

## VICTIM GROUPS

This Chapter of the Handbook collects the observations and recommendations of the UN Special Rapporteur on victim groups in the extrajudicial executions context. This section focuses on civilians in armed conflict, refugees and internally displaced persons and women. Attention is also given to particular groups, such as human rights defenders and activists, persons who have been victimized because they assist the Special Rapporteur, indigenous persons, victims killed in land-use disputes, alleged criminals, prisoners, journalists and gay, lesbian, bisexual, transsexual and queer persons. Finally, this section includes the abuses and deaths of persons considered as “social undesirables” and cases of political assassinations.

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## A. CIVILIANS IN ARMED CONFLICT

*Report on Mission to the Philippines (A/HRC/8/3/Add.2, 16 April 2008, ¶¶ 30-31, 35, 77, Notes):*

*The Special Rapporteur visited the Philippines from February 12 to February 21, 2007. The conflict between the Government and the New People's Army (NPA), the armed group of the Communist Party of the Philippines, has led to the killings of civilians, and these are seldom by accident. The killings in Western Mindanao, for instance, illustrate the situation of civilians as victims in armed conflict.*

### Killings by the New People's Army

30. The Government provided a list of 1,335 individuals, two-thirds of them civilians, allegedly killed by the NPA.<sup>1</sup> Despite numerous requests for any documentation substantiating any of these cases, virtually none was provided. While I have no reason to doubt that the list represents a good faith accounting, without further documentation it is impossible to confirm its reliability or to evaluate which killings violated the humanitarian law of armed conflict.

31. Discussions with NDF representatives and review of published CPP/NPA/NDF documents did, however, reveal several practices that are inconsistent with international human rights and humanitarian law. First, the CPP/NPA/NDF considers "intelligence personnel" of the AFP, PNP, and paramilitary groups to be legitimate targets for military attack. Some such persons no doubt are combatants or civilians directly participating in hostilities; however, the CPP/NPA/NDF defines the category so broadly as to encompass even casual Government informers, such as peasants who answer when asked by AFP soldiers to identify local CPP members or someone who calls the police when faced with NPA extortion.<sup>2</sup> Killing such individuals violates international law.

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<sup>1</sup> In my 21 February 2007 statement, I referred to 1,227 individuals alleged to have been killed by the NPA. This was the figure most commonly cited by Government officials, but the most recent data provided by the Government refers to 1,335 individuals and covers the period of 1 January 2000 to 31 January 2007.

<sup>2</sup> NDF representatives called my attention to a formal declaration it had made (*Declaration of Undertaking*):

The NDFP regards as legitimate targets of military attacks the units, personnel and facilities belonging to the following:

- a. The Armed Forces of the Philippines
- b. The Philippine National Police
- c. The paramilitary forces; and
- d. The intelligence personnel of the foregoing.

Civil servants of the GRP are not subject to military attack, unless in specific cases they belong to any of the four abovestated categories.

The interpretation given the concept of "intelligence personnel" is quite broad, including ordinary civilians who provide information to Government forces. NDF representatives stated that if there is certainty that someone is a Government informant, then he or she is considered a legitimate military target. If there is doubt as to whether someone is a Government informant, a process of escalating responses is followed: He or she will be approached and given a warning, then he or she will be asked to leave the area, and finally a judicial process will be commenced before a people's court, perhaps ultimately resulting in arrest and punishment. Generally, however, they said that such people simply leave the area. When I inquired

[...]

### Killings Related to the Conflicts in Western Mindanao

35. I received numerous well-substantiated allegations of extrajudicial executions on Jolo island. Three factors distinguished these from executions in other areas. First, the violence was relatively indiscriminate. The conflict between the Government and the NPA involves precisely targeted violence. Civilians are killed, but seldom by accident. In contrast, on Jolo, persons are abducted or arrested, and sometimes extrajudicially executed, for little or no apparent reason. In addition, military operations involve inherently indiscriminate tactics, such as aerial bombardment, artillery shelling, and helicopter strafing. Second, witnesses live in even more fear than in other parts of the country, and I received information regarding cases that had never been reported to the PNP. Third, responsibility for abuses is often difficult to assign. It is not uncommon for the Government to blame the ASG or MNLF and for victims to blame the AFP. In the absence of effective investigations, the truth is often difficult to determine. Regardless of which group is to blame for particular abuses, it is clear that abuses increase dramatically during major AFP operations against the ASG or MNLF. The CHRP has done excellent reporting work in the Sulu archipelago, and it should improve its capacity to deploy personnel for monitoring and protection as soon as military operations commence.

[...]

### Recommendations

77. The CPP/NPA/NDF should stop using people's courts that do not comply with human rights and humanitarian law standards and should ensure that lethal force is directed only against combatants and civilians directly participating in hostilities.

[...]

### Notes

The Government and the NDF signed the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) on 16 March 1998. The agreement affirms prohibitions on "summary executions", "involuntary

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regarding the alleged killings of persons for being Government officials and for refusing to pay revolutionary taxes, the importance of how "intelligence personnel" is interpreted was further demonstrated. NDF representatives asserted that insofar as Government officials may have been killed, this would have been due to the role that particular Government officials had played in providing Government forces with intelligence information. Similarly, NDF representatives stated that they were unaware of any case in which tax evasion as such had resulted in the NPA killing someone. They explained that tax collection generally involves a negotiation to settle on a mutually agreeable amount. If that negotiation breaks down and the firm or individual refuses to pay taxes, then the NPA might take such actions as the confiscation or destruction of assets. They stated that when someone has been killed in connection with tax collection efforts, this has been because he or she tipped off the AFP or PNP with a view to getting CPP or NPA members arrested to avoid making payment.

disappearances”, “massacres”, “indiscriminate bombardments”, and the targeting of “civilians or those taking no active part in the hostilities[,] persons who have surrendered[, and] those placed *hors de combat* by sickness, wounds, or any other cause” (Part III, Art. 2(4); Part IV, Arts. 2, 3(1), 4(2)). CARHRIHL also provided for the establishment of a Joint Monitoring Committee (JMC) that would be composed of three members chosen by the Government’s negotiating panel and three by the NDF’s negotiating panel. (Part V). The JMC was to “receive complaints of violations of human rights and international humanitarian law and all pertinent information and shall initiate requests or recommendations for the implementation” of CARHRIHL (Part V, Article 3). The members have been chosen, so that there are now Government and NDF “sections” of the JMC, but the JMC itself has never met.

***Report on Mission to Sri Lanka (E/CN.4/2006/53/Add.5, ¶¶ Summary, 4-5, 8-10, 13, 16-17, 20-23, 30-33, 48, 71, 85 ):***

The Special Rapporteur visited Sri Lanka from 28 November to 6 December 2005, at a time when the Ceasefire Agreement (CFA) of February 2002 between the Government and the rebel Liberation Tigers of Tamil Eelam (LTTE) was under unprecedented stress. Extrajudicial executions are a singularly important element in the exacerbation of the conflict. Many Tamil and Muslim civilians have been killed primarily because they have sought to exercise their freedoms of expression, movement, association, and participation in ways that are not supportive of one or other of the factions fighting the Government. And many others have been killed in retaliation or because they are deemed to be “sympathizers”.

[...]

#### Dynamics and Causes of Post-Ceasefire Killings

4. The conflict in Sri Lanka involves the intentional targeting of both combatants and civilians. The 2002 Ceasefire Agreement addressed both kinds of violence, committing the Government and the Liberation Tigers of Tamil Eelam (LTTE) to halt “offensive military operation[s]” as well as “hostile acts against the civilian population”. Until December 2005, the ceasefire between the parties’ armed forces had been largely respected, with only few exceptions. In contrast, the ceasefire in relation to civilians has consistently been broken by a series of so-called “political killings”.

5. The problem of political killings cannot be appreciated through statistics. Those dead since 2002 number in the hundreds, not the thousands, and it could be tempting to speak dismissively of a “high murder rate” or of an “imperfect but workable peace”. The social consequences of these political killings are, however, exponentially more severe than those that would follow from a comparable number of common crimes or random ceasefire violations. The purpose of these killings has been to repress and divide the population for political gain. Today many people - most notably, Tamil and Muslim civilians - face a credible threat of death for exercising freedoms of expression,

movement, association, and participation in public affairs. The role of political killings in suppressing a range of human rights explains why members of civil society raised this more than any other issue.

[...]

### The Cease-Fire and the Post-Ceasefire Killings

8. The conflict-related killings taking place in Sri Lanka today should be seen in the context of the Ceasefire Agreement (CFA) signed by the Government and the LTTE in February 2002. Both parties to the CFA have sought to consolidate and improve their positions by exploiting the ambiguities and opportunities presented by the terms of the agreement as well as weaknesses in its monitoring mechanism, the SLMM. The parties have continued to advance their interests, in significant part, by committing or permitting widespread killing.

9. When I talked with Government officials, members of civil society, and representatives of the LTTE, killings were often discussed as violations of one or another of the CFA's provisions. It was suggested implicitly that violations of one provision are justified by violations of some other provision by another group. This form of justification is without legal basis, but it is critical to understanding the logic of the post-ceasefire killings.

10. It is impossible to determine with precision the number of such killings. Virtually no deaths have been effectively investigated, and it is not always possible to distinguish common murders from conflict-related political killings. The most credible estimates that I received placed the total number of such in 2005 at over 300.<sup>3</sup>

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<sup>3</sup> The SLMM does not provide detailed data on conflict-related killings. At the time of my visit, it had received 138 complaints concerning assassinations of civilians, of which 20 had been resolved, and 14 were classified as CFA violations (by the LTTE). (These data cover the period from February 2002 through November 2005. Assassinations of civilians are violations of Art. 2.1 of the CFA. Data available at [http://www.slmm.lk/intros/C\\_and\\_V.html](http://www.slmm.lk/intros/C_and_V.html).) There are no publicly-available SLMM statistics on how many total killings the 138 complaints concerned, nor regarding the number of complaints concerning the killing of combatants. (The killing of combatants violates Art. 1.2 of the CFA which proscribes all military action. The SLMM's

statistics on violations of Article 1.2 do not, however, disaggregate killings.) Moreover, killings believed to have been committed by the Karuna group and other armed groups that are not party to the CFA are not reflected in these data.

The Government and others presented me with more comprehensive lists of killings. The Government claimed that as of 30 September 2005, the LTTE had killed 363 people. (I received various lists from different arms of the Government and the relationship among the lists is not always clear.) The EPDP (the Eelam People's Democratic Party) claimed that 43 of its members had been killed as of 14 October 2005. The EPRLF (the Eelam People's Revolutionary Liberation Front) claimed that the LTTE had killed 334 people in the Batticaloa and Ampara districts as of 5 December 2005. (Of the 334 alleged killed, 170 were Karuna cadres killed on 9 April 2004 in major fighting following the Karuna - LTTE split.) There is relatively little information that is not perpetrator or victim specific. However, a civil society group recorded a total of 295 killings by all parties during the period from 1 January through 21 November 2005. (Information provided by the Foundation for Co-Existence.) Another source recorded 338 killings during the period from 1 January through 13 November 2005. The discrepancy between these two figures is due

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### Tamil Political Parties and “Paramilitaries”

13. Post-ceasefire killings of members of these groups have continued, and most circumstantial evidence points to the LTTE. While some killings may have been motivated by the quest for military advantage, many appear to have been aimed only at upholding the LTTE’s proclaimed role as the “sole representative” of the Tamil people. Members of these groups are justifiably concerned that CFA article 2.1, prohibiting hostile acts against the civilian population, has not provided greater protection to them.

[...]

### The Karuna Split

16. The Government’s position on the Karuna group is also problematic. I was informed by a number of military personnel that ex-President Chandrika Kumaratunga had issued an order prohibiting any links with Karuna except by intelligence officers. I unsuccessfully requested a copy of that order. While I found no clear evidence of official collusion, there is strong circumstantial evidence of (at least) informal cooperation between Government forces and members of the Karuna group. I received credible reports from civil society groups of persons abducted by the Karuna group being released at military bases, a credible account of seeing a Karuna group member transporting an abductee in view of a Sri Lanka Army (SLA) commander, and equivocal denials from SLA personnel. Moreover, the stock line that members of both factions of the LTTE (Vanni or Karuna) were terrorists, between whom the Government does not distinguish, is disingenuous. Many of the people I spoke with in the Army and the Police Special Task Force (STF) candidly noted that the split had been beneficial for the Government, because the Karuna group was undermining the LTTE. (There has been a notable increase in the number of LTTE cadres killed since the split.) The strategic logic is undeniable, but it imperils the ceasefire and shows a dangerous indifference to the many civilians in the East who have been killed as a consequence of the low-intensity conflict between the LTTE and the Karuna group.

17. The 18 November 2005 attack on a mosque in Akkairapattu exemplifies the manner in which civilians are being caught in the crossfire. During morning prayers, two people rolled grenades to the front of the mosque, where they exploded, killing 6 persons and seriously wounding 29 others.<sup>4</sup> I visited the mosque, met with victims and community representatives, and discussed the attack with Government officials and LTTE representatives.

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mainly to differing characterizations of some incidents that may have been either conflict-related killings or common murders.

<sup>4</sup> Eight of the injured remained in critical condition when I visited.

## The Use of Civilian Proxies by the Liberation Tigers of Tamil Eelam

20. The day before I visited Kilinochchi to meet with LTTE leaders, six Sri Lankan Army soldiers were killed in a claymore mine attack in Jaffna. (Such attacks have escalated since my departure.) While in Kilinochchi, I expressed serious concern about these killings, and the role that might have been played by civilians recently trained by the LTTE was not ruled out. The LTTE has recently called Tamil civilians living in Government-controlled Jaffna to the LTTE-controlled area around Kilinochchi to receive civil defence training. While it was denied that the LTTE gives commands to these civilians, it was acknowledged that it does have substantial “influence” over them. A senior LTTE official informed me that the frustration of the Tamil people with the slow progress in the peace process made such attacks inevitable. He added that the Jaffna peninsula is uncontrollable because the LTTE has had to withdraw its political cadres and is thus unable to exercise its calming influence on the people. The LTTE’s apparent use of surrogate groups is a dangerous escalation.

### Killings to Control the Tamil Population

21. One of the most disturbing aspects of post-ceasefire violence has been the use of killing to control the Tamil population. CFA article 2.1 requires that the parties “in accordance with international law abstain from hostile acts against the civilian population” and, indeed, such killings are prohibited by international human rights and humanitarian law apart from the CFA. However, the LTTE and, to a lesser extent, other groups have elected to reinforce their political and financial support from the Tamil population through the use of violence.

22. The LTTE’s classification of its political opponents within the Tamil community as “traitors” and its efforts to enforce obedience with killings constitute fundamental violations of human rights. Governments as well as armed opposition groups are generally constrained to take account of human rights by the need to retain popular support within their constituencies. The LTTE has, however, been able to circumvent many of these constraints by relying so heavily for its financial and political support on a constituency that is largely exempted from its violence. This is the Sri Lankan Tamil diaspora, which numbers more than 800,000 and is centred in Australia, Canada, India, the United Kingdom and the United States of America.<sup>5</sup>

23. For members of the diaspora the problem is to distinguish between, and seek to reconcile, the two dramatically different faces of the LTTE. In Kilinochchi the apparatus it has established might appear an interesting experiment in governance, with its own judiciary and police force. It is endeavouring to promote some degree of human rights consciousness through the North-East Secretariat on Human Rights (NESOHR). Elsewhere, however, and especially in the East, its modus operandi inflicts intimidation, coercion and violence on a large population that is otherwise uninvolved in the conflict.

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<sup>5</sup> In estimates prepared by the UNHCR as of June 2001 the number of internationally displaced Tamils was said to be 817,000, most of whom were refugees or asylum seekers. Canada hosted an estimated 400,000 Tamils, followed by Europe (200,000), India (67,000), the United States (40,000), and Australia (30,000).

The diaspora must accept the responsibility that comes with influence and insist on being a positive force for human rights. Even those who view the issue in unidimensional terms as a liberation struggle must reject unequivocally the killing of all innocent civilians and non-combatants.<sup>6</sup> To the extent that the diaspora is funding the ongoing killing and terrorizing of innocent civilians, the Governments of the states in which they live should enter into a serious dialogue with them on the findings in this report and the opportunities they might have to promote respect for human rights.

[...]

### The International Legal Framework Governing the Use of Force

30. In an armed conflict, human rights law is complemented by the additional regime of humanitarian law. In 1959 the Government ratified the Geneva Conventions of 12 August 1949, and the LTTE has formally taken upon itself obligations under the Geneva Conventions and its Additional Protocols.<sup>7</sup> All parties to the conflict are bound to comply with the terms of common article 3 of the Geneva Conventions of 1949 and of customary international humanitarian law. The Karuna group is a party to the conflict within the meaning of humanitarian law, regardless of whether it constitutes a paramilitary within the meaning of CFA article 1.8 and regardless of any support the Government may be providing. However, depending on the character of such support, the Government could also bear legal responsibility for its violations of humanitarian law.

31. Common article 3 prohibits the murder of persons taking no active part in hostilities. This prohibition is both more limited than sometimes hoped and more expansive than sometimes realized. It leaves the use of lethal force in the midst of combat - the “conduct of hostilities” - largely unregulated. However, in other contexts, it protects combatants as well as civilians, prohibiting the murder of all “[p]ersons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause”. The killings that have taken place in which a person is abducted and subsequently killed violate this rule without exception. The bedrock legal principle that persons who are captured have a right to humane treatment should not be obscured by any implication that their execution is worse if they are civilians.

32. Motorcycle drive-by shootings have been a common tactic. It might be argued that when such a shooting occurs in territory controlled by an opposing party, it is governed

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<sup>6</sup> In 2004 the Secretary-General’s High-level Panel on Threats, Challenges and Change concluded at the end of a detailed analysis “that there is nothing in the fact of occupation that justifies the targeting and killing of civilians”. *A More Secure World: Our Shared Responsibility*, (United Nations, 2004), para. 160.

<sup>7</sup> This acceptance is recorded in the Letter of Authorization for the Filing of a Legal Action and Representation of the Liberation Tigers of Tamil Eelam in the Judicial Review of the Terrorist Designation of the Organization Pursuant to Section 219 of the Anti Terrorism and Effective Death Penalty Act of 1996 to the U.S. Court of Appeals, District of Columbia Circuit, from the LTTE International Secretariat, Nov. 6, 1997. The letter notes, inter alia, that the LTTE “never targets civilians who ‘take no active part in the conflict’”.

by the principle of distinction whereby soldiers and military members of armed groups may be targeted but civilians may not be.<sup>8</sup> In most of these incidents, however, the persons killed have been going about their daily lives rather than taking part in combat, and it is more appropriate to view such killings as murders within the meaning of common article 3. Moreover, regardless of how these killings might be conceptualized in humanitarian law, the prohibition on killing unless it is strictly necessary continues to apply under human rights law. The grenade attacks that became increasingly common in late 2005 raise further issues. While these too have generally constituted murders violating common article 3, they would often violate the prohibition of indiscriminate attacks even were they considered to fall within the conduct of hostilities.

33. The CFA has played a crucial role in ensuring the right to life in Sri Lanka. This role should not, however, lead to a de-emphasis of the requirements of human rights and humanitarian law. This is partly because the CFA binds only the Government and the LTTE; whereas, human rights and humanitarian law apply to all armed groups. It is also because the CFA affirms the international legal obligations of the parties only with respect to “civilians”. In contrast, the right to life of “combatants” is only indirectly protected by the prohibition of offensive military operations.<sup>9</sup> Under international law, all Sri Lankans, regardless of whether they are civilians, are bearers of the right to life. This right must be respected by all the parties quite apart from the obligations of the Government and the LTTE to each other. Human rights law, humanitarian law, and the CFA are overlapping and mutually-reinforcing frameworks that together serve to protect human lives.

[...]

#### Violations Must be Unequivocally Denounced

48. In my discussions with Mr. Thamichelvan, chief of the LTTE political wing, I stressed the difference between denying responsibility and denouncing attacks, and called on the LTTE to signal unequivocally its rejection of acts of violence. He responded by arguing that the LTTE is a movement of the Tamil people and that it cannot rightly denounce the actions of pro-LTTE civilians. This view is simply not compatible with the leadership role claimed by the LTTE. If it is serious about bringing an end to the widespread violation of the right to life, it must unequivocally denounce and condemn killings. This is a confidence-building measure that is essential if the CFA is to be understood to contain the essential aspects for ensuring human rights.

[...]

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<sup>8</sup> Rule 1 of the ICRC’s study on *Customary International Humanitarian Law* (J.M. Henckaerts and L. Doswald-Beck, eds., 2005) p. 3 states that “The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.”; art. 13 (3) of Protocol II provides that “Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.” And Art. 8 (2) (e) (i) of the Rome Statute provides that it is a war crime to “Intentionally direct attacks against the civilian population as such or against individual civilians not taking direct part in hostilities”.

<sup>9</sup> CFA art. 1.2.

## Recommendations

71. At the time of writing, the Government and LTTE had agreed to talks on strengthening the implementation of the CFA in late February 2006. Issues relating to extrajudicial executions are fundamental to the recent erosion of the ceasefire and the threats to the credibility of its monitoring mechanisms. The recommendations below should be squarely addressed in the talks:

(...)

(d) All parties to the conflict, including the Government, the LTTE and the Karuna group, must comply with their legal obligations under common article 3 of the Geneva Conventions of 12 August 1949 and customary international humanitarian law. In particular, humanitarian law requires respect in the conduct of hostilities for the distinction between civilians and combatants. The killing of anyone not taking an active part in hostilities (regardless of civilian status) is prohibited.

[...]

### *Liberation Tigers of Tamil Eelam*

85. The LTTE should refrain from violating human rights, including those of non-LTTE-affiliated Tamil civilians. This includes in particular respect for the rights to freedom of expression, peaceful assembly, freedom of association with others, family life, and democratic participation, including the right to vote. The LTTE should specifically affirm that it will abide by the North-East Secretariat on Human Rights charter.

### ***Follow Up on Report on Mission to Sri Lanka (A/HRC/8/3/Add.3, 14 May 2008, ¶¶ 12, 15-20, 23-26, 28-34, 65-66, Follow-Up on Recommendation):***

12. The Government of Sri Lanka and the LTTE, however, appear to believe that the only effective insurgency and counterinsurgency tactics are ones that involve extrajudicial executions and other human rights violations. This view has led them to commit widespread abuses. The Government and the LTTE have both engaged in the targeted killing of individuals suspected of collaborating with the other party. The Government and the LTTE have engaged in shelling (and the Government also in aerial bombardment) that has killed a substantial number of civilians in circumstances that sometimes suggest a failure to respect rules on proportionality and precautions in attack. The LTTE has also stepped up its indiscriminate attacks on civilians for the apparent purpose of terrorizing the population.

[...]

## Compliance with Human Rights and Humanitarian Law

15. In his report, the Special Rapporteur observed that extrajudicial executions were proving fundamental to the erosion of the ceasefire. He recommended that the Government take a number of immediate steps to comply with its existing human rights obligations, that the LTTE take concrete steps to demonstrate that it was serious about its professed commitment to human rights, and that all parties to the conflict comply with their legal obligations under common article 3 of the Geneva Conventions of 12 August 1949 and customary international humanitarian law. In particular, the Special Rapporteur noted, humanitarian law requires respect in the conduct of hostilities for the distinction between civilians and combatants and prohibits the killing of anyone not taking an active part in hostilities.

16. Since that time, the Government and the LTTE have engaged in a new round of hostilities characterized by exceptional brutality and disregard for international human rights and humanitarian law. According to one source, “A conservative estimate for total civilian deaths would be at least 1,500.”<sup>10</sup> The number of deaths of combatants has been far higher. A Government official has estimated that between 2006 and 2007, 1,233 Government personnel and 4,800 LTTE cadres were killed.<sup>11</sup>

17. Without effective independent human rights monitoring in many areas, it is difficult to distinguish lawful from unlawful killings and track precisely the number of violations of human rights or humanitarian law, but evidence from numerous sources makes it clear that extrajudicial executions are widespread throughout the country. There is, however, significant regional variation in both the level and pattern of abuse.

#### Government-Controlled Areas of Jaffna

18. In the Government-controlled areas of Jaffna, Government security forces, supported by the Eelam People's Democratic Party (EPDP), regularly kill civilians suspected of serving as LTTE informants. It appears that persons are suspected of acting as informants based on their record of past collaboration with the LTTE. Such collaboration can range from having attended an LTTE rally to having received its military training. According to some sources, Government forces will attempt to identify such people at checkpoints and during cordon-and-search operations, confiscate their identity cards, and require them to report to a military base. The individuals are then interrogated. If the soldiers conclude that they are LTTE collaborators, they are at risk of being killed. If the soldiers conclude that they are not, they are likely to be threatened with death unless they provide names of actual LTTE collaborators. Given Jaffna's history of LTTE control, nearly everyone has had some - voluntary or involuntary - association with the LTTE, and who survives and who is killed appears to have little relationship to what they have done. The LTTE also commits extrajudicial executions against suspected informants; however, in the Government-controlled areas of Jaffna, the number killed by the LTTE is much lower than the number killed by the Government.

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<sup>10</sup> International Crisis Group, *Sri Lanka's Return to War: Limiting the Damage* (20 February 2008), page 9.

<sup>11</sup> Cited in *ibid.*, page 5.

