.

Burundi

Communication sent

13. Le **4 Décembre 2008**, le Rapporteur Spécial sur le droit à toute personne de jouir du meilleur état de santé physique et mentale susceptible d'être atteint, ainsi que le Rapporteur Spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression et le Rapporteur Spécial sur la situation des défenseurs des droits de l'homme, ont envoyé une lettre l'allégation conjointe concernant le projet de Code Pénal révisé que l'Assemblée Nationale du Burundi aurait adopté le 22 Novembre 2008.

14. Selon les informations reçues, ce projet prévoit dans une nouvelle disposition la criminalisation de l'homosexualité et condamne ainsi tout acte sexuel consensuel entre des personnes du même sexe jusqu'à une peine de 2 ans d'emprisonnement. Selon ces mêmes informations, ce projet de Code stipule que « Quiconque fait des relations sexuelles avec la personne de même sexe est puni d'une servitude pénale de trois mois à deux ans et d'une amende de cinquante mille francs à cent milles francs ou d'une de ces peines seulement ».

15. Les trois Rapporteurs Spéciaux ont mentionné qu'à leur connaissance, ce projet de loi devrait être présenté devant le Sénat la semaine suivant l'envoi de leur communication et ensuite être promulgué par le Président. Les Rapporteurs Spéciaux ont fait référence à certains traités et conventions internationales pertinents aux droits de l'homme.

Observation

16. Le Rapporteur spécial regrette que le Gouvernement n'ait pas transmis de réponse à sa communication au moment de la finalisation du rapport.

Canada

Communication sent

17. On **2 December 2008**, the Special Rapporteur on the right to the highest attainable standard of health sent a letter to the Government of Canada to call attention to information received concerning a number of allegedly retrogressive measures proposed and implemented by the government, affecting people who use or are dependent on drugs or other controlled substances.

18. Allegedly, harm reduction ceased to form part of Canada's national strategy to address controlled substances, as indicated by the lack of a mention of harm reduction as a "pillar" of a comprehensive strategy to prevent the use of harmful substances and ensure treatment for drug dependence and law enforcement since the commencement of the 2007 National Anti-Drug Strategy. Given that decades of research have demonstrated that harm reduction services are important in protecting and promoting the health of drug users, Canada's departure from an evidence-based approach run counter to its obligations to progressively realize the right to health. Retrogressive measures have been further alleged with regards to the health services available for people with drug dependence, as Canada's Federal Criminal Law on controlled substances, for example, reportedly interferes with drug users' access to health services that reduce the risk of mortality. The Supreme Court of British Columbia in *PHS Community Services Society v. Attorney General of Canada*, 2008 held that the "law's blanket prohibition on possession of controlled substances contributes to the very harm it seeks to prevent," the decision has been appealed and the Government declared that it will be unwilling to consider applications for ministerial exemption allowing the operation of supervised injection sites free of the risk of criminal prosecution.

19. Reportedly, Canada had not established prison-based needle and syringe programs (PNSPs), even though that the prevalence of HIV in prisons is over ten times greater than in the general population and estimated HCV rates in prisons are over twenty times greater than among the general population. The lack of sterile syringes and the punitive consequences of using drugs

in prisons have induced prisoners to use non-sterile equipment when injecting drugs, thus increasing the risk of acquiring HIV and HCV. Despite the urging of international agencies, namely the World Health Organization (WHO), the United Nations Office on Drugs and Crime (UNODC) and the Joint United Nations Programme on HIV/AIDS (UNAIDS), as well as medical associations within Canada, to implement these programs, the Government of Canada allegedly failed to do so.

20. The Special Rapporteur on the right to the highest attainable standard of health, reminded the government that the implementation of drug strategies without harm reduction measures represent an imminent risk to those directly affected. Prevalence of HIV and HCV is already high among prisoners and national measures which do not include means of harm reduction, are only likely to further exacerbate transmission of highly prevalent infections.

Communication received

21. By letter dated **2 February 2009**, the Government presented clarifications regarding Canada's National Anti-Drug Strategy. The letter provided details regarding the Strategy, launched in October 2007, which is aiming at ensuring safer and healthier communities by taking action in three priority areas - prevention, treatment and enforcement. Even though the Strategy does not explicitly focus on harm reduction, it is implicitly part of it. The Government of Canada noted that it has not reduced existing health services for people with drug dependence, and that a new Treatment Action Plan was developed with a 100.5 million CAN$ budget over five years. This plan has five goals: to promote collaboration between provinces to support drug-treatment systems and services; to enhance treatment and support for Aboriginal populations to support addiction research; to enhance extra-judicial diversion and treatment programmes for young offenders with drug-related problems; and to develop new tools to refer youth at risk to treatment programming.

22. The Federal Initiative to Address HIV/AIDS in Canada launched in January 2005, provides for a renewed and strengthened federal role in the Canadian response to HIV/AIDS by enhancing collaboration between different federal government departments, provincial and territorial governments, NGOs, researchers, health professionals and people living with or vulnerable to HIV/AIDS to prevent spread of disease, slow its progression and improve quality of life of people living with HIV/AIDS. The focus is on populations most affected by the HIV/AIDS epidemic - people living with HIV/AIDS, homosexuals, Aboriginal peoples, drug users, etc. Harm reduction interventions are part of the public health toolkit and include services such as basic health care, immunization, needle exchange and methadone.

23. The Government also provided details on Correctional Services Canada (CSC) emphasizing its commitment to prevention of infectious disease transmission and to the control and management of the introduction and use of illicit substances in Canadian federal penitentiaries by providing offenders with effective health services. However, there are no plans to implement needle exchange programmes in federal prisons. CSC has a national drug strategy which includes prevention, intervention (treatment) and interdiction components In support of that strategy, the Addictions Research Centre (ARC) participates, with other CSC Sectors in the development of treatment and intervention programmes to reduce the impact of drugs and alcohol for offenders as well as on developing more effective methods for addressing these challenges.

China

Communication sent

24. On **14 April 2008** the Special Rapporteur on the right to the highest attainable standard of health, together with the Special Rapporteur on Human Rights Defenders, the Special Rapporteur on Freedom of Expression and the Special Rapporteur on the Independence of Judges and Lawyers sent an urgent appeal to the Government of the People's Republic of China in relation to Mr. Hu Jia. Mr. Hu Jia is a pro-democracy campaigner and HIV-AIDS activist. He is co-founder and former director of the Beijing Aizhixing Institute of Health Education and an outspoken advocate for those affected by HIV/AIDS. Mr. Hu Jia was the subject of a joint urgent appeal sent by the Special Representative of the Secretary-General on the situation of human rights defenders, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the question of torture on 4 January 2008, following his detention on 27 December 2007. Mr. Hu Jia was also subject of communications sent by mandate holders on 30 November 2007, 31 May 2007 and 2 June 2004.

25. According to information received, on 3 April 2008, Mr. Hu Jia was sentenced to three years and six months' imprisonment and one year of political rights deprivation for "inciting subversion of state power" by the Beijing Municipal No. 1 Intermediate People's Court. His conviction was based on political articles he wrote for the internet, interviews he had given to the media, and his signing of the letter "The Real China Before the Olympics," which demanded an end human rights abuses.

26. Mr. Hu Jia was charged on 30 January 2008 by the Beijing Municipal Peoples Procurator, and he stood trial on 18 March 2008. Reports indicate that his lawyers were given only 20 minutes to deliver a defense during the four-hour session and were prevented from responding or intervening otherwise throughout the proceedings. International observers and diplomats were barred from the courtroom during the trial, as were Mr. Hu Jia's father and wife. Some of Mr. Hu Jia's friends and colleagues were detained and moved to locations outside Beijing, allegedly to prevent them from speaking to the media outside the courtroom.

27. Mr. Hu Jia, who suffers from a liver disease and must take daily medication, has reportedly been denied by the Beijing Public Security Bureau (PSB) the necessary medication while in detention. The PSB authorities have also reportedly refused to deliver him the medication brought by his relatives to the detention centre.

28. Concern was expressed that the alleged conviction of Mr. Hu Jia may be directly related to his human rights activities, particularly his exercise of the right to freedom of expression. Further concern is expressed for Mr. Hu Jia's medical condition and psychological integrity while in detention.

Communication received

29. The Special Rapporteur thanks the Government for its reply received on 4 June 2008 and awaits its translation by the United Nations Conference Services.

Communication sent

30. On **20 October 2008**, the Special Rapporteur on the right to the highest attainable standard of health, together with the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on freedom of opinion and expression, and the Special Rapporteur on the right to food, sent an urgent appeal to the Government of the People's Republic of China regarding threats against voluntary lawyers involved in a campaign initiated by Mr. Li Fangping, a human rights lawyer in Beijing. The campaign seeks justice for the children victim of milk contamination following more than 50,000 cases of kidney infections reportedly caused by drinking milk mixed with melanin. At least 22 Chinese companies are allegedly responsible for the contamination.

31. Communications regarding Mr. Li Fangping were sent by various mandate holders on 7 April 2006, 21 December 2006, 5 January 2007, 22 January 2008, and 15 July 2008. Responses from the Government were received on 14 June 2006, 14 February 2007, 3 September 2008 and 10 September 2008.

32. According to information received, as of 24 September more than 100 lawyers from 22 provinces had signed up to offer voluntary legal aid to the victims of contaminated milk powder products. On 28 September 2008, many of those lawyers had dropped out of the group because of pressure from officials. The lawyers were reportedly told that "they would face serious repercussions if they stayed involved" in the campaign.

33. Concern was expressed that the threats against the voluntary lawyers involved in the campaign organized by Mr. Li Fangping may be related to their legitimate activities to seek justice for the victims of contaminated milk. Serious concern is expressed for the physical and psychological integrity of the lawyers involved in this campaign. It was feared that, because of the pressure faced by the lawyers in question, they may no longer feel able to continue with their campaign.

34. In addition, information received alleges that some of the companies' infant formula milk had been certified as an "inspection-exempt product" for three years by the General Administration for Quality Supervision, Inspection and Quarantine, which would exempt such products from quality monitoring and inspection by public authorities.

35. The Government was urged to take all necessary measures to guarantee that the rights and freedoms of the voluntary lawyers involved in the campaign mentioned above, in particular Mr. Li Fangping, are respected and accountability of any person guilty of the alleged violations is ensured; and that the Government adopt effective measures to prevent the recurrence of these acts.

Communication received

36. The Special Rapporteur thanks the Government for its reply received on 13 February 2009 and awaits its translation by the United Nations Conference Services.

37. On **7 January 2009**, the Special Rapporteur on the right to the highest attainable standard of health, together with the Special Rapporteur on torture sent a letter to the Government of the People's Republic of China concerning forced re-education and drug detoxification centres.

38. According to the information received, persons at high risk of HIV infection in China, such as injection drug users, are regularly detained in forced detoxification centres for a period of between three and six months, renewable for up to one year. Repeat offenders may be subject to detention in re-education through labour centres for one to three years. In these cases, the detention is an administrative procedure without trial or other guarantees of due process. Detainees may challenge their sentences by applying to the court to have them overturned. However, in practice, few detainees are aware that their sentences may be challenged. In 2007, approximately 700 mandatory drug detoxification centres and 165 re-education through labour centres (RELCs) housed 340,000 drug users.

39. Reportedly, drug users held in either type of centre are required to perform unpaid, forced labour, and are subjected to psychological and moral re-education, such as repeating slogans, marching in formation and doing repetitive drills. It was also reported that if they do not work fast enough, they are punished through beatings and the denial of food and sleep. Physical and sexual abuse was also believed to be common.

40. Concerning the conditions in drug detoxification centres and RELCs, the detainees were reportedly being housed in unsanitary and overcrowded facilities, with inadequate amounts (and quality) of food and drinking water. It was reported that in forced detoxification centres and in RELCs in Guangxi and Yunnan Provinces, detainees have been denied HIV services. When services are available, detainees are repeatedly tested but not provided with the result, counseling on prevention or treatment or with prevention methods.

41. Allegedly, detainees are sometimes subject to forced, abrupt withdrawal from methadone or other opiate substitution therapies as well as the denial of access to antiretroviral drugs, which may compromise their health and cause profound mental and physical distress. Concern was expressed at the conditions in the detoxification centres and RELCs, and at the denial of treatment, including the alleged failure to ensure access to methadone or other opiate substitution therapy and antiretroviral therapy.

Observation

42. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Colombia

Communication sent

43. El **7 de diciembre de 2007** el Relator Especial sobre el derecho a la salud junto con el Relator Especial sobre el derecho a la alimentación adecuada y el Relator Especial sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, enviaron

una carta a Gobierno de Colombia en seguimiento a previas comunicaciones enviadas con referencia a la situación nutricional de la comunidad indígena Yukpa (también conocida como Yuko) del resguardo Iroka, jurisdicción del municipio de Codazzi, en el Departamento del Cesar.

