EXHIBIT M

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2006/98/Add.1
23 December 2005

Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Sixty-second session
Item 17 of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS

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

Addendum

Communications with Governments*

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

GE.05-16830 (E) 050106

CONTENTS

SUMMARIES OF COMMUNICATIONS TRANSMITTED AND REPLIES RECEIVED

Egypt

1. On 21 September 2005 the Special Rapporteur sent a letter to the Government of Egypt, in which he referred to the state of emergency in force since 1981, extended in February 2003 for three years, and Act No. 97 of 1992. He pointed to allegations to the effect that Emergency Law No. 162 of 1958, upon which the current state of emergency is based, includes provisions allowing for detention without charge of persons suspected of being a threat to national security (some of whom, according to reports, have been held in detention for up to 15 years). Under the same law, State Security Courts have been established, creating a parallel court system, with no right of appeal, whose judges are often military officers and therefore not independent. Under Presidential Decree No. 1 of 1981, civilians are regularly referred to such courts. According to information received, the list of crimes to be tried before these courts is long and vaguely formulated, and has often been used to limit freedom of expression and freedom of association. Act No. 97 of 1992 is said to contain a very broad and general definition of terrorism, which seems to allow it to be used against dissidents and members of the opposition and which has led to an increase in crimes punishable by the death penalty. The Special Rapporteur requested more information on plans announced in the speech delivered by President Mubarak on 28 July 2005, in which he announced that a new anti-terrorism law would be adopted, with the current state of emergency regime replaced by counter-terrorism legislation.

2. As at 15 December 2005, there had been no response to the Special Rapporteur's correspondence.

Indonesia

3. By letter dated 18 November the Special Rapporteur, together with the Special Rapporteur on the question of torture, drew the attention of the Government of Indonesia to information they had received regarding **Mr. Salah Nasser Salim 'Ali**, a 27-year-old Yemeni citizen who lived in Jakarta. According to the information received, Salah Nasser Salim 'Ali was detained in Jakarta by Indonesian police on 19 August 2003 and taken to the main immigration centre in the Kuningan area of Jakarta. It was alleged that after four days of incommunicado detention, during which he was handcuffed, blindfolded and without food, Salah Nasser Salim 'Ali was told that he would be deported to Yemen, via Thailand and Jordan. Upon arrival at the airport in Amman, however, it is said that he was taken to a detention facility of the Jordanian intelligence service, where he was interrogated about a past stay in Afghanistan and routinely beaten, spat on, verbally abused, threatened with sexual abuse and electric shocks by Jordanian officials and subjected to other forms of ill-treatment. From detention in Jordan Salah Nasser Salim 'Ali was allegedly transferred to a detention centre under United States control, where he was kept in United States custody for 20 months. Information received also alleged that, at the beginning of May 2005, **Muhammad Farah Ahmed Bashmilah** was transferred to Yemen. The Special Rapporteurs asked specific questions concerning the legal basis for the detention procedures to ensure that the detainees had recourse to judicial review of the lawfulness of their detention and the applicable legal basis for measures referring to "terrorism".

4. A response to the Special Rapporteur's correspondence was requested by 14 January 2006.

Jordan

5. By letter dated 17 November 2005 the Special Rapporteur, together with the Special Rapporteur on the question of torture, drew the attention of the Government of Jordan to information they had received regarding **Mr. Salah Nasser Salim 'Ali**, a 27-year-old Yemeni citizen who lived in Jakarta, Indonesia, and **Mr. Muhammad Faraj Ahmed Bashmilah**, aged 37, a Yemeni citizen, who also lived in Indonesia (see paragraph 3 above).

6. Information received also alleged that Muhammad Farah Ahmed Bashmilah travelled to Jordan with his wife in October 2003 where, on arrival at Amman airport, Jordanian immigration authorities took his passport. Three days later, on 19 October 2003, he was apparently arrested by the Jordanian Da'irat al-Mukhabarat al-'Amah (General Intelligence Department), which kept him in custody for four days. It is alleged that he was repeatedly tortured during this period.

7. From detention in Jordan Salah Nasser Salim 'Ali and Muhammad Farah Ahmed Bashmilah are said to have been transferred to a detention centre under United States control. The two men were allegedly kept in United States custody for 20 and 18 months, respectively. At the beginning of May 2005 the two men were transferred to Yemen, where they are still in detention. The Special Rapporteurs asked specific questions concerning the legislation in Jordan, e.g. on the legal basis for the detention procedures to ensure that detainees have recourse to judicial review of the lawfulness of their detention, and the applicable legal basis for measures referring to "terrorism".