19. There are no exact statistics on the number of extrajudicial executions in Jaffna. In part, this is because enforced disappearances are common, and while many of the disappeared are ultimately executed, many others are not. An informed estimate is that from January 2006 through November 2007, the security forces committed a total of 700 extrajudicial executions in Jaffna.<sup>12</sup> The EPDP has also been implicated in a large number of these cases.

20. There is also a high-rate of extrajudicial execution in other Government-controlled areas in the north, including Vavuniya and Mannar. One study documented 27 civilians killed (along with 30 disappeared) in Mannar between January 2007 and August 2007. In Vavuniya, over the same period, it documented 130 civilians killed and 14 disappeared.

[...]

### The Wannu

23. A number of people have been killed in aerial bombardment by the Government. NESOHR records such attacks as having killed 38 civilians during 2007 and 12 in the first two months of 2008.<sup>13</sup> Whether all of these individuals were civilians has been contested by the Government. In the absence of independent human rights monitoring, it is impossible to be certain.

### The East

24. The East comprises the districts of Ampara, Batticaloa, and Trincomalee. At the time of the Special Rapporteur's visit, all major cities in this area were controlled by the Government, but significant swathes of the countryside were controlled by the LTTE. However, between mid-2006 and mid-2007 the Government succeeded in eliminating nearly all LTTE presence in the East. A large number of civilians also died in the course

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<sup>12</sup> This estimate derives from the overlapping statistics of a variety of sources and is given in University Teachers of Human Rights (Jaffna), *Slow Strangulation of Jaffna: Trashing General Larry Wijeratne's Legacy and Enthroning Barbarism* (December 2007). A study by the Law and Society Trust and four national non-governmental organizations documented that, from January 2007 through August 2007, 178 civilians were killed and 271 civilians were disappeared in the district of Jaffna. Civil Monitoring Commission, Free Media Movement, Law and Society Trust, *Second Submission to the Presidential Commission of Inquiry and Public on Human Rights Violations in Sri Lanka: January - August 2007* (31 October 2007). Two other organizations involved in producing the report "did not wish to be named". The information on which the report was based was gathered through "direct reporting of incidents by witnesses or family members to organizations with a district presence (ie, offices or individuals)" and "Tamil, Sinhala and English media monitoring". The report notes that "this is not, nor is it intended to be, an exhaustive document and is the result of work done in a difficult, hostile and dangerous environment, with concerns for the physical safety of human rights defenders involved."

<sup>13</sup> North East Secretariat on Human Rights (NESOHR), *Annual Report on Human Rights - 2007* (5 January 2008); NESOHR, *Monthly Report - January 2008* (7 February 2008); NESOHR, *Monthly Report - February 2008* (5 March 2008).

of military confrontations during this campaign. Estimates place the number of such civilian deaths as between 300 and 500.<sup>14</sup>

25. Today, Government security forces, supported by the (factionalized) Tamileela Makkal Viduthalai Pulikal (TMVP), regularly kill civilians due to their purported links to the LTTE. There are similarities to the situation in Jaffna, but there are also differences: Many areas were under LTTE control until quite recently, and the TMVP paramilitary group only split from the LTTE in 2004.

26. According to one study, from January 2007 through August 2007, 261 civilians were extrajudicially executed and 74 were disappeared.<sup>15</sup>

[...]

### The South

28. The area is under Government control. Indeed, the state of Tamil Eelam which the LTTE aims to establish does not include the South, so this area is not actively contested.

29. Probably for this reason, individuals are selectively killed in the South with less frequency than in the North and East. According to one study, from January 2007 through August 2007, 24 civilians were extrajudicially executed and 78 were disappeared in the southern districts of Anuradhapura, Colombo, and Polonnaruwa.<sup>16</sup>

30. However, the LTTE has resorted to indiscriminate attacks on civilians apparently designed to terrorize the population. In an extremely worrying trend, such attacks became common in the first months of 2008. In February 2008 alone, there were at least six attacks against civilian objectives using bombs or claymore mines that were most likely committed by the LTTE. More than 70 civilians have died in such attacks so far this year.

### The Ceasefire Monitoring Mechanism and Civilian Protection

31. The Sri Lanka Monitoring Mission (SLMM) established to monitor the Ceasefire Agreement (CFA) no longer exists. While it was still operating it made a significant and successful effort to implement the recommendations directed to it by the Special Rapporteur.

32. During his visit, the Special Rapporteur concluded that the SLMM could be strengthened in ways that would permit it to improve respect for human rights. The CFA

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<sup>14</sup> See International Crisis Group, *Sri Lanka's Return to War: Limiting the Damage* (20 February 2008), page 9.

<sup>15</sup> Civil Monitoring Commission, Free Media Movement, Law and Society Trust, *Second Submission to the Presidential Commission of Inquiry and Public on Human Rights Violations in Sri Lanka: January - August 2007* (31 October 2007).

<sup>16</sup> Civil Monitoring Commission, Free Media Movement, Law and Society Trust, *Second Submission to the Presidential Commission of Inquiry and Public on Human Rights Violations in Sri Lanka: January - August 2007* (31 October 2007).

prohibited not only “offensive military operation[s]” but also “hostile acts against the civilian population”. However, the SLMM had placed a low priority on this aspect of its mandate. The Special Rapporteur recommended that the SLMM be made more independent of the peace process, issue public reports, and prioritize civilian protection.

33. Following the Special Rapporteur’s visit, the Government of Norway and SLMM took various actions that represented a real attempt to play a more effective role in responding to human rights violations. In March 2006, Major General Ulf Henricsson of Sweden was appointed Head of Mission of SLMM, reducing Norway’s conflict of interest between providing accountability for violations and advancing the peace process. In April 2006, SLMM began to exhibit a greater concern with violence directed against civilians, referring for the first time to the “extrajudicial killings of civilians”.<sup>17</sup> In a number of subsequent reports, the SLMM attempted to clarify responsibility for attacks on civilians.

34. Unfortunately, within six months of making these reforms, the SLMM was severely weakened by the decision of LTTE to insist on the withdrawal of monitors who were nationals of EU member States. The SLMM ended its work when the CFA was formally terminated on 16 January 2008 following a declaration by the Government.

[...]

#### Recommendations Directed at the Liberation Tigers of Tamil Eelam

65. The Special Rapporteur recommended that the LTTE should stop committing extrajudicial executions, including of non-LTTE-affiliated Tamil civilians. The Special Rapporteur had found that the LTTE classified its political opponents within the Tamil community as “traitors” and used to killings to enforce obedience. He found that many people - most notably, Tamil and Muslim civilians - faced a credible threat of death for exercising freedoms of expression, movement, association, and participation in public affairs. The LTTE has not changed its approach to dissenters within the Tamil community, and these killings continue.

66. As a first step toward accepting accountability, the Special Rapporteur also recommended that the LTTE denounce and condemn any killing attributed to it for which it denied responsibility. The Special Rapporteur noted that mere denials were neither adequate nor convincing. In a report to the General Assembly, the Special Rapporteur pointed to the LTTE’s response to allegations that it had attacked a bus full of civilians as representing some progress in implementing this recommendation.<sup>18</sup> The LTTE had issued a statement that, “LTTE condemns this attack on the civilian bus. Directly targeting civilians, as the Kebitigollawe claymore attack has, cannot be justified under any circumstances.”<sup>19</sup> He noted that while the statement did not clarify the responsibility of any party, it did demonstrate an important evolution in the acceptance by LTTE of its

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<sup>17</sup> SLMM, press release of 29 April 2006.

<sup>18</sup> A/61/311, note 18.

<sup>19</sup> The Liberation Tigers of Tamil Eelam Peace Secretariat, press release of 15 June 2006

moral responsibility to denounce attacks on civilians. (When the Special Rapporteur spoke with Mr. Thamilchelvan, then chief of the LTTE political wing, during his visit, he had categorically refused to denounce particular attacks as incompatible with the role of LTTE as a people's movement.) However, since that time, the LTTE has ceased to denounce and condemn killings that have been attributed to it. The LTTE has, for example, failed to denounce and condemn the attacks on buses that have killed scores of civilians this year. The Special Rapporteur also recommended that the LTTE should refrain from providing arms, training and encouragement to civilian proxies and self-defence organizations. Reportedly, the LTTE continues to train and deploy a civilian "people's force".

#### Summary of Follow-Up to Each Recommendation

*(d) All parties to the conflict, including the Government, the LTTE and the Karuna group, must comply with their legal obligations under common article 3 of the Geneva Conventions of 12 August 1949 and customary international humanitarian law. In particular, humanitarian law requires respect in the conduct of hostilities for the distinction between civilians and combatants. The killing of anyone not taking an active part in hostilities (regardless of civilian status) is prohibited.*

This recommendation has not been implemented.

#### ***Report on Mission to Central African Republic (A/HRC/11/2/Add.3, 27 May 2009, ¶¶ Summary, 5-6, 19-20, 22-37):***

When the Special Rapporteur conducted his fact-finding mission to the Central African Republic in February 2008, the conflict in the north-east had ended, but a low-intensity conflict continued in the north-west. The rebels had killed a small number of civilians, but the security forces had been involved in widespread village burnings and the killing of hundreds of civilians in the north-west. These large-scale abuses had declined significantly by mid-2007, due to positive steps taken by President François Bozizé and a general waning of the conflict.

Since the Special Rapporteur's visit took place, there have been encouraging moves towards securing a durable peace in the north. A formal ceasefire was brokered, multi actor political dialogue to assure stability for the country as a whole was held in December 2008, and a new Government of national unity formed in January 2009. These steps were, however, interrupted through 2008 by sporadic fighting in the north-west and renewed rebel activity in the north-east. And progress in resolving the conflict has not been matched with progress in securing human rights. Killings have continued, accountability for past abuses is non-existent, and a general lack of security in the north prevails. From a human rights perspective, the most pressing issues today remain those of securing the population from banditry, remedying general lawlessness, countering impunity, and reforming the largely unaccountable security forces. As fighting between the Government and the rebels ebbed, banditry took its place as the prime threat to civilians. Bandits loot vehicles and kidnap for ransom; they also sometimes burn villages

and kill villagers. The security forces are largely unwilling and unable to protect villagers. Further, members of the security forces have been responsible for killings of suspected criminals and for killings motivated by personal or corrupt ends. Killings in police custody and in detention centres have been common. Killings of persons alleged to be “witches” also regularly occur, often with the direct participation of the security forces. Investigations and prosecutions of killings rarely occur due to a lack of will to tackle abuses by State actors and to a severe lack of resources in the justice sector.

[...]

### Background and International Legal Framework

5. International human rights law requires the Central African Republic to both respect and ensure the right to life.<sup>20</sup> The Government has an obligation to prevent extrajudicial killings of civilians, including alleged criminals, by the police and other security forces. It also has an obligation to use its security forces to ensure, insofar as possible, that the people living in the country are not murdered by non-State actors, such as bandits. The State must also investigate and prosecute those responsible for the unlawful killings that do occur.<sup>21</sup>

6. In addition to the obligations imposed by human rights law, the conflicts in both the north-west and north-east were non-international armed conflicts to which international humanitarian law applied. All parties to these conflicts, including rebel groups, are bound by this body of law.<sup>22</sup> International humanitarian law requires the parties to distinguish between civilians and combatants at all times,<sup>23</sup> prohibits killing civilians except when they are directly participating in hostilities, and prohibits killing anyone, civilian or combatant, who has been detained or otherwise placed *hors de combat*.<sup>24</sup>

[...]

### Conduct of hostilities and abuses against civilians: mid-2005 to mid-2007

19. The conflict in the north-west was of a low intensity, and few casualties of armed combatants from either side occurred in the sporadic fighting. The conflict did, however, take a heavy toll on civilians. It probably resulted in hundreds of deaths, and forced at least 10 per cent of the population of the north-west to flee into the bush or to neighbouring countries. Civilians were killed in violation of international humanitarian

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<sup>20</sup> ICCPR, arts. 2 (1), 6 (1).

<sup>21</sup> Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

<sup>22</sup> Common article 3 of the four Geneva Conventions of 1949; Protocol II; and customary rules applicable to non-international armed conflicts.

<sup>23</sup> Article 13 (2) of Protocol II, Rule 1 Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross (Customary Rules).

<sup>24</sup> Common article 3 of the four Geneva Conventions of 1949, article 4 of Protocol II, and Rule 89 of the Customary Rules.

law by both rebel and Government forces, although abuses by Government forces were far more extensive.

*Extrajudicial executions by the APRD rebels*

20. APRD rebels were responsible for a small number of extrajudicial executions. These related to the conflict as such, and to the efforts of APRD to govern areas under its control. With respect to the conflict, extrajudicial executions by the APRD were isolated incidents. Human rights monitors informed the Special Rapporteur of a small number of cases of the APRD killing civilians accused of supporting the Government. For instance, during the night of 30 May 2007, the APRD killed the *Sous-Préfet* of Ngaoundaye, allegedly because he supported the Government's defence forces. Likewise, the Special Rapporteur was informed of a case where three young men from Bélé were killed by the APRD on 2 September 2007 because they refused to join the APRD. Reports of killings by the APRD that were carried out to exact personal revenge were also received. In one case, an APRD commander executed a volunteer at a local organization because of a personal rivalry.

[...]

*Extrajudicial executions by Government forces*

22. Killings, beatings, forced displacement, and village burnings committed by the FACA/GP, usually as reprisals against perceived civilian support for or cooperation with rebel forces, were widespread during the mid-2005 to mid-2007 period. These abuses were reported widely.<sup>25</sup> During his visit, the Special Rapporteur received many credible and detailed accounts of violations from civil society, United Nations agencies and humanitarian organizations working directly in the areas of conflict, and from victims and witnesses.

23. These accounts indicate that the abuses by Government forces followed a similar pattern across the north-west. Typically, a group of APRD rebels would pass through or attack a village or town. The FACA/GP would then arrive, kill those believed to be rebels, and attack villagers perceived to be rebel supporters, or simply engage in indiscriminate shooting. The Government forces typically also burned the homes of villagers - targeting the homes of perceived rebel supporters, but also burning indiscriminately. The burning of over 10,000 civilian homes in the north-west in December 2005 by Government forces is well documented.<sup>26</sup> The majority of the villages were subsequently abandoned by their former residents, who moved to live in makeshift bush settlements, temporarily settled in larger towns, or fled to Chad or Cameroon.

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<sup>25</sup> See e.g., Human Rights Watch, *State of Anarchy: Rebellion and Abuses against Civilians*, September 2007, vol. 19, No. 14 (A).

<sup>26</sup> See e.g., Human Rights Watch, *State of Anarchy: Rebellion and Abuses against Civilians*, September 2007, vol. 19, No. 14 (A), p. 6; FIDH, *Central African Republic - Forgotten, stigmatised: the double suffering of victims of international crimes*, No. 457/2, October 2006, pp. 49-51.

Travelling by road from Bossangoa to Paoua, the Special Rapporteur saw, after 100 kilometres from Bossangoa, village after village of burned homes.

24. Civil society interlocutors met by the Special Rapporteur estimated that hundreds of civilians were murdered by Government forces during this period. They also reported that the military had killed suspected rebel group members in violation of international humanitarian law.<sup>27</sup> The Special Rapporteur received many credible reports that one GP commander in particular, Lt. Eugene Ngaïkossé, was responsible for commanding troops who carried out the more egregious instances of village burnings, the targeting of civilians, and unlawful killings of suspected rebels.

25. One significant incident about which the Special Rapporteur received much detail was a massacre of civilians in Paoua on 29-31 January 2006. On 29 January, the APRD attacked Paoua, looting Government offices and attacking the prison and police station. After initially retreating, soldiers from the FACA and the GP were then able to force the rebels to flee the area. However, instead of ensuring the safety of the population of Paoua during and after the APRD attack, the GP reinforcements from Bossangoa attacked Paoua's residents, killing at least 33 civilians. The Special Rapporteur spoke with one witness whose house was ransacked by the APRD on the first day of the attack, and then witnessed the GP burning down his neighbours' homes and killing four Paoua residents. Other witnesses saw one incident in which three civilian men from Paoua were shot by Government soldiers while the men were trying to flee the fighting. Witnesses described how the GP fired indiscriminately into gatherings of civilians in the town. After the APRD attack, soldiers also entered civilian homes, took men outside, and executed them. Other civilians detained by the FACA were also tortured to death. One victim was detained with seven other men from Paoua and taken to the FACA base. All of the detained men were beaten, and left in the sun for two days; only one survived.

26. A Government official in the prefecture informed the Special Rapporteur that no public investigations and prosecutions took place after this massacre. Indeed, impunity for such actions is the norm, and section VII discusses its causes and the reforms.

#### Response of the Government to allegations of abuse

27. The Special Rapporteur asked Government officials for their response to the many accounts of abuses he received during the visit. He was met with varying degrees of denial and excuses for the violence.

28. One senior Government official stated that much of the information on abuses was fabricated in order to discredit the Government. He suggested that in areas where Government opponents predominated, residents would burn their own houses so that they could blame this on the FACA. This explanation was unsubstantiated and completely at odds with all civil society and witness testimony. It is especially difficult to accept that a village of people would intentionally destroy their own homes, displacing themselves into

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<sup>27</sup> In one case, two suspected rebels were detained by the FACA close to Kaga-Bandoro. The two were taken to the town and publicly executed.

the bush without shelter, water, adequate food, or access to health care - just so that they could then denounce the FACA.

29. A number of other officials responded by asserting that the rebels also committed abuses. This is clearly true (see above), but it is no answer to inquiries about abuses by State forces.

30. A number of other Government officials stated that reports of violence were exaggerated. The officials admitted that some acts of violence by the military occurred, but stated that it was difficult to control individuals out in the field, or to know who did what to whom. This may be true, but it is not an acceptable excuse for inaction by the Government, nor can it form the basis of a credible denial of the accuracy of the many accounts of violence received. Rather, the Government's admissions of lack of control and lack of knowledge of events - in the face of comprehensive human rights reporting and the statements of many witnesses - indicate instead that it needs to undertake far-reaching security sector reforms so that the failings of command and control structures and investigative processes can be remedied.

#### Waning of conflict and reduction of abuses: mid-2007 to 2008

31. The abuses that marked the mid-2005 to mid-2007 period had become far less common by the time of the Special Rapporteur's visit. There have not been any reports of large-scale abuses against civilians by Government forces since May 2007, when the GP burned approximately 500 houses in Ngaoundaye (on the border between the Central African Republic, Chad and Cameroon).

32. The reasons given for the reduction in abuses were various.

33. One of the most important was the decision by President Bozizé to largely withdraw the GP from the north-west. The GP was the primary actor responsible for abuses, and its withdrawal from the area signalled the end of large-scale State abuses against civilians. President Bozizé visited Ngaoundaye in June 2007, and saw the damage to the villages caused by the GP. He promised to punish those responsible. He also visited Bocaranga in November 2007, and apologized for the abuses committed there by Government forces.

34. In addition, there was a general waning of the conflict in the six months prior to the Special Rapporteur's visit. There was an informal ceasefire in which the Government forces and rebels generally did not enter each others' areas. For instance, with respect to Paoua, Government forces controlled the city and its immediate surroundings but did not move through rural areas except along the road between Paoua and Bozoum. The increased presence of international NGOs and humanitarian organizations, as well as mounting international pressure on the Government to respect human rights, also played an important role in the reduction of abuses.

35. Despite these positive developments, the security situation remained volatile at the time of the Special Rapporteur's visit. People who had fled their villages were too scared

to return. They were worried that the Government could attack the APRD if the rebel group did not follow through with a peace agreement, and they feared that they would be targeted as rebel sympathizers. The population continued to live in particular fear of Lt. Ngaïkossé. The Special Rapporteur received information about one particular incident in which 80 per cent of the population of Markounda fled into the bush when Lt. Ngaïkossé arrived in January 2008 to arrest the mayor.

### Security Vacuum and Banditry

36. As the armed conflict waned during late 2007 and 2008, it became clear that bandits had emerged as the number one threat to the civilian population in the north-west.

37. There is a dearth of reliable information about the bandits, unsurprisingly given the absence of effective law enforcement in the area. The information provided by most interlocutors came at second-hand from villagers who have encountered or been held hostage by bandits. Nevertheless, some basic facts appear reliable. Banditry in the north west is a form of organized crime. The general modus operandi of bandits is to ambush a vehicle, loot its contents and take hostage anyone who appears likely to garner a significant ransom. Their activities are sophisticated: foreign bandits will use a citizen of the Central African Republic to act as an interpreter; they hold groups of hostages in the bush for weeks or months; and they efficiently conduct hostage negotiations. Travellers and villagers are not generally killed unless they resist. There are killings, however, but reliable statistics are not available. Over the course of 2007, bandits increasingly attacked and looted villages, and also engaged in village burning, seemingly as revenge for resistance to their demands.

### ***Report on Mission to Afghanistan (A/HRC/11/2/Add.4, 6 May 2009, ¶¶ Summary, 2-11, 14-23, 26-28, 33, 35-37, 67-69, 71, 73-75, 78-81):***

Afghanistan is engulfed in an armed conflict in which unacceptably high numbers of civilians are killed every day. An estimated 2,118 civilians were killed as a result of armed conflict in 2008, nearly 40 per cent more than were recorded in 2007. Not all of these deaths are unavoidable. Civilians face daily insecurity, and their most everyday tasks bring the risk of death. They are assassinated by the Taliban, or shot near checkpoints and convoys by Afghan or international soldiers. They are blown up in reckless Taliban suicide attacks carried out in public places, or killed in poorly planned or disproportionate airstrikes by international forces. Or they are the victims of false tips and killed in house raids by international intelligence services for which no Government or military command takes responsibility.

The concern of the Special Rapporteur during his fact-finding mission to Afghanistan in May 2008 was to understand how and why these killings are happening, and to formulate recommendations directed at reducing civilian casualties, however or by whomever they are caused. To achieve that, the Special Rapporteur adopted a civilian-centric view of the conflict and sought to understand how the tactics of each side lead to civilian deaths, how

conduct by one side increases the likelihood of killings of civilians by the other, and how civilians are trapped in a struggle to avoid military confrontations. Each of the military actors in the conflict shifts blame to the other for civilian deaths. The truth, however, is that the Taliban, Afghan forces and international military forces all bear responsibility for unlawful killings, and each bears responsibility for reducing the numbers of civilians killed in the conflict.

In relation to the many killings perpetrated by the Taliban, its leadership should issue clear orders calling upon its fighters to respect human rights and humanitarian law, particularly with a view to ending the use of human shields, the assassination of civilians and the use of suicide attacks, which result in a disproportionate number of civilian casualties. Human rights proponents should engage in dialogue with the leadership in an effort to promote these objectives. This is common in internal conflicts and armed insurgencies throughout the world, and Afghanistan should be no exception.

With respect to killings by Afghan and international forces, it is necessary that the forces review procedures for conducting air strikes and raids. More effective procedures for reliably vetting targets should be developed, and the forces should ensure that their methods of attack do not result in civilian casualties that are excessive in relation to the military advantage. In addition, significantly more attention needs to be paid by the international forces to promoting transparency and accountability in their operations and investigations. Estimates of civilian casualties in the conflict should be made publicly available. Furthermore, the international forces should ensure that Afghans can readily obtain information on the progress of investigations and prosecutions of killings. Military operations should not be permitted by unaccountable foreign intelligence personnel.

(...)

Far too many civilians in Afghanistan have experienced conflict and brutality for much of their lives. Many have lost multiple family members in successive conflicts. Afghans deserve far better. The message of the present report is that a great many of the killings that are now occurring in Afghanistan can be prevented. The Government of Afghanistan, the international forces and the Taliban should take urgent action to reduce the staggering rates at which civilians are unnecessarily and unlawfully killed in Afghanistan.

[...]

### Conflict-Related Killings

#### *Adopting a Civilian-Centric Perspective*

2. Afghanistan is not an easy country in which to be a civilian. Everyday activities are life threatening, and civilians are killed by all sides to the conflict. My concern is to reduce all unlawful killings, however or by whomever they are committed. This requires an assessment of how all parties to the conflict can modify their conduct so as to reduce the insecurity the war poses to the civilian population.

3. The violence experienced by Afghan civilians is quite different from that experienced by others in Afghanistan. Although the Taliban may draw some distinctions, expatriates are targeted by insurgents largely regardless of their individual conduct, and they are generally protected or at least left alone by the Government and international forces. Thus, expatriates experience violence as unilateral and indiscriminate and look upon security largely as a matter of physical protection (e.g., walled compounds) and physical avoidance (e.g., not driving into an area known for roadside bombs). In contrast, the typical Afghan civilian in a conflict-affected area experiences violence and pressure from all sides.<sup>28</sup> The most visible aspects of the conflict are the military engagements between the parties: raids on compounds suspected of housing insurgents, air strikes on suspected Taliban encampments, suicide attacks on military convoys, ambushes and armed confrontations, and so on. In this aspect of the conflict, civilians are seldom deliberately targeted but they may be killed as “collateral damage” or targeted based on false information that they are combatants.

4. In the following analysis, consideration is given to: (i) military tactics employed by each side which may lead directly to civilian deaths; (ii) the behaviours or methods of warfare adopted by one side which can affect the behaviour of the other side, and exacerbate civilian killings; and (iii) the competition for civilian support.