44. Según los reportes recibidos, por lo menos 20 menores de edad de la comunidad indígena Yukpa del resguardo de Iroka habrán fallecido entre diciembre de 2006 y mayo de 2007, debido a la desnutrición severa, la diarrea y problemas respiratorios. La temporada de incendios de marzo de 2007 empeoró a la situación de esta comunidad Yukpa, destruyendo aproximadamente 4.000 hectáreas de tierra fértil y contaminando el río Casacará, principal fuente de agua para las familias indígenas. Se ha reportado la ausencia de medidas adecuadas por parte del Estado para atender esta situación. Por otra parte, el enfrentamiento entre los indígenas y los colonos no indígenas asentados en tierras ancestrales de los Yukpa ha contribuido a limitar el acceso que goza la comunidad para cazar en estas zonas.

45. Previas comunicaciones recibidas de parte del Gobierno colombiano informaron del despliegue de una serie de acciones por las entidades gubernamentales, centrales, departamentales y municipales para brindar solución a la problemática de desnutrición que afronta la Comunidad Yukpa; entre ellos, un “Plan Integral para el Apoyo a Comunidades Indígenas en Extremo Grado de Vulnerabilidad y Riesgo de Desaparición” que se implementaría entre 2008 y 2010 y unas Mesas de trabajo para encaminar este Plan en el Departamento del Cesar el junio de 2006. Además, el 13 de marzo de 2007, una Comisión interinstitucional realizó una visita a las comunidades del Resguardo Iroka en la cual evidenciaron problemas de salud entre los miembros de la Comunidad a causa de la situación alimentaria y nutricional así como de infecciones respiratorias originadas por los incendios forestales. A base a los resultados de esta visita, el Ministerio del Interior y de Justicia acordó disponer una cantidad de alimentos para atender la urgencia así como realizar un censo para determinar el número de familias afectadas por los incendios forestales. Se coordinó la implementación del programa de “Recuperación Nutricional” y, por último, el Gobierno de Colombia informó que la población Yukpa estaría cubierta en un 100 % por el sistema de salud. Finalmente, con relación a la garantía de los derechos territoriales, dentro del marco de la Comisión Nacional de Territorios Indígenas (CNTI) se habrá priorizado el saneamiento de los resguardos Iroka y Socorra. Se informa que las acciones de adquisición y adjudicación de los predios en la jurisdicción de los municipios de Codazzi, Becerril y la Paz, se adelantararían, reconociendo la disponibilidad logística y presupuestal.

46. Los Relatores Especiales agradecieron al Gobierno la información detallada que ha proporcionado. A la vez, le llamaron la atención con respeto a información que siguen recibiendo en relación con:

(1) la continua falta de seguridad jurídica en la tenencia de tierras lo que contribuiría a empeorar la situación nutricional en el Resguardo Iroka;

(2) la continua falta de atención a la salud de los miembros de la comunidad Yukpa a pesar de los compromisos y obligaciones de las autoridades competentes;

(3) a las alegaciones de detención de Freizer Alfonso Ovalle Reyes, coordinador de salud trabajando en el Resguardo Iroka y uno de los fundadores de la organización Yukpa.

47. *Con relación a la falta de seguridad jurídica y de ampliación del Resguardo Iroka,* la realización del Plan Integral para el Apoyo a las Comunidades Indígenas en Extremo Grado de Vulnerabilidad y Riesgo de Desaparición requiere la compra, por inmediato, de tierras de los colonos del área del resguardo, para poder avanzar con el saneamiento territorial tanto como para limitar la tala de árboles, quemas, y la extracción de plantas por parte de los colonos. Según las alegaciones, el Estado no ha destinado recursos para el tema territorial, y en consecuencia, ningún compromiso se ha cumplido hasta la fecha. También se alega que la Comisión Nacional de Territorios Indígenas, creada por Decreto 1397 en 1996, en donde el saneamiento de los resguardos Iroka fue priorizado según el gobierno, fue desactivada el 31 de mayo de 2007. A consecuencia de su descontinuación además de la falta de presentación de propuestas de presupuesto por el Estado, ya no está previsto el saneamiento del Resguardo Iroka ni su ampliación, según los 19 compromisos del Gobierno. Además, se alega el descubrimiento de petróleo tras pruebas sísmicas así como otros recursos naturales en sus territorios. La falta de seguridad jurídica en la tenencia de sus tierras tradicionales empeoraría la situación alimentaria que los Yukpa en el Resguardo Iroka, una situación todavía no resuelta, según las alegaciones, debido a la falta de medidas efectivas tomadas por el Estado.

48. Según información que los Relatores Especiales han recibido, en los 19 compromisos del Plan de acción a las comunidades indígenas del Cesar, en lo relativo al problema alimenticio, se habría subrayado, principalmente, la problemática de la no accesibilidad alimentaria generada por la baja producción debido a que algunas tierras de los resguardos no serían aptas para la agricultura; así como por unas vías de acceso intransitables. Los compromisos habrían sido, entre otros, de formular proyectos productivos para la seguridad alimentaria viable y sostenible en zonas de resguardo aptas; o el arreglo de las vías, además de la programación de proyectos de saneamiento básico y potabilización de agua y el financiamiento de componentes de semillas, herramientas y capacitación del proyecto de seguridad alimentaria.

49. Según las alegaciones, ni los primeros 19 compromisos ni los de las Mesas de trabajo de junio 2007 se habría cumplido por parte del Estado. Se alega que estos compromisos no tendrían un peso significativo para de las instituciones departamentales y locales que lo firmaron, debido al poco tiempo que les queda para terminar sus periodos de funciones.

50. *Con relación a la situación de salud,* la desnutrición en el Resguardo Iroka sería crónica, con un total de 91% de la población que padecería de desnutrición cronica, según estudios de Junio de 2007 que habría averiguado que los compromisos no se habrían cumplido por parte de las instituciones del Estado responsables. Se alega que la situación de la comunidad sería cada vez más crítica. Las informaciones recibidas alegan de la carencia en los puestos de salud y de vías de acceso en malas condiciones. Ademas, se alega que la Institución Prestadora de Servicios de Salud IPS (Indígena Dusakawi), que realizaría brigadas médicas, sólo sería de servicio de nivel 1, lo que no sería suficiente para garantizar la atención a los más de 3000 indígenas del resguardo Iroka.

51. El 13 de marzo de 2007, en la visita realizada por la Comisión interinstitucional, el Secretario de Gobierno Departamental habría concluido que la fuente de la desnutrición no sería el hambre de las comunidades sino la falta de promoción y prevención en el tema de salud habiéndose afirmado que “lo que hemos identificado es que la empresa responsable de la salud

en el territorio, como es Dusakawi no está cumpliendo con su responsabilidad de garantizar el tema de la salud en el resguardo indígena y no está desarrollando las actividades de promoción y prevención que son su responsabilidad para prevenir estas enfermedades diarreicas y respiratorias". Asimismo, habría afirmado que "los entes territoriales tanto como las alcaldías y la gobernación están cumpliendo con su obligación de brindar los apoyos pero el que ejecuta el tema de la salud es Dusakawi, por eso le exigimos que debe haber más compromiso y responsabilidad con lo que se firmó en el contrato de prestación de servicios para estas comunidades".

52. *Con relación al supuesto arresto de Freizer Alfonso Ovalle Reyes*, según las informaciones recibidos, el 13 de noviembre de 2007, en el municipio de Codazzi, habría sido capturado por el ejército nacional el señor Freizer Alfonso Ovalle Reyes, supuestamente por delito de rebelión. Freizer Alfonso Ovalle Reyes no pertenecería a la etnia Yukpa pero estaría casado con una mujer Yukpa y sería coordinador de salud de la empresa Prestadora de Servicios de Salud Dusakawi, actuando en los Resguardos Yukpa de Iroka y Menkue. Freizer Alfonso Ovalle Reyes también vendría acompañando el proceso de la conformación de la organización indígena Yukpa, de nombre SKEIMU, fundada en septiembre de 2007 y conformada por los dirigentes de los cinco Resguardos Yukpa (Socorpa, Menkue, Rosario, Caño Padilla e Iroka), para el fortalecimiento de la comunidad.

Observation

53. El Relator Especial lamenta no haber recibido ninguna respuesta del Gobierno.

Egypt

Communication sent

54. On **28 March 2008** the Special Rapporteur on the right to the highest attainable standard of health, together with the Special Rapporteur on torture and the Working Group on Arbitrary Detention sent an urgent appeal to the Government of Egypt concerning Mr. Ahmed Sayed Ramadan, Mr. Mohamed Hassan Ahmed, Mr. Abdel-Nasser Mahmoud Mohamed, Mr. Karim Abdel-Fattah Ali, and Mr. Abdullah Hussein Abdullah, who are the subjects of criminal case file No. 16087/2007 before the Qasr al-Nil Court of Misdemeanors.

55. According to reports received, on 24 October 2007, Mr. Ahmed Sayed Ramadan and Mr. Mohamed Hassan Ahmed, were arrested during an altercation in Bab El-Louk in downtown Cairo. When Mr. Ahmed Sayed Ramadan explained to the arresting police officers that he was HIV-positive, both were taken directly to the Morality Police Department in Mugamma' al-Tahrir, where they were detained, and later interrogated by an officer. The officers allegedly slapped Mr. Ahmed Sayed Ramadan. in the face and beat Mr. Mohamed Hassan Ahmed. They allegedly forced them to sign statements, the contents of which they were not allowed to read. During the four days they were detained in Mugamma' al-Tahrir, the two men were handcuffed to an iron desk and left to sleep on the floor. They were denied food and water and were required to pay for them later. A forensic anal examination was performed on both men in order to establish whether they had engaged in anal sexual intercourse.

56. According to information received, on 20 January 2008, Mr. Abdel-Nasser Mahmoud Mohamed was arrested on the street, Mr. Karim Abdel-Fattah Ali was arrested at his apartment on the following day, and Mr. Abdullah Hussein Abdullah was arrested on 3 February 2008 at an unknown location.

57. It was alleged that all men were forcibly tested for HIV without their consent. Those prisoners who tested negative had the charges against them dropped. Mr. Ahmed Sayed Ramadan, Mr. Mohamed Hassan Ahmed, Mr. Abdel-Nasser Mahmoud Mohamed and Mr. Karim Abdel-Fattah Ali allegedly tested positive, and were subsequently held at Abbasiyya Fevers Hospital. They were reportedly chained to their beds until 25 February 2008 when the Ministry of Health intervened.

58. Reportedly, the five detainees were indicted on 4 March 2008 on charges of "habitual practice of debauchery" under article 9 (c) of Law 10/1961. Allegedly, the lead prosecutor indicated to a defense counsel that the men should not be permitted to roam the streets freely as the Government considers them to present a danger to public health. The first trial hearing scheduled for 12 March was postponed to 19 March in order to provide the defense more time to prepare. The verdict was expected on 9 April.

Communication received

59. By letter dated **6 October 2008**, the Government of Egypt sent a reply to the above-mentioned urgent appeal. It was stated that Mr. Ahmed Sayed Ramadan and Mr. Mohamed Hassan Ahmed were involved in a street fight in Cairo, and, when the police inquired as to the reason for the fight, Mr. Hassan claimed that Mr. Ramadan insisted that the two resume their sexual relationship, to which he had objected due to his knowledge that Mr. Ramadan was HIV-positive. At the police station, Mr. Ramadan confirmed that he was infected with HIV/AIDS which he believed to have contracted through homosexual intercourse with a number of individuals, whose names he provided. According to procedure, the Public Prosecutor's Office (PPO) was notified and initiated investigations into the cases. The investigations indicated that the two above-mentioned individuals, in addition to the men Mr. Ramadan named, habitually engaged in male prostitution. As a result, the Attorney General issued an order summoning these individuals who were later charged with "habitual practices of debauchery." During the investigations, a number of the individuals admitted to the charges and confirmed the participation of the others in this conduct. Upon completion of the investigations, the individuals were charged, and the courts found them guilty of violations to articles 6b, 9c and 10 of the Egyptian Criminal Code. The defendants both appealed the verdict; one of these appeals was later rejected and the final ruling was not yet issued at the time of this communication. The court verdict assigned the convicted individuals infected with HIV/AIDS to designated health centers rather than regular prisons, in order to ensure that they receive the necessary medical treatment while carrying out their sentences.

60. The conviction of these individuals was not due to their sexual orientation, nor to their infection with HIV or AIDS. The court's verdict was based on specific violations of provisions the Egyptian penal code, none of which criminalize homosexuality. The process was conducted under strict judicial supervision and the rights of the defendants (to fair trial, to present defense, to legal representation and to appeal) were respected, and medical services were provided throughout. Allegations of arbitrary detention, torture and inhuman treatment are groundless.

Any claims of illegal practices by security personnel and/or any other executive body in Egypt are investigated by the PPO and, when substantiated, tried. All investigations into these allegations by the PPO showed that these claims were unsubstantiated and lacked evidence necessary to incriminate any offender.

