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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 extrajudicial, summary or arbitrary executions, Philip Alston\* \*\***

### *Summary*

The present report details the activities of the Special Rapporteur in 2009 and the first four months of 2010. This is the final report to the Human Rights Council by Philip Alston in his capacity as Special Rapporteur. It analyses the activities and working methods of the mandate over the past six years, and identifies important issues for future research. Detailed addenda to this report address: (a) accountability for killings by police; (b) election-related killings; and (c) targeted killings.

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\* Late submission.

\*\* The annexes are being circulated as received in the language of submission only as the present document exceeds the page limitations currently imposed by the relevant General Assembly resolutions.

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–5	3
II. Activities and working methods.....	6–29	3
A. Communications to Governments.....	6–17	3
B. Country fact-finding visits .....	18–21	5
C. Follow-up reports on country fact-finding visits .....	22–26	6
D. Country visit requests .....	27–29	7
III. Review of issues addressed and research undertaken .....	30–60	8
A. Killings by law enforcement officials or other security forces .....	33–37	8
B. Killings during armed conflict.....	38–42	9
C. Killings during counter-terrorism operations.....	43–44	10
D. Killings by non-State actors .....	45–47	11
E. Deaths in custody.....	48–49	12
F. The death penalty.....	50–52	12
G. Impunity: investigation, prosecution and conviction.....	53–55	13
H. Reparations of killings.....	56–58	13
I. Victim groups .....	59	14
J. Mandate and working methods.....	60	14
IV. Future research.....	61–89	15
A. Sexual violence and unlawful killings .....	62–63	15
B. Crime scenes and forensic evidence .....	64–65	15
C. Non-State armed actors and their use of the “death penalty” .....	66–67	16
D. Mass graves and State responsibility .....	68–69	16
E. Civil defence groups .....	70–74	17
F. Corruption and unlawful killings.....	75–77	18
G. United Nations peacekeeping and multinational force operations .....	78–80	18
H. Demobilization and unlawful killings.....	81–83	21
I. Reparations for unlawful killings and amends for civilian harm.....	84–89	21
V. Conclusion .....	90–91	23
<b>Annexes</b>		
I. List of entities to which allegation or urgent action letters were sent .....		24
II. Assessing State responsiveness to communications.....		25

## **I. Introduction**

1. The present report is my final report to the Human Rights Council as Special Rapporteur on extrajudicial, summary or arbitrary executions. During the period of my mandate, I have sought to maintain and build upon the important work and successes of my three predecessors since 1982, Asma Jahangir, Bacre Waly Ndiaye and Amos Wako. Through communications to Governments, country fact-finding missions, and annual reports to the Human Rights Council and the General Assembly, I have sought to contribute to the constructive development of the mandate, to improve working methods and to advance understanding of the complex factual, policy and legal issues arising within the context of the mandate. In this spirit, in addition to describing the activities undertaken over the last year, in the report I assess the mandate's key activities and working methods, and provide a thematic review of the past six years. I also identify issues that would benefit from sustained research and analysis in the future.

2. In addition, addenda to the report contain three in-depth studies on: (a) accountability for killings by police (A/HRC/14/24/Add.8); (b) election-related killings (Add.7); and (c) targeted killings (Add.6).

3. The report is submitted pursuant to Human Rights Council resolution 8/3.

4. The terms "extrajudicial executions" and "unlawful killings" are used in the present report to refer to killings that violate international human rights or humanitarian law (E/CN.4/2005/7, para. 6). The various types of unlawful killings covered by this mandate are explained in detail below in section III.

5. I am grateful to the staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR) for their assistance in relation to the mandate. At New York University School of Law, my senior advisers Sarah Knuckey and Hina Shamsi have done superb work. I am also grateful for the excellent research assistance provided by Anna de Courcy Wheeler, Nishant Kumar, Danielle Moubarak, Wade McMullen, Lars Dabney, Rupert Watters and Ryan Ghiselli.

## **II. Activities and working methods**

### **A. Communications to Governments**

6. One of the Special Rapporteur's principal activities is to communicate with Governments about alleged cases of unlawful killings. These communications take the form of "allegation letters" or "urgent action" letters, which typically set out alleged facts, analyse the applicable international law, seek clarification from the relevant Government on the accuracy of the allegations, and call upon the Government to take particular actions to reduce killings or impunity.

7. Such communications with Governments raise international awareness of specific domestic incidents and encourage Governmental attention. They create a regular and ongoing system of monitoring State behaviour, generate a record of abuses over time, provide clarity on the circumstances of specific incidents and give States an opportunity to set the record straight. The communications can also shed light on the interpretation of applicable law, promote accountability and encourage measures to reduce future killings.

8. But, for the practice to live up to the theory, it is essential to take stock of how the system functions in reality and to identify needed reforms. While I have noted in past years that response rates from Governments were poor,<sup>1</sup> the present wrap-up report provides an opportunity to better understand general trends and patterns in communications and Government responses during the whole term of my mandate. A systematic review of communications is contained in annex II. In brief, from December 2004 to March 2009, 523 communications were sent to 87 States, concerning over 6,250 individuals. About half of these drew no response at all, while a quarter drew largely satisfactory responses.

9. Of the 15 countries that received the most communications, 7 failed to respond to more than 50 per cent of letters sent: India (no reply to 16 of 18 letters), Iraq (11 of 14 letters), the Sudan (12 of 16 letters), Saudi Arabia (16 of 22 letters), the United States of America (12 of 18 letters), Brazil (8 of 13 letters), and the Islamic Republic of Iran (37 of 63 letters).

10. It is clear that there is a need to consider how to make the procedure more effective both in engaging States in dialogue and bringing relief in individual cases. The importance of communications within the overall context of the Special Procedures system has grown immensely, but without any real planning or strategic vision. It would now be timely to consider what such a procedure should ideally look like in the twenty-first century. Six steps could usefully be taken.

11. First, there should be an examination of the effectiveness of communications.<sup>2</sup> Ideally, this would be based on a major review of allegations received, communications sent, responses provided and achievements registered as a result. It would encompass all relevant mandates. Such a review would provide an informative picture of the responsiveness of Governments to the procedures they have set up through the medium of the Council. And it would assist in identifying the strengths and weaknesses of the system as a whole, thus enabling clearer identification of the reforms needed.

12. The second step should be to move towards a better integrated system, which would bring together the efforts made by a myriad of individual mandate holders so that they would look more like a system. At present the procedures for determining when to send communications are uneven, there is no shared vision of the optimal approach, and there is no comprehensive strategic plan to develop the system. As a result, there is a strong sense that the wealth of information that is being generated by the relatively disparate procedures is not being effectively capitalized upon.

13. A third step is to update the techniques and technology being used to send, receive and manage communications. For example, it can no longer be appropriate to send the vast majority of communications to States by fax. Apart from the labour costs, the communications charges, the time lost, the reliance on a relatively primitive technology, and the difficulty of keeping track of such correspondence, faxing generally renders the content difficult to manage electronically and thus undermines all sorts of time- and cost-saving possibilities. While a full overhaul might require a broader reform of diplomatic communications strategies, there is no reason why significant changes could not be introduced immediately. Moreover, there is a need for a web-based database accessible to all mandate holders so that information can be shared in a far more efficient manner, priorities discussed, changes introduced more flexibly, and the overall situation can be monitored with ease at any given time. In addition, the publication of unwieldy printed

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<sup>1</sup> A/HRC/11/2, para. 7; A/HRC/8/3, para. 7; A/HRC/4/20, para. 9; E/CN.4/2006/53, para. 12; and E/CN.4/2005/7, para. 21.

<sup>2</sup> Government responsiveness is only one factor. Letters never responded to could still affect the behaviour of a Government or other actor. Other intangible impacts may also be difficult to measure.

volumes should be discontinued and an integrated, publicly available, searchable and constantly updated database should be put online. Data management and statistical analysis experts should be consulted to design a database which is more readily able to be integrated with other directly relevant databases within and outside the United Nations system.

14. Communications should be publicly available online within a fixed period, which could be set at three months after the deadline for a Governmental response. At present, communications remain confidential until published in the annual report, a procedure which might involve a delay of as little as two months or one closer to two years, depending entirely on the fortuitous timing of the report and the communication.