### Military Operations

#### *Air Strikes and Human Shielding*

5. In 2008, 64% of civilian casualties (552 people) caused by pro-Government forces were due to air strikes and close air support for troops in contact with Taliban fighters. These deaths have galvanized widespread outrage against international military action. Civilian casualties may result from attacks on those mistakenly believed to be combatants, or because of collateral damage. IHL provides that attacks on legitimate military objectives may be lawful even when they result in civilian deaths, as long as they are proportional.<sup>29</sup>

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<sup>28</sup> One example of conflating the security situations of Afghans with that of internationals is the frequent references to the UN Department of Safety and Security (UNDSS) access map as providing meaningful insights into the general level of violence in a given region. But UNDSS personnel stressed to me the limited purpose of that map and its inadequacy as a recorder or predictor on other issues. Thus, threats to the civilian population should be assessed independently from threats to expatriates. Civilian protection efforts must be guided by analytic tools specific to that purpose.

<sup>29</sup> With respect to the proportionality requirement, the “expected” resulting “incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof” must not be “excessive in relation to the concrete and direct military advantage anticipated” (Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (2005) (hereinafter, ICRC Study), Rule 14). With respect to the required precautions in carrying out an attack, the general rule is that “constant care” and “[a]ll feasible precautions” must be taken “to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects” (ICRC Study, Rule 15). This general rule is supplemented by a number of more specific rules. These include rules requiring that a party to the conflict make the “choice of means and methods of warfare” such as to minimize such harm to civilians (ICRC Study, Rule 17), do “everything feasible to assess” whether the proportionality requirement will be satisfied

6. These rules also apply in situations such as that in Kunar province, where the Taliban fires rockets from residential areas directed at international forces bases and the latter then respond by firing back at the source. I heard no claim that the international forces deliberately held the civilian population accountable for these attacks, but the perception was that their responses displayed insufficient concern for civilian casualties. One official opined that while the local people did not “support” the AGEs they were in no position to interfere when armed men decided to fire from the area. He stated that for the international forces to return fire served no useful military purpose inasmuch as the AGEs would slip away immediately after firing and return across the border to Pakistan. The international forces have procedures for vetting targets and selecting an appropriate method of attack. I was not provided specifics on procedures, and am in no position to assess their formal compliance with international law. But regardless of the written procedures, it is not clear that sufficient caution is shown *in practice* to ensure that attacks are not indiscriminate and that civilian casualties will not be excessive in relation to the military advantage anticipated.

7. IHL also requires each party to the conflict to take certain steps to limit the risk to civilians of attacks by the opposing party.<sup>30</sup> These requirements are routinely disregarded by the Taliban. While there are cases in which Taliban fighters have warned civilians to leave an area prior to an attack, I received multiple witness accounts of the Taliban intentionally using civilians as “human shields” to deter attacks on their forces. In some instances, the Taliban have launched rocket-propelled attacks at IMF bases, convoys or other military targets from civilian compounds and villages, thereby making it difficult for international forces to respond militarily - via return fire or air strike - without causing civilian casualties or damaging civilian objects. Human shielding is also employed when the Taliban are in direct military engagement with international ground forces, and fire upon soldiers from homes or compounds. In this situation, the presence of civilians

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(ICRC Study, Rule 18), and “give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit” (ICRC Study, Rule 20). Furthermore, even as an operation is underway, there is an obligation to do “everything feasible to cancel or suspend an attack if it becomes apparent” that the target is not a military objective or that the proportionality requirement would not be satisfied (ICRC Study, Rule 19). On the issue of verifying that the target is a legitimate military objective, the rule is that each “party to the conflict must do everything feasible to verify that targets are military objectives” (ICRC study, Rule 16).

<sup>30</sup> Customary international humanitarian law prohibits “the use of human shields” (ICRC Study, Rule 97) meaning the “intentional collocation of military objectives and civilians or persons *hors de combat* with the specific intent of trying to prevent the targeting of those military objectives” (ICRC Study, Rule 97, discussion p. 340). In addition to this prohibition, each party also has various affirmative obligations. There is a general obligation to “take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks” (ICRC Study, Rule 22). The specific implications of this rule in the context of non-international armed conflicts are open to some interpretation; however, the rules required in international armed conflicts provide guidance. These rules include that each party must “to the extent feasible, avoid locating military objectives within or near densely populated areas” (ICRC Study, Rule 23) and “to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives” (ICRC Study, Rule 24).

within the compound - generally a family or group of families - has been used by the insurgents to deter return fire from international or ANA ground forces located nearby.<sup>31</sup>

8. The Taliban also sometimes hide from the IMF in civilian homes. Witnesses in Kandahar, for example, told me that it was common in certain areas for the Taliban to ask families to hide them within their homes and compounds. One woman recounted how her relatives refused to do so, and asked the Taliban not to enter, saying that they feared being killed in potential cross-fire. But the Taliban entered the home by force. In the absence of direct military engagement such actions are less likely to lead to civilian casualties, but in other circumstances endangerment will occur and various binding IHL obligations will be violated.

9. The Taliban should end the use of human shields and avoid locating its forces in areas populated by civilians. Nonetheless, Taliban usage of human shields does not affect the international forces' obligation to ensure that air strikes do not cause a loss of civilian life excessive in relation to the military advantage of killing the targeted fighters.

### Raids

10. Night-time raids on housing compounds are routinely used by the international forces to capture individuals suspected of links to the Taliban. The international forces generally conduct a raid in one of two ways.<sup>32</sup> The most common method, employed without any prior warning or request to enter, is to blow off a housing compound's door with explosives. The other method is to land on a roof in a helicopter and then climb down into the house on ladders. Night raids are always dangerous for civilians. Many Afghans keep guns for personal protection from criminals, and to assure their self-protection within their own homes and compounds. Given that it is common for people to sleep with guns due to fear of intruders and local attackers, there is a high likelihood that they will fire on anyone, including troops, breaking down the compound's door at night. The results can be devastating.<sup>33</sup>

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<sup>31</sup> For instance, one witness with whom I spoke in Kandahar lost 17 family members in an airstrike when the Taliban used his home to launch attacks on the international forces. During the evening, 15-20 Taliban insurgents came to the witness's home, armed with AK-47s and rockets. The witness noticed airplanes flying overhead. Some of the Taliban told the family members to hide them, and others fired at the planes. They would not let the family leave the house. The witness told me that his sister-in-law begged the Taliban to stop firing at the planes from the home, fearing the planes would drop bombs on the family while attempting to strike the insurgents. Shortly after, she took her children out into the courtyard believing it would be safer, but they were all killed in the ensuing air strike.

<sup>32</sup> During raids, the international forces are often accompanied by ANA units, and, in many cases, ANP forces will secure the perimeter. In some areas, the NDS will perform prior surveillance. There are also raids conducted directly by the Afghan security forces, including the NDS. While the NDS collects and analyses intelligence, it also has an operational dimension. NDS officials informed me that they are authorized to conduct arrest operations and do so, especially in the areas of counterterrorism, organized crime, and counter-espionage. I did not gather information on the conduct of these raids.

<sup>33</sup> The most common complaints that I heard regarding night raids fall outside my mandate – that they are an invasion of privacy and the sanctity of a family's home, and result in women being treated inappropriately by foreigners. Many Afghans with whom I spoke indicated that these were some of their greatest concerns with respect to the conduct of the IMF, and expressed a strong desire for more cross-cultural training for the IMF, and for raids to be led by Afghan forces.

11. Raids must be conducted in accordance with the stringent safeguards required by international human rights and humanitarian law.<sup>34</sup> A commander in the international forces with whom I spoke defended surprise night raids as the safest available method, because sleeping men could be apprehended before they had a chance to respond with violence. But Afghans with whom I spoke maintained that such raids unnecessarily endangered the targeted individual's relatives and gave examples in which they believed that the target could readily have been captured in a less dangerous manner.<sup>35</sup>

[...]

### Intelligence Gathering and False Tips

14. While air strikes and raids on legitimate military objectives cause many civilian casualties, too many attacks also target civilians who are mistakenly believed to be combatants.<sup>36</sup> This seem to happen because the IMF were too hasty in concluding that suspicious activity was connected to the Taliban and too credulous in interpreting information provided by civilians.

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<sup>34</sup> The applicable body of law will depend on a raid's objective. If the raid is targeting a legitimate military objective, such as a combatant, then the raid is primarily governed by the same IHL governing other attacks, including rules and principles pertaining to verification of the target, proportionality, precautions in attack, and military necessity (*see note 4*). Thus, for example, when the IMF plans a raid, "everything feasible" must be done "to verify" that the target is a military objective (ICRC Study, Rule 16). And, in choosing the means and methods of conducting a military raid or detaining a combatant, the IMF must "take all feasible precautions" with a "view to avoiding, and in any event to minimizing, incidental loss of civilian life" (ICRC Study, Rule 17), and must "do everything feasible to assess whether the attack may be expected to cause incidental loss of civilian life ... which would be excessive in relation to the concrete and direct military advantage anticipated" (ICRC Study, Rule 18). If the raid's target is not a legitimate military objective - e.g., if the target is a civilian who is not directly participating in hostilities - the operation is governed by international human rights law. In a law enforcement context, lethal force may be used 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 him or her (making lethal force necessary). (*See A/61/311*, paras. 33-45; *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Principle 9; *Code of Conduct for Law Enforcement Officials*, art. 3.)

<sup>35</sup> For example, witnesses to raids and family members of suspects suggested that suspects could have been picked up from their place of work or while walking to work, where women and children would be at significantly less risk of being exposed to the threat or use of force.

<sup>36</sup> Pursuant to the rules of international humanitarian law applicable to non-international armed conflicts, attacks may only be directed at legitimate military objectives (ICRC Study, Rule 7). In addition to certain objects (*see ICRC Study*, Rule 8), legitimate military objectives may include combatants and civilians taking a direct part in hostilities (ICRC Study, Rules 1, 6). Combatants are "members of the armed forces of a party to the conflict" (excluding those forces' "medical and religious personnel") (ICRC Study, Rule 3). Many of those who belong to or are aligned with a party to the conflict - whether the Government or an armed opposition group - are neither combatants nor would be considered to be directly participating in hostilities while carrying out their roles. (When an individual is a civilian immune from attack, this does not mean that they may not be detained for violations of national law; however, the rules governing such law enforcement operations are principally provided by international human rights law rather than by international humanitarian law.)

15. A number of civilians from conflict-affected areas with whom I spoke – including elders, witnesses to specific incidents, and the family members of victims - alleged that the international forces’ ignorance of local practices sometimes resulted in civilians being targeted based on only superficially suspicious conduct.<sup>37</sup>

16. Residents of communities struck by the IMF often complained that attacks had been undertaken on the basis of fabricated information provided by individuals pursuing personal grudges.<sup>38</sup> Numerous Government officials also claimed that civilian casualties had often been caused by international forces acting on false tips. One governor stated that there were people in his province who make a business of acting as intermediaries who would give false tips to the international forces in return for payment from individuals holding grudges. A number of security officials raised the issue in more general terms.<sup>39</sup> Civilians from conflict-affected areas confirmed that there is a tendency for attacks on persons wrongly believed to belong to the Taliban to work as self-fulfilling prophecies when those targeted decide to cultivate some countervailing source of military support.<sup>40</sup>

17. Understandably, the international forces do not detail why particular targets were selected. Publicly releasing the source of intelligence information would often be tantamount to imposing a death sentence on the source. But this also makes it extremely difficult to confirm the authenticity or otherwise of intelligence relied upon. This does not

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<sup>37</sup> I heard multiple accounts of individuals who were irrigating fields at night - a common practice to prevent the evaporation of scarce water - being targeted by ground forces and in air strikes. The witnesses believed that these killings took place because international forces had jumped to the conclusion that a man moving about at night must be an insurgent. I received similar allegations about persons targeted while traveling at night (in one case, the individual was going to a hospital to obtain medication for a woman who had gone into labor) and others who were camping in remote areas because they were engaged in herding or road construction. Elders and other witnesses also claimed that international forces would misinterpret guns carried for self-defense as demonstrating that an individual was an insurgent and explosives possessed for road construction or gemstone mining - a significant industry in Nuristan - as evidence that an individual was involved in producing roadside bombs. One witness pleaded that the international forces should look at the ground reality in the area: “We are poor, we graze sheep, we have emergencies and need to walk at night - but we cannot.”

<sup>38</sup> An elder from Nuristan accused a district governor of feeding false information to international forces leading them to raid his local opponents. An elder from the Korengal Valley in Kunar asserted that “resistance” to the Government was stimulated by an IMF attack on the home of a prominent local leader. No compensation was provided and the leader responded by aligning himself with AGEs and facilitating attacks on the international forces. A witness from the Ghani Khel district of Nangarhar described a similar incident based on false information. An individual from the Maywand district of Kandahar claimed that Afghan interpreters for the international forces would extort money by threatening to label as Taliban those who would not pay. Air strikes and raids would follow.

<sup>39</sup> One senior official who claimed that reports of civilian casualties were frequently exaggerated stated that sometimes local residents genuinely perceived the victims as civilians involved in family feuds even when, in his view, those “feuds” were part and parcel of the conflict between the Taliban and the Government.

<sup>40</sup> Similarly, several elders from Nuristan province stated that communities closely observe who receives development assistance from the Provincial Reconstruction Teams (PRTs) and that those who do not receive assistance may come to fear that they are thought to be AGEs and thus flee the area rather than wait to be attacked.

mean that the problem should be ignored.<sup>41</sup> Government officials at all levels repeatedly argued that tighter cooperation between the international forces and the NDS in vetting targets and planning operations was the surest path toward reducing civilian casualties caused by false tips.<sup>42</sup> The merits of corroborating intelligence with as many sources as possible were not disputed by international military commanders, although one characterized the NDS's information as being more copious than reliable.

18. Existing procedures for ensuring that strikes targeting Taliban fighters are based on reliable information are insufficient to ensure respect for IHL requirements.<sup>43</sup> The current approach renders civilians vulnerable to attack and pushes personal and tribal rivals into opportunistic participation in the armed conflict.

### Suicide Attacks

19. In the four months prior to my visit, 214 of the estimated 381 civilians killed by the Taliban were killed in suicide attacks.<sup>44</sup> Both the number of suicide attacks and the number of civilians killed during such attacks have increased as the conflict has progressed: 2006 (123 attacks; 237 killed), 2007 (160 attacks; 321 killed), first four months of 2008 (34 attacks 214 killed).<sup>45</sup>

20. Taliban suicide attacks are often employed in a disproportionate or indiscriminate manner, and large numbers of civilians are injured or killed as a result. Because they are carried out through a suicide body-borne or vehicle-borne IED (“incendiary explosive device”) by insurgents who feign civilian status, Afghan and international forces are hard pressed to distinguish potential suicide bombers from civilians, leading to the accidental killing of civilians.

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<sup>41</sup> One witness whom I interviewed stated that, in his area, people trying to get their personal enemies attacked would sometimes go to the District Governor, but that he knew too much to believe their stories, would sometimes go to the Provincial Governor, but that he too was hard to persuade, and would then go to the international forces, who would conduct raids without adequately verifying the information received.

<sup>42</sup> I discussed the existing coordination mechanisms with a number of Governors and security officials. While arrangements vary, typically there is a weekly meeting bringing together the Governor and senior representatives of the international forces, ANA, ANP, and NDS, among others. This weekly meeting is sometimes supported by a standing body of lower-level representatives. Called a Provincial Coordination Committee (PCC), similar mechanisms also exist at the regional level and, less often, at the district level. All concerned stated that whether these mechanisms work well depends largely on the personal relationships and trust among the participants, and many of the Government officials with whom I spoke stressed with concern that the international forces continued to conduct some operations without prior consultation.

<sup>43</sup> ICRC Study, Rule 16. *See* further notes 4 and 9.

<sup>44</sup> UNDSS recorded 381 civilian casualties during the first four months of 2008 (214 of these were a result of suicide attacks).

<sup>45</sup> UN, UNDSS Afghanistan (8 May 2008).

21. Suicide bombing, as a method of attack during an armed conflict, is not prohibited *per se*.<sup>46</sup> But a suicide attack violates IHL when it targets civilians, may be expected to result in disproportionate civilian casualties, or is carried out in a perfidious manner.

22. Data on suicide attacks from January 2007 to March 2008 indicates that 15% of attacks targeted civilians, including government officials, and thus violated IHL. In addition, many of the attacks on legitimate military objectives disregarded the principle of proportionality by taking place in public areas where there are large numbers of civilians. Thus, although the suicide attack may target an IMF convoy or a member of the ANA, large numbers of civilian bystanders are often wounded and killed in a manner wholly excessive to any possible anticipated military advantage. The organizers of such attacks simply fail to take all feasible precautions to minimize incidental loss of civilian life. The manner in which suicide attacks have been employed also appear to have become more reckless in recent years.

23. Many Taliban attacks also involve perfidy, a prohibited method of warfare.<sup>47</sup> The Taliban regularly violate the prohibition against perfidy by feigning a civilian or other protected status for the purpose of carrying out suicide attacks. The Taliban's perfidious acts render everyday activities for Afghan civilians highly dangerous. In addition to the deaths caused directly, perfidy affects the behaviour of international and Afghan troops vis-à-vis Afghan civilians. In this way, violations by one side make it more difficult for the other side to comply with its legal obligations. Thus, in many situations the IMF will have no reliable way of assessing whether an unknown person approaching is a civilian, or a Taliban member intending to attack. This heightens the caution with which IMF soldiers approach ordinary Afghans, and necessitates the IMF taking precautions to protect themselves.

[...]

### Struggling for the Loyalty of the Civilian Population

#### *Neutrality*

26. The Government and its international supporters need civilian support to build a strong state.<sup>48</sup> The Taliban similarly need civilian support. As the parties to the conflict compete for the cooperation of local civilians, individuals are subjected to conflicting demands, often including threats of violence, regardless of what choices they make.<sup>49</sup> The

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<sup>46</sup> Just as it does not violate humanitarian law for a Taliban fighter to drive up to a checkpoint and shoot at a soldier, it does not violate humanitarian law for a Taliban fighter to drive up to a checkpoint and blow up both the soldier and himself.

<sup>47</sup> Perfidy is a deception that is designed to lead one party to the conflict to believe that they must accord protected status to an enemy. AP 1; ICC. And see J Ashley Roach, "Ruses and Perfidy Deception During Armed Conflict", 23 U. Tol. L. Rev. 395 (1991-1992).

<sup>48</sup> Civilians can provide information on the identities and locations of Taliban fighters, tip off international forces to the locations of IEDs, provide information on the identities of other civilian collaborators and informants, block or facilitate the recruitment of fighters, and so on.

<sup>49</sup> International humanitarian law governing non-international armed conflicts, including article 3 common to the Geneva Conventions of 1949, prohibits the killing of anyone "taking no active part in the hostilities"

kinds of killings that are happening in this war also wound the living and trap them in a struggle to retain their civilian neutrality.<sup>50</sup>

### *Taliban Assassinations and “Night Letters”*

27. The Taliban routinely resorts to assassinations to coerce and punish civilians. In 2008, 271 such executions were committed. These killings are the tip of an iceberg of intimidation, epitomized by the “night letters” distributed to civilians. Some letters are displayed in public places - nailed to a mosque door, a school, or in a public market – and contain general directives or threats to the local population.<sup>51</sup> One Kunar witness told of a

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including not only civilians but also combatants “who have laid down their arms” or who have been placed *hors de combat* by injury or “any other cause”. Common Article 3 also prohibits “the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples”. The content of these guarantees may be found, at least in part, by reference to the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. Furthermore, humanitarian law always prohibits “[a]cts of threats of violence the primary purpose of which is to spread terror among the civilian population” (ICRC Study, Rule 2).

<sup>50</sup> I was told of one man who was beheaded by the Taliban after having been warned in a “night letter” posted in the community’s mosque to stop supplying information to the international forces. Although he appears to have fallen under suspicion due to his own conduct, the community’s elders had previously decided to keep the Taliban fighters out after having received a warning from the international forces. The latter had told them that if the Taliban continued to launch attacks from their area, they would retaliate, and civilians might well die. But, while the elders succeeded in angering the Taliban, they were unable to convince the international forces of their intentions. Indeed, I was told that the international forces mistook for Taliban the community search party looking for the missing man and fired on them. Another incident also illustrates the difficulty for civilians to navigate the conflicting demands of the parties to the conflict. Witnesses informed me that the presence of Taliban fighters in their village had resulted in attacks by the international forces, targeting both actual fighters and others who had been wrongly accused. They stated that, for this reason, a *jirga* of local elders decided that the community would hinder and deter Taliban infiltration. They decided that the house of anyone found supporting AGEs would be burned down and he would be handed over to the government. It was unclear, however, whether the international forces believed that the *jirga*’s decision was *bona fide* and the community was subsequently raided by international forces, resulting in two civilian deaths.

<sup>51</sup> In addition to the accounts that I received from witnesses, I reviewed a large number of night letters and other information gathered in Afghanistan. Threats made by the Taliban in person, by telephone, and through night letters and other publications have attempted to induce compliance with social norms favored by the Taliban and to deter various forms of collaboration with the Government, the international forces, and other actors. Persons threatened and targeted have included mullahs in Ulema Councils that advise the Government, members of Provincial Councils (especially female members), teachers, students attending school (especially female students), elders perceived to be collaborating with the Government, drivers supplying food to the international forces, persons employed by the Government, and persons working for non-governmental organizations. A night letter in Kandahar referred to earlier general pronouncements that people should not work for the Government or NGOs and went on to warn that a specific individual’s family members must cease to work for NGOs or be killed. Persons belonging to the ANA and persons suspected of passing information to Government or international forces have been routinely targeted. A night letter in a mosque in Khost read, “Anyone who reports any pending suicide bomber attacks will face death. Do not maintain links with the government as well as with the international forces.” A night letter in Kunar read, “Don’t cooperate with the government, don’t spy, don’t be recruited to the military or police.” Current and former members of the ANA have been abducted and killed. (While ANA combatants are legitimate military objectives, a party to a conflict is prohibited from killing someone that they have detained. In some instances, the Taliban has prohibited movement between areas that they control and areas controlled by the Government. Thus, in parts of Kandahar province, the Taliban has instructed people to

letter justifying attacks on local school students and on all non-Muslims. Others are sent to specific addressees. A Kandahar woman told of letters instructing her son to stop working for the ANP. He was later killed by suspected Taliban. In Kunar, a night letter was been posted in the village's mosque threatening three people. Subsequently, two were assassinated and the third fled the country.<sup>52</sup> Directives issued by the Taliban leadership to its fighters expressly authorize the execution of civilians.<sup>53</sup>

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travel to Pakistan rather than to Kandahar City to purchase goods or to obtain medical care. Some night letters have also attempted to impose social norms. (For instance, one in Kunar instructed locals not to shave.)

<sup>52</sup> The East and the South see different patterns of abuse by the Taliban. In the East, night letters tend to be fairly general admonitions not to cooperate with foreigners; whereas, in the South, night letters tend to be more specific warnings that particular individuals must desist from particular activities. And, in the East, individuals labeled as collaborators are more likely to receive multiple warnings and even to be released after being detained by the Taliban, while, in the South, such individuals are more likely to be beheaded. Statistical evidence on assassinations show that they are far more common in the South and Southeast than in the East. The Taliban administers some kind of "judiciary" in a few areas, but most "punishments" are decided upon directly by Taliban fighters. These are only generalizations - individualized warnings, harsh intimidation, and beheadings take place in both regions with alarming frequency - but, nevertheless, these differences suggests that the proper approaches to reducing the risks war poses to the civilian population might also differ in some respects between the two regions. Informed interlocutors provided a number of explanations for these differences:

1. In the South, the Taliban is more hard-line ideologically. (Insofar as this is true, it may be, in part, because the South is dominated by the same Taliban leadership that exercised authority over much of the country in the late 1990s, while the East sees a greater diversity of armed actors - including Hezb-i Islami and groups directly linked to Al-Qaeda. In both regions, however, locals generally refer to all of these simply as "Taliban".)
2. In the East, tribal structures are stronger, making it easier for communities to resist Taliban coercion and infiltration.
3. The Taliban's more ruthless repression in the South reflects the fact that it is more dependent on the local population's cooperation there than in the East due to differences in geography and terrain. In the South, Taliban fighters must live amongst the local population and rely on them not to tip off the government or international forces as to their locations or identities; whereas, in the East, they can reside in Pakistan, only periodically crossing the border to make attacks. (The Southern provinces, including Helmand and Kandahar, also border Pakistan but, in contrast to the East, populated areas are separated from the border by large expanses of inhospitable and sparsely-populated desert.) The East's terrain is also extremely rugged in contrast to the relatively flat South. In the South, interlocutors also identified a difference in the kind of Taliban abuse between areas newly seized by the Taliban and areas under the sustained control of the Taliban. In the former, the Taliban is apt to kill elders who had previously collaborated with the Government and the international forces. In the latter, victims have more often been suspected spies. These are identified largely through circumstantial evidence, such as possession of US dollars. A number of those with whom I spoke were deeply fearful that speaking with a foreigner might lead others to label them as spies.

<sup>53</sup> A copy of the Taliban's *Layeha*, or Book of Rules, signed by the "highest leader of the Islamic Emirates of Afghanistan", was obtained by two journalists who met with a Taliban commander in late 2006. For example, with respect to teachers and NGO workers, the manual provides the following rules:  
(24) It is forbidden to work as a teacher under the current puppet regime, because this strengthens the system of the infidels. True Muslims should apply to study with a religiously trained teacher and study in a Mosque or similar institution. Textbooks must come from the period of the Jihad or from the Taliban regime.