Observation

61. The Special Rapporteur thanks the Government for its reply.

Communication sent

62. On **18 August 2008**, the Special Rapporteur on the right to the highest attainable standard of health together with the Special Rapporteur on torture and the Working Group on Arbitrary Detention sent an urgent appeal to the Government of Egypt concerning Messrs. Salah Eid Said, Ihab El-Sayed Ibrahim, Guirguis Ramzi Sarkis, Menshawi Mohamed Menshawi, Magdi Abdallah Abdel-Qadir, Mohamed Kamal Diab, Alaaddine Mohamed Abdel-Azim, Ahmed Mohamed Hassan Taash, Ossama Faruq Kamel, Abdel-Rahman Mohamed Yousef, Mohamed Abdel-Rahman Abul-Ezz, and Ibrahim Ibrahim Ahmed, who currently have a hearing before the Qasr al-Nil Court of Misdemeanors.

63. According to the allegations received, the above-mentioned individuals were arrested on 12 and 17 April 2008, after a raid on a square close to the train station in Alexandria. After a hearing at a court of first instance, the men were reportedly charged and sentenced to two years in prison under article 9 (c) of Law 10/1961 for crimes relating to conduct of a homosexual nature. Two men were allegedly beaten by police while in custody in the Alexandria Security Directorate. On the 28 of July, on appeal, the judge of the Attarin Appellate Court of Misdemeanors adjourned the case until 11 August; since that time, the men were detained in Gharbaniyat Jail.

64. While in prison, the 12 men were forcibly tested for HIV without consent at the Fevers Hospital by doctors from the Ministry of Health and Population. Four out of 12 men tested positive for HIV, and were reportedly first informed of their positive status after the information was disclosed by the judge in open court during the first-instance trial. They were reportedly held in cells away from other prisoners and did not receive any treatment for their condition by medical staff, including any anti-retroviral drugs or counseling. It is reported that the 12 men were subjected to intrusive and abusive forensic anal examinations by doctors from the Forensic Medical Authority for the purpose of establishing whether or not the men had engaged in homosexual conduct.

Observation

65. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Communication sent

66. On **17 October 2008** the Special Rapporteur on the right to the highest attainable standard of health, sent an urgent appeal to the Government of Egypt concerning the alleged refusal of

permission for Ms. Nufuz Alhusni and Mr. Jamal Dughmush, both of whom suffer from critical medical conditions and require urgent medical care outside Gaza, to receive such treatment. The Special Rapporteur added that he had also written to the Government of Israel concerning this matter.

67. According to information received, both of these patients had previously been treated in Israel. Nufuz Alhusni and Jamal Dughmush had reportedly been awaiting permission to exit Gaza for protracted periods of time, causing their physical condition to deteriorate.

68. It was alleged that Ms. Nufuz Alhusni was first diagnosed with rectal cancer in Ichilov Hospital, Tel Aviv, in March 2006 and received treatment there. In March 2008, she was diagnosed with a recurrence of the tumor and was referred back to the same hospital. It was reported that Israeli authorities have refused to grant her subsequent access to treatment necessary for her complex condition in Ichilov Hospital, and that close and easily accessible hospital treatment is necessary for her condition. Ms. Alhusni's attempts to access other regional hospitals on the border with Israel and Gaza in order to receive the required care were unsuccessful. She was allegedly referred to a Jordanian hospital but shuttle transfer was not authorized for two months. Subsequently, Ms. Alhusni transferred her referral to an Egyptian hospital, but was unable to cross the Rafah Crossing due to openings at infrequent intervals. Allegedly, hospitals in Gaza were unable to provide her with the necessary medical attention causing her physical condition to further deteriorate.

69. The second patient, Jama Dughmush, suffers from a heart failure due to heart disease and was treated at Ichilov Hospital in August 2007. According to the information received, the recommended treatment was the implantation of a special type of pacemaker (CRTD), unavailable in Gaza. Due to the ongoing deterioration of his condition, Mr. Dughmush was referred back to Ichilov Hospital in Tel Aviv for continued care since March 2008, in order that a CRTD pacemaker would eventually be implanted. Allegedly, his requests for access to the hospital were rejected by the Erez Crossing authorities, the GSS, and the Israeli military authorities. Additional attempts by Mr. Dughmush to leave Gaza by way of the Rafa Crossing were reportedly not successful.

70. Due to the lack of medical facilities in Gaza, it has become increasingly necessary for patients with life-threatening conditions to seek outside hospital treatment, whether in Israel, the West Bank, Egypt or overseas. As has been the situation of Ms. Alhusni and Mr. Dughmush, patients who have been treated in the past in Israel, have been regularly denied permission to access outside care or have been subject to protracted periods of waiting to receive such treatment. Allegedly, this has led to the denial of access to appropriate and timely medical care and a corresponding decline in the overall conditions of patients' health.

Observation

71. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

India

Communication sent

72. On **12 November 2008**, the Special Rapporteur on the right to the highest attainable standard of health, together with the Special Rapporteur on human rights defenders, the Special Rapporteur on Freedom of Expression and the Special Rapporteur on violence against women sent a letter to the Government of India.

73. According to reports received, on 20 October 2008, Madesh, Dil Faraz, Kokila, Shahana and Savita went to the Girinagar police station as they had received news about five hijras arrested and detained, and allegedly beaten by members of the Girinagar police. As they tried to inquire about the detention of the hijras, these members of the Sangama crisis intervention team were assaulted and detained at the Girinagar police station, and later at the Banashankari police station. They were accused of offences punishable under Section 143 (unlawful assembly), 145 (joining unlawful assembly ordered to be dispersed), 147 (rioting), and 353 (obstructing government officials in performing their duty) of the Indian Police Code. They were brought before a magistrate and sent into judicial custody later that evening. All five crisis team members were released on bail on 22 October 2008.

74. In the evening of 20 October 2008, about 150 human rights activists and lawyers reportedly gathered in front of the Banashankati police station to peacefully protest against the arrest and detention of the Sangama crisis team members and to try and negotiate their release. Six delegates from the protesters had been detained for about four hours at the police station, and subjected to physical and verbal abuse. In the meantime, members of the Banashankati police allegedly attacked the peaceful protesters with sticks, and subjected them to physical, verbal and sexual assault. Thirty-one human rights activists were closed into a small police van, and kept there for about seven hours.

Observation

75. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Indonesia

Communication sent

76. On **28 August 2008**, the Special Rapporteur on the right to health together with the Special Rapporteur on indigenous peoples sent a letter to the Government of Indonesia to draw its attention to information received regarding an outbreak of cholera amongst indigenous tribes in West Papua, from April to June 2008, in the adjacent Nabire and Paniai regencies of West Papua.

77. According to information received, 85 people died from the highly infectious disease from April to June 2008. Allegedly, the cholera epidemic was first reported in Paniai in early April 2008 at Ekemanida village. It subsequently spread to nearby villages at Kamuu and North Kamuu Districts. The affected villages reportedly include Ekemanida, Idakotu, Dogimani/Idadagi, Makidimi/Egebutu, Ekimani/Nuwa, Denemani/Apagogi, Kimupugi, Dikiyouwo, Duntek, Boduda, Deiyai, Goodide, Idakebo, Mogou and Dogimani.

78. Reportedly, the response by the authorities was inadequate and failed to contain the spread of cholera. Allegedly, the only people who were treated in the community health centers were those who were able to travel to the centers. This meant that there was no medical treatment given to many people, particularly those who were living in geographically isolated areas. It is important to note that cholera victims should be treated with immediate medical treatment and re-hydration within eighteen hours.

79. Allegedly, the authorities failed to respond adequately to past fatal outbreaks of cholera in West Papua, including an outbreak in April and May 2006. According to this information, the ongoing military conflict with West Papua has meant that basic services such as medical care have also not been accessible in the past. This increases the likelihood of medical emergencies, including the spread of infectious diseases such as cholera.

Observation

80. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Iran

Communication sent

81 On **25 January 2008**, the Special Rapporteur on the right to the highest attainable standard of health, together with the Special Rapporteur on torture and the Special Rapporteur on human rights defenders sent an urgent appeal to the Government of the Islamic Republic of Iran. According to reports received, Mahmoud Salehi, spokesperson for the Committee to Establish Trade Unions and former president of the Saqez Bakery Workers' Union, was admitted unconscious to Tohid Hospital in Sanandaj on 11 December 2007, after collapsing in prison between 4 and 10 December 2007. Following his admission to hospital he received a brain scan, which revealed that blood vessels in his brain had been damaged.

82. Mr. Salehi reportedly required dialysis treatment which is unavailable in prison, suffers from a kidney stone in his one remaining kidney, and has grave intestinal oedema or swelling that may be connected to his renal disease. Despite his poor health, Mr. Salehi was allegedly returned to prison. Since his arrest in April 2007, Mr. Salehi's family and lawyer have reportedly attempted to either secure his temporary release on medical grounds, or to transfer him to Saqez Prison so that his specialist doctor would be able to see him. On 31 May 2007, Mr. Salehi's doctor stated that he cannot receive adequate treatment in prison. On 17 June 2007, Mr. Salehi was examined in the Tohid Hospital, and was returned to prison. It is reported that Mr. Salehi is denied his right to see his lawyer, and his family can only contact him by phone.

Communication received

83. By letter dated **4 September 2008**, the Government of Iran responded to the above-mentioned communication, explaining that Mr. Mahmoud Salehi was charged with action against national security. There was a thorough examination of the charges and legal proceedings were exhausted, resulting in one year imprisonment and two years of probationary

imprisonment. During his sentence he continued his activities against the Islamic Republic of Iran. After investigations and hearing his defense, the court issued a temporary arrest warrant which was reconfirmed. Mr. Salehi was bailed out on 6 April 2008 pending the session of the court.

84. The letter also mentioned that the charges against the defendant had no connection with his alleged defense of human rights or trade union activities; his trial was in accordance with the rule of law and focused on his illegal activities; Mr. Salehi enjoyed all his legal rights before the court of justice, and he enjoyed regular medical services and received his prescribed medications while in detention. The letter concluded by stating that any allegation as to mistreatment or a lack of proper medical attention is baseless.

Observation

85. The Special Rapporteur thanks the Government for its reply.

Communication sent

86. On **22 October 2008**, the Special Rapporteur on the right to the highest attainable standard of health,, together with the Special Rapporteur on the situation of human rights defenders, Special Rapporteur on freedom of opinion and expression, Special Rapporteur on torture and the Working Group on arbitrary detention sent an urgent appeal to the government of the Islamic Republic of Iran to draw attention to information received concerning Ms. Negin Sheikholeslami, a human rights defender and journalist. Ms. Sheikholeslami is the founder of the Azar Mehr Women's Social and Cultural Society of Kurdistan. She is also associated with the Human Rights Organization of Kurdistan (HROK), which reports on human rights violations committed against ethnic Kurds in Iran. According to the information received, on 4 October 2008, Ms. Negin Sheikholeslami was arrested in her home in Tehran allegedly by members of the Iranian security forces. Her place of detention was not revealed to her husband until 9 October 2008. At the time of this communication, she was reportedly being held incommunicado in Section 209 of Evin Prison. Ms. Sheikholeslami underwent heart surgery a month before her arrest, and required follow-up medical attention. Apart from recovering from the heart surgery, she also suffered from respiratory problems. Ms. Sheikholeslami was previously arrested in February 2001 and in January 2002 for having participated in a demonstration in front of the Tehran UN Office.

87. Concern was expressed that the arrest and detention of Ms. Negin Sheikholeslami may be related to her activities in defense of human rights, as well as concerns regarding her physical and psychological integrity.

Observation

88. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Communication sent

89. On **1 December 2008**, the Special Rapporteur on the right to the highest attainable standard of health, together with the Special Rapporteur on the independence of judges and

lawyers and the Working Group on Arbitrary Detention sent an urgent appeal to the Islamic Republic of Iran concerning information received regarding brothers Arash and Kamiar Alaei, doctors specializing in the prevention and management of HIV and AIDS and harm-reduction programmes for HIV drug-users in Iran. According to the information received, Dr Arash Alaei was arrested by security forces on 22 June 2008, and held overnight at an unknown location. On 23 June 2008, he was reportedly accompanied to his home, where his brother, Dr Kamyar Alaei was also arrested. It was also alleged that security forces seized material and documents belonging to the brothers. At the time of this communication it had not been made clear by the authorities why the brothers were detained or whether or not they would face charges. It was further alleged that authorities refused to disclose information concerning the location the Alaei brothers were held and did not provide them access to counsel.

90. Reportedly, the detention of Drs. Arash and Kamiar Alaei would prevent drug users and others from accessing needed health care services necessary for the protection of their health and further prevention of HIV transmission.