8. A response to the Special Rapporteur's correspondence was requested by 14 January 2006.

Malaysia

9. On 3 October 2005, the Special Rapporteur sent a letter to the Government of Malaysia concerning the Internal Security Act (ISA) 1960, which has been in force for 45 years, although during this time no state of emergency has been declared. According to the reports received, detainees can be held for a period of two years without charge which, upon expiry, can be renewed by the Internal Security Minister. There are reports of 112 detainees currently held under ISA, some of whom have been in custody for more than four years. Whereas ISA was originally enacted to counter a rebellion, it is said to be currently used against persons alleged to be associated with militant Islamist groups. In this respect, the Special Rapporteur expressed concern that a number of opposition leaders and human rights activists have also been detained under ISA and that there is no provision in the legislation for detainees to challenge their detention because the law prevents the courts from reviewing the merits of ISA detention. According to information received, the lawfulness of these detentions is usually never examined by the courts as a vast majority of ISA detainees are never prosecuted. This practice is said to result in the often lengthy detention of a person, who is thereby denied the right to the presumption of innocence and is held without charge and trial. Taking note of the fact

United States of America

21. By letter dated 1 September 2005, the Special Rapporteur sent a letter to the Government of the United States of America, in which he indicated that he was aware of the fact that other special rapporteurs had addressed counter-terrorism measures taken by the Government through letters of allegation, urgent appeals and requests for a country visit, and that a group of special procedures mandate holders had launched a joint study regarding the situation of the detainees in Guantánamo Bay. He also indicated that he was closely following reports from various sources relating to the human rights impact of counter-terrorism measures taken by the United States within its territory and elsewhere. As at 15 December 2005, there had been no written response to the Special Rapporteur's correspondence of 1 September 2005.

22. By letter dated 17 November 2005 the Special Rapporteur, together with the Special Rapporteur on the question of torture, drew the attention of the Government of the United States to information they had received regarding **Mr. Salah Nasser Salim 'Ali**, a 27-year-old Yemeni citizen who lived in Jakarta, Indonesia (see paragraph 3), and **Mr. Muhammad Faraj Ahmed Bashmilah**, aged 37, a Yemeni citizen, who also lived in Indonesia (see paragraph 6).

23. From detention in Jordan, it is said that Salah Nasser Salim 'Ali and Muhammad Farah Ahmed Bashmilah were transferred to a detention centre under United States control. Information received alleged that the cells in which the men were held in solitary confinement for between six and eight months were approximately 1.5 m x 2 m and had buckets instead of toilets. The men were apparently subsequently transferred, by plane and helicopter, to a second detention centre under United States control, again blindfolded, so that they were not able to identify the location of the facility. In both places, Salah Nasser Salim 'Ali and Muhammad Farah Ahmed Bashmilah were interrogated about their activities in Afghanistan and Indonesia, and about their knowledge of other persons suspected of terrorist activities. The two men were said to have been kept in United States custody for 20 and 18 months, respectively. It is alleged that, during this period, they were held underground, in solitary, incommunicado confinement, with no contact but the prison guards, interrogators and interpreters. Noise was apparently piped into their cells without interruption, 24 hours a day. A response to the Special Rapporteur's correspondence of 17 November 2005 was requested by 14 January 2006.

24. On 18 November 2005 the Special Rapporteur, together with the Special Rapporteur on the question of torture, sent a letter regarding secret detention centres under United States authority in various parts of the world, in which an unknown number of persons are allegedly detained. According to the allegations received, the Central Intelligence Agency (CIA) has established a covert prison system in several countries in Eastern Europe, Thailand and Afghanistan to hide and interrogate some of its captives in its fight against terrorism. About 100 terrorism suspects are said to have been held in these places of detention. In most cases it has not been acknowledged that they are being held. The detainees are said to have had no access to the International Committee of the Red Cross, nor have their families been notified of their whereabouts. There is no information about the procedures in place to decide about their detention and its duration. There appears to be no oversight of the conditions of detention and the treatment of the detainees, which is of particular concern since 20 October 2005 when

Vice-President Cheney and CIA Director Goss asked members of Congress to exclude counter-terrorism operations conducted abroad and operations conducted by an element of the United States Government other than the Defense Department, in particular the CIA, from legislation under consideration that would bar inhumane treatment. The Special Rapporteur asked about the legislative amendments and the exclusions requested by the Vice-President and the CIA Director, for an indication of which interrogation techniques have been authorized in respect of counter-terrorism detainees abroad, and for a complete list of all places of detention throughout the world where terrorism suspects are detained under United States authority (including within United States territory).