(25) Anyone who works as a teacher for the current puppet regime must receive a warning. If he nevertheless refuses to give up his job, he must be beaten. If the teacher still continues to instruct contrary to the principles of Islam, the district commander or a group leader must kill him.

### *Intimidation by International Forces*

28. Civilians experience far more pervasive and violent intimidation by the Taliban, elders and others, especially in Kunar province, claimed international forces had threatened collective consequences for failures to cooperate.<sup>54</sup> In one instance, international forces were cited as saying that unless various weapons were brought to them within 24 hours, they would demolish several villages. The villagers refused, and a funeral ceremony was then attacked by a helicopter, killing six people. International forces in Kunar province would not meet with me, so it was not possible to obtain their response. Arguably, if villagers have Taliban in their midst they will inevitably be endangered by military operations no matter what safeguards are adopted. Nonetheless there is reason for serious concern that international forces take a cavalier attitude toward such safeguards precisely because they view the civilian population as complicit with the Taliban.

[...]

### Transparency and Accountability in International Forces Operation

33. Third, the international forces do not publicly provide information on civilian casualties. Clearly, it is often difficult to reliably ascertain a precise figure because it is not always possible to determine whether particular individuals were civilians or Taliban fighters. But instead of a wall of silence, statistics should be provided accompanied by appropriate caveats and explanations of any uncertainty. The absurdity of the current situation is captured in the response by NATO to the preliminary findings I issued at the conclusion of my mission to Afghanistan. NATO's spokesman stated that "the suggestion that international military forces have killed 200 civilians uses a figure that we reject and is far too high" but he then refused to provide any alternative estimate.<sup>55</sup> This is a wholly unsatisfactory situation.

[...]

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(26) Those NGOs that come to the country under the rule of the infidels must be treated as the government is treated. They have come under the guise of helping people but in fact are part of the regime. Thus we tolerate none of their activities, whether it be building of streets, bridges, clinics, schools, madrases (schools for Koran study) or other works. If a school fails to heed a warning to close, it must be burned. But all religious books must be secured beforehand.

The Book of Rules clarifies that these "rules are obligatory" and that "[a]nyone who offends this code must be judged according to the laws of the Islamic Emirates". ("A new layeha for the Mujahideen" (29 November 2006) at < <http://www.signandsight.com/features/1071.html>> (translated from version in *Die Weltwoche* (16 November 2006)).) One informed interlocutor stated that at least in the South, where the control of Mullah Mohammad Omar is most direct, these rules do appear to influence the conduct of fighters on the ground.

<sup>54</sup> There is no exception to the rule prohibiting attacks directed at civilians who are not directly participating in hostilities. Indeed, the international humanitarian law applicable to non-international armed conflicts expressly prohibits any "resort to belligerent reprisals" as well as any other "countermeasures against persons who do not or who have ceased to take a direct part in hostilities" (ICRC Study, Rule 148).

<sup>55</sup> NATO Statement, 15 May 2008.

## Compensation for Victims

35. The Government provides some payments (approximately US\$1,900) to civilians killed by AGEs, but this program is uneven, and operates in a highly unsatisfactory manner. The various international forces have implemented diverse programs for compensating civilian victims of military operations. Such payments are consistent with international law requirement for reparations for human rights or IHL violations.<sup>56</sup> Governments have generally cited the rationale of “winning hearts and minds” and eschewed any notion of obligation. But the fact remains that reparations are increasingly often paid to the families of those killed, even in lawful attacks, and this goes well beyond the practice in previous conflicts. Publicly-available records are insufficient for estimating the proportion of victims who receive payments. However, informed interlocutors suggested that victims do routinely obtain payments, although doing so is not always easy, and the payments are not always fair or timely.

36. Women, in particular, face obstacles, as illustrated by interviews with many women in Kandahar who lost male relatives in air strikes, Taliban attacks, or IMF convoy shootings. Their incomes had been eliminated or drastically reduced. Some had received monetary assistance from the Afghan government or ISAF, but many did not know how to even begin to seek such aid. If they are lucky, their families support them. Some enter the workforce, and receive second-class wages. Others will have no way to access education or employment and will be forced to beg to feed their children. Compensation can be especially important for women, and payment programs should be designed with their unique circumstances and needs in mind.

37. Among the international forces, the US is the most systematic in providing compensation. Commanders are authorized to make “condolence” or “solatia” payments

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<sup>56</sup> See ICCPR, Art. 2(3); Human Rights Committee, General Comment 31, “Nature of the General Legal Obligation on States Parties to the Covenant” (2004), para. 16; Henckaerts & Doswald-Beck, *Customary International Humanitarian Law* (ICRC 2005), Rule 150. As a matter of customary international humanitarian law, “A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused.” (ICRC Study, Rule 150.) While the modalities of this obligation under IHL continue to be clarified, “There is an increasing trend in favour of enabling individual victims of violations of international humanitarian law to seek reparation directly from the responsible State.” (ICRC Study, volume 1, page 541.) This interpretation is, moreover, obligatory pursuant to the international human rights law requirement to “ensure that any person whose rights ... are violated shall have an effective remedy” (ICCPR, art. 2(3)(a); Human Rights Committee, general comment No. 31, “Nature of the legal obligation on States Parties to the Covenant” (2004), (CCPR/C/21/Rev.1/Add.13), para. 16.) The injury for which reparation is due includes both material and moral damage, and the reparation therefore “shall take the form of restitution, compensation and satisfaction” (Draft Articles on State Responsibility, arts. 31, 34). Because restitution - “re-establish[ing] the situation which existed before the wrongful act was committed” would be “materially impossible” in the case of an individual’s death, the requisite reparation will comprise compensation and satisfaction (Draft Articles, art. 35). The compensation “shall cover any financially assessable damage” (Draft Articles, art. 36), and the satisfaction “may consist in an acknowledgment of the breach, an expression of regret, a formal apology or another appropriate modality” (Draft Articles, art. 37). In practice, the monies and goods provided for deaths in Afghanistan typically carry elements of both compensation and satisfaction, helping to compensate for the loss of a productive member of the family and serving as an expression of regret.

and frequently do so. The maximum payment amount provided for a death on either basis is roughly \$2,500. A British commander informed me that they make *ex gratia* payments, with the amount determined by general guidelines and negotiation with the *shura* of the victim's village. Some of the other national contingents within ISAF run similar programs. But some governments have held back. One concern has been that offering payments would inherently constitute an admission of legal liability. This concern is baseless, as demonstrated by the experiences of governments who do make such payments. Another concern expressed has been that for their military contingents to offer payments would encroach on "humanitarian space" by involving soldiers in the provision of "aid". This is unpersuasive: such payments are an integral part of responsible military action rather than an ancillary humanitarian activity. The existing payment programs are extremely promising and, in many respects, unprecedented. The flaws lie in the overall system's excessively discretionary and fragmentary character, which mean that whether payment is provided for a particular civilian's death depends on the national contingent involved, the attitudes of local commanders and Government officials, and the ability of the surviving family to navigate the process for obtaining a payment.

[...]

### Recommendations

67. The Government of Afghanistan, the international military forces and the Governments who send them, and the Taliban and other anti-government elements all have a responsibility to take urgent action to reduce civilian casualties and to end unlawful killings in Afghanistan. My recommendations follow.

#### *Killings by the international and afghan military forces*

68. The international forces should review procedures to ensure that air strikes and close air support are delivered only when sufficient measures have been taken to verify the identity of the target and that the incidental loss of civilian life would not be excessive in relation to the anticipated concrete and direct military advantage.

69. The international and Afghan forces should review the circumstances in which they conduct unannounced night-time raids, to identify situations in which alternative measures less dangerous to other residents might be employed.

[...]

#### *Killings by the Taliban*

71. The Taliban should cease employing means and methods of warfare that violate international humanitarian law, and result in the unlawful killing of civilians. The Taliban leadership should issue clear orders to those carrying out attacks to abide by international law. This particularly includes the following:

- (a) To stop threatening and assassinating civilians in all circumstances, including for their alleged failure to cooperate with the Taliban or for their decision to cooperate with the Government;
- (b) To cease using civilians as “human shields” to deter attacks by international and Afghan military forces;
- (c) To stop targeting civilians in suicide attacks, and cease engaging in perfidy (unlawful deception) during such attacks, including by disguising themselves as civilians, soldiers or police.

[...]

#### *IMF responses to civilian casualties*

73. The international forces should ensure that allegations that soldiers have committed unlawful killings are fully investigated, and ensure that soldiers who have committed unlawful killings are prosecuted.

74. The international military forces should cooperate more fully with outside efforts - especially those of UNAMA and of the Afghanistan Independent Human Rights Commission - to investigate killings. This should include the expedited declassification and more comprehensive sharing of relevant information, including video footage and mission story-boards.

75. At the conclusion of military investigations into killings of civilians, information on the findings and reasoning should be made public. Such information should be provided to the families of the victims. In particular, the reasoning of the US Court of Inquiry decision on the 4 March 2007 Nangarhar incident should be made public.

[...]

78. The international military forces should provide public information on the estimated numbers of civilians killed and wounded in air strikes, raids, and other military operations.

#### *Compensation for victims*

79. The various domestic and international compensation programs should be better coordinated. This might usefully involve a high-level policy body that would help the various programs to operate in a complementary fashion and an operational, information-sharing body that would allow for greater consistency and that would help prevent individual cases from falling through the cracks.

80. Even where compensation programs involve *ex gratia* payments that carry no admission of legal liability, the discretion of commanders in deciding whether to grant compensation should be more limited, and general guidelines for making payments should be clearly set out.

81. Commanders should seek out victims and their families rather than waiting to receive a complaint or request. In particular, the obstacles women face in accessing compensation and other payments should be taken into account in implementing such programs.

## B. REFUGEES AND INTERNALLY DEPLACED PERSONS

### *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/62/265, 16 August 2007, ¶¶ 33-36):*

33. The Special Rapporteur has addressed a number of threats to the lives of refugees, other migrants, and internally displaced persons. In a field in which many actors have highly specialized mandates or remits the comprehensive normative approach adopted by the Special Rapporteur makes an important contribution. Refugees were identified in the first report of the Special Rapporteur as one of 15 sets of “[t]argets of summary or arbitrary executions”,<sup>57</sup> and he focused especially on the dangers that counterinsurgency operations could pose to those in refugee camps.<sup>58</sup> That report also discussed three specific allegations that the Special Rapporteur had received regarding the killing of refugees, illustrating that from the beginning that the Special Rapporteur’s thematic concerns emerged from concrete situations.<sup>59</sup>

34. The work of the Special Rapporteur in relation to these issues provides a good illustration of the way in which potentially overlapping mandates adjust to accommodate one another and to avoid unproductive duplication of effort. Thus, the early work of the Special Rapporteur could well have provided some of the impetus to establish the mandate of the Representative of the Secretary-General on internally displaced persons, which the Commission did in 1992, 10 years after the establishment of the mandate on extrajudicial executions. In the early years after the appointment of the Representative the Special Rapporteur continued to address issues concerning internally displaced persons and related issues systematically and this was encouraged by a 1995 Commission resolution calling upon the special procedures to pay special attention to the plight of IDPs.<sup>60</sup> In response, in 1999, the Special Rapporteur undertook an exchange of correspondence with the Government of Colombia that included considerable discussion of the situation of IDPs in that country.<sup>61</sup> The forced internal relocation of a group of individuals in Myanmar was also the subject of a communication.<sup>62</sup> Similarly, the Special Rapporteur indicated in 2000 that she had received during the period under review “disturbing reports of deliberate attacks against internally displaced persons, particularly in the context of internal conflict and unrest”.<sup>63</sup> In several reports, the Special Rapporteur refers to the reports of the Representative of the Secretary-General on internally displaced

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<sup>57</sup> E/CN.4/1983/16, para. 104.

<sup>58</sup> Ibid., para. 114.

<sup>59</sup> See E/CN.4/1983/16. These allegations were that Salvadoran soldiers killed Salvadoran refugees in camps in Honduras (note verbale, para. 155; response, annex IX, p. 11), that civilians were killed in refugee camps in Lebanon while they were under the control of the Israeli armed forces (note verbale, para. 174; response, annex IX, p. 32), and that the South African military attacked Namibian refugee camps located in Angola (letter, para. 184).

<sup>60</sup> *Official Records of the Economic and Social Council, 1995, Supplement No. 4 (E/1995/23)*, chap. II, sect. A, resolution 1995/57.

<sup>61</sup> E/CN.4/1999/39/Add.1, para. 58 et seq.

<sup>62</sup> E/CN.4/1999/39, para. 39.

<sup>63</sup> A/55/288, para. 26.

persons for a “broader overview of the phenomenon”.<sup>64</sup> In her 2003 report, the Special Rapporteur noted

that extrajudicial killings in the context of global migration have become of increasing concern. The issue is increasingly highlighted as people find it necessary to move, both inside and outside their countries, for political, economic, social or other reasons, as the world population grows. The Special Rapporteur wishes to recall that the right to life applies to all human beings, and that Governments have a responsibility to protect this right in territories under their jurisdiction regardless of the citizenship of the persons concerned.<sup>65</sup>

35. The analysis of country situations was also guided by this emphasis on the applicability of the right to life to all individuals, including those who are seeking refuge inside or outside their own countries. For example, the Special Rapporteur’s report to the Commission in 2004 dealt in the same section with “reports of deliberate attacks against refugees and internally displaced persons”.<sup>66</sup>

36. Overall, the emphasis attached by the Special Rapporteur to cases involving refugees and IDPs has changed since the advent of the Representative dealing with internally displaced persons. Relevant cases continue to be taken up, especially when it seems necessary to complement the action taken by the Representative or when the Special Rapporteur feels that he can bring added value to the work undertaken by other special procedures. Thus, for example, the Special Rapporteur sent communications to Egypt with regard to the killing of refugees in Cairo in 2005<sup>28</sup> and to Rwanda with regard to the massacre of refugees.<sup>67</sup> But in general, the advent of an active and effective mandate concerning internally displaced persons has enabled the Special Rapporteur to pay less attention to the plight of those groups and instead focus his very limited resources elsewhere.

***Report on Mission to The Republic of Congo, by Special Rapporteur Asma Jahangir (E/CN.4/2003/3/Add.3, 4 November 2002, ¶¶ 8):***

*The Special Rapporteur visited the Democratic Republic of the Congo from 16 to 22 June 2002. She reported on the widespread killings of refugees by government forces.*

8. The allegation received includes a great large number of large-scale extrajudicial killings of refugees and other unarmed civilians by government forces. In 1998, the Special Rapporteur transmitted allegations to the Government regarding the killing by army soldiers of 54 Rwandan refugees and some 100 Congolese civilians in March and April 1998 in Shabunda, South Kivu. Another 30 civilians were reportedly killed by government soldiers on 12 May 1997 in Mudja, Bukumu county, in Kivu. On 3 January

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<sup>64</sup> See, e.g. E/CN.4/1997/60, para. 62.

<sup>65</sup> E/CN.4/2003/3, para. 55.

<sup>66</sup> E/CN.4/2004/7, para. 65.

<sup>67</sup> E/CN.4/2000/3/Add.1, para. 388.

1999, over 300 civilians were allegedly killed by Congolese army soldiers in Mobé south of Zongo and Bangui in the northern part of the country.

***Press Statement on Mission to the Democratic Republic of the Congo (October 2009):***

*The Special Rapporteur visited the Democratic Republic of the Congo from 1 to 15 October, 2009 and reported on the killings of refugees in their camps.*

I have received credible information of significant and largely unreported killings by the FARDC in the Kivus during 2009. In Shalio (near Busurungi in North Kivu) it appears that the FARDC, led by Colonel Zimulinda, attacked a makeshift camp of Rwandan Hutu refugees on 27 April 2009. The FARDC surrounded the camp, shot and beat to death at least 50 refugees and burnt the camp to the ground. It also appears that some 40 women were abducted from the camp. A small group of 10 who escaped described being gang raped, and had severe injuries; some had chunks of their breasts hacked off. It is not known what has happened to the other 30 women. On 10 May, at least 96 civilians were massacred by the FDLR in Busurungi largely in retaliation for the Shalio killings. I have also received early indications of many killings by the FARDC on the Nyabiando to Pinga axis in North Kivu. A thorough investigation should be launched.

## C. WOMEN

### 1. Honor Killings

*Report of the Special Rapporteur on extrajudicial executions, by Special Rapporteur Asma Jahangir (E/CN.4/2000/3, 25 January 2000, ¶¶ 78-84):*

78. In the period under review the Special Rapporteur has continued to receive reports of so-called “honour killings” of women. The perpetrators of these crimes are mostly male family members of the murdered women, who go unpunished or receive reduced sentences on the justification of having murdered to defend their misconceived notion of “family honour”. The Special Rapporteur is working closely with the Special Rapporteurs on violence against women, its causes and consequences and on the independence of judges and lawyers to monitor incidents of “honour killings” where the State either approves of and supports these acts, or extends a form of impunity to the perpetrators by giving tacit or covert support to the practice. The Special Rapporteur has received reports of “honour killings” from Bangladesh, Turkey, Jordan, Israel, India, Italy, Sweden, the United Kingdom, Pakistan, Brazil, Ecuador, Uganda and Morocco. The practice of “honour killings” is more prevalent although not limited to countries where the majority of the population is Muslim. In this regard it should be noted that a number of renowned Islamic leaders and scholars have publicly condemned this practice and clarified that it has no religious basis. At the same time, it is reported that some Governments of countries where Muslims are in a minority do not take a firm position against such violations of human rights on the pretext of not wanting to hurt cultural sensitivities among the minority population.

79. Information received so far indicates that “honour killings” take many forms. In some cases, young girls and women have been forced to commit suicide after public denunciation of their behaviour and open threats to their lives. Others are disfigured by acid burns; many of these women die as a result of their injuries. The Special Rapporteur has been informed that a 18-year-old woman was flogged to death in Batsail, Bangladesh, for “immoral” behaviour on the orders of clerics presiding over an informal village council. Such cowardly crimes against women are publicly and proudly confessed by the perpetrators, who are often family members of the victims. In one case in Egypt, the father of the victim reportedly killed his daughter, beheaded her and paraded her severed head through the streets of his neighbourhood shouting “I avenged my honour”. It is reported that in Pakistan around 300 women are killed every year for crimes of “honour”. Only a handful of the perpetrators are arrested, and most of these criminals receive only token punishment. The law also allows the heirs of the victims to forgive the accused or accept compensation (diyat) in place of imprisonment. In almost 90 per cent of such cases, the victims are killed by their own family or at their behest. Around 25 women are reportedly killed for crimes of “honour” each year in Jordan. It is estimated that almost one in four homicides in Jordan is an “honour killing”.

80. The right to life is the most fundamental of all rights and must be guaranteed to every individual without discrimination. Article 2 of the Convention on the Elimination of All

Forms of Discrimination against Women makes it obligatory for States parties to “condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women” and, to this end, undertake to make legislative changes, including sanctions, prohibiting discrimination against women. States parties are obliged “to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation”. They are required “to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”. They are expected to take all appropriate measures to modify or abolish “customs and practices which constitute discrimination against women”.

81. The Special Rapporteur notes that some countries retain legislation allowing for reduction of sentences and exemption from prosecution to those who kill in the name of honour. The authorities often maintain a deadly and deliberate silence over such killings, thereby encouraging perpetrators to adopt a self-righteous stance in regard to such inhuman crimes. The courts in many of these countries continue to justify such killings. Lesser punishment is often awarded on the grounds that the victim offered “provocation” by disobeying or violating cultural norms. The Special Rapporteur deplors the refusal of the Senate of Pakistan to discuss a resolution condemning “honour killings”. The senators favouring such a resolution were physically intimidated in the presence of the press and women activists attending the session. The Government of Pakistan has further refused to condemn honour killings despite public protests throughout the country against the decision of the Senate. The Special Rapporteur is deeply concerned at the Government’s attitude of tolerance of such killings despite its statement to the contrary at the fifty-fifth session of the Commission on Human Rights.

82. The Special Rapporteur is aware of and welcomes the initiatives taken by the Governments of Jordan and Turkey to abolish or amend their legislation in order to bring it into conformity with international standards with regard to “honour killings”. The Special Rapporteur was encouraged by the public statements made by His Majesty King Abdullah, Her Majesty Queen Noor, and the Minister of Justice of Jordan in support of amending the penal laws discriminating against women.

83. When studying reports on this issue, the Special Rapporteur was deeply troubled to read judgement upon judgement moralizing upon the conduct of the victims of “honour killings”, while justifying acts of murder by the very people who would be expected to feel love and closeness to the women they so heartlessly kill. The Special Rapporteur is also concerned at the policy adopted by some Governments to protect potential victims of “honour killings”. While those threatening the lives of these women enjoy total freedom, the victims are placed in prisons or custodial and correctional homes, sometimes for years on end. They are not free to leave these institutions once confined to them.

84. A comprehensive policy has to be drawn up to abolish practices which impinge upon the life of any person purely because of sexual distinction. The Special Rapporteur intends to continue to follow individual cases to assess the level of impunity extended to

such crimes. In this connection, she would also like to acknowledge the efforts made by some Governments and judges in bringing the perpetrators of such violations to justice. Their endeavours to counter these gross violations of human rights must be supported by the international community. In this regard, the Special Rapporteur was particularly encouraged to follow the work undertaken by some leading international non-governmental organizations. Their campaigns, along with increased media exposure, have attracted much-needed international attention to the practice of “honour killings”.

***Report of the Special Rapporteur on extrajudicial executions, by Special Rapporteur Asma Jahangir (A/57/138, 2 July 2002, ¶ 35):***

35. During her mission to Turkey, the Special Rapporteur had the opportunity to gather information on “honour killings” of women, mostly occurring in the east and south-east of the country. Despite the involvement of a few women’s rights organizations that reported that impunity for such cases was taken for granted, the Special Rapporteur noted with concern that all other non-governmental organizations dealing with human rights were of the opinion that “honour killings” were not a human right but a social issue. Reports from women’s rights groups confirm that only a few cases come to light, as the local authorities and society in general condone the crime. The Special Rapporteur welcomes the initiative of the Turkish Government, which, as a preventive measure, runs shelter homes; however, since existing shelters are insufficient and ineffective in guaranteeing the right to life of threatened women, she is dismayed that the Government does not, as a matter of policy, arrest family members threatening the lives of victimized women. In this regard, the Special Rapporteur is also concerned at the policy adopted by other Governments to “protect” potential victims of “honour killings”. While those threatening the lives of these women enjoy total freedom, the victims are placed in prisons or custodial and correctional homes, sometimes for years on end. They are not free to leave these institutions once confined to them. The Special Rapporteur therefore considers these so-called protected women under perpetual threat to their life.

***Report of the Special Rapporteur on extrajudicial executions, by Special Rapporteur Asma Jahangir (E/CN.4/2004/7, 22 December 2003, ¶¶ 66-69):***

66. In the period under review, the Special Rapporteur has continued to receive reports of so-called “honour killings” of women. In this regard, the Special Rapporteur wishes to recall that she is monitoring incidents of “honour killings” where the State either approves of and supports these acts, or extends a form of impunity to the perpetrators by inaction. In this connection, she transmitted to the Government of Pakistan a communication relating to the murder of some 200 victims. It is worth mentioning that, although women and girls are the main targets of these brutal killings, men and boys - either relatives, alleged partners or considered as “accomplice” of the female victim - can sometimes be targeted by such killings. The perpetrators of these crimes are always male family members or persons acting at their behest. The rationale for killing is to preserve a misconceived notion of “family honour” allegedly put in jeopardy by the victim herself. In the great majority of cases sent by the Special Rapporteur to the Government of Pakistan, the information received indicates that the murderers remain unpunished either

because no complaint was ever filed by relatives of the victims, or because the police investigation is allegedly ongoing without any concrete result. In some cases, it is reported that the police refused to file a complaint claiming that the victims' relatives should forgive the perpetrator who is considered to have acted in all fairness. According to the information received, there are some cases where murderers reportedly surrender themselves to the police with the murder weapon. Nevertheless, no action was ever taken against them.

67. Information received indicates that “honour killings” can take many forms. The Special Rapporteur submitted to the Government of Pakistan horrifying cases where women and young girls are set ablaze, strangled, shot at, clubbed, stabbed, tortured, axed or stoned to death. Their bodies are found mutilated with their throat slit, or they are chopped into pieces and thrown in a ditch. The Special Rapporteur was particularly disturbed by the case of a 16-year-old girl who was reportedly electrocuted to death after being drugged with sleeping pills and being tied to a wooden bed with iron chains by members of the Rajput Toors, a powerful community in Duniyapur, allegedly for having married outside her community.

68. In November 2003, the President of Pakistan ordered an investigation into the murder of a young woman, Afsheen Musarat. Her body was exhumed after local human rights groups alleged that she was murdered for refusing to marry a cousin and eloped with another relative. The post-mortem indicated that she was strangled and the perpetrators were arrested. While the Special Rapporteur welcomes this step, she urges the Government to amend the law and to take steps which will bring about institutional reforms. Action in 1 case out of over 200 remains at best symbolic.