91. Drs. Arash and Kamiar Alaei are leading experts on HIV/AIDS and have pioneered HIV/AIDS prevention and treatment activities throughout Iran. Since 1986, they have worked to integrate care of HIV/AIDS, sexually-transmitted diseases and drug-related harm reduction programs into Iran's national health care system. Their programmes have focused on harm reduction for injecting drug users and they have received wide acclaim internationally. In addition to their work in Iran, the Alaei brothers have held training courses for Afghan and Tajik medical workers and have encouraged regional cooperation among 12 Middle Eastern and Central Asian Countries.

Observation

92. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Israel

Communication sent

93. On **25 January 2008**, the Special Rapporteur on the right to the highest attainable standard of health, sent a letter to the Government of Israel to draw attention to information received regarding the government's decision to cut off the reduced supplies of fuel and electricity and to shut down the restricted passage of humanitarian assistance to the Gaza Strip, measures that contributed to a deteriorating humanitarian crisis and put the health of the civilian population at risk.

94. According to the information received, on 17 January 2008 the Israeli Minister of Defense decided to impose a complete closure on Gaza Strip, blocking the passage of all basic goods, including medical supplies and fuel required to operate the Gaza power plant. The lack of fuel reportedly caused a dramatic decrease in the production of electricity in the Gaza Strip, preventing hospitals from working properly. The shortage of fuel also affected the transportation of medical supplies as well as the storage of medicines, vaccines and food.

95. The Gaza power plant reportedly stopped functioning at 8:00 pm on 20 January and by 21 January, Gaza had to rely on only two out of three sources of electricity, with extremely serious consequences for all hospital services. Allegedly three out of the 11 Ministry of Health hospitals faced severe shortages of fuel. The Gaza European Hospital and the Nasser Hospital in Khan Younis both experienced extreme fuel shortages and declared a "state of emergency," stopping all activities, except for emergency cases and the intensive care units during the hours of the cut. According to the information received, the Gaza Paediatrics Hospital was also very short of fuel and is considering transferring critical patients to other hospitals that still have fuel in stock. The fuel tanks and generators of Shifa Hospital were also rapidly depleting. The Aqsa Martyrs Hospital reduced its working hours to four per day in order to decrease the consumption of the available fuel.

96. The lack of fuel also affected household water pumps, leaving several areas in Gaza without water. The pumps of the wastewater management plant stopped functioning due to the lack of fuel, posing a risk of waste water floods and environmental health hazard. The shortages promised disastrous consequences for the health and well-being of the civilian population.

97. Concern was also expressed for the alleged continuous restriction on the movement of goods and people inside and outside the occupied Palestinian territory. Critically ill patients in urgent need of medical treatment not available in the occupied Palestinian territory were forbidden to leave Gaza and access quality health care.

98. The Special Rapporteur on the right to the highest attainable standard of health, reminded the government that, as an occupying power, Israel is responsible for ensuring the welfare of the Palestinians in the occupied Palestinian territory according to humanitarian and human rights law. Preventing the supply of basic necessities such as electricity, fuel, medicines and humanitarian assistance to the entire population of Gaza as a response to continuous firing of rockets from Gaza into Israel would appear to constitute collective punishment. While Israel is fully entitled to take appropriate measures to ensure the security of its population and while the firing of rockets aimed at civilians is clearly entirely unacceptable, the adoption of measures that constitute collective punishment is categorically prohibited under international law and cannot be justified on security grounds.

99. While aware that a partial lifting of the blockade occurred on the 21st January 2008, which temporarily allowed the provision of fuel for the Gaza Strip, concern was expressed about the allegation concerning strict restriction of the movement of goods and people in and out of the Gaza Strip, which continues to obstruct Palestinians' right to enjoy the highest attainable standard of health.

Communication received

100. By letter dated **12 March 2008**, the Government of Israel responded to the concerns expressed in the above communication, regarding the situation in Gaza. The letter explained that the operations in Gaza took place in the context of a conflict whereby Israeli civilians were under daily threat of missile and rocket attacks fired from civilian areas; some 3,000 missiles were fired at Israel in the past year by a regime which is declaredly committed to Israel's destruction. These attacks escalated after June 2005 when Israel withdrew all its forces and 9,000 civilians from Gaza in order to enable Palestinian self-rule.

101. Israel was not persuaded that the control it exercises in and around Gaza qualifies as a state of occupation under international law; a conclusion which was examined and upheld by a recent Supreme Court decision regarding the supply of fuel and electricity to Gaza. The court, in its decision, made clear that, even while the situation cannot be defined as occupation, Israel still bears responsibility in those areas where its actions impact the people in Gaza, and to conduct itself with regard to the dependencies upon it that have developed over past decades. The relevant legal framework which establishes Israel's obligations concerning Gaza was the law of armed conflict, which Israel has committed to applying.

102. In reference to the temporary closing of crossing points to Gaza, these took place on 20 January, rather than 17 January as the original communication alleged. This closure followed the firing of 220 mortars at Israeli towns during the previous week, and normal delivery of goods and supplies was renewed on 22 January 2008. During the 48-hour closure period, supplies of electricity continued unimpeded. Once having entered Gaza, it is the Palestinian Energy Authority and not Israel, which allocates the energy. While the Supreme Court detailed Israel's rationale behind the proposed reduction in fuel and energy supplies, these were not implemented in practice, despite the attacks that have been directed at the Ashkelon power plan, which supplies the energy in question.

103. Regarding the movement of Palestinian patients requesting medical treatment, WHO data indicates that in 2007, approximately 85% of requests for permits to cross into Israel for medical treatment were granted. Statistics show that more than 7,000 Palestinians were allow to travel to hospitals in Israel and the West Bank - a 50% increase from 2006 - and an additional 8,000 Palestinians were allowed to accompany these patients.

104. Finally, the letter states that Israeli channels for humanitarian assistance are often abused: border crossings are regularly attacked, explosive materials have been found under the guise of humanitarian convoys and there has been well-documented and credible evidence that ambulances have been used by terrorist operatives to stage attacks within Israel. In June 2007, two Palestinian females disguised as pregnant mothers were caught crossing into Israel to carry out suicide bombings.

105. The letter concluded by inviting the Special Rapporteur on the right to the highest attainable standard of health together with the international humanitarian community to highlight their concern on both sides and demonstrate that international law does permit a practical and effective response to acts of unprovoked terrorism.

Observation

106. The Special Rapporteur thanks the Government for its reply.

Communication sent

107. On **17 October 2008**, the Special Rapporteur on the right to the highest attainable standard of health, sent an urgent appeal to the Government of Israel concerning the alleged refusal of permission for Ms. Nufuz Alhusni and Mr. Jamal Dughmush, both of whom suffer from critical

medical conditions and require urgent medical care outside Gaza, to receive such treatment. The Special Rapporteur added that he had also written to the Government of Egypt concerning this matter.[1]

Observation

108. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Communication sent

109. On **1 December 2008**, the Special Rapporteur on the right to the highest attainable standard of health sent an urgent appeal to the Government of Israel concerning Mr. Awadh Al Haloul, Mr. Nassar Al Akhras and Fathi Al Ghuf, who suffer from critical medical conditions requiring urgent medical care outside Gaza and had been denied permission to leave Gaza to receive such treatments.

110. According to the information received, the first patient, Mr. 'Awadh Al Haloul, suffered from chest pain due to a narrowing of the left coronary artery. His condition was life-threatening and required immediate intervention. ACT scan showed aneurism of the aorta with thrombosis and suspicion of dissection. In October 2007 he had a coronary catheterization at Maqassed hospital in East Jerusalem, but his condition did not improve. He was not responsive to medications and was subsequently hospitalized in the ICU of Shifa hospital in Gaza. The only hospital in Gaza able to perform catheterizations, Julis Medical Center, stated that it was unable to address the complexity of this patient's condition and, in August, referred him urgently to an advanced medical center, Madinet Hussen Al-Tabbieh, in Amman, Jordan. After his request for exit was rejected, an application was submitted and was rejected on 22 September 2008. A further application submitted on 17 November 2008 was still unanswered at the time of this communication.

111. The second patient, Nassar Al Akhras, had complex gunshot wounds since 7 June 2007. This patient suffered injury to the urinary tract as well as vascular and intestinal injuries. Until February 2008, he was allowed to exit Gaza twice and underwent numerous operations in Sheba Medical Center, Tel Hashomer, in Israel, including colostomy and nephrostomy. During the four months preceding the time of this communication he suffered from repeated pain attacks that suggest a possible secondary blockage. However, his applications to exit Gaza for investigation and care were rejected for "security reasons" since February, despite referral to Sheba medical center in Tel Hashomer, Israel. Additional requests to exit Gaza were submitted in August and October 2008 but were also rejected. Dr. Izhak Ziv Ner, Head of a surgical department at Sheba medical center, noted that delay of investigation and intervention endangered the life of the patient since it could lead to infection and destruction of the kidneys.

112. The third patient, Fathi Al Ghuf, suffered from heart disease, diabetes, hypertension, obesity, and chronic obstructive pulmonary disease. This patient suffered from chest pain despite

[1] See paras. 66-69 for a summary of the concerns detailed in the letter.

receiving medication. In May, his doctors referred him for coronary catheterization to Maqassed hospital in East Jerusalem. This procedure cannot be performed in Julis Medical Center in Gaza due to extreme obesity and high risk. His applications to exit Gaza were rejected in June and August 2008. Mr. Al Ghuf's state of health was critical and further delays in providing care and treatments would endanger his life.

113. It is also reported that the authorities suggest that since two Arab-Israeli expert cardiologists enter Gaza to perform catheterizations at Julis Medical Center, there was no reason for patients to exit Gaza. However, it is reported that some types of catheterization are not performed by these doctors, and the waiting lists are very long leading to delays in urgent care. In addition, since Julis Medical Center is a private hospital, patients are charged for the medical care provided, but many remain without necessary treatments because of their inability to pay.

Observation

114. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Communication sent

115. On **24 December 2008**, the Special Rapporteur on the right to the highest attainable standard of health, together with the Special Rapporteurs on the right to food and the Special Rapporteur on the human rights situation of the Palestinian territories occupied since 1967 sent a letter to the Government of Israel regarding information received concerning the closure of all commercial crossing points between the Gaza Strip and Israel and the obstacles to the delivery of humanitarian assistance in the territory since 5 November 2008. These measures allegedly resulted in shortages of food, medicines and fuel and threaten serious effects on the food security situation of the 1.4 million Palestinians who live in the Gaza Strip.

116. Reportedly, on 17 November 2008, the Erez border crossing was briefly reopened to allow a convoy of 33 truckloads carrying humanitarian aid and medical supplies to enter the Gaza Strip. However, this was the first such passage to be authorized in two weeks. Information received also noted that on 26 November and 4 December 2008 crossings were reopened again to allow in limited amount of food assistance and fuel supplies. However, it would appear that the supplies which were brought in during these re-openings, were not sufficient to alleviate the shortages of basic essential items such as fuel, fresh food, meat and fruits, and that they were insufficient to build reserves for meeting daily the basic food needs of the 1.4 million Palestinians living in the Gaza Strip. Despite these re-openings, it is estimated that the level of imports remains well below the level of the previous year. The unpredictability of humanitarian assistance and delivery also affects the organization and conduct of assistance programmes, thus contributing to undermine the food security of beneficiaries.

117. Eighty per cent of the Palestinians in the Gaza Strip live under the official poverty line and depend on humanitarian assistance, including food aid. Restrictions on the entry of supplies which are essential for the production of food, such as fuel, fertilizers, plastics and seeds, have reportedly undermined the ability of the population to produce its own food. In addition, food prices continued to increase due to limited stocks, surpassing the purchasing power of the large part of the population.

118. The global rises in food prices over the past 12 months and reduced domestic agricultural production due to adverse weather conditions further exacerbated the already precarious food security of this population. The Special Rapporteurs recalled that these territories are highly dependent on imports and that only 4 percent of dry staple food - including cereals and pulses - consumed there is produced locally. It is estimated that rates of food insecurity have risen from 34 percent in 2006 to 38 percent in 2008, with severe impact on children, who are the first victims of malnutrition, and whose physical and mental development is severely affected by such shortages.

119. According to the information received, the above-mentioned blockade has decreased the humanitarian assistance provided by the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) to the 830,000 refugees in the Gaza Strip, as food reserves in UNRWA distribution centers in Gaza were gradually depleted and required essential supplies such as wheat, powdered milk and oil, in order to guarantee the food security of beneficiaries. Reportedly, on both 17 and 24 November 2008 the UNRWA was also allowed to bring into Gaza eight trucks of humanitarian aid each day, after it had been unable to do so since 5 November 2008. It appears that the agency would need a minimum of 15 trucks per day to sustain normal humanitarian operations in the territory. Concern was expressed regarding reports that, on 18 December 2008, UNRWA suspended its emergency and regular food distribution programmes in the Gaza Strip until further notice. According to this information, the suspension was due to the depletion of the agency's stocks of wheat flour, which is a result of the ongoing crisis and limited border crossing access for humanitarian assistance.