15. A fourth step involves revisiting the rules that require the submission of the original complaint by those affected or those claiming to have direct or reliable knowledge of the violation. This rule is often interpreted as being the flip side of the rule that complaints may not be based entirely on media reports or even reports from non-governmental organizations, unless they are specifically submitted to the Special Rapporteur. These rules were designed for another age, well before the communications revolution of the late twentieth century. Their entirely legitimate objective is to deter false reports and to emphasize that the credibility of sources must be a key consideration. But today's reality is that those affected might have no access to the United Nations, let alone to Special Procedures, those with reliable knowledge such as national or international NGOs might not bother sending a complaint to the United Nations when their information is rapidly made available online, and the "mass media" is no longer the limited group that it once was but is now a much more diffuse and heterogeneous concept.

16. A fifth step is to pay more attention to the ways in which the information generated by the various communications systems is used. In general, most of it remains very poorly integrated into the broader United Nations human rights system. Means could easily be devised to enhance its relevance to thematic or country specific debates, to the work of the treaty bodies, to efforts to integrate human rights information into mainstreaming activities and into the universal periodic review process.

17. A sixth and final step (these steps can be taken more or less simultaneously) is to respond when countries have consistently poor levels of cooperation or meaningful engagement with a Special Rapporteur's communications process. Those that fail to respond year after year should surely be asked why this is so by the Council. To do otherwise indicates that the communications procedure, despite its significant cost, is not being taken seriously as a means of responding to alleged violations.

## **B. Country fact-finding visits**

18. During the six years that I have held this mandate, I have visited 14 countries. Since I last reported to the Council, three visits have taken place: Colombia from 8 to 18 June 2009 (A/HRC/14/24/Add.2), the Democratic Republic of the Congo from 5 to 15 October 2009 (A/HRC/14/24/Add.3), and Albania from 15 to 23 February 2010 (A/HRC/14/24/Add.9). Countries visited in prior years were: Nigeria (June-July 2005), Sri Lanka (November-December 2005), Guatemala (August 2006), Israel and Lebanon (September 2006, joint mission), the Philippines (February 2007), Brazil (November 2007), the Central African Republic (January-February 2008), the United States of America (June

2008), Afghanistan (May 2008) and Kenya (February 2009). These countries should be commended for their openness to international scrutiny.<sup>3</sup>

19. During country missions, my aims have been to understand and explain the dynamics of unlawful killings (both in terms of particular incidents, and patterns across the country) as well as their causes (legal, historical, institutional, a matter of political will etc.), and to propose constructive and specific reforms to reduce killings and eliminate impunity. These aims are linked – if the specifics and patterns of killings and their causes are not carefully understood, the Special Rapporteur cannot provide an accurate account of the human rights situation in a country, and cannot craft appropriately specific and tailored reforms.

20. Most country missions last 8 to 12 days. I am often asked how it is possible to write a meaningful report in such a time. The short answer is that it is not. My reports are based on months of pre-mission research and post-mission analysis. Informed reports and constructive recommendations require months of research into all available sources of published information, consultations with country experts before the mission, the preparation of detailed analyses of key issues, and a very large number of in-depth interviews with witnesses and officials. In many countries, detailed files are provided by witnesses or family members of victims on each specific incident, and NGOs often submit extensive reports. It is essential that Governments are given a full opportunity to respond to allegations and to provide all relevant information. I have found it productive in this respect to prepare detailed lists of questions for officials, which can be provided before or during the mission as appropriate. After the mission, it can take some months to carefully analyse all of the information provided.

21. Country missions are thus clearly complex and resource-intensive in ways that the system does not adequately recognize. The support provided by OHCHR to the mandate is significant, and OHCHR staff make admirable efforts. But the Office has simply not been given the resources it needs to meet the many demands of the average mandate. It is not realistic to expect one or two staff members to assist adequately with the preparation in any year of hundreds of allegation letters, two or three country missions and annual reports, together with the many other administrative and liaison responsibilities they must fulfil. It is essential that Special Rapporteurs and OHCHR are provided the necessary resources and staff for these functions to be carried out at a high level.

### **C. Follow-up reports on country fact-finding visits**

22. In 2006 I began following up on country missions, two years after they had taken place, to assess the extent to which recommendations had been implemented. Two follow-up reports – on Brazil (A/HRC/14/24/Add.4) and the Central African Republic (A/HRC/14/24/Add.5) – are submitted as addenda to the present report.

23. During my term, I prepared follow-up reports on 10 countries. The formal picture that emerges from these reports is not encouraging.<sup>4</sup> While some countries had taken positive measures in response to my reports, many others had done little to implement the recommended reforms.

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<sup>3</sup> Some of these countries have also been visited multiple times by this mandate – including Afghanistan (twice), Albania (twice), Brazil (twice), Colombia (three times), the Democratic Republic of the Congo (twice), Sri Lanka (twice) and the United States (twice).

<sup>4</sup> E/CN.4/2006/53/Add.2, para. 7; A/HRC/8/3/Add.3; and A/HRC/11/2/Add.7 and Add.8.

24. Civil society actors have been eager to provide information on follow-up reports, and have contributed substantially. However, less than half of the countries reviewed responded to my requests to provide information on their implementation of recommendations. Responses from some United Nations country presences have also been disappointing.

25. Given the disappointing results documented in the follow-up reports, it is clear that the Council should devise procedures to ensure that the recommendations are addressed by States. Otherwise, there is a risk that country visits will be treated by some Governments as a temporary inconvenience to be endured rather than as an occasion for serious stock-taking to enhance respect for human rights.

26. It should also be acknowledged, however, that the effectiveness of country missions should not be measured solely on the basis of formal responses to specific recommendations. The reality is that country missions have many important benefits, some of which are not easily quantifiable. In my own assessment, a number, but by no means all, of the country missions I undertook yielded important positive achievements in human rights terms.

#### **D. Country visit requests**

27. The ability of the mandate to be effective is significantly undermined by the extent to which States in which there would appear to be serious problems of extrajudicial executions can systematically ignore requests to visit, in some cases for over a decade. The information below indicates that almost 70 per cent of the 52 countries requested have either not responded at all to requests, or have failed to approve a visit. From the perspective of the individual State, the decision to respond to a mission request is a matter for its sovereign discretion. There may be a number of legitimate reasons why a visit would not be appropriate at a given time, and why different mandates might be accorded priority. But as the years pass, these reasons become less plausible. From the perspective of the Council, there comes a point when the mechanism it has established to monitor and report on extrajudicial executions is effectively disabled from doing its job properly in respect to the States concerned. This should be a matter of grave concern to the Council in view of its mandated responsibility in relation to “the prevention of human rights violations”.<sup>5</sup>

28. During my mandate, mission requests have been sent to 53 countries, in addition to a range of outstanding requests by my predecessor. Of these:

- 14 requests resulted in country missions
- 4 country missions have in principle been accepted to take place in 2010 and 2011 (Argentina, Ecuador, Mexico and Turkey)
- 35 States either did not respond at all or failed to approve a mission despite entering into correspondence<sup>6</sup>

<sup>5</sup> General Assembly resolution 60/251, para. 5 (f).

<sup>6</sup> In addition to 21 non-responses, one State stated that the request (made in 2006) was under consideration; three States responded that an initial request could not be granted, and then did not respond to subsequent follow-up letters; two States agreed initially to a visit, but then indefinitely postponed; two States responded that a visit could not take place in the year requested; four States indicated that a visit could take place in the future, but have not responded to subsequent requests; one State acknowledged receipt of the request, but did not respond to follow-up requests; and one State merely acknowledged receipt of the request.

29. As of March 2010, the following requests to visit remain outstanding: Bangladesh; Canada; Chad; China; Dominican Republic; Egypt; El Salvador; Ethiopia; Georgia; Guinea; India; Indonesia; Iran (Islamic Republic of); Israel; Kyrgyzstan; Lao People's Democratic Republic; Mozambique; Myanmar; Nepal; Pakistan; Peru; Russian Federation; Saudi Arabia; South Africa; Thailand; Togo; Trinidad and Tobago; Turkmenistan; Uganda; United Republic of Tanzania; Uzbekistan; Venezuela (Bolivarian Republic of); Viet Nam; and Yemen.

### III. Review of issues addressed and research undertaken

30. The situations dealt with by this mandate often involve complex factual, policy and legal issues. In addition to generating pressure for change, I have attached considerable importance to specifying and clarifying the applicable international legal framework.