69. In this regard, the Special Rapporteur wishes to remind that Governments are obliged to protect the right to every individual to life, liberty and security by law and to adopt all appropriate measures, including legislation, to modify and abolish existing law regulations, customs and practices that are in violation of the human rights of women. She further refers to article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, which makes it obligatory for State parties to “condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women” and, to this end, undertake to make legislative changes, including sanctions, prohibiting discrimination against women. State parties are obliged “to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation”. They are required “to take all appropriate measures [...] to modify or abolish [...] customs and practices which constitute discrimination against women”.

***Interim Report of the Special Rapporteur on extrajudicial executions to the General Assembly, by Special Rapporteur Asma Jahangir (A/59/319, 1 September 2004, ¶¶ 54-55):***

54. During the period under review, the Special Rapporteur continued to receive reports of gender-based crimes, which thrive on impunity. In this regard, the Special Rapporteur received many reports of so-called “honour killings” where the State either approves of or supports these acts, or permits de facto impunity for the perpetrators by inaction. In this connection, she transmitted to the Government of Pakistan a communication relating to the murders of 208 women (see E/CN.4/2004/7/Add.1, paras. 354-500). The perpetrators of these crimes are always male family members or persons acting at their behest. The rationale for killing is to preserve a misconceived notion of “family honour”, allegedly jeopardized by the victim herself. In the great majority of cases transmitted by the Special Rapporteur to the Government of Pakistan, the information received indicated that the murderers remain unpunished either because no complaint was ever filed by relatives of the victims, or because the police investigation is allegedly ongoing without any concrete result. In some cases, it is reported that the police refused to register a complaint, claiming that the victims’ relatives should forgive the perpetrator who is considered to have acted in all fairness. According to the information received, in some cases the murderers reportedly surrender to the police, along with the murder weapon, but no action is ever taken against them. The Special Rapporteur was informed of the cases of 2,774 women killed over the last six years in Pakistan for “dishonouring” their families, but the Special Rapporteur selected only those cases which fell within her mandate: those in which government officials were complicit or had failed to take action. It is worth mentioning that, during the reporting period, the Government of Pakistan has sent five communications clarifying the cases of 24 victims of honour killings. In most instances, the Government provided information relating the autopsies of the victims, as well as to the arrest of perpetrators and their subsequent trials. While welcoming the incipient efforts of the Government of Pakistan to halt impunity for perpetrators of gender-based crimes, the Special Rapporteur recommends that her successor closely follow up this problem by continuing to bring up cases and seeking an adequate response from the Government.

55. The laws in Pakistan allow the heirs of the victim to forgive the murderer, who is then set free. In the case of honour killings, the perpetrators are almost always close family members, who are forgiven by other relatives, thus ensuring impunity. In this regard, the Special Rapporteur wishes to recall that Governments are obliged to protect the right to life of every individual by taking all appropriate actions, including legislative measures, and by adopting policies and administrative measures to protect the lives of threatened women. In addition, they are obliged to de-legitimize customs and practices that threaten the lives of women. She further refers to article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, according to which “State parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake ... (b) to adopt appropriate legislative and other measures, including sanctions, ... prohibiting all discrimination against women”; “(d) to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation”; and “(f) to take all appropriate measures ... to modify or abolish customs and practices which constitute discrimination against women”.

***Report on Mission to Afghanistan (A/HRC/11/2/Add.4, 6 May 2009, ¶¶ 63-64):***

*The Special Rapporteur visited Afghanistan in May 2008 and noted the unacceptably high numbers of civilians killed every day. He also reported on the practice of “honor killings”, affecting predominantly women.*

63. “Honor killings”<sup>68</sup> occur with impunity in parts of Afghanistan. In the eastern region, for example, one source had documented 40 honor killings between January 2007 and December 2008. The actual number is certainly far higher due to fear of reporting such cases. The victims are predominantly women, although men are also killed. Rarely are perpetrators investigated and prosecuted.

64. In Jalalabad, Nangarhar province, I spoke with a family member of a boy and girl (cousins) who allegedly had sexual relations outside of marriage. They were invited to a “dinner” by their uncles and, when sleeping, were shot and killed. The boy’s body was sent to his father. The girl’s was buried without any funeral prayers. No family members complained to the police. The police knew about the deaths, but did not investigate, claiming that they could not do so without a complaint from the family.<sup>69</sup> In Kandahar, a female colleague spoke with many women who told her that honor killings occur in their neighborhoods, but are rarely reported or investigated. One young woman, found to be pregnant, was strangled by her father and brother. No investigation or prosecution ensued. Other women were killed for attempting to flee their homes, often because of domestic violence. Women in the family of the deceased victim of an “honor killing” are typically too afraid of their own families to make a complaint to police. And they know that the police are unlikely to carry out an investigation, or that if they do, bribery will ensure impunity for the perpetrators. I received reports of a number of cases in which police did attempt to carry out investigations, but senior Government officials interfered with or prevented the investigations. Like any other murders, international law requires that these killings be investigated, prosecuted, and punished.<sup>70</sup>

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<sup>68</sup> The killing of a family member on suspicion of engagement in any actions deemed dishonorable, ranging from mere association with the opposite sex to sexual relations or running away from home.

<sup>69</sup> Article 476(1) of the *Penal Code of 1976* provides that in certain crimes against the person committed by a family member, an action may only be brought based on a complaint by the victim. Following a highly questionable interpretation of this provision, there have been cases in which the fact that the (dead) victim has not “chosen” to bring a complaint against the perpetrator has served as a basis for refusing to prosecute.

<sup>70</sup> In most situations, the isolated killing of individuals will constitute a simple crime and not give rise to any governmental responsibility. But once a pattern becomes clear in which the response of the Government is clearly inadequate, its responsibility under international human rights law becomes applicable. (See E/CN.4/2005/7, paras. 71-75.) This is because human rights law obligates governments to investigate, prosecute, and punish crimes that impinge upon the rights of its people. (ICCPR, art. 2(1).) When doing so is obstructed by existing laws or practices, governments are obligated to change these. (ICCPR, art. 2(2).) As the Special Rapporteur has repeatedly observed, governments that fail to punish murders because they are “honor killings” are violating international human rights law. (See E/CN.4/2000/3, paras. 78-84; see also the report of the Special Rapporteur on violence against women, its causes and consequences on her visit to Afghanistan in 2005, E/CN.4/2006/61/Add.5.)

## Recommendations

87. So-called “honour killings”, which occur in very large numbers, must be treated as the murders that they so clearly are. Police should investigate such cases whether or not the family has made a specific complaint to the police.

## **2. Witchcraft Killings**

*Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/11/2, 27 May 2009, ¶¶ 43-59):*

43. The persecution and killing of individuals accused of practising so-called “witchcraft” – the vast majority of whom are women and children - is a significant phenomenon in many parts of the world, although it has not featured prominently on the radar screen of human rights monitors. This may be due partly to the difficulty of defining “witches” and “witchcraft” across cultures - terms that, quite apart from their connotations in popular culture, may include an array of traditional or faith healing practices and are not easily defined. The fact remains, however, that under the rubric of the amorphous and manipulable designation of witchcraft, individuals (often those who are somehow different, feared or disliked) are singled out for arbitrary private acts of violence or for Government-sponsored or tolerated acts of violence. In too many settings, being classified as a witch is tantamount to receiving a death sentence.

44. While there has been a steady trickle of reports from civil society groups alleging the persecution and killing of persons accused of being witches, the problem has never been addressed systematically in the context of human rights. There is little systematic information available on the numbers of persons so accused, persecuted or killed, nor is there any detailed analysis of the dynamics and patterns of such killings, or of how the killings can be prevented. The lack of attention paid to the issue is especially true of the various United Nations human rights bodies that might have been expected to have engaged in in-depth examination. A prominent exception is the Office of the United Nations High Commissioner for Refugees (UNHCR), which acknowledges in its guidelines that women are still identified as witches in some communities and burned or stoned to death. These practices may be culturally condoned in the claimant’s community of origin but still amount to persecution.<sup>71</sup>

### Defining “witchcraft”

45. Defining witches and witchcraft is not an easy task. “Witchcraft” has denoted many different practices or beliefs at different times and in diverse cultures. In some cultures, belief in witchcraft is rare; in others, people see it as “everyday and ordinary, forming as

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<sup>71</sup> Guidelines on Religion-Based Refugee Claims (HCR/GIP/04/06), para. 24. See also Jill Schnobelen (UNHCR), “Witchcraft allegations, refugee protection and human rights: a review of the evidence”, January 2009, available at [www.unhcr.org/research/RESEARCH/4981ca712.pdf](http://www.unhcr.org/research/RESEARCH/4981ca712.pdf).

it does an integral part of their daily lives”.<sup>72</sup> Such beliefs are not confined to any particular strata of society, whether in terms of education, income or occupation. Both the concept and the terminology also vary from one scholarly discipline to another. In Western Europe and the United States, witchcraft and the persecution of so-called witches are often associated with the witch-hunts and trials that took place there through the fifteenth and seventeenth centuries. Today, in the social sciences, and especially in the disciplines of religious studies, anthropology and ethnology, a wide range of contemporary beliefs and practices termed “witchcraft” or “sorcery” are studied around the world.

46. In the popular imagination, witchcraft is often associated with the infliction of harm on people or property through the purported exercise of supernatural powers. In sociological and anthropological terms, it can be described as a phenomenon that is invoked to explain misfortune by attributing it to the evil influence of someone, either from within or outside the community. Thus witchcraft has historically been employed to bring about “the death of some obnoxious person, or to awaken the passion of love in those who are the objects of desire, or to call up the dead, or to bring calamity or impotence upon enemies, rivals and fancied oppressors”.<sup>73</sup>

47. Alternatively, witchcraft may refer to or be associated with, for example, neo paganism, shamanism or traditional healers. Some have emphasized its close links to moral and broader belief systems and portrayed it more benignly as providing a framework of moral agency that enables believers to make sense of otherwise seemingly inexplicable coincidences or happenings.<sup>74</sup> It is also associated with positive connotations such as healing or cleansing,<sup>75</sup> and as a means for articulating and coping with psychological problems.<sup>76</sup> In some regions, traditional communities had elders who acted as mediums in communicating with spirits from the other world and who were widely respected.<sup>77</sup>

48. Older scholarship tended to emphasize the pitfalls of taking the meaning and significance attached to the term “witchcraft” in any given context and seeking to transpose it to other settings.<sup>78</sup> More recently, however, comparative studies have become much more common.<sup>79</sup> Ronald Hutton, for example, has identified five characteristics

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<sup>72</sup> See Henrietta Moore and Todd Sanders (eds), *Magical Interpretations, Material Reality: Modernity, Witchcraft and the Occult in Postcolonial Africa*, 2002.

<sup>73</sup> See “Witchcraft”, in *New Advent: Catholic Encyclopedia*, available at [www.newadvent.org/cathen/15674a.htm](http://www.newadvent.org/cathen/15674a.htm).

<sup>74</sup> See E. Evans-Pritchard, *Witchcraft Oracles and Magic among the Azande*, 1937.

<sup>75</sup> See, for example, James Howard Smith, *Bewitching Development: Witchcraft and the Reinvention of Development in Neoliberal Kenya*, 2008.

<sup>76</sup> See Roy Allen, “Anger, Anxiety and Sorcery”, in C.W. Watson and R. Ellen (eds.), *Understanding Witchcraft and Sorcery in Southeast Asia*, 1993.

<sup>77</sup> See Peter Geschiere, *Sorcellerie et politique en Afrique: La viande des autres*, 1995.

<sup>78</sup> Malcolm Crick, *Explorations in Language and Meaning: Toward a Semantic Anthropology* (1976).

<sup>79</sup> Ashforth has argued that, while witchcraft is not indicative of any single belief system, there may be a broadly applicable witchcraft paradigm. Adam Ashforth, “AIDS, Witchcraft and the Problem of Power in Post-Apartheid South Africa”, Institute for Advanced Study, paper No. 10, May 2001, available at [www.sss.ias.edu/publications/papers/paperten.pdf](http://www.sss.ias.edu/publications/papers/paperten.pdf).

generally shared by those who believe in witches and witchcraft across different cultures and time periods: (a) witches use non-physical means to cause misfortune or injury to others; (b) harm is usually caused to neighbours or kin rather than strangers; (c) strong social disapproval follows, in part because of the element of secrecy and in part because their motives are not wealth or prestige but malice and spite; (d) witches work within long-standing traditions, rather than in one-time only contexts; and (e) other humans can resist witches through persuasion, non-physical means (counter-magic), or deterrence including through corporal punishment, exile, fines or execution.<sup>80</sup>

### Human rights, extrajudicial executions and witchcraft

49. The relevance of the practice of witchcraft to human rights is clearly a complex matter, and it is not possible to do justice to it within the confines of a report of this nature. Perhaps the most appropriate starting point is to examine the contexts in which attention has been brought to the human rights consequences of the phenomenon in recent years. Any such survey is inevitably incomplete, but it can nevertheless provide an insight into the nature of the challenges that need to be addressed:

(a) The killing of accused witches was reported as a significant phenomenon in the Central African Republic. Articles 162 and 162 bis of the country's criminal code indicate that a person convicted of "witchcraft" (*charalatinisme* and *sorcellerie*) can face capital punishment, a prison sentence or fine. While the death penalty does not appear to have been used recently for this purpose, there were many reports of individuals being killed by private citizens or sometimes by the army after having been accused of witchcraft;<sup>81</sup>

(b) In the context of the universal periodic review, issues have arisen about the fight against traditional practices such as sorcery and infanticide of the so-called "witch children" in Gabon,<sup>82</sup> and about the psychological trauma, physical harm, social exclusion and impoverishment suffered by alleged witches in Burkina Faso;<sup>83</sup>

(c) The Committee on the Elimination of All Forms of Discrimination against Women considered problems relating to the persecution of witches on a number of occasions. With regard to India, in 2007, the Committee noted its concern about the practice of witch-hunting, which it characterized as an extreme form of violence against women (CEDAW/C/IND/CO/3). It recommended that the State party adopt appropriate measures to eliminate the practice, to prosecute and punish those involved, and provide for rehabilitation of, and compensation to, victimized women. It also linked the issue to the struggle for control over land by recommending that the necessary measures be identified on the basis of an analysis of such causes. In 2002, the Special Rapporteur on

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<sup>80</sup> Ronald Hutton, "Anthropological and historical approaches to witchcraft: potential for a new collaboration?", *Historical Journal* (2004), 413.

<sup>81</sup> See A/HRC/11/2/Add.3.

<sup>82</sup> See [www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights7May2008am.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights7May2008am.aspx).

<sup>83</sup> A/HRC/WG.6/3/BFA/3, para. 12.

violence against women, its causes and consequences, also drew attention to these problems in India, Nepal and South Africa;<sup>84</sup>

(d) In examining the report on Ghana, the Committee received information alleging that some 2,000 witches and their dependents were confined in five different camps.<sup>85</sup> A member of the State party delegation acknowledged the existence of the camps, but said that their character had changed over the years. She called for community sensitization, especially of the chiefs, before laws could be enacted and warned that the persecution of witches could [otherwise] turn into an underground practice.<sup>86</sup> The Committee subsequently expressed its concern about the persistence of the belief in witchcraft and the subjection of women in witch camps to violence. It called for the elimination of these practices through legislative action and education and awareness-raising campaigns.<sup>87</sup> After a visit to Ghana, the Special Rapporteur on violence against women called upon the Government to demystify the beliefs around witchcraft and sorcery and criminalize acts of undue accusations of persons of causing harm through the use of supernatural powers;<sup>88</sup>

(e) The Committee has received estimates of up to 1,000 witches being killed annually in the United Republic of Tanzania;<sup>89</sup>

(f) In 1998, the Committee recommended further research into the prevalence of witch burning in South Africa, and called for the prohibition and eradication of such practices.<sup>90</sup> The South African Truth and Reconciliation Commission granted amnesty to 33 individuals accused of killing alleged witches.<sup>91</sup> In relation to Mozambique, the Committee expressed concern about the situation of older women, who were subject to accusations of witchcraft, and urged the State party to challenge such traditional views;<sup>92</sup>

(g) With regard to Angola, in 2004, the Committee on the Rights of the Child called for immediate action to eliminate the mistreatment of children accused of witchcraft, including by prosecuting the perpetrators of this mistreatment and intensive education campaigns that involve local leaders.<sup>93</sup> The same issue was taken up in almost identical terms four years later by the Committee on Economic, Social and Cultural Rights;<sup>94</sup>

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<sup>84</sup> E/CN.4/2002/83, paras. 45-48.

<sup>85</sup> CEDAW/C/SR.741 (B), para. 19. Other estimates are closer to 5,000.

<sup>86</sup> *Ibid.*, para. 23.

<sup>87</sup> A/61/38 (2006), paras. 232-33.

<sup>88</sup> A/HRC/7/6/Add.3, para. 93.

<sup>89</sup> [www2.ohchr.org/english/bodies/cedaw/docs/ngos/HAITanzania41.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/HAITanzania41.pdf), p. 7.

<sup>90</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 38 (A/53/38/Rev.1)*, para. 134. This was probably a response to the report of the Commission of Inquiry into Witchcraft Violence and Ritual Murder in the Northern Province (1995), chaired by Professor N.V. Ralushai.

<sup>91</sup> <http://www.info.gov.za/speeches/2000/000615110p1005.htm>.

<sup>92</sup> CEDAW/C/MOZ/CO/2, paras. 42-43.

<sup>93</sup> CRC/C/15/Add.246, paras. 30-31.

<sup>94</sup> E/C.12/AGO/CO/3, para. 25.

(h) The role of witch doctors has also been raised. In Mali, the traditional practice of giving a girl in marriage to a witch doctor for religious reasons still persists;<sup>95</sup> in the United Republic of Tanzania, concern has been raised about the practice of hunting down and murdering albinos so that their body parts can be used by witch doctors;<sup>96</sup>

(i) In Papua New Guinea, provincial police commanders in two highlands provinces, Eastern Highlands and Chimbu, reportedly told journalists that there had been more than 50 sorcery-related killings in their provinces in 2008. Other independent sources estimate that there have been up to 500 attacks against women accused of practising witchcraft that have resulted in torture and murder;<sup>97</sup>

(j) In the Democratic Republic of the Congo, civil society reports suggest that most of the 25,000 to 50,000 children living on the streets of Kinshasa are there because they have been accused of witchcraft and rejected by their families. In 2009, the Committee on the Rights of the Child expressed concern that a large number of children are labelled as witches and consequently suffer serious stigmatization. It observed that violence against children accused of witchcraft was increasing, and that children were being kept as prisoners in religious buildings where they were exposed to torture and ill-treatment or even killed under the pretext of exorcism. The Committee called for effective measures to prevent children from being accused of witchcraft, including through continuing and strengthening public awareness-raising activities, particularly directed at parents and religious leaders and by addressing the root causes, inter alia, poverty. It also recommended legislative and other measures to criminalize making accusations against children of witchcraft, efforts to prosecute those responsible for violence and ill-treatment against alleged child witches, and programmes to promote the recovery and reintegration of child victims;<sup>98</sup>

(k) In Nigeria, a civil society organization, the Child Rights and Rehabilitation Network, works primarily with what it claims to be a large and increasing number of children abandoned or persecuted on the grounds that they are witches or wizards. In the Kisii District of Kenya, police officers reported, in early 2008, the killing of eight women and three men aged between 80 and 96, all of whom were accused of being witches. Reports noted that belief in witchcraft is widespread in the area, but local officials emphasized the need for people to avoid taking the law into their own hands;

(l) In Nepal, various groups have also reported the persistence of traditional beliefs about witchcraft that largely concern elderly women and widows in rural areas. Exorcism ceremonies involve the public beating and abuse of suspected witches by shamans or village elders. It has been reported that the existing law is inadequate to

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<sup>95</sup> CEDAW/C/MLI/2-5.

<sup>96</sup> [www.un.org/durbanreview2009/story22.shtml](http://www.un.org/durbanreview2009/story22.shtml).

<sup>97</sup> Amnesty International, "Increasing sorcery-related killings in Papua New Guinea", 11 February 2009.

<sup>98</sup> CRC/C/COD/CO/2, paras. 78-79.

prevent these abuses and that no system is in place to provide compensation for those persecuted;<sup>99</sup>

(m) In Mexico, a case was reported in July 2008 in which the police had charged three women with strangling and cutting into pieces the bodies of a woman and her 3-month old daughter who they believed were committing acts of witchcraft;

(n) In Saudi Arabia, in 2006, a woman was sentenced to death for witchcraft, recourse to supernatural beings (*jinn*) and the slaughter of animals. The conviction is said to have been based solely on statements by individuals claiming to have been bewitched.<sup>100</sup>

50. What tentative conclusions might then be drawn from the above initial survey?

51. The first is that the number of so-called witches killed or otherwise persecuted is high in the aggregate. Responses to witchcraft frequently involve serious and systematic forms of discrimination, especially on the grounds of gender, age and disability. In addition, the relatives of the witches are also often subjected to serious human rights violations.

52. In response, international human rights bodies have dealt only sporadically with the issue and have focused mainly on the need for consciousness-raising and education. For the most part, the response has been a very limited one and the complexity of the challenges has tended to be glossed over.

53. At the national level, legal approaches vary greatly. A significant number of States have legislation providing for the punishment of witchcraft. Few appear to make regular use of such laws routinely. In some States, such as the Central African Republic, witchcraft is a capital offence. In the Islamic Republic of Iran, a pending draft bill to amend the Islamic Penal Code of 1991 prescribes the death penalty for any Muslim who is involved with witchcraft and promotes it in the society as a profession or sect, but not for non-Muslims. Where the formal legal system is silent, traditional or customary law will often be used. Customary approaches vary from a heavy emphasis on mediation to severe and even deadly punishments.<sup>101</sup>

54. In 1998, in South Africa, a national conference on witchcraft violence called for the repeal of the Witchcraft Suppression Act of 1957, in part because it could in fact be fuelling witchcraft violence. It called for new legislation to adopt a pragmatic approach acknowledging the belief in witchcraft and the possibility that some forms are benign. It called for clear definitions of “witch”, “wizard” and “witchcraft”, and an emphasis on

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<sup>99</sup> United States Department of State, “Nepal”, in 2008 Country Reports on Human Rights Practices (2009), available at [www.state.gov/g/drl/rls/hrrpt/2008/sca/119138.htm](http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119138.htm).

<sup>100</sup> Human Rights Watch, “Saudi Arabia: halt woman’s execution for ‘Witchcraft’”, 14 February 2008, available at: [www.unhcr.org/refworld/docid/47b5aa1a1a.html](http://www.unhcr.org/refworld/docid/47b5aa1a1a.html).

<sup>101</sup> Herman Slaats and Karen Portier, “Sorcery and the law in modern Indonesia”, in C.W. Watson and Roy Ellen (eds.), *Understanding Witchcraft and Sorcery in Southeast Asia*, 1993.

conciliation and mediation.<sup>102</sup> Other studies, however, have highlighted the inherent contradictions between a judicial approach that “objectifies *sorcellerie* as always evil and hence to be completely eradicated” and local discourse on witchcraft, which views it more positively “as a special force that can be used for various ends”.<sup>103</sup>

55. Commentators are sceptical of the value of judicial approaches in many settings: “Where cases of witchcraft have entered the formal judicial system in Africa, the results have generally not been salutary for the health of that system or the cause of justice.”<sup>104</sup> The available evidence from human rights sources also counsels against the criminalization of witchcraft. The first reason relates to the difficulty of defining with any accuracy the conduct being proscribed. The second is the difficulty of ensuring respect for other rights, including cultural rights and freedom of speech and religion in such contexts. In the vast majority of cases examined, the offence has been defined in a vague and open-ended manner, which lends itself almost unavoidably to abuse. The vaguely defined elements of the “crime” can easily operate to permit those with a personal grudge or enmity to accuse others of having practised witchcraft. A third reason is empirical evidence, which shows that, in most instances, the criminalization of witchcraft is interpreted as legitimizing the punishment of accused witches in vigilante-like fashion, with no regard for the specific details of the alleged conduct, no due process protections being accorded to the accused, and no evidentiary burdens being met. Instead, there is usually a flagrantly discriminatory approach that results in the singling out of those who are simply “different”, feared or disliked. The accused witches are then often killed by vigilantes or mobs.

56. Even in States that have detailed laws providing for the punishment of witches, the law does not always explicitly address penalties for the persecution or killing of witches. Where it does, it sometimes permits the defence to invoke witchcraft as an extenuating circumstance warranting a lesser sentence. Where Governments identify genuinely abusive practices on the part of those accused of witchcraft, the challenge is to identify which criminal laws have been violated by the conduct and not to use the nebulous, catch-all label of “witchcraft”. Similarly, those who live in fear of witches should be educated and sanctioned to act within the law and on the basis of a criminal code that respects human rights when taking measures against those whom they believe to be engaging in harmful acts. In such circumstances, it is wholly unacceptable to invoke a subjective and highly manipulable accusation of witchcraft as the basis for either arbitrary private acts of violence or for Government-sponsored or tolerated acts of violence.

57. For present purposes, the most important point is to ensure that all killings of alleged witches are treated as murder and investigated, prosecuted and punished accordingly. In most of the cited problem situations, the Governments concerned have not been accused

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<sup>102</sup> Commission on Gender Equality, “Thohoyandou Declaration on ending witchcraft violence”, available at [www.cge.org.za/backup/userfiles/documents/national\\_conf\\_witchcraft1998.pdf](http://www.cge.org.za/backup/userfiles/documents/national_conf_witchcraft1998.pdf), p. vii.