120. Reports also indicated that the supply of industrial fuel, which is donated by the European Union and is needed to power Gaza's power plant, had been blocked. The Nahal Oz fuel pipeline, which is the only line to import fuel into the Gaza Strip, remained closed since 5 November 2008 except on two days, 11 and 12 November 2008, in which it was partially reopened in order to allow the inflow of less than 230,000 liters to the Gaza power plant's industrial gas. Reports further alleged that on 24 November 2008 440,000 liters of industrial gas were pumped through to Gaza's power plant. According to these reports, between 1 and 17 November 2008, the Gaza power plant received a total of 1,345,430 liters or 24 percent of the 5,700,000 liters it should have received under normal circumstances over a period of 16 days. It was alleged that due to lack of fuel, Gaza's power plant was forced to shut down completely on 9 and 10 November and from 13 November to the time of this communication, it has required rolling blackouts of up to eight hours per day in most areas of Gaza.

121. Reportedly, the Gaza Electricity Distribution Company set a daily power cut schedule whereby households in Gaza City and in the middle area of the Gaza Strip went without power for 16 hours per day, 8-12 hours/day in northern Gaza, 4-8 hours/day in Khan Younis and 2-4 hours/day in Rafah. Apparently, the blockade on fuel deliveries and the reduction of electricity supply have disrupted water and sewage services which are dependant on electricity to operate. The information received alleges that 15 percent of Gaza's population, around 225,000 people, was not receiving an adequate amount of drinking water due to lack of fuel. There was also a severe shortage of cooking gas in the Gaza Strip and already more than 30 pita-bread bakeries out of the existing 47 were rendered non-operational. As a result, the bread rationing scheme reportedly remained in effect. The closure of bakeries affected UNRWA's school feeding programmes that have been targeting around 200,000 school children.

In addition, chicken farms have been particularly affected by the shortage of cooking oil, which together with the lack of animal feed, led hatchery owners to destroy their animals, thus losing sources of livelihoods to feed themselves and their families.

122. Access to quality health care was reportedly deteriorating due to closure of hospitals and lack of medicine supply. In addition, shortage of fuel and electricity materials affected essential maintenance and rehabilitation of health infrastructure, and particularly hit maternal and neo-natal units. It was also reported that even though the number of patients referred to treatments outside Gaza had increased, access to such care remained constrained. It is estimated that only 66% of requests for medical permits were approved from January-August 2008, compared to 80 % during the corresponding period in 2007.

Observation

123. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Latvia

Communication received

124. On **10 March 2008**, the Government of Latvia sent an additional letter to respond to the communication sent on 15 March 2007 (A/HRC/7/11/Add.1, paras. 33 and 34) and informed that an individual by the name “Vasiliy Grilyan” was not recognized by the competent authorities. However, the correct name of the alleged applicant might possible be “Vasilijs Grigjans”, who was detained in the Riga Central Prison between 30 October 2006 and 13 April 2007 in cell No. 215 (from 1 November 2006 to 3 January 2007; and from 15 January to April 2007). On the latter day, pursuant to the judgment of the Riga Regional Court, the security measure previously applied with regard to Mr. Grigjans was altered and he was immediately released from detention.

Observation

125. The Special Rapporteur thanks the Government for its reply.

México

Communication sent

126. El **15 de octubre de 2008** el Relator Especial sobre el derecho de toda persona al disfrute del más alto nivel posible de salud física y mental, junto con el Relator Especial sobre los efectos nocivos para el goce de los derechos humanos del traslado y vertimiento ilícitos de productos y desechos tóxicos le enviaron una carta al gobierno de México con respecto a información recibida referente a la supuesta contaminación del río Santiago, el cual proviene del Lago Chapala y fluye a través de las municipalidades mejicanas de Juanactalan y El Salto, proporcionando agua para una población de más de 120000 personas.

127. De acuerdo con la información recibida, el río Santiago recibe aguas residuales no tratadas, industriales y municipales, siendo así uno de los ríos más contaminados en el país y originando

importantes riesgos para la salud de sus habitantes. Se alega que un 26.5% de estos vertidos proceden de la industria química-farmacéutica, un 15 % procede de la industria de bebidas y alimentos, y un 12.3 % de la industria textil.

128. Se alega que la presente contaminación del río Santiago imposibilita que las comunidades lo utilicen para beber y cocinar. Se informa que el Índice de Calidad del Agua del Río se encuentra entre 38.09 y 31.69, lo que lo rinde impotable. Se alega que su uso se limita al uso recreativo sin contacto y que sólo los organismos más resistentes pueden sobrevivir a esas condiciones. Igualmente, las informaciones recibidas indican que existen bajos niveles de oxígeno disuelto, lo que muestra la asfixia del agua, altos niveles de sólidos disueltos, presencia de grasa y aceite, altos niveles de amoniaco y fosfatos, y bacterias coliformes fecales 110 veces por encima del límite.

129. La Comisión del Agua del Estado de Jalisco (CEA) planea construir la Represa Arcediano sobre el Río Santiago con el fin de suministrar agua potable a más de cuatro millones de personas en el área. Según lo alegado, éste proyecto plantea preocupaciones sobre la salud de la población. Se alega que los niveles de contaminación del río son tan altos que, incluso después de su purificación, el agua de la represa continuará siendo inadecuado para el consumo humano. El sitio de la represa posee un Índice de Calidad de Agua del 33 en la estación seca y del 48 en la estación lluviosa, lo que sugiere que el agua de la represa se encuentra por debajo de los niveles mínimos para el consumo humano seguro.

130. Según las informaciones los niveles de H2S (sulfuro de hidrógeno) han aumentado. En un estudio de 100 hogares en el área del río Santiago, donde residen 166 niños de edades comprendidas entre los seis y catorce años, se informa que un 39% de los niños sufren de enfermedades respiratorias, infecciones de garganta y problemas de piel. Se alega además que “la constante exposición a los bajos niveles de H2S ha afectado a su salud”.

131. Una exposición prolongada a elevados niveles de sulfuro de hidrógeno puede causar problemas respiratorios así como fatiga, dolores de cabeza, problemas en la memoria, irritabilidad, mareos y desórdenes en el sistema motor. Adicionalmente, la población que sufre de desórdenes en el sistema nervioso es más susceptible a los efectos de este ácido y a su exposición a altas concentraciones, lo que podría derivar en edema pulmonar, asfixia, parada respiratoria e incluso muerte.

Observation

132. El Relator Especial lamenta no haber recibido ninguna respuesta del Gobierno.

Myanmar

Communication sent

133. On **22 April 2008**, the Special Rapporteur on the right to the highest attainable standard of health, together with the Special Rapporteur on Freedom of expression, the Special Rapporteur on Human Rights Defenders and the Special Rapporteur on Torture sent a letter to the Government of Myanmar concerning Paw U Tun (alias Min Ko Naing) who has been the subject of previously transmitted communications. Since late March 2008, Mr. Paw U Tun has

reportedly suffered from a severe eye infection. According to information received, Mr. Paw U Tun requested to visit an ophthalmologist, but the prison authorities refused this request, claiming that an eye doctor would not be available before May 2008. According to reports, his eye condition prevents him from eating and sleeping because of the acute pain.

Observation

134. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Niger

Communication received

135. Le **8 février 2008**, le gouvernement du Niger a adressé une réponse à une communication portant sur les activités minières du Niger (A/HRC/7/11/Add.1, para. 37), en apportant les éléments suivants.

136. Le Niger dispose d'un arsenal juridique assez fourni, qui réglemente toutes les questions liées aux ressources naturelles et à leur exploitation, aux droits qui s'exercent sur lesdites ressources naturelles, aux droits des pasteurs sur l'espace de pâturage, aux procédures d'occupation des terrains par les titulaires de permis de recherche ou d'exploitation minière, au Régime d'utilisation et de réalisation des points d'eau en zone pastorale, à la règlementation de l'hygiène du milieu et aux règles d'hygiène publique. Il s'agit de:

- La loi No. 98-056 du 29 décembre 1998, portant loi Cadre relative à la gestion de l'Environnement
- L'Ordonnance No. 93-013 du 2 mars 1993, instituant un Code d'Hygiène Publique
- L'Ordonnance No. 93.014 du 2 mars 1993, portant Régime de l'Eau au Niger
- L'Ordonnance No. 93-015 du 2 mars 1993, fixant les Principes d'Orientation du Code Rural
- L'Ordonnance No. 93-016 du 2 mars 1993, portant Code Minier de la République du Niger

137. L'ordonnance No. 93-015 du 2 mars 1993 fixe le cadre juridique des activités agricoles, sylvicoles et pastorales dans la perspective de l'aménagement du territoire, de la protection de l'environnement et la promotion humaine. Elle s'applique aux ressources foncières, végétales, animales et hydrauliques. Elle définit également le contentieux résultant de la gestion des ressources ci-dessus évoquées et détermine les autorités compétentes pour trancher les litiges et afférents. Ainsi, conformément aux dispositions de l'Ordonnance No. 93-015 du 2 mars 1993, « les ressources naturelles rurales font partie du patrimoine commun de la Nation. Tous les nigériens ont une égales vocation à y accéder dans discrimination de sexe ou d'origine sociale ». Les droits qui s'y exercent bénéficient d'une égale protection, qu'ils résultent de la coutume ou du droit écrit » (art. 4 et 5).

138. Quant aux terroirs d'attache des pasteurs, prévus à l'article 28 de l'Ordonnance No. 93 015 susvisée, le Décret No. 97-007/PRN/MAG/EL du 10 janvier 1997, pris en application de ladite disposition, précise en son article 4 que les « pasteurs jouissent du droit d'usage prioritaire de leur terroir d'attache et des ressources qui s'y trouvent sans préjudice des droits des tiers ». Aussi, le même article 4 du Décret 97-007/PRN/MAG/EL précité stipule que « le droit d'usage prioritaire est un pouvoir d'occupation, de jouissance et de gestion reconnu aux pasteurs sur leur terroir d'attache. En aucun cas, le droit d'usage prioritaire ne constitue un droit de propriété ». Au vu du régime juridique et du statut ci-dessus détaillés des terres à vocation pastorale, de la notion du droit d'usage prioritaire des pasteurs et du statut des ressources naturelles, il ressort qu'aucune communauté nigérienne ne peut s'arroger, sur le territoire national, d'un supra droit par rapport aux autres communautés nationales, sur les ressources naturelles qui en principe font partie du patrimoine commun de la Nation.

139. Nonobstant les clauses contractuelles contenues dans les concessions de recherche ou d'exploitation minière accordées aux différentes sociétés évoquées dans la communication du Rapporteur Spécial, l'Ordonnance No. 93-016 du 2 mars 1993 précise en son article 113 que « le titulaire de permis de recherche ou d'exploitation sera autorisé par Arrêté conjoint du Ministre chargé des Domaines et du Ministre chargé des Mines à occuper les terrains qui seraient nécessaires à son activité de recherche ou d'exploitation et aux industries qui s'y rattachent tant à l'intérieur qu'à l'extérieur du périmètre du permis dans les conditions fixées par règlementation. En ce qui concerne les carrières, l'arrêté d'ouverture et d'exploitation des carrières autorise aussi l'occupation des terrain nécessaires ».

140. Dans un tel contexte, les actes réglementaires ci-dessus indiqués ne peuvent être pris que dans le cadre d'une déclaration d'utilité publique prévue par l'article 115 du Code Minier de la République du Niger, et que l'article 31 de l'Ordonnance No. 93-015 susvisée confirme. Par ailleurs, l'article 116 du même texte législatif prévoir que « les frais d'indemnisation et d'une façon générale, toutes les charges résultant de l'application des articles 113, 114 et 115 précités sont supportés par le titulaire intéressé ».

141. Tout prélèvement d'eau, exécution d'ouvrage ou utilisation d'eau qui atteint le seuil de 40m3 par jour, doit être obligatoirement autorisé par l'autorité compétente /art. 8 Décret No.98-368/PNR/MH/E du 2 octobre 1997 susvisé).

142. Les dispositions du Titre III, chapitre premier de l'Ordonnance No. 93.014 du 2 mars 1993, portant Régime de l'Eau au Niger, prévoit la protection des eaux par rapport notamment aux déchets industriels (art. 27) et une peine en cas d'une telle infraction (art. 69). Par ailleurs, l'Ordonnance No. 93-013 du 2 mars 1993, instituant un Code d'Hygiène Publique a prévu les règles d'hygiène publique sur les voies et places publiques, l'hygiène des habitations, l'hygiène des denrées alimentaires, l'hygiène de l'eau, l'hygiène des installations industrielles et commerciales, l'hygiène du milieu naturel et la lutte contre les bruits (Titre III).