25. As at 15 December 2005, there had been no response to the Special Rapporteur's communications.

Uzbekistan

26. On 21 October 2005 the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the question of torture, sent an urgent appeal to the Government of Uzbekistan concerning the [trial of] **15 men, including 3 Kyrgyz citizens,** [accused of being the main organizers of the "Andijan events" of May 2005], before the Criminal Chamber of the Supreme Court of Uzbekistan in Tashkent, and concerning **106 other people** still in detention and expected to face trial on similar charges. According to reliable sources, the trial of 15 persons was based on charges of premeditated murder and terrorism, punishable by the death penalty. Furthermore, reports indicated that, on the first day of the trial, all 15 defendants confessed their guilt and did so in terms which tracked the prosecution statement practically word by word. In addition, rather than seeking to defend their clients' interests, the defendants' attorneys are said to have posed questions which were not significant in terms of the charges, or were formulated in such a way as to assist the prosecution's case. Since, apart from the confessions, little evidence was presented during the trial, and since the defendants were not cross-examined by any independent lawyers to verify their testimonies, the Special Rapporteurs expressed their concern that applying the charge of "terrorism" in this matter could be used as a tool by the executive to punish the defendants for their religious or political beliefs and convictions. A number of precise questions were asked of the Government of Uzbekistan concerning legislation that dealt with terrorism, in particular those articles that defined terrorist acts and their punishments, concerning the criteria used to characterize organizations as terrorist, and whether any appeal procedures were in place.

27. The Permanent Mission of the Republic of Uzbekistan to the United Nations Office at Geneva responded on 28 October 2005 to the public statement made on 26 October 2005 by the Special Rapporteurs on the question of torture, the independence of judges and lawyers, extrajudicial, summary or arbitrary executions, and counter-terrorism. The Permanent Mission criticized the Special Rapporteurs for making a public statement before the Republic of Uzbekistan had had an opportunity to formally respond to the correspondence of the Special Rapporteurs of 21 October 2005. The Permanent Mission described the statement as a gross violation of the mandates of the Special Rapporteurs and expressed concern that they had prejudged the matter by doubting the competence of the investigative and judicial bodies of the sovereign State of Uzbekistan. It emphasized that the subject matter of the case concerned grave

crimes punishable under criminal law and recognized worldwide. The Permanent Mission denied that a prosecutor had demanded the death penalty, stating that imprisonment from 15 to 20 years had instead been requested. On the question of the alleged torture of suspects, the Permanent Mission stated that proceedings were being conducted openly and in full conformity with national and international law, and that there had been no complaint by the defendants, their lawyers or their families of the use of torture. The Permanent Mission stated that, in combating terrorism, Uzbekistan was devoted to the norms of international law, including human rights, and resolutions of the Security Council.

Yemen

28. By letter dated 17 November 2005 the Special Rapporteur, together with the Special Rapporteur on the question of torture, drew the attention of the Government of Yemen to information they had received regarding **Mr. Salah Nasser Salim 'Ali**, a 27-year-old Yemeni citizen who lived in Jakarta, Indonesia (see paragraph 3), and **Mr. Muhammad Faraj Ahmed Bashmilah**, aged 37, a Yemeni citizen, who also lived in Indonesia (see paragraph 6).

29. The two men were allegedly kept in United States custody for 20 and 18 months, respectively (see paragraph 23) until they were transferred to Yemen, where they were detained in the central prison of Aden and subsequently briefly taken to Sana'a. It is alleged that the men are currently detained at the Fateh political security facility in Aden, where they have received visits by their family. Neither of the two men has been charged with or tried for any offence, and neither has been informed of the reason for his continued detention. Reportedly, the reason for their detention is that their transfer from detention by United States forces was conditional upon their being held in Yemen. The Special Rapporteurs asked specific questions concerning the legislation in Yemen referring to "terrorism", and about the legal basis for the detention procedures to ensure that detainees had recourse to judicial review of the lawfulness of their detention.

30. A response to the Special Rapporteur's correspondence was requested by 14 January 2006.