<sup>103</sup> Peter Geschiere, *The Modernity of Witchcraft: Politics and the Occult in Postcolonial Africa*, 1997, p. 171.

<sup>104</sup> Adam Ashforth, *Witchcraft, Violence and Democracy in South Africa*, 2005.

of playing an active part in the persecution or killings of witches. There are, however, questions as to whether they have met their due diligence obligations to prevent such killings. These require Governments to take all available measures to prevent such crimes and prosecute and punish perpetrators, including private actors.<sup>105</sup> Indeed, there is an interesting historical parallel with anti-lynching statutes in the United States, which were proposed in response to the almost 5,000 lynchings reported between 1882 and 1968. They were explicitly designed to go beyond the simple criminalization of the murder involved, and provided severe penalties for State or municipal officials who failed to take reasonable steps to prevent a lynching. In addition, any county in which a lynching occurred would have to compensate the victim's family.<sup>106</sup>

58. It is also important for the problems surrounding the persecution and killing of witches to be reflected in the guidelines and operational programmes of development agencies working in countries in which there is a significant level of belief in witchcraft. In addition to providing education and practical programmes to address the situation, protection should be arranged for individuals accused of witchcraft and who are at risk of retribution or even death outside the framework of the law.

59. The relevant legal authorities in States should examine carefully, and with an open mind, claims by asylum-seekers and others to be actual or potential victims of witchcraft-related practices and of community responses thereto.

***Report on Mission to the Central African Republic (A/HRC/11/2/Add.3, 27 May 2009, ¶¶ 49-51, 87):***

*The Special Rapporteur visited the Central African Republic in February 2008. He reported on the killings of “witches” by private persons, government forces and rebel groups.*

49. There is a widespread belief in the Central African Republic that some people are “witches” who use their powers to harm others. In fact, however, many of those accused of witchcraft are simply members of vulnerable groups, such as women and children, the elderly or the mentally ill, and are the victims of an accuser's personal grudge. In many cases they are killed with impunity, whether by private persons, Government security forces, or rebel groups. They may also be punished or effectively banished and excluded from society.

50. The Special Rapporteur received credible reports of numerous cases of such killings by the local population. Reliable interlocutors have reported that members of the APRD, sometimes acting together with the local population, have also killed “witches”. In one case, the head of the town of Badama was accused of being a sorcerer and detained by the APRD in August 2007. Shortly thereafter, he was taken to Bélé and killed. Informed

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<sup>105</sup> This would include religious groups that designate children as witches, leading to stigmatization and persecution.

<sup>106</sup> See George C. Rable, “The South and the politics of anti-lynching legislation, 1920 1940”, 51 *Journal of Southern History*, 1985.

interlocutors described such cases as examples of the larger phenomenon of the APRD seeking to fill in the law-and-order vacuum left by the Government authorities in the north-west. In areas under Government control, Government forces have been responsible for killings, sometimes upon the request of the local population. In Paoua, the Special Rapporteur received reports of six cases of “witches” killed by the FACA. In some of these cases, Government forces carried out the killings in return for payment.

51. Under the Criminal Code, a person convicted of “witchcraft” (*charlatanisme* and *sorcellerie*) can face capital punishment, a prison sentence or fine.<sup>107</sup> While imposing the death penalty for this “offence” would violate international law - which permits death penalty only for the crime of intentional murder - no recent instances in which the death penalty had been applied were reported. But it is common for accused persons to be arrested, tried, convicted and imprisoned on the basis of spurious evidence. These problems must be taken seriously. The criminalization of “witchcraft” by the State reinforces the social stigmatization of those accused of witchcraft. Indeed, the proscription of “witchcraft” tends to lead vigilantes, soldiers and rebels alike to view the killing of suspected “witches” as legitimate. It is, moreover, a “crime” that lends itself ideally to the persecution and victimization of women and children in particular. A clear and immediate message should be sent by amending the Criminal Code so as to abolish the crime of witchcraft. Further, there is an educational challenge to ensure that those who fear witches act within the law and on the basis of a criminal code which fully respects human rights when taking measures against those whom they believe to be engaging in harmful acts. In such circumstances, it is wholly unacceptable to invoke the amorphous, subjective and highly manipulable accusation of engaging in “witchcraft” as the basis for either arbitrary private acts of violence or for Government-sponsored or tolerated acts of violence. The killing of “witches” should be prosecuted like any other murder, and other violent acts against such individuals should also be prosecuted.

[...]

### Recommendations

87. (...)

#### *End the Killing of “Witches”*

- The Criminal Code should be reformed to abolish the criminalization of “witchcraft”.
- Educational efforts should be made to bring an end to arbitrary and unjustified punitive measures against those accused of witchcraft. The killing of “witches” should be prosecuted like any other murder.
- All violations of the human rights of those accused of witchcraft should be investigated and prosecuted.

***Report on Mission to the Democratic Republic of the Congo (A/HRC/14/24/Add.3, 1 June 2010, ¶¶ 88-91):***

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<sup>107</sup> Criminal Code of the Central African Republic, arts. 162 and 162 bis.

88. Significant numbers of children and women are accused of being witches in the DRC, and are subjected to torture, harsh beatings and other cruelty as a result.<sup>108</sup> Some have been killed, or have died following cruel treatment. This violence is one outcome of a widespread social phenomenon in which vulnerable members of the community are blamed for misfortunes, such as the loss of a job or illness. According to international and local NGOs, tens of thousands of children abandoned on the streets of Kinshasa and other major cities are especially vulnerable to witchcraft accusations. Unsurprisingly, this phenomenon is most prevalent in poverty-stricken communities which lack access to education and social services, and the victims are often individuals with physical or mental disabilities who are perceived to have “brought defects” into a family or community.

89. Because of the remoteness of many communities and a level of secrecy around the practice, victim numbers are hard to ascertain. According to UNICEF, at least 12 accused child witches were killed in three provinces (Orientale, Maniema and Katanga), from September 2008 to early October 2009, mostly by their own family members. In Kasai Occidental, there are credible accounts of over 21 children subjected to harsh beatings and cruel treatment for alleged witchcraft.

90. Churches and cults that practice exorcism play an especially pernicious role, often condoning victimization and subjecting children to “exorcisms” or “deliverance” ceremonies in which they are forcibly isolated and deprived of food and water. In one emblematic case from Province Orientale, one of the wives of a polygamous man accused her husband’s young son of trying to kill her. The father took the son to be exorcised and a church deacon bound the child while the father and his wife poured boiling water on him. The wife submerged the child in water heated to over 90 degrees. He died of second degree burns. In another case in Katoko, Maniema, an 8-year-old boy died in October 2009 after a local pastor imprisoned him in a “prayer chamber” for 7 days without food.

91 There is almost total impunity for such killings, with witnesses or family members reluctant to report such incidents to authorities, and officials all too often turning a blind eye to preventing or investigating the violence.

### **3. “Femicide”**

***Report on Mission to Guatemala (A/HRC/4/20/Add.2, 19 February 2007, ¶¶ 22-26):***

*The Special Rapporteur visited Guatemala from 21 to 25 August, 2006 during which he reported on the “femicide” taking place and the trend in murders of women in the country.*

“Femicide”: the unexplained surge in murders of women

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<sup>108</sup> In my 2009 report to the UN Human Rights Council, I examined in-depth the complex phenomenon of the killing of witches around the world. See A/HRC/11/2.

22. The recent upward trend in murders of women is an issue that has provoked outrage in Guatemalan society. The number of women murdered has been increasing year by year, as has the proportion of murder victims who are women. In 2001, there were 303 homicides of women; in 2002, 317; in 2003, 383; in 2004, 531; in 2005, 665; and by mid August 2006, there had been 359.<sup>109</sup> In other words, the female homicide rate increased by 117 per cent over five years. (By comparison, the female population increased by 8 per cent.<sup>110</sup>)

23. These murders of women are collectively referred to as “*femicidio*”, suggesting that they constitute a discrete phenomenon. However, the causes of this upward trend remain poorly understood. I asked numerous interlocutors what they understood the causes of this upsurge to be, and I received a very large number of hypotheses, including:

- As more women enter areas of life traditionally reserved for men, they are targeted to put them in their place;
- As more women enter areas of life traditionally reserved for men, they become more exposed to the kinds of murder men have traditionally suffered;
- In connection with organized crime, women are killed to put pressure on their husbands or boyfriends;
- Men feel increasingly free to rape and murder women given the climate of impunity;
- Police are increasingly engaged in the social cleansing of gang members and associates and, in doing so, do not grant women any special dispensation.

24. It is likely that individual women have indeed been killed for each of these reasons. However, there is a risk that the term *femicidio* may obscure the diversity of crimes involved. This matters because, without an analysis that distinguishes between the various reasons that women are killed, it will be impossible to strategically confront the problem by reforming institutions or productively mobilizing outrage.

25. In Guatemala, the concept of *femicidio* is often explicated by comparison to the murders of women in Ciudad Juárez, Mexico. When my predecessor, Asma Jahangir, visited Mexico in 1999, she concluded that, “The events in Ciudad Juárez ... constitute[d] a typical case of gender-based crimes which thrive on impunity”, observing that it appeared that “many of the crimes were never investigated for the sole reason that the victims were ‘only’ young girls with no particular social status and who therefore were regarded as expendable” (E/CN.4/2000/3/Add.3, para. 89). It remains unclear, however, whether the murders of women in Guatemala fit the same profile.

26. The hypothesis that the rising number of female murder victims is due to the increasing use of social cleansing would point in another direction. The fact that a significant and rapidly growing number of female murder victims show signs of intimate violence is often cited as indicating that these are gender-based crimes. However, when

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<sup>109</sup> *Informe*, p. 38, based on data from the PNC.

<sup>110</sup> United States Census Bureau, International Data Base, Table 094 for Guatemala, *available at* [www.census.gov/ipc/www/idbprint.html](http://www.census.gov/ipc/www/idbprint.html).

these murders are placed in the broader context of murders involving torture and other abuse, the data lead to more equivocal conclusions. A PDH study based on media reports showed that, among those murder victims who experienced torture or abuse, the acts committed by the perpetrators were generally similar whether the victim was male or female. Of those bodies showing signs of torture or abuse, roughly 40 per cent of both male and female corpses showed signs of strangulation, about 15 per cent of female corpses were left naked and about 11 per cent of male corpses were. The one notable distinction was that while 15 per cent of the female corpses showed signs of sexual abuse, none of the male corpses did. The increase in female homicides involving abuse or torture shown in the PDH study would account for at least two fifths of the increase in total female homicides shown in police statistics. Finally, the PDH study found that, in 2005, 18 per cent of homicide victims whose bodies showed signs of torture or other physical abuse were women, while only 10 per cent of all homicide victims were women. The most obvious explanation of these data is that while women have been relatively immune from some forms of social violence, both men and women are being targeted by social cleansing. It is impossible to be sure of any explanation for this pattern of violence against women without effective investigations and prosecutions, but it appears likely that at least some of it is due to social cleansing rather than gender-specific reasons. Further research is needed, and strategies must be adopted to confront the full range of threats to women's lives.

#### **4. Gender-Based Violence and Vigilante Groups**

##### ***Report of the Special Rapporteur to the Human Rights Council (A/HRC/14/24, 20 May 2010, ¶ 62):***

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>111</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>112</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

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<sup>111</sup> See also A/HRC/11/2/Add.7, paras. 18-19 and A/HRC/11/2, paras. 43-59 and 68.

<sup>112</sup> For recent exceptions, see A/HRC/14/24/Add.3 and S/2009/693, annex, para. 79.

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

***Report on Mission to Nigeria (E/CN.4/2006/53/Add.4, 7 January 2006, ¶¶ 35, 78-85, 107):***

*The Special Rapporteur visited Nigeria between 27 June to 8 July, 2005. He later reported on the rise of vigilante groups as well as the open and covert use of vigilante groups by state officials. This has been especially problematic for women.*

The police force must be reformed rather than marginalized. There are a number of practices that attempt to maintain public order without relying on the police force: the use of the military for policing, the “supernumerary” hiring of police by oil companies, and the open and covert support of vigilante groups by State officials. The military regularly supplement or even replace the police in establishing law and order in civilian disturbances. This has sometimes involved massive abuses, such as the revenge killing of over 200 civilians in Benue State in 2001. In that incident, and others, the reports of the inquiries have been kept confidential, and no measures have ever been taken against those responsible. The proliferation of vigilante groups also poses problems of abuse and accountability. While there is a benign traditional concept of vigilantism in Nigeria, many groups have moved far beyond the appropriate limits. The Government must ensure accountability and lawful conduct by all groups and must improve the performance of the police to fill the vacuum in local law enforcement.

[...]

### Sharia Law in Nigeria

35. (...) Firstly, characterizing adultery and sodomy as capital offences leading to death by stoning is contrary to applicable Nigerian and international law. Neither can be considered to be one of the most serious crimes for which the death penalty may be prescribed.<sup>113</sup> Secondly, even if the sentence is never carried out, the mere possibility that it can threaten the accused for years until overturned or commuted constitutes a form of cruel, inhuman or degrading treatment or punishment. Assurances that an offence which continues to be recognized by the law will never be applied in practice are neither justified nor convincing. The very existence of such laws invites abuse by individuals.

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<sup>113</sup> See Article 6(2) of the International Covenant on Civil and Political Rights, the relevant jurisprudence of the Human Rights Committee, and the 1984 Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty. The latter provide that “capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes, with lethal or other extremely grave consequences”.

This is all the more so in a context in which sharia vigilante groups have been formed with strong Government support. The maintenance of such laws on the books is an invitation to arbitrariness and in the case of *zina* to a campaign of persecution of women.

[...]

78. With the end of military rule large businesses, including oil companies and banks, as well as the rich, turned to private security to fill the vacuum of authority. For the poor, vigilantes were seen as a way to make-up for inadequate, ineffectual and often malign policing. For politicians, armed volunteer groups offered a means of intimidating opponents and rewarding supporters. While “vigilante” groups play a major role in Nigeria, definitional issues are crucial to understanding the situation. The term covers a wide spectrum of groups ranging from community policing through problematic ethnic-based vigilantes, to state-sponsored or supported gangs. Because many of the groups have been openly or covertly supported by State officials, they cannot be considered classical non-state actors. The right of citizen arrest is often invoked to justify the groups’ activities.<sup>114</sup>

79. Among the most violent have been those established to defend commercial interests in urban areas. While they may carry out some “policing”, they also undertake debt collection, crime protection, extortion and armed enforcement services. The Bakassi Boys for example, is a group active mainly in Abia, Anambra and Imo states that has been responsible for many extrajudicial executions, often carried out publicly. They patrol the streets in heavily armed gangs, arrest suspects, determine guilt on the spot and exact punishment, which may involve beating, “fining”, detaining, torturing or killing the victim. The Bakassi Boys are tacitly supported by state governments and one has accorded them official recognition.<sup>115</sup>

80. Another prominent group operating in the south-west is the O’odua People’s Congress (OPC) which combines vigilantism with political advocacy of Yoruba autonomy. There have been persistent reports of OPC members apprehending suspected robbers and beating and killing them in public. Members of other ethnic groups, particularly the Hausa, are especially vulnerable. Despite official denials, the OPC appears to have a close relationship with some state governments.

81. An important religious-based group is the Hisbah who are considered to be an integral part of overall State policing in some northern States. While some strongly defend their role there are also persistent reports of attacks upon women alleged to be inappropriately dressed, of businesses selling alcohol being destroyed, of insults to Islam

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<sup>114</sup> Section 14(1) of the Nigerian Criminal Procedure Act provides that “...Any private person arresting any other person without a warrant shall without unnecessary delay make over the person so arrested to a police officer, or in absence of a police officer shall take such person to the nearest police station.” This limited power of arrest is far exceeded by many vigilante groups who have even established their own detention centers.

<sup>115</sup> *The Anambra State Vigilante Service Act No. 9, 2000.*

being punished severely, and of prostitutes being badly beaten. There is a need for much closer and more systematic scrutiny of their activities.

82. The rise of vigilante groups has especially problematic consequences for women since such groups are overwhelmingly male-dominated. As a result, gender stereotypes are both reinforced and enforced, and women are often subjected to various forms of gender-based violence. This consequence is exacerbated by the support given to the groups by state governments. In Kano, the relationship between the Hisbah and the Government is very close and the Governor of Bayelsa told the Special Rapporteur that he has recruited some 420 vigilantes who play a law enforcement role and are paid a salary far in excess of that earned by junior police officers. Whatever the justifications offered, the potential for manipulation of such groups by politicians is immense.

83. While there is a benign traditional concept of vigilantism in Nigeria, many groups have moved far beyond the appropriate limits. Too many have evolved into highly armed criminal gangs, or gangs doing the political bidding of their paymasters. State governments have generally supported this expanded role while imposing no form of regulation or accountability. Clear guidelines should be published in relation to all groups operating with governmental support, their conduct must be monitored, and impunity for activities such as torture, detention and executions must cease.

84. The rise of vigilantism and the undeniably significant public support for some groups partly reflects the failure of the Nigeria Police to address high violent crime rates. However, the lack of public trust and confidence in the police cannot be used to justify the violent and illegal acts of untrained, unregulated and unaccountable armed groups. The performance of the Nigeria Police must instead be improved so that the vigilantes can be confined to non-policing activities.

85. Community policing initiatives are in their infancy in Nigeria but offer an important opportunity. A pilot Community Policing Programme, launched in 2004 in Enugu State, involves local, highly visible patrols interacting cooperatively with the public to reduce and prevent criminal activity, as well as improved police training and accountability. It has succeeded in reducing levels of police corruption and public fear of crime, while improving police-public relations and the treatment of prisoners. The expansion of such programmes throughout Nigeria offers the potential to fill the vacuum in local law enforcement that has facilitated the rise of vigilante groups.

[...]

### Recommendations

#### *107. Vigilantes and community policing*

(a) The corruption and unreliability of the police force provides a convenient excuse for efforts to marginalize it: use of the military for policing, hiring “supernumary” police by oil companies, and support of vigilantes gangs. But these developments further

undermine the community standing of the police and make reforms even less likely. The police, at all levels, must begin to see that it is in their own interests to clean up their act. The recently launched Community Policing Initiative has huge potential to obviate the need for vigilantes and to link the police to local communities. It should be greatly expanded;

(b) Tackling the vigilante problem is especially urgent. The Federal Government should prepare and publish an authoritative inventory of all vigilante groups enjoying any form of official support and playing any role whatsoever in law enforcement. Each state Government concerned should promulgate rules regulating the activities of such groups. And the relevant authorities must investigate and prosecute any illegal vigilante activities involving torture, detention or executions.

***Report on Mission to the Democratic Republic of the Congo (A/HRC/14/24/Add.3, 1 June 2010, ¶¶ 62-67):***

62. Sexual violence in the Congo, and especially in the Kivus, falls squarely within my mandate because it has reached such levels of brutality that women have literally been raped to death.<sup>116</sup> Many others have died subsequently. Women and girls, including babies<sup>117</sup> – have been gang raped, had guns, wood, sand or glue inserted into their bodies, and had their genitals mutilated. Some pregnant women have had fetuses ripped out of their wombs by perpetrators. I received multiple accounts in the Kivus of gang rapes so vicious that women died from bleeding or from ruptured uteruses. I also received numerous accounts of severe rape-related injuries – e.g., gunshots to a woman’s vagina – that resulted in death days or weeks later. Such deaths are especially likely in remote areas where victims have little or no access to health services. Those who survive are often left with debilitating physical injuries, such as fistula or displaced uterus, and deep psychological harm.

63. Victims have, additionally, been killed when they resist rape, or murdered immediately following a rape. Victims are sometimes taken into sexual slavery and then killed when their captors are no longer able to rape them (because of the victim’s injury or illness). Family members attempting to stop a rape have been killed, as have men who refuse the perpetrators’ orders to rape female family members. Those working to assist rape victims have also been attacked and threatened and, in some instances, also raped.

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<sup>116</sup> There does not appear to be any study to track how many women have died as a result of sexual violence. The difficulties of collecting information on sexual violence are exacerbated when victims have died. This is in large part because the data currently gathered is based on services provided to survivors, and also because more deaths likely take place in remote areas to which NGOs do not have access – and in which victims do not have life-saving medical support.

<sup>117</sup> According to UNFPA statistics, between January and June 2009, 57% of victims were minors and there were 460 cases against children less than 10 years old. UNFPA recorded 17 incidents against women older than 65 during the same period. There is anecdotal evidence that male rape is increasingly being used by both the FARDC and the FDLR, but because of the stigma and associated lack of formal reporting, I was not able to obtain exact numbers. Based on credible reports, at least two male rape victims have died as a result of their injuries.

64. Evidence from a variety of sources indicates that rape and related killing are particularly vicious when either the FARDC or FDLR retaliate against communities they suspect of collaborating with the opposing force. FARDC soldiers, for example, have engaged in widespread rape as punishment for alleged collaboration with rebel groups. FARDC soldiers have also raped women during the course of raids to steal food or other goods. FDLR attackers have also engaged in a campaign of rape, repeatedly telling victims the rape was “punishment” for alleged cooperation with MONUC or the Government.

65. Despite the political attention that sexual violence in the DRC has garnered, key officials continue to deny the extent of the problem. When I asked one senior military official in eastern DRC about sexual violence in the area under his command, he told me that only 15% of rapes alleged by NGOs and others actually occurred, that most cases were “imaginary”, and that it was in the nature of women to be unfaithful.

66. However, the truth is that rape is pervasive. The United Nations Population Fund (UNFPA) coordinates and compiles statistics on sexual violence, although its staff emphasize that their numbers are an undercount.<sup>118</sup> According to information provided to me by UNFPA, there were 13,404 incidents in 2006, 13,247 in 2007, and 14,245 in 2008. From January through June 2009, it provided a preliminary count of 6,433 incidents, and reports I received suggest that the annual total will exceed the deplorable heights reached in 2008.

67. Despite the prevalence and horrific nature of sexual violence atrocities, there is a shocking lack of accountability in the DRC domestic legal system, both military and civilian. Although there is generally strong substantive law, it is rare for cases to be prosecuted. Between February and August 2009, less than 100 rape cases were prosecuted by the military justice system in North and South Kivu, and most of the prosecutions were of low-ranking officers.<sup>119</sup> MONUC human rights officials have made commendable efforts to assist in investigations and thus support the few prosecutions that have occurred, but much more needs to be done by MONUC as a whole. MONUC launched a comprehensive strategy to address the sexual violence epidemic in April 2009, but its implementation has been delayed by staffing issues.

## **5. Effect of Armed Conflict Killings on Women**

***Report on Mission to Afghanistan (A/HRC/11/2/Add.4, 6 May 2009, ¶¶ 35-37, 81):***

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<sup>118</sup> The UNFPA’s statistics are an undercount and better used as trend analysis. Although a large number of NGOs provide statistics to the UNFPA, participation in reporting is not mandatory and the involvement of NGOs varies widely. Survivors and family members often do not report rape because of fear of reprisal, the social stigma attached to rape, and lack of access to support facilities. 24 UN Group of Experts, Final Report, November 2009, paras. 343-344.

<sup>119</sup> Bemba was arrested in Belgium on 24 May 2008, following the lifting of a sealed arrest warrant issued by the ICC. Bemba is accused of crimes committed in the Central African Republic, including torture, rape and murder. He is currently in custody, awaiting trial at the ICC.

*The Special Rapporteur visited Afghanistan in May 2008 and noted the unacceptably high numbers of civilians killed every day. He reported on the obstacles civilian victims of military operations face to obtain compensation by the Afghan government and the international forces.*

### Compensation for Victims

35. The Government provides some payments (approximately US\$1,900) to civilians killed by AGEs, but this program is uneven, and operates in a highly unsatisfactory manner. The various international forces have implemented diverse programs for compensating civilian victims of military operations. Such payments are consistent with international law requirement for reparations for human rights or IHL violations.<sup>120</sup> Governments have generally cited the rationale of “winning hearts and minds” and eschewed any notion of obligation. But the fact remains that reparations are increasingly often paid to the families of those killed, even in lawful attacks, and this goes well beyond the practice in previous conflicts. Publicly-available records are insufficient for estimating the proportion of victims who receive payments. However, informed interlocutors suggested that victims do routinely obtain payments, although doing so is not always easy, and the payments are not always fair or timely.