31. The many themes addressed in-depth over six years have been approached in different ways, but especially the following:

(a) **Empirical surveys.** World-wide surveys of a particular type of killing or accountability mechanism (for example electoral killings; killings of "witches"; vigilante killings; targeted killings; the use of commissions of inquiry);

(b) **Policy and best practices analyses.** Various reports have examined best practices in order to assist civil society and Governments with complex legal and policy issues, and to bring greater specificity into my own recommendations. Such studies have focused on witness protection, military justice and police accountability;

(c) **Legal analysis.** Other reports have focused on contested or unclear areas of law, such as the relationship between human rights and humanitarian law, the circumstances in which the application of the death penalty is unlawful, and the legality of targeted killings.

32. The disparate issues arising under the mandate can usefully be understood thematically.<sup>7</sup> In what follows, I outline the general issues encountered by the mandate, and the contributions made with respect to each.<sup>8</sup>

#### A. Killings by law enforcement officials or other security forces

33. Killings by police and other law enforcement or security officials are frequently encountered within the mandate. They can take many forms. All too common are intentional murders in which police shoot to kill alleged criminals without resort to other appropriate measures. Instances of this approach are detailed in my reports on Brazil, Guatemala, Kenya and Nigeria. Some of the killings are carried out by individual police, others are killed by unacknowledged police "death squads". Another major problem is the use of excessive force while arresting a suspect, or of indiscriminate force in a riot-control context. Such killings are often due to poor training, inappropriate "use of force" regulations and resource deficiencies. In countries where the security forces may be directly controlled by politicians, security officials may conduct politically motivated killings,

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<sup>7</sup> As the mandate develops over time, these categories will no doubt expand or be restructured, but I have found the categories described in this section useful as a working structure for understanding the issues the mandate addresses.

<sup>8</sup> The full text of all contributions of the Special Rapporteur has been organized thematically, and is available as a handbook from the website [www.extrajudicialexecutions.org](http://www.extrajudicialexecutions.org).

including of political opposition members or supporters, and election-related killings. I have also investigated many killings in the context of extortion attempts or for other reasons personal to the official. In some countries, police also carry out killings while off duty, whether for “vigilante” reasons, for profit, or as part of a well-organized militia or business enterprise.

34. I have addressed in detail the applicable international legal standards relevant to the use of force by police, as well as the policies that seem most likely to reduce or contribute to unlawful police killings. In 2006 I set out the basis and content of international law on the use of lethal force by police (A/61/311, paras. 33-45). That report explained that the rules governing the use of force were built on the principles that the force must be both necessary and proportional. The intentional use of lethal force is strictly limited to circumstances where it is required to protect life. The report also underscored the importance of the principles contained in the Code of Conduct for Law Enforcement Officials, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Country reports, including those on Kenya (A/HRC/11/2/Add.6) and Nigeria (E/CN.4/2006/53/Add.4), indicate that the right to life is at grave risk in States where the use-of-force guidelines are inconsistent with these rules.

35. My 2006 report to the Commission examined “shoot-to-kill” policies in response to a number of high-profile pronouncements from officials of various Governments, authorizing police to “shoot on sight” alleged terrorists and criminals (E/CN.4/2006/53, paras. 44-54). Such dangerous official rhetoric displaces the clear legal standards on the use of lethal force which stipulate that the police may shoot to kill only when it is clear that an individual is about to kill someone (making lethal force proportionate) and there is no other available means of detaining the suspect (making lethal force necessary).

36. Country reports have addressed policing methods that offer alternatives to counter-productive, unlawful and violent policing. Examples include community policing in Nigeria, and the benefits of a sustained police presence in gang-controlled areas in Brazil. In reports on Kenya and Nigeria I addressed the need for centralized data-keeping and monitoring of police killings.

37. Much of the mandate’s work on police killings has focused on improving accountability, an issue addressed in greater detail in the general section on impunity (see below).

## **B. Killings during armed conflict**

38. In many of the countries I have visited, armed conflicts have resulted in many unlawful killings. These include Afghanistan, the Central African Republic, Colombia, the Democratic Republic of the Congo, Israel, Lebanon, the Philippines and Sri Lanka.

39. Much of the mandate’s work on killings in armed conflict has sought to clarify the relationship between human rights and humanitarian law, starting with the basis for the mandate’s coverage and investigation of armed conflict killings. In 2004 (E/CN.4/2005/7, paras. 5-11 and 45) and 2007 (A/HRC/4/20, paras. 18 and 20-24) I showed that, from the very beginning of the mandate, Special Rapporteurs have reviewed the legality of killings under international humanitarian law, and that the mandate covers, without exception, violations of the right to life in international and non-international armed conflicts. These analyses, as well as reports on Afghanistan, Israel and Lebanon, and Sri Lanka, explained

the coextensive protections of, and complementary relationship between, human rights and humanitarian law.<sup>9</sup>

40. Another significant element of the mandate's work in this area has been to study the methods and means of warfare. Thus, for example, the 2007 report to the Council (A/HRC/4/20) examined "mercy killings" and explained the legal basis for their absolute prohibition. Reports have also addressed: the principles of distinction and proportionality; airstrikes; cluster bombs; raids; perfidy; suicide attacks; human shielding; issues arising in urban counter-insurgencies; and killings of persons *hors de combat*.<sup>10</sup> Mission reports on the Central African Republic (A/HRC/14/24/Add.5), Afghanistan (A/HRC/11/2/Add.4, paras. 9 and 23-24), and Israel and Lebanon (A/HRC/2/7, paras. 30 and 68-70), also addressed the requirement of reciprocity and the illegality of reprisal killings. As the discussions on reciprocity explained, one side's unlawful use of civilian shields, for example, does not affect the other side's obligation to ensure that airstrikes do not kill civilians in excess of the military advantage of killing the targeted fighters.

41. Over the course of the mandate, the responsibility of rebel or insurgent groups to observe international humanitarian law has repeatedly been explained and emphasized, including in country reports on Afghanistan (A/HRC/11/2/Add.4, para. 71), the Central African Republic (A/HRC/11/2/Add.3, para. 6), Colombia (A/HRC/14/24/Add.2), the Democratic Republic of the Congo (A/HRC/14/24/Add.3), Sri Lanka (E/CN.4/2006/53/Add.5, paras. 26, 30 and 33) and the Philippines (A/HRC/8/3/Add.2, para. 5). Too often, and especially in insurgency contexts, civilians are trapped between State and rebel forces, or between warring rebel factions, in a struggle to avoid being threatened or killed by one or more sides. This dynamic, together with the obligations of all sides to respect international law, was described in detail in the reports on Afghanistan, Colombia and the Democratic Republic of the Congo.

42. Reports have also addressed the importance of human rights-based security sector reform (A/HRC/11/2/Add.3), military recruitment and vetting of military personnel for war crimes,<sup>11</sup> humanitarian law training,<sup>12</sup> killings by private security contractors,<sup>13</sup> and the need for transparency and accountability mechanisms relating to right-to-life violations during armed conflict and occupation.<sup>14</sup>

### C. Killings during counter-terrorism operations

43. I have often had cause to note that while terrorist acts can have terrible consequences, counter-terrorism responses must not themselves violate human rights and humanitarian law. One example concerns the targeted killings of alleged terrorists. Both international human rights and humanitarian law apply to limit the circumstances under which States may intentionally kill specific individuals both in and outside the context of armed conflict.<sup>15</sup> The refusal of States that practice targeted killings, and those on whose territory such killings occur, to respond to allegation letters and requests for information on whether applicable legal standards and procedural safeguards have been complied with,

<sup>9</sup> E/CN.4/2005/7, paras. 48-53; A/HRC/4/20, para. 19; A/HRC/2/7, paras. 15-16; E/CN.4/2006/53/Add.5, paras. 24-33; and A/HRC/11/2/Add.4.

<sup>10</sup> See A/HRC/2/7 and A/HRC/11/2/Add.4.

<sup>11</sup> A/HRC/11/2/Add.3 and A/HRC/14/24/Add.3.

<sup>12</sup> A/HRC/11/2/Add.3 and A/HRC/11/2/Add.4.

<sup>13</sup> Ibid.

<sup>14</sup> See, for example, E/CN.4/2006/53, paras. 33-43.