143. Du reste, conformément aux dispositions de la loi No. 98-56 du 29 décembre 1998, portant loi cadre relative à la gestion de l'Environnement, « les activités, projets et programmes de développement qui, par l'importance de leurs dimensions ou leurs incidences sur les milieux naturel et humain peuvent porter atteinte à ces derniers sont soumis à une autorisation préalable du ministère chargé de l'environnement » et feront l'objet d'études d'impact environnemental (EIE).

144. La loi No. 98-56 du 29 décembre 1998 dispose que la gestion rationnelle de l'environnement et des ressources naturelles s'inspire des principes tels que :

« • le principe de prévention, selon lequel il importe d'anticiper et de prévenir à la source les atteintes à l'environnement

• le principe pollueur-payeur, selon lequel les frais découlant des actions préventives contre la pollution, ainsi que des mesures de lutter contre celle-ci, y compris la remise en l'étant des sites pollués, sont supportés par le pollueur

• le principe de responsabilité, selon lequel toute personne qui, par son action crée des conditions de nature à porter atteinte à la santé humaine et à l'environnement, est tenue de prendre les mesures propres à faire cesser le dommage occasionné (…) » (art. 3).

Observation

145. Le Rapporteur Spécial remercie le Gouvernement pour sa réponse.

Norway

Communication sent

146. On **6 March 2009** the Special Rapporteur on the right to the highest attainable standard of health, together with the Special Rapporteur on Torture, the Special Rapporteur on violence against women and the Working Group on Arbitrary detention sent an urgent appeal to the Government of Norway concerning Ms. Eli Haukanes Aarskog, aged 20, resident in Stavanger.

147. According to the allegations received, on 24 May 2005, Eli Haukanes Aarskog, at that time aged 16, was involuntarily admitted to the psychiatric ward of the Stavanger University Hospital by a school consultant without her parents being informed or consulted although she had no previous history of violent or other disturbing behaviour. At the date of this communication, she had been kept at the hospital, most of the time in solitary confinement.

148. According to her mother, Ms. Aarskog was experiencing emotional difficulties due to a possible sexual assault a few months earlier. This incident was reported to the police, but the case was dismissed by the police authorities due to the lack of evidence.

149. Information received alleges that Ms. Aarskog was forcibly administered different types of psychiatric drugs, despite her parents' repeated objections. The doctors' diagnoses changed many times and lacked consistency. Since her confinement, Ms. Aarskog's condition deteriorated drastically: she allegedly suffered from spasms, eyes rolled up in their sockets (dystonia), severe motoric restlessness (akathisia), memory problems, compulsive actions, incontinence, psychoses, dry mouth, teeth damage, inflammation of the gums and gross weight gain, among others. Ms. Aarskog may even have sustained brain damage due to the extensive use of neuroleptics and other psychoactive drugs.

150. After her mother publicly criticized her treatment, her visitation rights (as well as that of her father) were restricted and eventually denied for more than one and a half years between 2006 and 2007, and again for one year in 2008. Following a complaint, the Control Commission

concluded on 26 September 2008 that the decision to deny the parents visits for one year was illegal, but that Ms. Aarskog should remain under involuntary admission. The Regional Supervisory Authorities (Helsetilsynet) concluded on 16 July 2008 that the hospital violated Ms. Aarskog's legal rights related to free and informed consent to health care and the right to participation. However, on 4 December 2008, the Stavanger University Hospital filed a complaint asking for the father to be replaced as a legal guardian.

151. An application for free legal assistance filed on 6 November 2008 on behalf of Ms. Aarskog was rejected by the authorities (Fylkesmannen) on 11 December 2008. Her father's appeal against the decision was rejected on 30 January 2009. A further appeal is pending. The decision rejecting the application for legal aid states inter alia that, since the issue in question is not of such great significance for Ms. Aarskog's welfare and her parents, it would not be reasonable that the public treasury pay for free legal aid.

152. Due to a lack of sufficient legal advice the parents of Ms. Aarskog were not aware of the possibility to challenge the decision of the Control Commission of 26 September 2008 before a court of law pursuant to chapter 7 of the Norwegian Mental Health Care Act and chapter 36 of the Civil Procedure Act.

Observation

153. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Peru

Communication sent

154. On **28 March 2008**, the Special Rapporteur on the right to the highest attainable standard of health thanked the Government of Peru for its letter of 28 September 2007, which clarifies many of the points raised in his mission and follow-up letter, and demonstrates its commitment to complying with the decision of the Human Rights Committee in *KL v. Peru* (Communication No. 1153/2003).

155. However, he received new information alleging that women across Peru continued to face difficulties in accessing legal therapeutic abortion, as well as news about the administrative annulment (on 9 March 2007) of a national Protocol for therapeutic abortions, based on a document drafted by the Ministry of Health and approved by the Maternal and Perinatal Institute on 7 February 2007.

156. The Special Rapporteur on the right to the highest attainable standard of health commended the significant initiative made by the Regional Government of Arequipa towards complying with the Human Rights Committee's recommendations, demonstrating its commitment to preventing similar violations from occurring in the future (*KL v. Peru*, para. 8). He further urged the government of Peru to support the full implementation of this recently approved Protocol, and to support any other regional government engaged in drafting similar Protocols.

157. He requested information from the government of Peru on its efforts to develop similar Protocols at national level, in particular the status of the Clinical Guide on comprehensive care for the therapeutic termination of pregnancy mentioned in the government's letter of 28 September 2007. He further solicited information on the role of the multi-sectoral committee of experts that was to be established to facilitate the drafting of the national Clinical Guide and the committee's activities to date. Lastly, he asked for clarification as to what steps the government has taken to ensure that women receive objective and impartial information on their entitlement in national law to access therapeutic abortion.

Observation

158. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Russian Federation

Communication sent

159. On **25 January 2008**, the Special Rapporteur on the right to the highest attainable standard of health together with the Special Rapporteur on Torture sent an urgent appeal regarding Vasily Aleksanyan, aged 36, who was held at the investigation isolator (SIZO) of Matrosskaïa Tichina in Moscow at the time of this communication. According to reports received, on 5 April 2006, Mr. Aleksanyan was arrested and was being held in the investigation isolator (SIZO) of Matrosskaïa Tichina in Moscow at the time of this communication. He was suffering from HIV/AIDS, for which prison doctors prescribed urgent therapy and medication 14 months ago, but at the date of this communication he had not received any treatment. When he was transferred to a prison hospital in November 2007, he contracted tuberculosis. As a result of his illness and the lack of treatment, he became almost blind. Repeated requests by the European Court of Human Rights to transfer Mr. Aleksanyan to a clinic where proper treatment could be administered have been ignored and he remains at the detention facility.

Communication received

160. By letter dated **12 March 2008**, the Government of the Russian Federation informed that in accordance with the Federal legislation in force and the instructions of the Procurator General of the Russian Federation, several checks have been conducted in respect of Mr. Aleksanyan, including at the request of the European Court of Human Rights, the Russian Human Rights Commissioner, as well as in response to articles in the press. As a result, it was established that Mr. Aleksanyan is charged with offences under article 160, paragraphs 3 (a) and 3 (b), article 174, paragraph 3, and article 198, paragraph 2, of the Criminal Code of the Russian Federation. On 7 April 2006, Basmanny district court in Moscow decided to apply the preventive measure of remand in custody, and from 7 April 2006 to 26 October 2007, he was held in the Federal Penal Correction Service's remand centre IZ-99/1. The Government's reply stated the following.

161. On 7 April 2006, he underwent a routine preliminary medical examination but categorically refused to submit to blood tests. Mr. Aleksanyan was then placed under clinical observation in the medical wing of facility IZ-99/1, since he was suffering from a number of

chronic diseases (chronic cholecystitis, a bleeding liver, post-traumatic encephalopathy, neurocirculatory asthenia, polyneuropathy, myopia, HIV infection and recurrent aphthous stomatitis). In accordance with the therapeutic standards for such diseases, on 15 September 2006, following diagnosis, he was prescribed treatment, which he refused, as is noted in his medical records.

162. The reports that Mr. Aleksanyan contracted tuberculosis while in the remand centre's hospital are unfounded. According to information provided by the Federal Penal Correction Service, a medical examination and laboratory tests conducted by specialists showed that he was not suffering from any infectious lung disease. The allegation that, as a result of illness and the lack of essential treatment, Mr. Aleksanyan went blind is also unfounded, as evidence from the Moscow Health Department revealed that Mr. Aleksanyan's eyesight began to deteriorate in 1977 and was not caused by conditions in custody. The assertion that many requests have been made by the European Court of Human Rights for Mr. Aleksanyan's transfer to a specialized clinic where he would be able to receive the appropriate medical care is also incorrect. The European Court of Human Rights applied Rule 39 of the Rules of the Court only once in respect of Application No. 46468/06 (*Aleksanyan v. Russian Federation*). In the light of Mr. Aleksanyan's concerns about his state of health, the Court invited the Government of the Russian Federation to secure immediately, by appropriate means, the inpatient treatment of the applicant in a specialized hospital. On 26 October 2007, due to his deteriorating conditions, his physicians decided that he should be transferred for inpatient treatment to the infectious diseases unit at remand centre No. 1 (IZ-77/1) of the Federal Penal Correction Service's department for Moscow which, as concluded by the director of the specialized Federal Scientific Centre, has the clearance and the conditions and facilities necessary for the inpatient treatment of persons suffering from such illnesses. As such, the request by the European Court of Human Rights for Mr. Aleksanyan's transfer for inpatient treatment thus became moot, since the Russian Federation had already taken the steps necessary to administer the recommended treatment. Mr. Aleksanyan continued to refuse the therapy prescribed by the specialists of the infectious diseases unit at facility IZ-77/1. Pursuant to article 35 of the Principles of Russian Legislation on Public Health No. 5487-1 of 22 July 1993, citizens or their legal representatives have the right to refuse medical intervention or request that it be discontinued.

163. Specialists from the State health-care system have held a total of nine consultations and panel meetings. The most recent panel meeting, involving specialists from the Moscow Health Department, took place on 20 December 2007; Mr. Aleksanyan consented to undergo laboratory and instrumental tests, and recommendations for further tests were made. The panel of specialists noted that Mr. Aleksanyan continued to refuse the recommended medication. While being held in facility IZ-77/1, Mr. Aleksanyan submitted three applications through the facility's administration: a request for a copy of the Moscow municipal court's decision of 15 November 2007; a cassational appeal against the Moscow municipal court's decision of 15 November 2007; and a cassational appeal against the Basmanny district court's decision of 19 December 2008. On 23 January 2008, the criminal case against Mr. Aleksanyan, was referred to the Simonov district court in Moscow, which decided to schedule a pretrial hearing for 30 January 2008. On 28 January 2008, the court received a reply signed by Mr. Tagiev, the director of facility IZ-77/1, stating that Mr. Aleksanyan was undergoing medical tests, was suffering from a number of illnesses and, consequently, had been in the infectious diseases unit since 26 October 2006; he had been diagnosed with HIV infection and had a fever of unknown origin. From the time of his admission until 20 December 2007, he had refused to undergo any

medical examination or test in the infectious diseases unit. In Mr. Tagiev's opinion, the question of Mr. Aleksanyan's fitness to participate in proceedings must be decided following a preliminary medical examination on the day of the hearing.

164. On 30 January 2008, the Office of the Procurator-General of the Russian Federation carried out a check of the conditions in which Mr. Aleksanyan was being held in the general hospital at remand centre No. 1 in Moscow, and found that he was in a private room measuring 17 m2, which meets all international standards and regulations, including having all the necessary facilities and a room temperature in line with the relevant standards and regulations. No violations of the legislation governing conditions for the custody of persons suspected of or charged with offences were found; rather, the hospital at remand centre No. 1 in Moscow has the relevant specialists, medical equipment and all the necessary medication to provide such care. It was Mr. Aleksanyan himself who repeatedly refused to undergo medical examinations and tests and to take the necessary medication, as noted in his medical records. As part of the check carried out on 30 January 2008, Mr. Aleksanyan was examined by medical staff who declared him fit to participate in judicial proceedings. This finding is corroborated by the conclusions of the forensic medical commission's report prepared earlier.

165. At the pretrial hearing, held on 30 January 2008 the court was provided with a medical certificate issued by the duty doctor at facility IZ-77/1 on 30 January 2008, which described Mr. Aleksanyan as fit enough to participate in the proceedings. At the pretrial hearing, the defense counsel requested the modification of the preventive measure imposed against Mr. Aleksanyan and the suspension of the criminal case on the ground that he was seriously ill; however, no medical documentation was submitted to the court by the defense. When Mr. Aleksanyan complained of a deterioration in his health in the course of the pretrial hearing, the court called the ambulance service. Following the examination of the defendant by Mr. A.V. Kabanov, the ambulance doctor, and his recommendation that the hearing should not continue, the court declared an adjournment until 31 January 2008.