36. Women, in particular, face obstacles, as illustrated by interviews with many women in Kandahar who lost male relatives in air strikes, Taliban attacks, or IMF convoy shootings. Their incomes had been eliminated or drastically reduced. Some had received monetary assistance from the Afghan government or ISAF, but many did not know how to even begin to seek such aid. If they are lucky, their families support them. Some enter the workforce, and receive second-class wages. Others will have no way to access education or employment and will be forced to beg to feed their children. Compensation

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<sup>120</sup> See ICCPR, Art. 2(3); Human Rights Committee, General Comment 31, “Nature of the General Legal Obligation on States Parties to the Covenant” (2004), para. 16; Henckaerts & Doswald-Beck, *Customary International Humanitarian Law* (ICRC 2005), Rule 150. As a matter of customary international humanitarian law, “A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused.” (ICRC Study, Rule 150.) While the modalities of this obligation under IHL continue to be clarified, “There is an increasing trend in favour of enabling individual victims of violations of international humanitarian law to seek reparation directly from the responsible State.” (ICRC Study, volume 1, page 541.) This interpretation is, moreover, obligatory pursuant to the international human rights law requirement to “ensure that any person whose rights ... are violated shall have an effective remedy” (ICCPR, art. 2(3)(a); Human Rights Committee, general comment No. 31, “Nature of the legal obligation on States Parties to the Covenant” (2004), (CCPR/C/21/Rev.1/Add.13), para. 16.) The injury for which reparation is due includes both material and moral damage, and the reparation therefore “shall take the form of restitution, compensation and satisfaction” (Draft Articles on State Responsibility, arts. 31, 34). Because restitution - “re-establish[ing] the situation which existed before the wrongful act was committed” would be “materially impossible” in the case of an individual’s death, the requisite reparation will comprise compensation and satisfaction (Draft Articles, art. 35). The compensation “shall cover any financially assessable damage” (Draft Articles, art. 36), and the satisfaction “may consist in an acknowledgment of the breach, an expression of regret, a formal apology or another appropriate modality” (Draft Articles, art. 37). In practice, the monies and goods provided for deaths in Afghanistan typically carry elements of both compensation and satisfaction, helping to compensate for the loss of a productive member of the family and serving as an expression of regret.

can be especially important for women, and payment programs should be designed with their unique circumstances and needs in mind.

37. Among the international forces, the US is the most systematic in providing compensation. Commanders are authorized to make “condolence” or “solatia” payments and frequently do so. The maximum payment amount provided for a death on either basis is roughly \$2,500. A British commander informed me that they make *ex gratia* payments, with the amount determined by general guidelines and negotiation with the *shura* of the victim’s village. Some of the other national contingents within ISAF run similar programs. But some governments have held back. One concern has been that offering payments would inherently constitute an admission of legal liability. This concern is baseless, as demonstrated by the experiences of governments who do make such payments. Another concern expressed has been that for their military contingents to offer payments would encroach on “humanitarian space” by involving soldiers in the provision of “aid”. This is unpersuasive: such payments are an integral part of responsible military action rather than an ancillary humanitarian activity. The existing payment programs are extremely promising and, in many respects, unprecedented. The flaws lie in the overall system’s excessively discretionary and fragmentary character, which mean that whether payment is provided for a particular civilian’s death depends on the national contingent involved, the attitudes of local commanders and Government officials, and the ability of the surviving family to navigate the process for obtaining a payment.

[...]

### Recommendations

#### *Compensation for Victims*

81. Commanders should seek out victims and their families rather than waiting to receive a complaint or request. In particular, the obstacles women face in accessing compensation and other payments should be taken into account in implementing such programs.

## D. HUMAN RIGHTS DEFENDERS AND ACTIVISTS

### ***Report on Mission to Guatemala (A/HRC/4/20/Add.2, 19 February 2007, ¶¶ 35-36):***

*The Special Rapporteur visited Guatemala between 21 and 25 August, 2006. He reported on the death threats, fears and assassinations of human rights defenders.*

35. The situation of human rights defenders in Guatemala is indicative of the broader human rights problems in the country. Death threats, fears of imminent extrajudicial execution and assassinations of human rights defenders are alarmingly common. From 2000 through mid-August 2006, at least 64 human rights defenders have been murdered.<sup>121</sup> Those defenders most frequently assassinated, such as trade unionists, peasant workers (*campesinos*), indigenous leaders or environmental activists, have been upholding economic, social or cultural rights. Defenders seeking truth and justice for human rights violations committed during the internal armed conflict have also been particularly targeted.

36. Few attacks against human rights defenders are investigated and even fewer result in convictions, and the killing of human rights defenders has increased in large part due to the failure to investigate and punish those responsible. A large number of killings are preceded by death threats or acts of intimidation which are not investigated. Effective investigation of these death threats could prevent a subsequent killing. More broadly, if coupled with effective prosecution for assassinations, it could rupture the culture of impunity and deter future killings. The establishment of CICIG would be a positive step, but it is neither designed to be nor can be a substitute for effective prosecutions by the Ministerio Público (see chapter IV).

### ***Report on Mission to Brazil (A/HRC/11/2/Add.2, 23 March 2009, ¶¶ 22, 40, 62):***

*The Special Rapporteur visited Brazil from 4 to 14 November, 2007. He reported on the crimes against human rights defenders in the country.*

#### “War” on crime and large-scale police operations in Rio de Janeiro

22. Nineteen were killed and at least 9 wounded during the 8 hour operation. All 19 deaths were recorded as “resistance” deaths.<sup>122</sup> But there is compelling evidence that at least some of those killed were extrajudicially executed. I received credible accounts from residents and family members of victims that victims were shot in the back whilst walking away from police, or dragged out of homes unarmed and executed, or disarmed and then shot in the head. Residents and families also testified that police invaded their homes, threatened them, damaged and stole property, and were physically abusive. Some

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<sup>121</sup> *Informe*, p. 12.

<sup>122</sup> The numbers of killings by police registered as “*autos de resistência*” in Rio de Janeiro has risen sharply since 1997: 1997 (300), 1998 (397), 1999 (289), 2000 (427), 2001 (592), 2002 (900), 2003 (1195), 2004 (983), 2005 (1098), 2006 (1063), 2007 (1,330).

of those subsequently independently investigating allegations of police abuse - including members of the Brazilian Bar Association<sup>123</sup> as well as victims' families – reported receiving death threats and warnings to cease their investigations.<sup>124</sup>

[...]

#### Death squads and extermination groups

40. Extermination groups are also responsible for the murders of landless workers and indigenous persons in rural areas, generally in the context of disputes over land. While the numbers of landless workers or indigenous persons executed each year does not form a large proportion of Brazil's total homicides, the killings that take place serve to reinforce a broader system of repression by demonstrating the lethal consequences of defying powerful actors. The Pastoral Land Commission reports on average approximately 40 murders per year of landless workers.<sup>125</sup> In the state of Pará alone, over 770 landless workers and other human rights defenders have been killed since 1971.<sup>126</sup> These killings generally occur in retribution for the activism of landless workers or during violent evictions from land settled by landless workers.<sup>127</sup> The *Conselho Indigenista Missionário* (CIMI) informed me that they estimate that about 10 summary executions of indigenous persons occur each year.<sup>128</sup> While individual killings are a result of structural land conflict issues, complex and long-term land use and ownership issues

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<sup>123</sup> See Ordem dos Advogados do Brasil, Seção do Rio de Janeiro, Comissão de Direitos Humanos e Acesso à Justiça, *Notitia Criminis*, Exmo. Sr. Dr. Sub-Procurador Geral de Direitos Humanos do Ministério Público do Estado do Rio de Janeiro.

<sup>124</sup> Since my visit, I have also learned that prominent human rights activist and lawyer João Tancredo (who has been working on behalf of some of the families of Complexo do Alemão victims) survived an assassination attempt on 19 January 2008. The bullet-proof car he was traveling in was shot at four times when he returning home from a meeting with the parents of victims of alleged police violence in the Furquim Mendes favela.

<sup>125</sup> See Comissão Pastoral da Terra, “Assassinatos” at [www.cptnac.com.br](http://www.cptnac.com.br). In 2007, the most recent year for which there are homicide statistics, the number of homicides (28) was lower than the previous years' averages. (However, in 2007, the number of states in which murders took place increased from 8 to 14).

<sup>126</sup> Comissão Pastoral da Terra, Justiça Global, Terra de Direitos, “Violação dos direitos Humanos na Amazônia: Conflito e Violência na Fronteira Paraense” (November 2005), p. 33.

<sup>127</sup> For example, I received reports that on 21 October 2007, a few weeks prior to my visit, an armed militia group shot and killed Valmir Mota de Oliveira (42 years old), a leader of the *Movimento dos Trabalhadores Rurais Sem Terra* (MST), at the Via Campesina encampment at the GMO field of Syngenta Seeds, Santa Tereza do Oeste, Paraná. Five other farmers were also shot and seriously wounded. The MST leaders had been threatened for the previous 6 months by the militia, who were believed to have been employed by Syngenta.

<sup>128</sup> These killings either occur in the context of disputes over land that has already been demarcated to indigenous groups pursuant to the requirements of Article 231 of the 1988 Constitution, but on which others trespass for the purposes of resource exploitation, or the killings occur over land which is not yet demarcated but which an indigenous group chooses to begin to reclaim. The National Foundation for Indians (*Fundação Nacional do Índio*, FUNAI) has responsibility for indigenous policies, and policing of indigenous areas is largely the responsibility of the Federal Police. I was told by NGOs and indigenous representatives that Federal Police presence was often non-existent or minimal. In indigenous areas known to have serious land conflicts, Federal Police presence should be increased, and police who work in and near indigenous areas should receive specialist training to sensitize them to the land issues and indigenous culture.

should not be used as an excuse for failing to take immediate action to prevent, prosecute and punish extrajudicial executions in this context. Land conflicts form the context in which these murders take place. But it is not the case that executions inevitably follow from conflicts over land. Executions occur because those who order and carry out the murders know that they will get away with it. Brazil must ensure that reported death threats are investigated and the perpetrators punished.

[...]

#### Witness Protection [see footnote 87]

62. Brazil has recognized the importance of witness protection and has taken positive steps over the past decade to improve its programs. The most important of its witness protection programs, the *Programa de Assistência a Vítimas e a Testemunhas Ameaçadas*<sup>129</sup> (PROVITA), currently operates in 16 states and the federal district.<sup>130</sup> Between 1998 and 2006, it protected a total of 2265 people (870 witnesses and 1395 family members).<sup>131</sup> Between 2003 and 2007, 355 people were protected in relation to executions. PROVITA's structure is defined by federal legislation, it receives a combination of federal and state funding, and is administered at the state level. In each state, a committee that includes judges, prosecutors, and others, provides policy direction and makes final decisions on the admission and expulsion of witnesses.<sup>132</sup> Day-to-day operations are conducted by the state's secretariat for justice in tandem with an NGO. The NGO receives government funds to relocate witnesses and help them integrate into a new community. This innovative structure, in which government officials are not actually informed of the witness's location, has provided witnesses to crimes committed by Government agents a much higher level of protection than most systems that rely solely on the Government to provide protection. However, some of the NGOs providing protection services to witnesses reported dissatisfaction with the structure of the program and questioned the long-term viability of a program that relies so extensively on NGO implementing partners.

***Report on Mission to the Philippines (A/HRC/8/3/Add.2, 16 April 2008, ¶¶ Summary, 2, 11-12, 28, 38, 59, 66, Appendix B):***

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<sup>129</sup> Law No. 9.807, of the 13th of July, 1999. PROVITA was started in 1996 in Pernambuco by the NGO *Gabinete de Assessoria Jurídica às Organizações Populares* (GAJOP).

<sup>130</sup> Acre, Amazonas, Bahia, Ceará, Espírito Santo, Goiás, Maranhão, Mato Grosso do Sul, Minas Gerais, Pará, Paraná, Pernambuco, Rio de Janeiro, Rio Grande do Sul, São Paulo, and Santa Catarina. See Presidência da República, Secretaria Especial dos Direitos Humanos, Subsecretaria de Promoção e Defesa dos Direitos Humanos. In addition to PROVITA, the National Special Secretariat for Human Rights developed the National Programme for the Protection of Human Rights Defenders. However, it currently only operates in a few states, and does not protect many human rights defenders. According to SDDH, the National Program for the Protection of Human Rights Defenders has a list of 90 human rights defenders in Pará threatened with execution, but only 10% of these are under protection.

<sup>131</sup> See Presidência da República, Secretaria Especial dos Direitos Humanos, Subsecretaria de Promoção e Defesa dos Direitos Humanos, Coordenação-Geral de Proteção a Testemunhas, "Programa de Assistência a Vítimas e a Testemunhas Ameaçadas" (2007).

<sup>132</sup> Law No. 9.807 of the 13th of July, 1999, Art. 4; Decree No 3.518, of the 20th of June, 2000, s. 1.

*The Special Rapporteur visited the Philippines from 12 to 21 February 2007.*

Over the past six years, there have been many extrajudicial executions of leftist activists in the Philippines. These killings have eliminated civil society leaders, including human rights defenders, trade unionists and land reform advocates, intimidated a vast number of civil society actors, and narrowed the country's political discourse. Depending on who is counting and how, the total number of such executions ranges from 100 to over 800. Counter-insurgency strategy and recent changes in the priorities of the criminal justice system are of special importance to understanding why the killings continue.

Many in the Government have concluded that numerous civil society organizations are "fronts" for the Communist Party of the Philippines (CPP) and its armed group, the New People's Army (NPA). One response has been counter-insurgency operations that result in the extrajudicial execution of leftist activists. In some areas, the leaders of leftist organizations are systematically hunted down by interrogating and torturing those who may know their whereabouts, and they are often killed following a campaign of individual vilification designed to instil fear into the community. The priorities of the criminal justice system have also been distorted, and it has increasingly focused on prosecuting civil society leaders rather than their killers.

[...]

2. I visited the Philippines from 12 to 21 February 2007 and traveled to Manila, Baguio, and Davao and I spoke with a wide range of actors to clarify responsibility for these killings and to formulate recommendations to bring them to an end. I also looked at selected other issues of unlawful killing, including the use of a death squad in Davao City. I was aware when I arrived that the international community's concern at the wave of killings was seen by some as the outcome of a successful propaganda campaign by leftist activists rather than as a proportionate response to the problem's actual dimensions and causes. I came with an open mind, and I succeeded in speaking candidly and often constructively with a very broad range of interlocutors. The success of my visit owes much to the full cooperation shown to me by the Government and to the active and energetic efforts made by civil society to inform me.

[...]

11. Over the past six years, there has been a spate of extrajudicial executions of leftist activists, including human rights defenders, trade unionists, land reform advocates, and others.<sup>133</sup> The victims have disproportionately belonged to organizations that are members

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<sup>133</sup> The category of "leftist activists" is employed due to its explanatory power. Human rights defenders and trade unionists, along with many other civil society leaders, appear to be killed due more to their association with leftist groups than to their particular activities. With respect to trade unionists, for instance, I spoke with representatives of both the Federation of Free Workers (FFW) and the Kilusang Mayo Uno (KMU). Both groups claim several hundred thousand members, but while KMU has lost numerous members to extrajudicial executions, FFW has not lost any. The key distinction appears to be that KMU is commonly cited by Government officials as a CPP front group and FFW is not. To clarify, disputes surrounding organizing campaigns and collective bargaining negotiations appear often to be the motivating

of Bagong Alyansang Makabayan (Bayan), or the “New Patriotic Alliance”, or that are otherwise associated with the “national democratic” ideology also espoused by the CPP/NPA/NDF.<sup>134</sup> These killings have eliminated civil society leaders, intimidated a vast number of civil society actors, and narrowed the country’s political discourse. Responses to the problem have been framed by lists produced by civil society organizations. The most widely cited list is that of Karapatan, which contains 885 names.<sup>135</sup> Task Force Detainees of the Philippines (TFD-P) has compiled a shorter list, but the different numbers indicate differences in the geographical coverage of their activist networks more often than disagreement about particular cases.<sup>136</sup> Due to a narrow definition of the phenomenon and its uncertainty regarding some cases, Task Force Usig, the PNP group charged with ensuring the effective investigation of these incidents, has a list of 116 cases that it is attempting to resolve.<sup>137</sup>

12. Two policy initiatives are of special importance to understanding why the killings continue. First, the military’s counterinsurgency strategy against the CPP/NPA/NDF increasingly focuses on dismantling civil society organizations that are purported to be “CPP front groups”. Part IV(B) below examines the general approach and its national scope. Part IV(C) looks at the regional variation in how this strategy has been implemented. Second, as examined in Part X, the criminal justice system has failed to arrest, convict, and imprison those responsible for extrajudicial executions. This is partly due to a distortion of priorities that has law enforcement officials focused on prosecuting civil society leaders rather than their killers.

[...]

### The “Purge Theory” of a Military in Denial

28. The military is in a state of denial concerning the numerous extrajudicial executions in which its soldiers are implicated.<sup>138</sup> Some military officers would concede that a few

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factor behind decisions to attack workers and organizers, but the likelihood that such an attack will take the extreme form of an extrajudicial execution appears to be far higher if the worker is associated with what is purported to be a CPP front group. In contrast, the killing of journalists is discussed separately, because it appears to constitute a distinct phenomenon.

<sup>134</sup> The list of extrajudicial victims maintained by Karapatan (as of 30 June 2007) provides the political or organizational affiliation of the 390 victims for which they are known. If these are correlated with documents originating in the AFP that list CPP/NPA/NDF front groups, we find that 94% of the victims with known affiliations belonged to alleged front groups.

*[see table in footnote 12 of original report]*

<sup>135</sup> Number from list current as of 30 June 2007. Some comparisons in the report are based on earlier versions of Karapatan’s list, as noted.

<sup>136</sup> According to a Government analysis of the various lists of “alleged political killings” that was current as of 20 December 2006, while Karapatan’s list contained 725 names and TFD-P’s list contained 89 names, only 46 names appeared on both lists. (“Report of the Technical Working Group (TWG) on the Alleged Political Killings (Covering the Period 1 February 2001 – 31 October 2006) as of 20 December 2006”).

<sup>137</sup> In May 2006, the Secretary of the Interior and Local Government ordered the PNP to establish Task Force Usig to investigate and help to resolve the killings of journalists and leftist activists.

<sup>138</sup> According to a Government analysis, of the 184 incidents reported to the Joint Monitoring Committee established by CARHRIHL between 1 February 2001 and 31 October 2006, the alleged perpetrators were the AFP (88 incidents; 48%), the PNP (7 incidents; 4%), CAFGUs (6 incidents; 3%), private individuals (8

killings might have been perpetrated by rogue elements within the ranks, but they consistently and unequivocally reject the overwhelming evidence regarding the true extent of the problem. Instead, they relentlessly pushed on me the theory that large numbers of leftist activists are turning up dead because they were victims of internal purges within the CPP and NPA. I repeatedly sought evidence from the Government to support this contention. But the evidence presented was strikingly unconvincing.  
(...)

[...]

### The Killings of Journalists

38. Journalists are killed with increasing frequency. From 1986 to 2002, the number killed averaged between 2 and 3 per year, depending on how one counts.<sup>139</sup> During 2003-2006, the number killed averaged between 7 and 10. However, while the trends coincide and the two phenomena are often joined in the public mind, the killings of journalists appear to have different causes than the killings of leftist activists. The views of journalists and organizations for the protection of journalists with whom I spoke were that most of these killings had local roots.<sup>140</sup> Some killings had been perpetrated to prevent journalists from exposing information related to the crimes and corruption of powerful individuals. Other killings resulted from local disputes in which the journalists had participated by publicly promoting one side or the other. This problem is exacerbated by the structure of the media industry. Many broadcasters are “block-timers” who purchase airtime and then pay for this airtime and seek a profit by selling advertising. Sometimes they also earn money through so-called “AC/DC” journalism — “attack, collect; defend, collect”. Approximately three quarters of journalists killed are broadcasters, and nearly half of these are block-timers.<sup>141</sup> Needless to say, however questionable the practices of some journalists may be, these do not justify murder. There is a lamentable degree of impunity for murders of journalists.

[...]

### The Role of the Courts

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incidents; 4%), the Revolutionary Proletarian Army – Alex Boncayo Brigade (RPA-ABB) (1 incident; 1%), and unidentified persons (74 incidents; 40%). (“Report of the Technical Working Group (TWG) on the Alleged Political Killings (Covering the Period 1 February 2001 – 31 October 2006) as of 20 December 2006”).

<sup>139</sup> The records maintained by civil society organizations indicate the following number of journalists killed by year, since 1986: [see chart at footnote 52 of original report]

<sup>140</sup> I interviewed witnesses regarding 5 extrajudicial executions of journalists and 1 frustrated extrajudicial execution. I also received case files regarding a further 36 cases of extrajudicial execution.

<sup>141</sup> The relationship between the structure of the media industry and the frequency with which journalists are killed has been extensively studied by civil society organizations. See Abi Wright, “On the Radio, Under the Gun: Behind the Rising Death Toll of Radio Broadcasters in the Philippines”, CPJ (15 August 2005); Rachel E. Khan and Nathan J. Lee, “The Danger of Impunity”, CMFR (5 September 2005).

59. When most cases stall at the investigation or prosecution stage, it is difficult to evaluate the effectiveness of the judiciary. Two issues specific to the judiciary were, however, raised by my interlocutors. First, trials are routinely delayed and are generally not held on consecutive days, increasing the opportunities for witness intimidation. If fully implemented, the Supreme Court's decision to establish "special courts" for "cases involving killings of political activists and members of the media" should remedy this problem for those cases.<sup>142</sup> Second, witnesses often relocate to avoid retaliation, but judges seldom grant a change of venue on that basis.<sup>143</sup> The judiciary should ensure that docket management and venue decisions facilitate witness participation and protection.

[...]

Recommendations [see footnote 98]

66. I am encouraged by the many measures recently taken by the Government,<sup>144</sup> and I have found instructive the many recommendations made in other reports.<sup>145</sup> Based on my own observations, I believe that the following measures are essential.

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<sup>142</sup> Chief Justice Reynato Puno informed me of this initiative when we met, and he announced it shortly thereafter. Concretely, the establishment of "special courts" means that particular trial courts are designated either to only hear such cases or to prioritize them in their trial calendars: "The cases referred to herein shall undergo mandatory continuous trial and shall be terminated within sixty (60) days from the commencement of trial. Judgment thereon shall be rendered within thirty (30) days from submission for decision unless a shorter period is provided by law or otherwise directed by this Court. . . . The Special Courts here designated shall continue to be included in the raffle of cases, criminal and civil, provided that the Executive Judges of the RTCs [Regional Trial Courts] concerned shall exclude the designated Special Courts from such raffle whenever in their judgment the caseload of these courts shall prevent them from conducting the continuous trial of the special cases herein specified. . . . No postponement or continuation of trial shall be allowed except for clearly meritorious reasons. Pleadings or motions found to have been filed for dilatory purposes shall constitute direct contempt and shall be punished accordingly." (Administrative Order No. 25-2007, "Designation of Special Courts to Hear, Try and Decide Cases Involving Killings of Political Activists and Members of Media" (1 March 2007)).

It should be straightforward to monitor the effectiveness of this arrangement, inasmuch as, "A report on the status of these cases shall be attached to the Monthly Report of Cases submitted every 10th day of the succeeding month to the Statistical Reports Division, Court Management Office, Office of the Court Administrator. Failure to submit such report shall be a ground for withholding of the salaries and allowances of the judge/s and clerk/s of court/branch clerk/s of court/officer/s-in-charge concerned without prejudice to whatever administrative sanction the Supreme Court may impose on them." (Administrative Order No. 25-2007).

<sup>143</sup> I also interviewed a witness who encountered the same problem in filing a *habeas corpus* petition when her brother was detained in an AFP "safe house" (a euphemism for secret detention facility).

<sup>144</sup> These measures include the President's establishment of the Melo Commission (Administrative Order No. 157, "Creating an Independent Commission to Address Media and Activist Killings" (21 August 2006)), the establishment of a Presidential Human Rights Committee (Administrative Order No. 29 (27 January 2007); Administrative Order No. 163 (8 December 2006)), the President's instruction to the Secretaries of Justice and the Department of National Defense to coordinate with the CHRP in constituting a "Joint Fact-Finding body" (Statement of the President, dated 31 January 2007; Memorandum from Executive Secretary Eduardo R. Ermita, dated 31 January 2007), the AFP's establishment of a Human Rights Office in February 2007, the Supreme Court's establishment of special courts, the directive issued by the AFP on command responsibility, the DOJ's measures to strengthen the witness protection program (Memorandum to the President, 19 February 2007), and the Supreme Court Chief Justice's convening of a National Consultative Summit on Extrajudicial Killings and Forced Disappearances in July 2007.

[...]

## Appendix B – Programme of the Visit

2. I met with President Gloria Macapagal-Arroyo, the Executive Secretary, and members of her cabinet, including the Secretaries of Justice, Defense, and Foreign Affairs. I also met with the Undersecretary of the Department of the Interior and Local Government, the National Security Adviser, the Presidential Adviser on the Peace Process, the Executive Director of the Presidential Human Rights Committee, and the chair and members of the Melo Commission (appointed by the President to investigate “media and activist killings”). In most cases, I also met with members of their staff and of subordinate agencies, of which I can list only a few.

3. From the Philippine National Police (PNP), I met the commander in charge of Task Force Usig, the group overseeing investigation into killings of leftist activists and journalists, the Police Chief Superintendent, the Inspector General (head of the Internal Affairs Service), the Davao District PNP chief, and regional heads of Task Force Usig in Baguio and Davao. From the Department of Justice (DOJ), I met the Chief State Prosecutor, the City Prosecutors of Baguio and Davao, the head of the witness protection program in Baguio, the head of the National Bureau of Investigation (NBI), the head of the NBI in Baguio, and the deputy head of the NBI in Davao. From the Armed Forces of the Philippines (AFP), I met the Chief of Staff, numerous senior staff officers, and local and regional commanders in Baguio and Davao. I also met with the Mayor of Davao, Rodrigo Duterte.