<sup>15</sup> A/62/265, para. 27; E/CN.4/2005/7; and A/HRC/11/2/Add.5, paras. 71-73.

creates a situation in which Governments kill without any “verifiable obligation . . . to demonstrate in any way that those against whom legal force is used are indeed terrorists” (E/CN.4/2005/7, para. 41).

44. In response to “shoot-to-kill” policies aimed at suspected suicide bombers, I examined in detail the rules regulating the use of lethal force by law enforcement officials (E/CN.4/2006/53, paras. 44-54). That report emphasized that human rights law provides a framework within which States can reconcile their obligations to protect their populations from terrorism, with their obligations to respect the rights of suspects.

#### **D. Killings by non-State actors**

45. Human rights and humanitarian law clearly apply to killings by non-State actors in certain circumstances. Thus, for example, country mission reports have investigated killings by rebel and insurgent groups, paramilitary groups, militias, vigilantes, death squads, criminal gangs, bandits, mobs, family members and private individuals. Such killings may be for the purposes of “social cleansing”, to “restore honour”, to punish suspected criminals, or to punish “witches”. They might also be for profit, or be linked to domestic violence familial blood feuds, armed conflict, election violence or inter-communal violence.

46. Because a focus on killings by non-State actors has at times been controversial, the mandate has extensively studied and clarified the legal bases for the responsibility of non-State actors and the State with respect to this category of abuses. In 2004 I identified four general categories of non-State actors and explained the legal implications (E/CN.4/2005/7, paras. 65-76):

(a) The State has direct responsibility for the actions of non-State actors that operate at the behest of the Government or with its knowledge or acquiescence. Examples include private militias controlled by the Government (which may, for example, be ordered to kill political opponents) as well as paramilitary groups and deaths squads;

(b) Governments are also responsible for the actions of private contractors (including military or security contractors), corporations and consultants who engage in core State activities (such as prison management, law enforcement or interrogation);

(c) Where non-State armed groups are parties to an armed conflict, such groups have their own direct legal responsibilities for any killings they commit in violation of international humanitarian law. Where a group exercises significant territorial and population control, and has an identifiable political structure, it may also be important for the Special Rapporteur to address complaints directly to the group and to call for it to respect human rights and humanitarian law norms.<sup>16</sup> This has been the approach in reports on Afghanistan, Colombia, the Democratic Republic of the Congo and Sri Lanka.

(d) The mandate has increasingly addressed fully “private” killings, such as murders by gangs, vigilante justice, “honour killings” or domestic violence killings. In most cases, an isolated private killing is a domestic crime and does not give rise to State responsibility. However, where there is pattern of killings and the Government’s response (in terms either of prevention or of accountability) is inadequate, the responsibility of the State is engaged. Under human rights law, the State is not only prohibited from directly violating the right to life, but is also required to ensure the right to life, and must meet its due diligence obligations to take appropriate measures to deter, prevent, investigate,

<sup>16</sup> See A/62/265, paras. 37-44.

prosecute and punish perpetrators. In addition, in reports detailing Governmental violations in response to violence by non-State actors (including gangs or sects), it is important to report on non-State actor violations in order to provide a fair picture of the situation facing the Government. This is reflected in the reports on Brazil, Kenya and Nigeria.

47. In order to understand the dynamics of killings by non-State actors, which are often underreported and under-studied, reports to the Council and the General Assembly have included global studies of particular phenomena such as killings by vigilantes and mob justice (A/64/187, paras. 15-83) and killings of “witches” (A/HRC/11/2, paras. 43-59). My predecessor, Ms. Jahangir, contributed substantially with respect to the issue of “honour killings” (E/CN.4/2000/3, paras. 78-84).

## **E. Deaths in custody**

48. Communications to Governments and country mission reports often address deaths in custody, which encompass guards killing prisoners, inter-prisoner violence, suicides, death resulting from torture in custody and deaths resulting from prison conditions, including poor health care, overcrowding and inadequate food.

49. I have analysed in detail the nature of the State’s responsibility in a custodial setting (A/61/311, paras. 49-54). States have a heightened level of responsibility in protecting the rights of detained individuals. Indeed, when an individual dies in State custody, there is a presumption of State responsibility. The obligation of the State is not only to prohibit and prosecute killings by guards or other officials, but also to prevent deaths and to respond effectively to the causes of the deaths. The specific content of the obligations of the State include: ensuring appropriate prison oversight and monitoring; providing adequate health care to detainees (A/HRC/11/2/Add.5) and appropriate budgets to prisons (A/HRC/14/24/Add.3); stopping practices of prisoners running prisons (A/HRC/8/3); ensuring accurate records of detainees and their sentences (A/HRC/14/24/Add.3); and exercising due diligence to prevent inter-prisoner violence.

## **F. The death penalty**

50. International law does not prohibit the application of the death penalty. However, given the fundamental nature of the right to life, the circumstances in which the death penalty may lawfully be applied are strictly circumscribed. Executions carried out in violation of those limits are unlawful killings.

51. Various reports examining the legal limits on the application of the death penalty show that:

(a) The death penalty is only lawful if imposed after a trial conducted in accordance with fair trial guarantees, including judicial independence, the right to counsel, an effective right to appeal, and the right not to be coerced or tortured to give evidence (A/HRC/11/2/Add.5). When a State’s judicial system cannot ensure respect for fair trials, the Government should impose a moratorium on executions (A/HRC/11/2/Add.4, paras. 65 and 89);

(b) States that impose the death penalty must provide transparency in relation to the specifics of the processes and procedures under which it is imposed.<sup>17</sup> This obligation is firmly grounded in existing law (E/CN.4/2006/53/Add.3). States retaining the death penalty

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<sup>17</sup> E/CN.4/2005/7; E/CN.4/2006/53, para. 28; and A/HRC/8/3/Add.3, para. 81.

should undertake periodic reviews to determine whether international standards have been complied with, and report to the Council on their findings (E/CN.4/2005/7, paras. 60-62, 88);

- (c) International law prohibits the application of the death penalty to juveniles;<sup>18</sup>
- (d) International law prohibits the mandatory imposition of the death penalty;<sup>19</sup>
- (e) International law only permits the death penalty for “the most serious crimes”. The scope and implications of this important phrase have been explored in detail;<sup>20</sup>
- (f) A person sentenced to death has the right to seek pardon or commutation of the sentence (A/HRC/8/3, paras. 59-67).

52. In the death penalty context it has also been necessary to address the relationship between international legal obligations and sharia law or Islamic criminal law as applied in some countries. Specifically, reports have discussed stoning, the illegality of the death penalty for homosexuality or adultery, and the challenges of diyah (compensation in lieu of criminal punishment).<sup>21</sup>

## **G. Impunity: investigation, prosecution and conviction**

53. Impunity is often a central cause of continued killings. In many of the countries visited, impunity is maintained through problems at every level of the criminal justice system. Thus, police may be unwilling or unable to carry out an independent investigation of the killing. The State may lack forensic capacity to conduct investigations. Crimes scenes may not be secured. The police may fail to refer cases to the prosecution service. Prosecutors may be corrupt or poorly trained. Witnesses may justifiably be unwilling to testify because of inadequate witness protection programmes. Judges’ dockets may be so overcrowded that cases are delayed for years, or judges may also take bribes to delay cases or absolve perpetrators. If perpetrators are convicted, prison systems may be insecure or susceptible to corruption, resulting in prisoners escaping or bribing their way out of detention.

54. In response to these challenges, specific studies have addressed:

- (a) The need for external oversight of the police, including a study of the various forms of oversight, and the applicable law and principles (A/HR/14/24/Add.8);
- (b) The obstacles to effective national commissions of inquiry, and the requirements for the creation and implementation of effective commissions;<sup>22</sup>
- (c) Best practices in witness protections programmes (A/63/313);
- (d) How States can make their military justice systems compatible with human rights standards (A/63/313).

<sup>18</sup> A/HRC/11/2, paras. 29-42 and A/HRC/4/20, paras. 16-17 and 63.

<sup>19</sup> E/CN.4/2005/7, paras. 63-64 and 80; A/HRC/4/20, paras. 54-62 and 66; and A/HRC/11/2/Add.6, paras. 83-84 and 115.

<sup>20</sup> A/HRC/4/20, paras. 39-53 and 65; A/HRC/11/2/Add.6, para. 84; and A/HRC/11/2/Add.5, para. 23.