166. On 31 January 2008, when Mr. Aleksanyan was brought to court, medical certificates were produced, issued by the duty doctor and physician at facility IZ-77/1, and describing Mr. Aleksanyan as fit enough to participate in the proceedings. The defense counsel requested the suspension of the criminal case on the ground that Mr. Aleksanyan was seriously ill and the deferral of the pretrial hearing pending receipt of medical documentation from facility IZ-77/1. On 1 February 2008, when Mr. Aleksanyan was brought to court, a medical certificate was produced stating that he was fit to participate in the proceedings. The court handed down its decision on the outcome of the pretrial hearing, scheduling a further hearing for 5 February 2008 and rejecting the defence's request for the suspension of the criminal case and the modification of the preventive measure. On the same day, following Mr. Aleksanyan's announcement that he was suffering from cancer (lymphoma), the court sent a letter to Mr. Tagiev, the director of facility IZ-77/1, requesting him to confirm the above diagnosis.

167. On 4 February 2008, Mr. Aleksanyan was transferred to a specialized health institution, the Botkin Municipal Hospital, for tests and consultations with specialists, who concluded: "On the basis of Mr. Aleksanyan's clinical profile and the histological and immunohistochemical results of a lymph node biopsy, a diagnosis of stage 3B T-cell lymphoma associated with HIV infection has been established. Polychemotherapy in combination with anti retroviral therapy as an inpatient in a haematology unit is indicated." A separate joint consultation that same day

produced the conclusion that: “Treatment for T-cell lymphoma must be prescribed by a haematologist. A programme of anti retroviral therapy will be drawn up after the results of laboratory tests have been received and cytostatic therapy has been prescribed, for which a further consultation will be carried out by an infectious diseases specialist.” This information was transmitted to the Simonov district court in the southern administrative area of Moscow.

168. At the hearing held on 5 February 2008, a medical certificate was produced, issued the same day by a doctor at facility IZ-77/1 and describing Mr. Aleksanyan as fit enough to participate in the proceedings. The court also received a report from Mr. Tagiev, the director of facility IZ-77/1, according to which Mr. Aleksanyan had been diagnosed with stage 3B T-cell lymphoma associated with HIV infection. The treatment indicated was polychemotherapy in combination with anti-retroviral therapy as an inpatient in a haematology unit. During the hearing, Mr. Aleksanyan consented to the recommended treatment. In addition, his lawyers requested that the preventive measure should be modified so that he could follow the recommended course of treatment.

169. In the light of the foregoing and given the serious illness from which Mr. Aleksanyan was suffering, the Simonov district court in Moscow decided to suspend the criminal case, pursuant to article 253, paragraph 3, of the Code of Criminal Procedure of the Russian Federation, until Mr. Aleksanyan had completed the recommended course of treatment. The preventive measure of remand in custody remained in place. In accordance with the court’s decision of 6 February 2008 and the specialists’ recommendations, on 8 February 2008, Mr. Aleksanyan was transferred to Moscow municipal clinic No. 60 for the necessary treatment and has remained there to this date.

170. During the investigation into the criminal case and his remand in custody, Mr. Aleksanyan was not subject to any humiliating or degrading acts or to treatment that endangered his life or health. Under the circumstances, no follow-up action by the Office of the Procurator-General is warranted. In the course of the internal investigation conducted, it was established that Mr. Aleksanyan’s allegations regarding the institutions and authorities of the Penal Correction System were unfounded, and that there had been no violations of Russian legislation, the generally accepted principles and rules of international law and the international human rights treaties to which the Russian Federation is party. No disciplinary, criminal or administrative sanctions were taken against the staff of the Penal Correction Service.

Observation

171. The Special Rapporteur thanks the Government for its reply.

Communication sent

172. On **10 September 2008**, the Special Rapporteur on the right to the highest attainable standard of health together with the Special Rapporteur on torture, the Special Rapporteur on independence of judges and lawyers and the Working Group on Arbitrary Detention sent an urgent appeal to the Government of the Russian Federation concerning Mr. Vladimir Bogushevsky, born in 1984, held in remand prison 1 of Yekaterinburg at the time of this communication.

173. According to the information received, on 30 August 2007 Mr. Boguchevski went to the Directorate of Internal Affairs in Yekaterinburg, located at Frunze street 74, at approximately 9 am in response to an invitation by the authorities to give evidence concerning Mr. Scheyder and Mr. Struyn, who had been arrested earlier in relation to the murder of Mrs. Irina Zlatina.

174. Police officer Valery Zhernakov allegedly led Mr. Bogushevsky to office No. 505 where he secured him to a chair with handcuffs and then proceeded to punch Mr. Bogushevsky in the chest with his fists. Mr. Bogushevsky was diagnosed, in 1996, with a heart condition, and this blow caused a problem with his heart. Mr. Bogushevsky told Mr. Zhernakov that he would need immediate medical assistance. Mr. Zhernakov then strangled Mr. Bogushevsky, applied strong pressure on his eyeballs using his thumbs and hit Mr. Bogushevsky against the throat. Several times Mr. Anatoly Smirnov, Chief of the unit, entered the office and asked how the case was going.

175. Between 3 and 4 pm, a third police officer entered office No. 505, alarmed by Mr. Bogushevsky's screams. After being called by the authorities, around 4 pm, a physician entered office No. 505 and examined Mr. Bogushevsky, confirmed an anomaly in his heart and also informed the authorities of his threatening condition.

176. Mr. Zhernakov and Mr. Smirnov then allegedly pressured Mr. Bogushevsky to testify, among other issues, that he was involved in the murder to Mrs. Zlatina; and assured him that signing an agreement to this extent would terminate his ill-treatment while in detention. The authorities offered Mr. Bogushevsky a lawyer who is known to the police establishment, but Mr. Bogushevsky insisted on having a lawyer of his choice to defend him.

177. Later, in the night of 30 to 31 August 2007, when Mr. Zhernakov and Mr. Smirnov were then again alone in the room with Mr. Bogushevsky they allegedly proceeded to strangle and kick him, and subsequently placed a gas mask over his mouth, while beating him in the chest and the stomach.

178. Mr. Bogushevsky was taken to the temporary detention facility, and then to the hospital where his condition stabilized. Mr. Zhernakov and Mr. Smirnov reportedly accompanied Mr. Bogushevsky to the hospital and continued to threaten him, as well as pressuring the physician in charge to note on the report that Mr. Bogushevsky was "able to work".

179. From this date until 5 September 2007, Mr. Bogushevsky was repeatedly threatened and pressured to confess his guilt in the involvement in the murder of Mrs. Zlatina, which he finally did. No witnesses or material evidence presented at the trial confirmed that Mr. Bugoshevsky and Mrs. Zlatina had been seen together around the time of the crime nor are they aware of any fight that would have occurred. At the date of this communication, Mr. Bogushevsky remained in detention.

Communication received

180. The Special Rapporteur thanks the Government for its reply received on 4 December 2008 and awaits its translation by the United Nations Conference Services.

Communication sent

181. On **23 February 2009**, the Special Rapporteur on the right to the highest attainable standard of health together with the Special Rapporteur on torture sent an urgent appeal to the Government of the Russian Federation concerning information received regarding Mr. Zubair Isaevich Zubairaev, aged about 30, ethnic Chechen, who was detained in colony No. 9 in Volgograd at the time of this communication.

182. According to the allegations received, Mr. Zubairaev was sentenced to five years' imprisonment in August 2007 and detained at colony IAR-154/25 in Frolovo, Volgograd Oblast. While held there, prison officers, allegedly beat him with plastic bottles filled with water and truncheons and subjected him to electric shocks. No medical examination was conducted following the ill-treatment, nor did Mr. Zubairaev have access to medical assistance. Consequently, he filed several complaints and was transferred to prison colony No. 9 in Volgograd. In February 2008, he was admitted to prison hospital LIU-15 in Volgograd, after which the ill-treatment continued, resulting in weight-loss and pain in his back and stomach, as well as wounds that were not healing. In spite of his deteriorating health, the prison authorities do not provide him with adequate treatment, including medicine. In addition, they refuse to allow him access to the medication provided by his family.

183. The situation of Mr. Zubairaev was allegedly exacerbated by frequent threats by prison guards and prosecutors from the Volgograd Public Prosecutor's office indicating that, if he complains about the treatment in detention, he or his family might face reprisals.

Observation

184. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Sri Lanka

Communication sent

185. On **2 February 2009**, the Special Rapporteur on the right to the highest attainable standard of health sent an urgent appeal to the Government of Sri Lanka concerning the Vanni region.

186. According to the information received, the ongoing hostilities between government forces and LTTE reportedly have a detrimental effect particularly in the Vanni region, which resulted in the killing of 300 internally displaced persons and over 1000 injured in the last few days prior to the date of this communication. It is alleged that health facilities are understaffed and ill-equipped to handle the large numbers of injuries. It is also reported that hospitals and ambulances had been hit by the shelling and a number of humanitarian workers and medical staff had to be evacuated. It was further alleged that the Puthukkudiyiruppu Hospital, which accommodates 500 persons, was shelled twice in the previous week. Moreover, it was alleged that basic emergency medical care for the injured is not available due to the lack of essential drugs and services in Mullaitivu and surrounding areas which is due the heavy fighting. In addition, the imposed travel restrictions limited transfer of the injured to hospitals outside the conflict zones.

187. Allegedly, the Regional Director of Health Services (RDHS) sent out an urgent appeal on 26 January 2009 requesting immediate supplies of medicine and other essential items, indicating that if supplies were not provided, many more patients would succumb to their injuries.

188. According to the information received, some 250,000 people have been trapped in a 250 square-kilometer area, which has come under intense fighting. Those civilians had no safe shelter, since demarcated "safe zones" have also been targeted. It is also alleged that the few thousand civilians who have managed to flee Vanni were detained in camps in Vavuniya, Mannar and Jaffna under the guard of the security forces, in order to ensure that LTTE fighters do not infiltrate the south of the country. There were alleged restrictions of freedom of movement for those living within the camps as well as limited access to extended family members and humanitarian workers.

Communication received

189. By its letter dated **5 February 2009**, the Government reiterated its great concern regarding health services in the Vanni region. While indicating that Sri Lankan forces have been battling terrorism for several years, the Government succeeded in maintaining health services, which was recognized by the UN Resident Coordinator after his visit to Vanni. Details on incidents of 27 January were provided indicating that LTTE held back a convoy with several ambulances and two UN staff members. The convoy was finally allowed to leave Vanni on 29 January. The alleged statement of the Regional Director of Health Services was denied and in the rebuttal, he noted that he did not have access to email which was the mode he was alleged to have used. Although acknowledging some of the facts presented in the communication sent, the overall picture is inaccurate since the health situations has deteriorated but mainly due to the LTTE actions. The Government continues maintaining hospitals and providing services free of charge and will continue to transfer patients to hospitals in government controlled areas if and when LTTE permits. Contingency plans for IDPs who make it out to government controlled areas have been prepared and a workshop conducted by the government with UN and NGO participation.

Observation

190. The Special Rapporteur thanks the Government for its reply.

Sudan

Communication sent

191. On **17 February 2008** the Special Rapporteur on the right to the highest attainable standard of health, together with the Special Rapporteur on Torture and the Special Rapporteur on Violence against Women sent an urgent appeal to the Government of Sudan regarding the decision to remove article 13, which would ban female genital mutilation as part of customs and traditions harmful to the health of the child, from the draft Children's Act on 5 February 2009.

192. According to information received, the Government of Sudan took this decision pursuant to an advisory opinion of the Islamic Fiqh Academy, which distinguished between infibulation ("Pharaonic" circumcision), considered harmful by them, and the circumcision of "sunna", a less

intrusive procedure. The Government reportedly decided that the law should allow for the "sunna" practice and prohibit the infibulations with its introduction in the Penal Code, which is currently under preparation.

Observation

193. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Turkey

Communication sent

194. On **27 August 2008**, the Special Rapporteur on the right to the highest attainable standard of health together with the Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture sent a letter to the Government of Turkey concerning Abdullah Ocalan (subject of a previously transmitted communication), who was detained in Imrali Island High Security Closed Prison, since 15 February 1999 until the date of this communication.

195. According to the allegations received, the total isolation of Mr. Ocalan-the sole inmate at Imrali Island-for almost ten years has resulted in severe deterioration of his mental health. Results of psychiatric examination have showed that this deterioration is linked with situations of chronic stress and prolonged social and emotional isolation, along with feelings of abandonment and disappointment. Mr. Öcalan inhabited a 12 square meter cell with a table, chair, bed, wash basin, toilet and a shower cabin. He was confined to his cell for 23 hours per day under round-the-clock video surveillance. Except for consultations, he had no access to the adjoining room. The exercise yard, which he could use for one hour per day is 45 square meters, covered by wire netting, and is surrounded by a 4 m high wall.