<sup>21</sup> A/HRC/8/3/Add.3, paras. 76-78; E/CN.4/2006/53/Add.4, paras. 21-24 and 32-38; and A/61/311, paras. 55-64.

<sup>22</sup> A/CN.4/2006/53 and A/HRC/8/3.

55. Mission reports have also addressed the important role of international and non-governmental actors, including NGOs, national human rights institutions, OHCHR, and the International Criminal Court, in promoting accountability.

## **H. Reparations of killings**

56. Whenever a State is responsible for an unlawful killing, international law requires reparations in the form of compensation and/or satisfaction. This obligation is based in general customary international law, as well as duties arising from human rights and humanitarian law.<sup>23</sup> The State is also required to ensure that victims have access to remedies, including judicial remedies, for violations of their rights.

57. As a general matter, a great deal more can and must be done by States to meet their reparations obligations. Governments in many countries visited by the mandate, such as Kenya and Sri Lanka, have not met their obligations, either because they have not created reparations programmes, or because programmes are difficult for victims' families to access, or because tort remedies have undue jurisdictional impediments. Reparations should also be adequately provided for under post-conflict transitional justice mechanisms. This is often not the case (see A/HRC/14/24/Add.2).

58. Increasingly, and out of concern that paying "reparations" would be an admission of State wrongdoing, Governments involved in armed conflict have created other forms of payments. These "ex gratia" or "condolence" payments are often paid to the families of civilians killed during armed conflict. This practice, particularly by the United States in Afghanistan and Iraq, has important benefits, although problems remain in administration and distribution.<sup>24</sup> It does not, however, absolve States of their responsibility to acknowledge wrongdoing where it has occurred.

## **I. Victim groups**

59. Understanding the dynamics and causes of killings in particular situations will often require a focus on the victims' membership of especially vulnerable groups. Thus, for example, building upon Ms. Jahangir's work (see for example E/CN.4/2000/3, paras. 78-84), my reports have addressed the particular vulnerability of women in relation to practices such as honour killings, domestic violence, sexual violence as a cause of death, "femicide" and killings of "witches".<sup>25</sup> Country reports have addressed other vulnerable groups, including: refugees; indigenous persons; those deemed to be "socially undesirable"; suspected criminals; children; the elderly; the disabled; those perceived to be or identifying as gay, lesbian, bisexual or transsexual; human rights defenders; and journalists.

## **J. Mandate and working methods**

60. I have placed particular emphasis on enhancing understanding of the scope of the mandate and of the working methods adopted. In addition to ensuring continuity with the work of my predecessors in relation to the types of violations dealt with and the mandate's legal framework (see E/CN.4/2002/74, para. 8), I have:

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<sup>23</sup> A/HRC/11/2/Add.4, para. 35, footnote 35.

<sup>24</sup> *Ibid.*, paras. 35-36 and A/HRC/11/2/Add.5, paras. 67-66.

<sup>25</sup> See E/CN.4/2004/7, paras. 66-69; A/HRC/11/2/Add.4, paras. 63-64; A/HRC/4/20/Add.2, paras. 22-26; A/HRC/11/2/Add.3, paras. 49-51, 87; and A/HRC/11/2, paras. 43-59, 68.

- (a) Limited the overall number of communications sent in order to be able to devote more attention to detailed legal analysis within the communications;
- (b) Introduced a system of evaluating the adequacy or otherwise of responses received from Governments;<sup>26</sup>
- (c) Instituted follow-up reports on country missions;<sup>27</sup>
- (d) Provided detailed legal analysis to back up interpretations adopted by the mandate;
- (e) Sought to raise the Council's awareness of the consequences of persistent non-responses to requests to undertake country visits (E/CN.4/2006/53, paras. 13-16);
- (f) Elaborated upon the terms of reference of the mandate and the types of killings it covers (E/CN.4/2005/7, para. 6).

## IV. Future research

61. It is not enough just to denounce violations. Many of the issues that arise are complex and demand analysis if the mandate is to achieve its full potential. Based on my own experience over the past six years, I would encourage research by those in the field on the following issues, among others.

### A. Sexual violence and unlawful killings

62. The link between gender-based violence and killings has been a central theme in many situations, whether concerning "honour" killings, "femicide", domestic violence or "witchcraft" killings.<sup>28</sup> But situations in which women are literally raped to death have actually been significantly underreported, and the links between rape and killings have been under-studied.<sup>29</sup> While men are also subject to sexual violence linked to killings, women have been subject to such killings in situation after situation around the world:

- (a) Women are killed if they resist rape or are murdered immediately after it;
- (b) Women are taken into sexual slavery and then killed;
- (c) Family members (generally men) or others who attempt to stop a rape, or refuse orders to rape their female relatives, are killed (S/2009/693, para. 80);
- (d) Women who have been attacked die as a result of rape-related injuries, or contracting HIV/AIDS or other sexually transmitted diseases (A/HRC/14/24/Add.3).

63. Rape/killings may be particularly brutal when conducted as reprisal attacks for alleged cooperation with an opposition group. Deaths are more likely in remote areas where victims have little or no access to health services (A/HRC/14/24/Add.3). A consistent problem, however, is that data collection in relation to this phenomenon is especially difficult. In conflict situations, resources are scarce and survivors become the priority. Privacy concerns, combined with problems of stigmatization and reprisals, also restrict the possibilities for meaningful data collection. But it is important that the scale and severity of the problem should not be underestimated. More research is needed in order to: ensure that

<sup>26</sup> E/CN.4/2005/7, paras. 14-15, 22-23 and E/CN.4/2006/53, paras. 8-12.

<sup>27</sup> E/CN.4/2005/7, paras. 29-31 and E/CN.4/2006/53, para. 19.

<sup>28</sup> See also A/HRC/11/2/Add.7, paras. 18-19 and A/HRC/11/2, paras. 43-59 and 68.

<sup>29</sup> For recent exceptions, see A/HRC/14/24/Add.3 and S/2009/693, annex, para. 79.

the full extent of the phenomenon is recognized; combat impunity; and understand better the dynamics which are at play and thus help craft strategies for the future.

## **B. Crime scenes and forensic evidence**

64. The capacity to collect and analyse forensic evidence is crucial in combating impunity for unlawful killings. Yet it is too often severely lacking, or even entirely absent. Where there is no forensics capability, successful prosecutions can be extremely difficult and reliance on confessions, no matter how obtained, becomes the preferred option. This is especially so where witnesses are afraid to testify, as is often the case where police or armed groups were responsible for the killing. In countries with a basic forensics capacity, resources, training or evidence-gathering standards are often very limited. In these circumstances, even basic evidence (such as X-rays or gun powder analysis) may not be examined or analysed correctly (A/HRC/11/2/Add.2, paras. 54-56). In other countries, the problem may be one of institutional independence – if the forensics office is not independent from police who may have been involved in an unlawful shooting, it can be all too easy for police to hide or manipulate evidence.

65. The following issues would benefit from further research:

(a) What is the minimum forensics capacity that a State should have in order to meet its international legal obligations to investigate and prosecute unlawful killings? How can the international community best support the development of forensic labs and expertise in developing States?

(b) What are the advantages of different institutional models employed in different countries?

(c) What are best practices with respect to forensics?

(d) How should human rights standards influence the approach to forensics?

(e) Where in the forensics process do obstacles to effectiveness and independence most often occur? For example, is evidence generally lost or manipulated at the crime scene itself, when the body is examined, or when evidence is provided to prosecutors? What steps can be taken at each stage to mitigate obstacles?

## **C. Non-State armed actors and their use of the “death penalty”**

66. In a number of countries visited, including Afghanistan, the Central African Republic, Colombia and Kenya, non-State armed actors have set up “tribunals” to hear cases of alleged civilian wrong-doing. Some of these trials have resulted in death sentences. In some cases, the process represents little more than the thinly veiled murder of an opponent. In others, the group may, in the absence of any State presence, be enforcing a rudimentary criminal code.

67. This “black market criminal justice” phenomenon receives almost no attention, although its significance would clearly warrant it. Comparative research should be undertaken on whether such processes observe basic fair trial standards, their composition, the types of crimes tried, when and how often the death penalty is prescribed, and the responses (if any) of States and the international community to such incidents.

## D. Mass graves and State responsibility

68. I have visited or been informed of mass grave sites in Afghanistan, Albania, Colombia and Kenya. In Kenya, around Mt. Elgon, I learned of sites that had not been secured or preserved, and whose victims had not been identified. In Albania, there are numerous reports of alleged undiscovered mass grave sites, related both to communist-era abuses, and separately to allegations of killings after the Kosovo war (A/HRC/14/24/Add.9). In Afghanistan, I visited Dasht-e-Leili, suspected of containing the remains of some 2,000 Taliban fighters killed after surrendering in 2001. Credible reports suggest that those responsible had later removed bodies in order to destroy the evidence (A/HRC/11/2/Add.4, para. 66).

69. States are obligated to investigate alleged violations of the right to life. But what, specifically, does this entail with respect to mass graves? Must certain steps be taken when there are credible allegations of the existence of such a site? What can be learned from the experience of States in dealing with mass graves on their territory? What steps should be taken to secure the site, to prevent tampering and to protect witnesses, to identify bodies and notify family members? How can the Special Rapporteur most productively respond to allegations of mass graves? Should there be some international resources available, beyond those provided by groups like Physicians for Human Rights, to conduct independent and expert investigations? The effectiveness of efforts to prevent impunity depends significantly on answering such questions.

## E. Civil defence groups

70. The mandate has addressed the use of force by private actors in various contexts. One particular subgroup of non-State actors – civilians who band together to form “civil defence groups” or “village self-defence forces” with a view to exercising force against other armed actors – raises complex issues that merit further research.

71. Such groups are most likely to exist when:

(a) Civilians face daily threats to their lives and property in situations of armed conflict, high levels of lawlessness (especially attacks on villages by bandits), or similar heightened insecurity; and

(b) The State’s security presence is minimal or entirely absent because, for example, territory is remote, or held or contested by rebel groups or criminal gangs; and/or

(c) State forces are themselves a source of threat.<sup>30</sup>

72. The international community has long been concerned about the existence of such groups, and the risks they pose,<sup>31</sup> but there has been little analysis or understanding of how best to mitigate the risks, and when or how such groups should be supported or disbanded. On the one hand, civil defence groups may be the only form of security for local communities. In some circumstances – for instance, out of strict necessity and in defence against imminent threats to life – the formation of such groups may be appropriate, and their use of force may be lawful.

<sup>30</sup> E/CN.4/1994/7, paras. 719-720; E/CN.4/1994/7/Add.1; A/HRC/4/20/Add.2; A/HRC/11/2/Add.6; and A/HRC/14/24/Add.3.

<sup>31</sup> See Commission on Human Rights resolution 1992/57; E/CN.4/1992/18; E/CN.4/1993/34; and E/CN.4/1994/38.

73. On the other hand, experience shows a significant risk that such groups will commit serious human rights abuses with impunity, or evolve into unaccountable militias or bandit forces.<sup>32</sup> This remains a problem in both the Democratic Republic of the Congo and the Central African Republic.<sup>33</sup>

74. Given the prevalence of civil defence groups around the world, and their potential either to protect or to violate the right to life, further research is needed to study the conditions under which they come into existence, the factors that contribute to illegal conduct, and what Governments and the international community can do to mitigate such risks. It is clear that human rights law requires Governments to exercise due diligence in preventing such groups from committing abuses, and to investigate, prosecute and punish violations when they occur. But difficult questions include whether, in what circumstances, and how Governments could or should legally support or encourage the development of civil defence groups.

## F. Corruption and unlawful killings

75. Corruption has been a significant issue in most of the countries visited.<sup>34</sup> Initial appearances notwithstanding, there is often a strong link between corruption and killings. Corruption can contribute to the commission of unlawful killings (e.g. violence by police against civilians who refuse to pay a bribe), to impunity for killings (through bribery of police, prosecutors or judges), and can divert essential resources from much needed Government programmes that would help to reduce killings. Thus, corruption can be both a cause and a consequence of killings and of impunity.

76. Pervasive and deep-rooted corruption is difficult to change, but in the absence of such change there is often little point in recommending sweeping reforms of police or legal systems. Research could explore the factors that contribute to or reduce killings in corrupt contexts and the effectiveness of measures to reduce corruption and their impact on killing levels. Such measures might include requiring audits of Government institutions, obligating senior officials to publicly declare their assets (A/HRC/14/24/Add.5); instituting zero tolerance policies (E/CN.4/2006/53/Add.4, para. 57); strengthening police oversight mechanisms (idem); instituting radical structural reforms (A/HRC/11/2/Add.6, para. 95), or tailoring witness protection programmes specifically to guard witnesses against police reprisals and widespread witness intimidation.<sup>35</sup>

77. Research could also examine the role and impact of donor assistance for anti-corruption initiatives. While, for example, donor aid to improve salaries for police forces and the judiciary can be necessary and welcome, it is often only one part of the systemic reforms required to address corruption, violence and a culture of impunity (A/HRC/8/3/Add.3, paras. 90-91). Aid may be more effective when part of a coordinated system of donor-provided funding for rule of law programmes, defined broadly to include a variety of institutions and all levels of society, but the exact parameters, needs, and outcomes of such initiatives needs further study.

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<sup>32</sup> E/CN.4/1994/7, paras. 719-720 (referring to the Bangladesh Rifles and Ansar Guards in Bangladesh, civil self-defence patrols in Guatemala, *rondas campesinas* and *comités de defensa civil* in Peru, Citizen's Armed Forces Geographical Units in the Philippines and the *Kontrgerilla* and Village Guards in Turkey).

<sup>33</sup> A/HRC/14/24/Add.3 and A/HRC/14/24/Add.5.

<sup>34</sup> E/CN.4/2006/53/Add.4, paras. 39-41 and 48 (Nigeria); A/HRC/11/2/Add.6, para. 31 (Kenya); and A/HRC/11/2/Add.3, paras. 83-86.

<sup>35</sup> A/HRC/11/2/Add.2, para. 61 and A/HRC/11/2/Add.7, para. 38.

## G. United Nations peacekeeping and multinational force operations

78. The United Nations currently deploys more peacekeepers than at any other time in its history. Some peacekeeping missions, like the one in the Democratic Republic of the Congo, have very strong mandates to protect civilians, use armed force and support the national military. Missions are also increasingly mandated to perform a range of activities, from active combat to development, justice reform and human rights monitoring. Recent years have also seen an increase in regional and international multinational force deployments, including where multinational forces are a party to an armed conflict (as in Iraq or Afghanistan).

79. In almost all cases, the various international missions I have encountered have been very cooperative and I have benefited from their knowledge and their facilities. This has been true even when my mandate has required me to scrutinize relevant aspects of the work of those missions.<sup>36</sup> The increased use and changing nature of peacekeeping and multinational force operations raise many questions with respect to the human rights and humanitarian law obligations of international forces, and accountability for violations of those obligations. The development of practical standards necessary to answer many such questions is still at an early stage.<sup>37</sup> My experience indicates that research could usefully focus on the following issues:

### (a) Participation in peacekeeping and multinational force operations by militaries accused of human rights and humanitarian law abuses:

- (i) When, and under what conditions, if any, should such an accused military unit be excluded from regional or international peacekeeping operations or other military engagements?
- (ii) How should the international community respond to credible allegations that a military contingent in a peacekeeping or multinational force operation committed human rights or humanitarian law abuses? What constitutes a “credible” allegation? How should investigations be conducted, and by whom?

### (b) United Nations obligations with respect to the national militaries it supports

- (i) Where support is provided to a national military, what are the obligations of the United Nations when the former engages in alleged human rights or humanitarian law abuses? At what point does the United Nations become complicit in, or legally responsible for, the abuses committed?
- (ii) What forms of conditionality are most effective and should be used as the basis for United Nations support for a national military? How can public transparency of conditions be secured? What steps should the United Nations take to ensure that conditions are met, and what should be done if conditions are violated?
- (iii) Which United Nations agency should be tasked with an independent investigation of abuse allegations? Should there be a separate and independent United Nations human rights investigative entity? What level of investigation is required?

<sup>36</sup> A/HRC/11/2/Add.3 and 4 and A/HRC/14/24/Add.3.

<sup>37</sup> See, for example, the excellent 2005 report of Prince Zeid Ra'ad Zeid Al-Hussein on sexual exploitation by peacekeepers (A/59/710).