196. He had no access to basic fitness or sports equipment, and no other types of activities were available, neither was access to a television. Contact with prison staff was minimal and perfunctory. Visits by his lawyers were restricted to Wednesdays only and were recorded. Although he was allowed two visits per month (one separating panel visit and one table visit, each of one hour's duration on a Wednesday), it was reported that table visits are effectively denied because of the restricted class of visitors permitted. He was even denied monitored access to a telephone.

197. According to the European Committee for the Prevention of Torture, "there had been no favourable response from the Turkish authorities to the various recommendations made by the CPT as early as 1999, and subsequently expanded on, to alleviate the harmful effects of his detention" (Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 22 May 2007, CPT/Inf (2008) 13)".

198. According to the Special Rapporteurs, the weight of accumulated evidence to date points to the serious and adverse health effects of the use of solitary confinement, whereby socially and psychologically meaningful contact is reduced to the absolute minimum, to the point that it is

insufficient for most detainees to remain mentally well-functioning. Regardless of the specific circumstances of its use, effort is required to raise the level of social contacts for prisoners: prisoner - prison staff contact, allowing access to social activities with other prisoners, allowing more visits, and providing access to mental health services.

Communication received

199. By letter dated **27 October 2008**, the Government of Turkey sent a reply to the above-mentioned communication, stating that the terrorist organization PKK/KONGRA-GEL has orchestrated campaigns to call attention of the international community regarding the convict Ocalan, and recent allegations constitute another such attempt to exploit the UN human rights mechanisms.

200. The government explained that the European Committee for the Prevention of Torture has closely monitored the imprisonment and health conditions of Mr. Ocalan. The European Court of Human Rights ruled on 12 May 2005 that the conditions of Mr. Öcalan's imprisonment conform with the European Convention on Human Rights and international law and further stated that "Ocalan cannot be regarded as being kept in sensory isolation or cellular confinement." Ocalan enjoys, as do all inmates in high security closed prisons in Turkey, access to means of redress, health and psycho-social services, outdoor privileges, books, newspapers and radio. Visits and contact with legal representatives is also available. Between 11 March 2000 and 11 June 2008 Ocalan received 326 visits from a total of 1055 visitors, the majority of which were visits from lawyers and, on some occasions, interpreters.

201. International law, guidelines and practices recognize the need to detain dangerous criminals in high security institutions and to house them alone, in maximum security cells. The allegation that Ocalan is kept in isolation remains baseless.

Observation

202. The Special Rapporteur thanks the Government for its reply.

Turkmenistan

Communication sent

203. On **17 October 2008**, the Special Rapporteur on the right to the highest attainable standard of health together with the Special Rapporteur on the situation of human rights defenders sent an urgent appeal to the Government of Turkmenistan regarding Mr. Valery Pal, a social activist in the city of Turkmenbashi. Mr. Pal has cooperated with various non-governmental organizations and also participated in numerous human rights programs in Turkmenistan. Mr. Valery Pal had been the subject of an urgent appeal, sent on 29 May 2008 by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on the situation of human rights defenders, in response to which no reply has yet been received.

204. According to new information, On 24 September 2008, Mr. Valery Pal suffered a heart attack. His heart attack reportedly followed news that despite previous indications he had not been included on the list of persons being released under a presidential amnesty. Serious

concerns were expressed regarding Mr. Valery Pal's health due to his chronic prostatitis. He also suffered a stroke in 2004, which left him partially paralyzed and requires him to receive regular medical treatment and exercise. On 20 March 2008, an ambulance was called to the detention facility to attend to Mr. Pal, who was reportedly suffering from chest pains and high blood pressure.

205. Mr. Pal was sentenced on 14 May 2008 to 12 years in prison to be served at a maximum-security penal colony. It is believed that Mr. Pal was sentenced in connection with charges brought following his detention by police in the city of Turkmenbashi on the night of 21 February 2008. The arrest was reportedly on suspicion of theft in 2004 from the oil refinery he worked at. However, it is alleged that these charges may have been fabricated and may be connected to Mr. Pal's social activism and his knowledge of corrupt practices at the refinery. Mr. Pal pleaded innocent. During the proceedings the court allegedly dismissed all allegations made by the defense counsel of judicial misconduct and violation of due process.

Observation

206. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

United Arab Emirates

Communication sent

207. On **19 January 2009**, the Special Rapporteur on the right to the highest attainable standard of health together with the Special Rapporteur on torture sent an urgent appeal to the Government of the United Arab Emirates regarding Mr. Charles Komla Deka, who was detained at Sharjah Central Jail at the time of this communication.

208. According to the allegations received, Mr. Charles Komla Deka had been detained at Sharjah Central Jail since 27 December 2006. He suffered from a knee injury, and due to the alleged lack of medical care, he developed kidney and leg infections. It was alleged that authorities have not provided access to the necessary treatment, although the prison doctor as well as doctors at the Kuwait hospital, have stated that he was in need of surgery.

Observation

209. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

United States of America

Communication received

210. By letter dated **17 July 2008,** the Government of the United States responded to the communication sent on 24 August 2007 (A/HRC/7/11/Add.1, para. 66), stating that Mr. El-Haj had been transferred from Guantanamo Bay to his home country of Sudan in May, 2008. Further questions regarding his situation should be referred to the Government of Sudan. Mr. El-Haj had

been detained by the United States Department of Defense because he was determined to be an enemy combattant, not because he worked as a cameraman for Al Jazeera. The United States do not target members of the media, as commitment to freedom of the press and freedom of expression is central to American values and the U.S. Constitution.

211. The United States found no evidence to substantiate claims that Mr. El-Haj had been mistreated at Guantanamo. They do investigate claims of abuse and, when the allegations are deemed credible, they hold those responsible accountable. U.S. officials are prohibited from engaging in torture at all times, and uphold the obligations of the US under the Convention Against Torture. The U.S. Supreme Court has held that Common Article 3 of the Geneva Conventions applies to the armed conflict with al-Qaeda, and the U.S. will apply these protections to all detained unlawful enemy combatants.

Observation

212. The Special Rapporteur thanks the Government for its reply.

Communication sent

213. On **12 December 2008**, the Special Rapporteur on the right to the highest attainable standard of health together with the Special Rapporteur on torture sent a letter to the Government of the United States of America concerning the situation of Mr. Coleman, who was allegedly arrested on 4 October 2002 and incarcerated on 24 February 2005. Between 22 September and 22 October 2008, Mr. Coleman was force-fed intravenously approximately ten times. On 23 October employees of the Connecticut Department of Corrections (CDOC), including medical staff, placed Mr. Coleman in an isolated area, where they locked him down in four-point restraints and inserted a nasogastric feeding tube into his nose and down his throat. The CDOC acted under a broad temporary court order granted in early 2008, which permits intravenous and nasal-gastric feeding.

214. With Mr. Coleman’s body weakened from a year-long hunger strike, as a result of which he lost weight, the above described force-feeding procedure carries the following risks: major infection, pneumonia, or a collapsed lung. Immediately after the procedure, Mr. Coleman began sneezing up blood. Prior to the nasogastric initiation, Mr. Coleman suffered from the psychological impact of the force-feeding and imminent escalation. Mr. Coleman was being monitored by CDOC medical staff at the time of this communication.

Observation

215. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Uzbekistan

Communication sent

216. On **23 February 2009**, the Special Rapporteur on the right to the highest attainable standard of health together with the Special Rapporteur on torture, the Special Rapporteur on freedom of expression and the Working Group on arbitrary detention sent an urgent appeal to the

Government of Uzbekistan regarding Mr. Erkin Musaev (subject of a previous communication) who, at the time of this communication, was detained at Prison n. 64/21, Bekabad city, Tashkent region.

217. According to new allegations received, following the Opinion of the Working Group on Arbitrary Detention, on 26 July 2008, Mr. Musaev was threatened by two officers from the National Security Service (SNB) that, if he or his family did not withdraw their petitions or continued to make complaints to international human rights mechanisms, or to spread news about the above decision, they would face reprisals. Following this incident, Erkin Musaev was reportedly put under "special control", i.e. not allowed to go to work, denied medical treatment and his movement within the territory of the penitentiary institution was restricted.

218. In addition, Mr. Musaev's health was deteriorating. The left side of his body was partly paralyzed, and he suffered from a persistent cough. Reportedly, he was beaten by Lieutenant Halimov and Lieutenant Karabayev in reaction to the announcement by Erkin Musaev that he would go on a hunger-strike to protest the refusal to send his complaints to the General Prosecutor's Office and Supreme Court. He was allegedly transferred to the medical unit of the prison.

Observation

219. The Special Rapporteur regrets that at the time of the finalization of the report, the Government had not transmitted any reply to his communication.

Zimbabwe

Communication sent

220. On **17 December 2008**, the Special Rapporteur on the right to the highest attainable standard of health together with the Special Rapporteur on the right to food and the Special Rapporteur on human rights defenders, sent an urgent appeal to the Government of Zimbabwe concerning the closing of public hospitals and medical schools despite the spread of a cholera epidemic throughout the country.

221. It was alleged that the cholera epidemic was spreading throughout the country resulting in a daily increase in the death toll. The spread of cholera was exacerbated by the breakdown of water and sanitation systems. Reports indicate that there was a lack of access to clean water and that fresh water was no longer being pumped into urban areas. It was also alleged that sewage systems were blocked or have burst pipes, and uncollected garbage was overflowing into the streets. Furthermore, it was reported that essential medicines were unavailable to treat the acute epidemics. Anti-retroviral therapy for HIV/AIDS patients and TB treatment for chronically ill patients were reportedly severely disrupted.

222. According to the information received, due to a lack of medicine, equipment, services, and health staff, public hospitals and clinics were closed, resulting in the preventable deaths of individuals. It was alleged that the only maternity hospital in the capital was closed and patients with fractures, meningitis and other acute and dangerous conditions were being sent home. This

reported decrease in access to basic health care meant that, despite the spread of the cholera epidemic, many individuals cannot afford health care because of the high cost of private clinics.

223. It was further alleged that there had been a violent police crack-down on peaceful demonstrations relating to the right to health and that medical schools had been closed. Reportedly, riot police forcefully dispersed hundreds of doctors, nurses and other health workers who peacefully gathered at Parirenyatwa Hospital in Harare, to protest working conditions.

224. It was also alleged that more than five million people were in need of food aid and that 45% of the population was malnourished. Children have been particularly affected by increasing levels of malnourishment. Hungry people allegedly resorted to eating animals and vegetables that are unsuitable for human consumption and that are risky for their health. In addition, drinking unsafe water renders already malnourished people more vulnerable to diseases.

Communication received

225. By letter dated **13 March 2009**, the Government of Zimbabwe responded to the above-mentioned communication. The letter stated that, on 18 November 2008, about 500 health staff people of Parirenyatwa Hospital held a demonstration in contravention of section 25 of the Public Order and Security Act (chapter 11:17) which prescribes the way in which a public demonstration may be conducted. The demonstration was held in order to petition the Minister of Health regarding the poor conditions at hospitals and the non-availability of medicines, results of the illegal economic sanctions imposed on Zimbabwe by the West. The Police approached the leadership of the demonstrators, informed them that they were breaching the law, and advised them to select two representatives who could take their petition to the Minister. The demonstrators refused the proposal, began to chant and then cut a security fence to create an exit route. The Police stopped them and they stayed at that point until they eventually dispersed of their own accord at approximately 11:30am. No arrests or injuries were reported as a result of the demonstration.

Observation

226. The Special Rapporteur thanks the Government for its reply.

III. OTHER

Communication sent

227. On **15 January 2008**, the Special Rapporteur on the right to the highest attainable standard of health sent a letter to the Global Fund to fight AIDS, Tuberculosis and Malaria regarding the consideration of gender issues in the Global Fund on HIV/AIDS, Tuberculosis and Malaria.

228. The Special Rapporteur on the right to the highest attainable standard of health recalled that gender issues play a critical role in the fight against HIV/AIDS, and that, due to a number of factors, women and girls are more vulnerable to HIV infection. In addition, they are more susceptible to the negative social and economic consequences of the epidemic. The reduction of gender inequalities, the empowerment of women and girls, and the reduction of violence against them are widely recognized as effective and essential elements in the fight against HIV/AIDS.

229. The Special Rapporteur on the right to the highest attainable standard of health further reminded the Global Fund that continuing high infection rate among women and girls underscores the fact that the unequal status of women and girls, gender-based violence and negative gender norms threaten health and human rights and continues to drive the epidemic. For the multisectoral response to HIV and AIDS to be successful, the empowerment of women is one of the cornerstones. It is also imperative to enable women to have access to legal, economic, social and health opportunities to prevent infections and to withstand the impact of HIV and AIDS.

230. Though the Global Fund has been a major contributor in fighting HIV and AIDS, information received has suggested that a stronger gender perspective is needed in the policies and operations of the Global Fund in a number of areas of its programs.

Observation

231. The Special Rapporteur regrets that at the time of the finalization of the report, he has not received any reply to his communication.