(iv) Where serving military personnel are suspected of war crimes, what strategies and tools can effectively be used to: remove the suspect from the position of authority without inciting a violent backlash or unravelling any peace agreements; disassemble and/or disarm the unit(s) allied to the suspect; and ensure that the suspect is effectively investigated and prosecuted?

**(c) Obligations of donors to those militaries accused of human rights and humanitarian law abuses**

(i) What restrictions do and should apply to a Government's assistance to a foreign military? How effective are restrictions that condition assistance to foreign militaries on certification that they have not committed gross human rights violations? What legal responsibilities does a Government have to ensure that the aid, resources or training it provides is not used to commit abuses, or by units that have committed abuses?

(ii) In response to credible obligations of abuses by a State's military, what are the international legal obligations of countries that provide funds or other assistance? At what point does or should the donor State incur responsibility for abuses by the supported military?

**(d) Accountability for unlawful killings committed in the course of peacekeeping or multinational force operations**

(i) What best practices should the United Nations or multinational forces follow to ensure that civilian or other unlawful deaths: are reported accurately; recorded and made public; and independently and effectively investigated, prosecuted and punished?

(ii) What best practices can ensure that victims' families have adequate access to information about investigations, prosecutions and their outcomes?

(iii) What jurisdictional obstacles to investigation and prosecution might arise (e.g. between the host State and the United Nations or multinational force), and how might they be resolved?

(iv) What should model memoranda of understanding (between the United Nations and troop-contributing countries) or status of force agreements provide with respect to jurisdictional issues to ensure accountability obligations are met?

(v) What specific responsibilities does a host State have to ensure that United Nations or multinational forces comply with their human rights and humanitarian law obligations? What should happen if a State does not abide by obligations to investigate and prosecute?

**(e) Human rights monitoring and promotion within a United Nations peacekeeping mission**

(i) The human rights functions of the United Nations often fall within the general mandate of the country mission. Thus, for example, in both the Democratic Republic of the Congo and the Central African Republic, OHCHR does not have an independent office, but its functions are integrated into the broader mission. In some situations there may be good reasons for this. In others, political considerations may curtail the effectiveness of the important work done by human rights officers. Consideration needs to be given to how, in such contexts, human rights monitoring and promotion is best facilitated.

(ii) Consideration should also be given to the circumstances in which United Nations officials, for human rights and humanitarian purposes, should maintain contact with rebel or insurgent groups.

80. Given the importance and complexity of these issues, it would be especially beneficial if a thorough independent study was commissioned.

## H. Demobilization and unlawful killings

81. In post-conflict countries, or countries seeking to transition out of conflict, disarmament, demobilization and reintegration (DDR) programmes for former rebels or other armed groups are critical to ending violence. However, my visits to States such as the Central African Republic, the Democratic Republic of the Congo and Colombia indicate that delayed or poorly conceived or implemented DDR programmes may continue or start new cycles of violence.

82. In the Democratic Republic of the Congo, the poorly planned rapid integration (without vetting for war crimes or other violations) of over 12,000 rebels into the national army contributed to large-scale massacres of civilians by those newly integrated forces (A/HRC/14/24/Add.3). Colombia is an example of a Government that achieved partial success in its DDR process – 48,616 illegal armed group members demobilized between 2002 and 2009. Yet because the Government did not adequately dismantle command structures or investigate and prosecute crimes, new illegal armed groups, composed in large part of former paramilitaries, have formed and have allegedly committed over 4,000 killings between 2002 and 2008 (A/HRC/14/24/Add.2, paras. 53-54 and 61). In the Central African Republic, delays and a lack of substantive progress on the country's DDR programme heighten the risk that rebel groups will engage in more violence and killings in the lead-up to 2010 elections (A/HRC/14/24/Add.5).

83. In recent years, significant attention has been paid to formulating effective DDR programmes from the peacekeeping and security perspectives – addressing the political, military, technical, security, humanitarian and socio-economic needs of both victims and ex-combatants.<sup>38</sup> But more research on DDR is needed from a human rights perspective. The challenges faced by Governments that, as a result of brutal and often decades-long conflicts, must re-build war-torn societies and fragile or non-existent State institutions cannot be underestimated. In order to assist policymakers, peacekeepers, civil society and human rights professionals to formulate and implement programmes that respect and ensure the right to life even – and especially – in unstable societies, in-depth and systematic research on the following would be beneficial:

(a) The relationship between different kinds of DDR programmes and their effectiveness in eliminating unlawful killings or other grave human rights abuses;

(b) The relationship between DDR programmes and transitional justice mechanisms as a means of eliminating unlawful killings;

<sup>38</sup> Executive Committee on Humanitarian Affairs Working Group on Disarmament, Demobilization, and Reintegration, *Harnessing Institutional Capacities in Support of the Disarmament, Demobilization and Reintegration of Former Combatants* (2000); Report of the Secretary-General on the prevention of armed conflict, (A/55/985-S/2001/574); Report of the Special Committee on Peacekeeping Operations, "Comprehensive review of the whole question of peacekeeping operations in all their aspects" (A/57/767); Report of the Secretary-General on disarmament, demobilization and reintegration (A/60/705).

(c) The extent to which DDR programmes contribute (or not) to accountability for serious human rights violations.

## I. Reparations for unlawful killings and amends for civilian harm

84. Human rights law, humanitarian law and the international law on State responsibility require that individuals should have an effective remedy when their rights are violated, and that the State must provide reparations for its own violations.<sup>39</sup> States must ensure that victims' families are able to enforce their right to compensation, through judicial remedies where necessary. In many cases, reparations can mean the difference between the destitution of innocents and their families, and their ability to rebuild their lives and livelihoods.

85. Yet there is a dearth of legal and factual research on the precise content of States' legal obligations and how those obligations are, or should be, implemented in practice, as well as on emerging State practice relating to amends for lawful harm to civilians during conflict.

86. During visits to countries experiencing armed conflict or other large-scale violence, I have found that States rarely complied with their reparations obligations,<sup>40</sup> although some States, such as the United States and the United Kingdom of Great Britain and Northern Ireland, have made commendable efforts.<sup>41</sup> Those efforts include monetary payments to the families of those killed even in lawful attacks. Such payments – unlike formal reparations – are offered without legal implication and as a gesture of condolence and respect. The Government of the United States also makes amends by providing livelihood assistance programmes to individuals (e.g. skills training to enable widows to make a living) or communities (e.g. to repair damage caused by military operations). Most countries with combat troops in Afghanistan now offer monetary payments for lawful civilian harm, but programme implementation suffers from flaws, including a lack of common funding among International Security Assistance Force (ISAF) partners, inconsistency due to an over-reliance on commander discretion and different troop-contributing country rules and practices, lack of access for civilians seeking payments, lack of a formal ISAF programme, and a lack of transparency. Some other States have also announced amends programmes in different contexts. In March 2010, Yemen promised payments to civilians killed in counter-terrorism operations. These examples illustrate an expanding practice which is not yet being systematically tracked or instituted by the international community.

87. Legal and factual research on extrajudicial killings and reparations in the context of armed conflict could:

- (a) Clarify the forms and amounts that reparations currently take;
- (b) Promote best practices in the form and amounts of reparations;
- (c) Assess how best to facilitate victims' and family members' access to reparations;
- (d) Study how to promote consistency in amounts paid;

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<sup>39</sup> Human Rights Committee, general comment 31 (2004), para. 16; J-M. Henckaerts & L. Doswald-Beck, *Customary International Humanitarian Law* (International Committee of the Red Cross, 2005), Rule 150; and *Official Records of the General Assembly, Fifty-Sixth Session, Supplement No. 10* (A/56/10), Draft articles on responsibility of States for internationally wrongful acts, para. 76.

<sup>40</sup> E/CN.4/2006/53/Add.5, para. 75; A/HRC/8/3/Add.3, para. 63; and A/HRC/11/2/Add.6, paras. 81-82.

<sup>41</sup> A/HRC/11/2/Add.4, paras. 37 and A/HRC/11/2/Add.5, paras. 67-68.

- (e) Assess what measures (such as repairing facilities or providing training) best address different kinds of losses;
  - (f) Assess how States should provide reparations for losses caused by their private security contractors;
  - (g) Study how States should best ensure transparency (consistent with individuals' privacy and security needs) about payments;
  - (h) Clarify the relationship between reparations and amends.
88. Comparable research on amends could:
- (a) Document existing State practice, including in relation to civilian deaths, injuries and property damage through lawful acts;
  - (b) Promote best practices in terms of the form and amounts of amends such as monetary payments, livelihood assistance, community aid and rebuilding, and psycho-social efforts;
  - (c) Assess how best to facilitate victims' and family members' access to amends;
  - (d) Study how to ensure consistency and/or appropriate cultural context in amounts paid;
  - (e) Assess how parties to a conflict can ensure amends for losses caused by lawful conduct of their private security contractors.

89. Outside the context of armed conflict, research is also needed on the practices of States in providing effective remedies for violations of the right to life. What obstacles do families experience when attempting to enforce their right to a remedy? What statute of limitations (if any) commonly apply where a victim has been killed? How can States best ensure that unlawful killings are fairly compensated? Where the State is responsible for killings on a large scale, what systems or programmes can best provide and distribute reparations?

## V. Conclusion

90. **Since this report consists largely of recommendations, and given space constraints, I will not repeat the many recommendations here.**

91. **In terms of a conclusion, a paradox emerges from the preceding review of the mandate's impact. In formal terms, the Council itself only rarely takes any specific action, even when very serious violations of the prohibition of extrajudicial executions are apparent. Nor does it generally debate the details of country visit reports or troubling communications exchanges. And there is immense reluctance to respond to the persistent failure of certain States to agree to visit requests over a long-period of years. In terms of real impact, however, it is clear that the broad range of activities undertaken by the mandate pursuant to the Council's authorization have mattered a great deal. Lives have been saved, lethal practices have been abandoned, greater caution has been shown, and awareness of the issues has grown at all levels. It is clear, nevertheless, that if the Council has the political will it can do vastly more to prevent unlawful killings around the world and to put in place much more effective mechanisms for accountability when atrocities do occur.**

## Annexes

### I. List of entities to which allegation or urgent action letters were sent

December 2004 – March 2009

#### States

Afghanistan, Algeria, Argentina, Armenia, Australia, Bahrain, Bangladesh, Barbados, Bolivia (Plurinational State of), Brazil, Burundi, Cameroon, Chad, Chile, China, Colombia, Côte d'Ivoire, Democratic People's Republic of Korea, Democratic Republic of the Congo, Djibouti, Ecuador, Egypt, Equatorial Guinea, Ethiopia, Fiji, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Jamaica, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Liberia, Libyan Arab Jamahiriya, Madagascar, Malaysia, Maldives, Mauritania, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Niger, Nigeria, Pakistan, Papua New Guinea, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Singapore, Somalia, Spain, Sri Lanka, Sudan, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Yemen and Zimbabwe.

#### Other entities

2. The Palestinian Authority, the Liberation Tigers of Tamil Eelam (LTTE), and the United Nations Stabilization Mission in Haiti (MINUSTAH).

## II. Assessing State responsiveness to communications

1. A systematic review of communications from December 2004 to March 2009<sup>a</sup> yields the following findings:

- 523 communications relating to unlawful killings were sent (an average of 130 letters per year).
- 231 urgent appeals, 276 allegation letters, and 16 follow-up letters were sent.
- Communications were sent to countries in all regions (a total of 87 countries and 3 other actors).<sup>b</sup>
- The letters concerned more than 6,250 individuals (an average of over 1,560 individuals per year).
- Most of the letters concerned death penalty cases (over 150 letters), attacks or killings (over 90 letters)<sup>c</sup>, and deaths in custody (over 80).
- The response rate to communications was generally poor. Of the 523 communications sent, 256 (or 49%) were not responded to at all. A “no response” rate of roughly 50% was observed in each year during the period under review.
- There were 118 responses categorized as “largely satisfactory” (23% of the total, or approximately 50% of the letters responded to). “Largely satisfactory” is the most positive characterization given to a Government’s reply in Special Rapporteur communications reports in prior years.<sup>d</sup> It denotes a reply that is responsive to the allegations and substantially clarifies the facts, but does not imply that the Government’s actions necessarily complied with international human rights law. Nevertheless, it is encouraging that when Governments do respond, half of their letters are largely responsive to the allegations made.
- Of the countries which received letters, 30% received only one letter during the period under review. Over 70% received five or less letters. The 15 countries that received the most communications were: Iran (Islamic Republic of) (63), Colombia (28), Pakistan (28), Sri Lanka (24), Saudi Arabia (22), China (19), the United States of America (18), India (18), Nepal (17), Yemen (17), the Sudan (16), Iraq (14), the Philippines (14), Bangladesh (14), and Brazil (13).<sup>e</sup> Letters to these countries represent just over 60% of the total number of communications sent.<sup>f</sup>

<sup>a</sup> The review relies on the data provided in each annual communication report. It does not cover letters sent between March 2009 and April 2010 since sufficiently detailed information on those letters is not yet available. The communications addendum to this report contains letters sent from 16 March 2009 to 15 March 2010, and replies received from 1 May 2009 to 30 April 2010. During that period 102 communications were sent to 44 countries and 1 other actor. These included 61 urgent appeals and 41 allegation letters. The main issues covered in the communications were: the death penalty (31), deaths in custody (14), the death penalty for minors (7), excessive use of force (16), impunity (3), attacks or killings (23), armed conflict (3), death threats (2) and others (3).

<sup>b</sup> See Appendix I for a list of the letters sent.

<sup>c</sup> The category of “attacks or killings” covers acts by State security forces, or by paramilitary groups, death squads, or other private forces cooperating with or tolerated by the State.

<sup>d</sup> The other categories are: “cooperative but incomplete response”, “allegations rejected but without adequate substantiation”, “receipt acknowledged”. See the annual communications reports of the Special Rapporteur for more detail.

<sup>e</sup> The fact that these States received the most communications should not necessarily be taken as an indication that they have the most significant problems of unlawful killings. This is because letters are

- Of the 15 countries that received the most communications, 7 failed to respond to more than 50% of letters they received: India (no reply to 16 of 18 letters), Iraq (no reply to 11 of 14 letters), the Sudan (no reply to 12 of 16 letters), Saudi Arabia (no reply to 16 of 22 letters), the United States (no reply to 12 of 18 letters), Brazil (no reply to 8 of 13 letters), and the Islamic Republic of Iran (no reply to 37 of 63 letters). This “response rate” may not necessarily be a good indicator of country cooperation in all cases. For example, countries that received the most letters are effectively being asked to cooperate with Special Procedures at a higher level, and, where many communications are sent, the country may not have the resources necessary to prepare responses. Or, the rate by itself may provide only partial information about responses. Brazil, for instance, has a poor overall response rate (62% no responses), but did submit 4 (31%) “largely satisfactory” responses. Likewise, the Islamic Republic of Iran, whose “no response” rate was 59%, submitted 9 “largely satisfactory” responses.
- Of the 15 countries that received the most communications, those that performed relatively well in responding (where their “no response” rate was less than 30 percent) included Sri Lanka, China, Yemen, the Philippines, and Colombia.
- Of the 15 countries that received the most communications, those with more than 30% of their responses categorized as “largely satisfactory” were: Colombia, Sri Lanka, China, the Philippines, and Brazil.
- The response rate of countries receiving just one letter in the period under review was also low. Of the 27 countries which were sent one letter, 16 (59%) did not respond at all.<sup>g</sup>

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sent to a country based on several factors, including whether an allegation was received by the Special Rapporteur (thus letters sent can depend on the resources and focus of NGOs and others), the ease with which information about incidents can be obtained, and the extent to which there were indications of an insufficient domestic response.

<sup>f</sup> Perhaps surprisingly, the greater proportion of communications sent to this small number of countries does not substantially skew the overall response rate. In order to assess this, the rate was recalculated on a number of bases. First, of the 15, those countries whose “no response” rate was greater than 50% were excluded from the calculation. This resulted in a slightly improved “no response” rate of 40%. (Excluding these countries (7 States), 359 communications were sent. Of these, there were 144 no responses.) If all top 15 countries are excluded, the response rate is 53% - roughly that of the overall rate. (Excluding the 15 countries which received the most letters, the total number of letters sent was 198. Of these, there were 105 “no responses”).

<sup>g</sup> Armenia, Argentina, Kuwait, Barbados, Fiji, Turkmenistan, Uganda, Lebanon, United Arab Emirates, Jordan, Liberia, Trinidad and Tobago, Namibia, Equatorial Guinea, Guyana and Peru.