### ***Report on Mission to Kenya (A/HRC/11/2/Add.6, 26 May 2009, ¶¶ Summary, 16, 76-77, 111-114, Appendix 3):***

*The Special Rapporteur visited Kenya from 16 to 25 February 2009 in order to ascertain the types and causes of unlawful killings. He also reported on the intimidation of human rights defenders, including the assassination of two defenders assassinated a couple of weeks after meeting with the Special Rapporteur.*

The Special Rapporteur concludes that, in Mt. Elgon, both the Sabaot Land Defence Force militia and the Government’s security forces are engaged in widespread brutality, including torture and unlawful killings, against Mt. Elgon’s residents. Detailed reports from a broad range of sources documenting this abuse have not been seriously investigated by the police or the military. Both groups remain in denial of such abuses and their response to systematic civil society reporting has been to methodically intimidate human rights defenders and witnesses.

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<sup>145</sup> I have read with great interest the analyses of recommendations of several bodies and organizations, including the Melo Commission (“Initial Report” (February 2007)), Amnesty International (“Philippines: Political Killings, Human Rights and the Peace Process” (15 August 2006)), and Human Rights Watch (“Scared Silent: Impunity for Extrajudicial Killings in the Philippines” (June 2007)).

(...)

Many of the human rights defenders who testified before the Special Rapporteur during his mission were threatened and harassed by members of the security forces and other Government

officials. Two activists who had been particularly active in reporting on police death squads were murdered just two weeks after the mission ended. There has been a systematic attempt to silence criticism of Kenyan security forces.

[...]

16. In other respects, however, the police response to my visit has consisted of continued denials of all wrongdoing, ad hominem attacks against me, and apparent police involvement in the broad daylight assassination of two human rights defenders with whom I met. Rather than in any way addressing the substance of the allegations contained in my initial statement, some police officials have sought to structure public debate so that criticisms of police actions are equated with condoning criminal activity. In this way, the police have tried to position civil society - and also my own reporting - as aligned with the interests of criminal organizations. This in turn sets up the police to launch further attacks against the Mungiki and others, while failing to take any steps to address the real issues. Efforts to monitor and reform policing so that it is carried out with respect for human rights do not mean being “soft” on crime. Security policies only truly provide security if the rights of all - victims, the general public, police, and criminals - are respected. The violent police response to crime has done nothing to promote security. Innocent bystanders have been shot by police, the public has lost faith that the police force can protect them, and the police have undertaken few if any measures to investigate and prosecute those Mungiki and other criminals who continue to terrorize and extort private citizens.

[...]

#### Intimidation of Human Rights Defenders

76. Human rights defenders (HRDs) were intimidated, harassed and threatened in a systematic manner by Government and security force officials during and after my visit (see Appendix III). Intimidation was particularly severe in Mt Elgon, but took place in Nairobi and elsewhere. As a result, a large number of HRDs have been forced to go into hiding or exile. The intimidation was clearly designed to silence individual activists, prevent civil society investigations of abuses, and to instill widespread fear amongst civil society organizations.

77. Those who have control over the security forces - including the President, the Defence Minister, and the Internal Security Minister - have offered no substantive response to the complaints issued by myself and the United Nations about this intimidation. They have issued no public statements acknowledging harassment, and have

taken no measures to hold to account those responsible or to protect threatened activists. The Human Rights Council ignores this contempt for its Special Procedures system at its peril.

[...]

### Recommendations

111. The Government of Kenya should immediately issue instructions to the police, the military, and district and provincial officials to cease and desist from acts of intimidation and harassment of human rights defenders. The text of these instructions should be made public.

112. The Government should ensure that independent investigations take place to determine who was responsible for carrying out and ordering the intimidation.

113. The Government should accept international offers to provide criminal investigation assistance to identify those responsible for the 5 March 2009 killings of two prominent human rights defenders from the Oscar Foundation Free Legal Aid Clinic, Mr Oscar Kamau Kingara and Mr John Paul Oulu.

114. The Government should report, publicly and to the UN High Commissioner for Human Rights, within 3 months following the publication of this report, on the steps it is taking to prevent and prosecute intimidation of human rights defenders.

### Appendix III – Intimidation of Human Rights Defenders

1. Before, during, and after the visit of the Special Rapporteur to Kenya, human rights defenders were systematically intimidated by the police, military, and Government officials.

2. In Mt Elgon, human rights defenders (HRDs) were told not to bring witnesses or victims to meet with the Special Rapporteur. Human Rights defenders were also told not to personally testify before the Special Rapporteur about abuses committed by the police or military. They were told to speak only about abuses by the Sabaot Land Defence Force (SLDF) armed group. HRDs were warned by text message, telephone calls, and in person. In one instance, officials addressed an internally displaced persons (IDP) camp. They told the residents that they should tell the Special Rapporteur about killings by the SLDF, but not about those by the Government. The officials told the IDP camp residents that if they followed these instructions, they would continue to receive food aid from the Government.

3. During the Special Rapporteur's visit to Mt Elgon, National Security Intelligence Officers unsuccessfully attempted to obtain from NGOs the list of witnesses with whom he was going to meet. Civil society organizations were harassed repeatedly for information about the program and schedule of the Special Rapporteur, and for details of

the NGO involvement in the Special Rapporteur's mission. During meetings, the Special Rapporteur was alerted to the nearby presence of intelligence officers. When these officers were confronted by the Special Rapporteur, they ran away.

4. Subsequent to the Special Rapporteur's meetings with witnesses, police, military and Government officials went to the homes and workplaces of human rights defenders, in an attempt to obtain lists of those who had testified before the Special Rapporteur. Individuals were told that they would be arrested if they did not hand over the list of names. This led to a number of human rights defenders being forced to flee the area. They were delivered further messages by telephone to "keep away" and "not come back". Following the Special Rapporteur's press statement, demonstrations were held in Mt Elgon against NGOs. Individuals were told that they would be denied their food assistance if they did not participate.

5. When the Special Rapporteur was in Kenya, he sought written assurances from the Government that this conduct would cease. In return, he received an official letter which stated that none of the human rights advocates had been threatened. The letter also referred to allegations about the conduct of the HRDs, and indicated that they would be investigated. At the time, this gave rise to even graver concerns about reprisals than he had initially. These concerns were borne out in the following weeks after he left Kenya, as increased numbers of HRDs continued to be intimidated, and were forced to flee or go into hiding.

6. Subsequent to his visit, the intimidation meted out to HRDs in Mt Elgon was extended across Kenya. Advocates in nearly all of the civil society organizations who provided the Special Rapporteur information during his mission received threats. Their work has been severely impeded, many have been required to take extra personal security measures, and others have been forced to go into hiding or exile. Two weeks after his visit, two HRDs - Mr Oscar Kamau Kingara and Mr John Paul Oulu - who worked for the Oscar Foundation, a human rights organisation providing free legal aid services to the poor, were assassinated in their vehicle. The Special Rapporteur met with both men during his fact-finding mission to discuss the issue of killings by police. No one has yet been charged in connection with these murders.

***Press Release – “Kenya: Two Prominent Human Rights Defenders Assassinated in Nairobi”, March 5, 2009:***

The UN Special Rapporteur issued a press release in response to the assassination on 5 March 2009 of two prominent human rights defenders in Nairobi.

The two men - Mr Oscar Kamau Kingara and Mr John Paul Oulu - worked for the Oscar Foundation, a human rights organisation providing free legal aid services to the poor. The Special Rapporteur met with them two weeks earlier during his February 2009 fact-finding mission to Kenya to discuss the issue of killings by police.

The Special Rapporteur called for the Government of Kenya to ensure that an independent investigation was carried out, by bringing in an independent team from Scotland Yard or the South African Police.

***Press Release – “Kenya: BBC Interview About Assassinations in Kenya with the UN Special Rapporteur, March 6, 2009:***

The UN Special Rapporteur spoke on the BBC’s “Focus on Africa” program about the assassinations on 5 March 2009 in Nairobi of two human rights defenders.

The audio of the interview is available in full at the BBC website, at <http://news.bbc.co.uk/2/hi/africa/7929215.stm>

***Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/54/187, 29 July 2009, ¶¶ 10)***

Update on Visit Undertaken to Kenya

10. It is important to bring to the Assembly’s attention that before, during and after the visit of the Special Rapporteur to Kenya, human rights defenders were systematically intimidated by the police, the military and Government officials. Two activists who had been particularly active in reporting on police death squads were murdered just two weeks after the mission ended. There has been a systematic attempt to silence criticism of Kenyan security forces and the Government has done little to address the intimidation

## E. REPRISALS AGAINST THOSE WHO ASSIST THE SPECIAL RAPPORTEUR

*Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/11/2, 27 May 2009, ¶¶ 12-26, 66 ):*

12. In March 2009, a journalist questioned the spokesperson of the Secretary-General about the protection available to individuals who had provided information to me on one of my missions.

13. The official transcript records the following exchange:

*Question:* [T]here are these reports following up on Philip Alston's report about police killings in Kenya that some 30 human rights activists and lawyers have gone into hiding because they think they're going to be killed because they cooperated with the UN on the report. Is the UN aware of it, and what's the UN going to do for people who actually worked with the UN on this report?

*Spokesperson:* This report was made to the Human Rights Council and it is a matter for the Human Rights Council to take decisions on.

*Question:* But if it's true what these people say that they're in fear of their life because they cooperate with the UN, does the Human Rights Council have any safety or security service? What's the procedure?

*Spokesperson:* The Human Rights Council does not have its own security services, if that's what you're asking.<sup>146</sup>

14. The above exchange highlights a significant challenge facing the Council in relation to the country missions undertaken on its behalf by special procedures mandate holders. At one level, it goes without saying that the Council cannot provide security services, nor can it be responsible for actions taken by Governments which are acting, or failing to act, in accordance with the generally accepted rules governing this type of human rights fact-finding. At another level, however, the question serves to expose a major gap in the arrangements that the Council has put in place. It has established a system that depends heavily on the good faith cooperation of civil society and private actors in providing information, but then stands back and fails to act when those same individuals are victimized by Government agents precisely as a result of their cooperation. The irony is that although the Council, and the Commission that preceded it have regularly acknowledged the unacceptable nature of such reprisals, it almost never takes any action in response to such cases. The Council should move to remedy this gap in its procedures.

15. One of the fundamental assumptions upon which country visits by special procedures are undertaken is the principle that “[c]omplainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation”. While this formulation is taken from principle 15 of the

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<sup>146</sup> Daily press briefing by the Office of the Spokesperson for the Secretary-General, 30 March 2009, available at [www.un.org/News/briefings/docs/2009/db090330.doc.htm](http://www.un.org/News/briefings/docs/2009/db090330.doc.htm).

principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions (Economic and Social Council resolution 1989/65, annex), the same approach was repeatedly endorsed by the Commission on Human Rights. In its resolution 2005/9, the Commission urged Governments to refrain from all acts of intimidation or reprisal against those who availed or had availed themselves of procedures established under United Nations auspices for the protection of human rights and fundamental freedoms, or who had provided testimony or information to them. The principle is also reflected in the terms of reference for fact-finding missions by special rapporteurs/representatives of the Commission on Human Rights (E/CN.4/1998/45, appendix V), which provide that “no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings”.

16. In spite of these principles, intimidation of witnesses remains one of the most effective ways for perpetrators of extrajudicial executions and those who tolerate such practices to avoid being held accountable. If witnesses can be easily intimidated, if they and their families remain vulnerable, or if they sense that the protections offered to them cannot be relied upon, they are unlikely to testify. In reporting to the General Assembly (A/63/313, para. 12), I noted that “[t]he successful prosecution of those responsible for extrajudicial executions is difficult, if not impossible, in the absence of effective witness-protection programmes. [...] Ending impunity for killings thus requires institutionalizing measures to reduce the risks faced by witnesses who testify.” I drew attention to examples of global best practice and identified some of the key issues that needed to be addressed in the design of effective witness-protection programmes. In response, the Assembly urged States to intensify efforts to establish and implement such programmes and encouraged OHCHR to develop practical tools designed to encourage and facilitate greater attention to the protection of witnesses.<sup>147</sup>

17. Just as successful prosecution of organized crime and serious offences committed by organs of State or armed groups at the national level is difficult or impossible in the absence of effective witness-protection programmes, effective fact-finding and reporting on extrajudicial executions by my mandate is difficult, if not impossible, if persons cooperating with the mandate can be effectively intimidated by those interested in preventing them from doing so.

18. In the domestic context, the first and most important step for investigators is to take measures to avoid placing witnesses at risk. The same applies to witnesses<sup>148</sup> assisting country missions by special procedures. In preparing country visits, a considerable effort is made to assess the potential threat to possible witnesses. This involves the Special Rapporteur, OHCHR officials and other staff assisting my mandate, in consultation with the OHCHR Field Security Unit, the United Nations presence in the country, any relevant

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<sup>147</sup> General Assembly resolution 63/182, para. 10.

<sup>148</sup> In this context, the term “witness” is used to cover all those who provide information to the Special Rapporteur, whether they be victims, eyewitnesses, victims’ family members, officials of human rights organizations or other.

national human rights institution, and civil society organizations who are in contact with potential witnesses. Depending on the level of threat, precautionary measures regarding the locations and circumstances in which I meet witnesses are decided. The actual implementation of such measures (for example, selection of meeting locations or travel arrangements for witnesses) is essentially the responsibility of the United Nations field presence, national human rights institution and civil society organizations, and of the witnesses themselves. The Special Rapporteur, however, retains moral responsibility for not subjecting witnesses to unjustified risks. Occasions have arisen when I have decided not to meet a potentially very valuable witness because I could not justify the risk involved for the witness.

19. Three factors complicate the choice, adoption and implementation of precautions designed to protect witnesses. First, the financial and logistical means available to a special rapporteur for such purposes are minimal, even with the support provided by the United Nations field presence, non-governmental organizations and civil society. Special rapporteurs have no resources to set up their own witness-protection programmes, unlike States and even the ad hoc international criminal tribunals and the International Criminal Court. Second, most witnesses are likely to overestimate the ability of a special rapporteur to protect them, and might as a consequence be less cautious than they would be in cooperating with a domestic investigator. Third, as the Government of the country concerned is the host and is responsible for the security of the special rapporteur, the basic details of my travel plans within the country must be shared with the Government. This in turn implies a serious limitation on the confidentiality of any arrangements that can be made to protect the identity of witnesses becoming known.

20. I inform witnesses who might be at risk that I have no concrete means at my disposal to assist them against retaliatory measures by the authorities once I leave the country. In some cases, it will be possible for a special procedures mandate holder to ask the Government concerned to include persons at risk in the domestic witness-protection programme. During a visit in 2003 to Brazil by my predecessor, a witness who had testified to her on police death squads was killed by unknown perpetrators (having already survived one attempt on his life by a police officer).<sup>149</sup> The Government reacted immediately and offered to include all witnesses who spoke to the special rapporteur - and who agreed - to be included in a witness-protection programme.<sup>150</sup> The Special Rapporteur subsequently submitted a list of witnesses to the Federal Government.

21. The possibility of entrusting witnesses at risk to the domestic witness-protection programme is, however, an exception. Generally, there is no witness-protection programme that would be effective under the circumstances. Where such programmes do exist, they are usually run by the same authorities responsible for taking or threatening the reprisals in the first place.

22. In the absence of an effective programme, my only option is to seek clarification and assurances from the Government concerned. For example, after my mission to Kenya, I

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<sup>149</sup> E/CN.4/2004/7/Add.3, para. 3.

<sup>150</sup> See A/63/313, paras. 17, 19 and 45.

sent an urgent appeal and issued public statements in response to continuing reprisals.<sup>151</sup> Other mandates have similarly sought explanations and assurances from Governments - whether orally, in letters, or through their reports - upon receiving credible allegations of such reprisals.<sup>152</sup>

23. At the end of the day, however, there will be situations in which Governments fail to respond meaningfully and the reprisals continue. In those situations, it is essential that the Council itself have a mechanism for seeking explanations from the Governments concerned and, where appropriate, expressing public concern when a Government's response is inadequate. While the Secretary-General and other actors have an important role to play in this regard, it is ultimately the responsibility of the Council, whose "eyes and ears" the special procedures are often said to be.

24. Under current arrangements, the Council receives once a year a report addressing acts of intimidation or reprisal against four categories of individuals: those cooperating with representatives of United Nations human rights bodies; those who have cooperated with United Nations human rights procedures; those who have submitted communications under established procedures; and the relatives of human rights victims. The net thus appears to be cast broadly. In his report for 2009 (A/HRC/10/36), the Secretary-General provides details of, inter alia, the killing of the spouse of a witness who testified under the universal periodic review process (para. 8), the incarceration of a human rights defender who had written to the United Nations (paras. 9 and 10), and soldiers threatening the staff of a non-governmental organization (paras. 11 and 12).

25. The above-mentioned report is far from comprehensive, indeed it presents only an extremely limited picture of the real situation. First, it relies almost entirely on cases publicized by mandate holders in their reports, and especially on those mentioned by the Special Rapporteur on the situation of human rights defenders. Second, cases are not reported if there are "security concerns" or the individuals concerned have opted not to have their cases made public. In instances involving threats of serious reprisals, this will often be the case. Third, reprisals against individuals for cooperating with other United Nations bodies, such as OHCHR field presences and peacekeeping operations, are not covered by the report. And finally, in the report itself, the Secretary-General acknowledges that reprisals against individuals cooperating with United Nations human rights bodies are often unreported owing to a lack of access to appropriate means of communication or fear of further reprisals (para. 7). The coverage of the report is thus very limited and its reporting seems perfunctory.

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<sup>151</sup> Documented in my public statement issued at the conclusion of the visit ("Independent expert on extrajudicial executions says police killings in Kenya are systematic, widespread and well planned", press release, 25 February 2009) an urgent appeal I sent jointly with three other special procedures mandate holders on 13 March 2009 (which regrettably remained without a response from the Government as of one month later; see A/HRC/11/2/Add.1) and in two press releases ("UN expert on extrajudicial executions calls upon Kenyan Government to establish an independent investigation into the assassination of two prominent Kenyan human rights defenders" and "UN expert on extrajudicial executions calls on Kenya to stop the systematic intimidation of human rights defenders").

<sup>152</sup> See A/HRC/7/28/Add.2, paras. 72-74.

26. Perhaps unsurprisingly, none of the three reports submitted by the Secretary-General to the Council at its fourth, seventh and tenth sessions has generated any debate among Member States. While a few Governments have made statements in relation to specific incidents, the reporting process has not served the original purpose of bringing greater attention to the relevant problems and providing an occasion for the Council to take action. It is therefore essential that the Council and other stakeholders address this issue with urgency. Recommendations to this effect are proposed at the end of the present report.

[...]

### Conclusions and Recommendations

66. Intimidation of, or retaliation against, those cooperating with special procedures mandate holders is a problem that threatens the very foundations of the Council's work in protecting human rights. Urgent measures are needed to respond to any such reported incidents. The following steps should be taken:

- (a) The Council should urge Governments, United Nations field presences and special procedures mandate holders to give particular attention to the protection of persons who have cooperated with a mandate holder;
- (b) Given the need to be able to respond promptly and meaningfully to any reports of serious or continuing harassment, the Council should define appropriate mechanisms to make representations to the Government concerned in a timely and effective manner and to monitor situations;
- (c) Civil society organizations and States through their diplomatic missions should continue to enhance arrangements to provide financial and other assistance to individuals who are at risk, including, where necessary, providing assistance in relocation to a secure place;
- (d) The Coordination Committee for Special Procedures should pursue this issue following an exchange of views among mandate holders at their annual meeting.

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111. The Government of Kenya should immediately issue instructions to the police, the military, and district and provincial officials to cease and desist from acts of intimidation and harassment of human rights defenders. The text of these instructions should be made public.

112. The Government should ensure that independent investigations take place to determine who was responsible for carrying out and ordering the intimidation.

113. The Government should accept international offers to provide criminal investigation assistance to identify those responsible for the 5 March 2009 killings of two prominent human rights defenders from the Oscar Foundation Free Legal Aid Clinic, Mr Oscar Kamau Kingara and Mr John Paul Oulu.

114. The Government should report, publicly and to the UN High Commissioner for Human Rights, within 3 months following the publication of this report, on the steps it is taking to prevent and prosecute intimidation of human rights defenders.

[...]

### Appendix III – Intimidation of Human Rights Defenders

1. Before, during, and after the visit of the Special Rapporteur to Kenya, human rights defenders were systematically intimidated by the police, military, and Government officials.

2. In Mt Elgon, human rights defenders (HRDs) were told not to bring witnesses or victims to meet with the Special Rapporteur. Human Rights defenders were also told not to personally testify before the Special Rapporteur about abuses committed by the police or military. They were told to speak only about abuses by the Sabaot Land Defence Force (SLDF) armed group. HRDs were warned by text message, telephone calls, and in person. In one instance, officials addressed an internally displaced persons (IDP) camp. They told the residents that they should tell the Special Rapporteur about killings by the SLDF, but not about those by the Government. The officials told the IDP camp residents

that if they followed these instructions, they would continue to receive food aid from the Government.

3. During the Special Rapporteur's visit to Mt Elgon, National Security Intelligence Officers unsuccessfully attempted to obtain from NGOs the list of witnesses with whom he was going to meet. Civil society organizations were harassed repeatedly for information about the program and schedule of the Special Rapporteur, and for details of the NGO involvement in the Special Rapporteur's mission. During meetings, the Special Rapporteur was alerted to the nearby presence of intelligence officers. When these officers were confronted by the Special Rapporteur, they ran away.

4. Subsequent to the Special Rapporteur's meetings with witnesses, police, military and Government officials went to the homes and workplaces of human rights defenders, in an attempt to obtain lists of those who had testified before the Special Rapporteur. Individuals were told that they would be arrested if they did not hand over the list of names. This led to a number of human rights defenders being forced to flee the area. They were delivered further messages by telephone to "keep away" and "not come back". Following the Special Rapporteur's press statement, demonstrations were held in Mt Elgon against NGOs. Individuals were told that they would be denied their food assistance if they did not participate.

5. When the Special Rapporteur was in Kenya, he sought written assurances from the Government that this conduct would cease. In return, he received an official letter which stated that none of the human rights advocates had been threatened. The letter also referred to allegations about the conduct of the HRDs, and indicated that they would be investigated. At the time, this gave rise to even graver concerns about reprisals than he had initially. These concerns were borne out in the following weeks after he left Kenya, as increased numbers of HRDs continued to be intimidated, and were forced to flee or go into hiding.

6. Subsequent to his visit, the intimidation meted out to HRDs in Mt Elgon was extended across Kenya. Advocates in nearly all of the civil society organizations who provided the Special Rapporteur information during his mission received threats. Their work has been severely impeded, many have been required to take extra personal security measures, and others have been forced to go into hiding or exile. Two weeks after his visit, two HRDs - Mr Oscar Kamau Kingara and Mr John Paul Oulu - who worked for the Oscar Foundation, a human rights organisation providing free legal aid services to the poor, were assassinated in their vehicle. The Special Rapporteur met with both men during his fact-finding mission to discuss the issue of killings by police. No one has yet been charged in connection with these murders.

***Press Release – “Kenya: Two Prominent Human Rights Defenders Assassinated in Nairobi”, March 5, 2009:***

The UN Special Rapporteur issued a press release in response to the assassination on 5 March 2009 of two prominent human rights defenders in Nairobi.

The two men - Mr Oscar Kamau Kingara and Mr John Paul Oulu - worked for the Oscar Foundation, a human rights organisation providing free legal aid services to the poor. The Special Rapporteur met with them two weeks earlier during his February 2009 fact-finding mission to Kenya to discuss the issue of killings by police.

The Special Rapporteur called for the Government of Kenya to ensure that an independent investigation was carried out, by bringing in an independent team from Scotland Yard or the South African Police.

***Press Release – “Kenya: BBC Interview About Assassinations in Kenya with the UN Special Rapporteur, March 6, 2009:***

The UN Special Rapporteur spoke on the BBC’s “Focus on Africa” program about the assassinations on 5 March 2009 in Nairobi of two human rights defenders.

The audio of the interview is available in full at the BBC website, at <http://news.bbc.co.uk/2/hi/africa/7929215.stm>

***Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/54/187, 29 July 2009, ¶¶ 10):***

Update on Visit Undertaken to Kenya

10. It is important to bring to the Assembly’s attention that before, during and after the visit of the Special Rapporteur to Kenya, human rights defenders were systematically intimidated by the police, the military and Government officials. Two activists who had been particularly active in reporting on police death squads were murdered just two weeks after the mission ended. There has been a systematic attempt to silence criticism of Kenyan security forces and the Government has done little to address the intimidation.

## F. INDIGENOUS PERSONS

### *Report on Mission to Brazil (A/HRC/11/2/Add.2, 23 March 2009, ¶¶ 6, 40, Appendix):*

*The Special Rapporteur visited Brazil from 4 to 14 November, 2007. He reported on executions by police and death squads of indigenous persons in rural areas.*

#### Extrajudicial Executions by Police

6. Policing responsibilities are divided between the federal and state Governments.<sup>153</sup> While the Federal Police are responsible for preventing and investigating crimes against indigenous peoples and, in some instances, crimes constituting human rights violations, state police forces are the key actors in issues arising under my mandate. In each state, the Governor commands two police forces. The Military Police are responsible for patrolling the streets, and arresting those caught committing a crime. The Civil Police are responsible for conducting criminal investigations. Governors typically exercise their command powers through a Public Security Secretariat which coordinates the efforts of the two forces.

[...]

#### Death Squads and Extermination Groups

40. Extermination groups are also responsible for the murders of landless workers and indigenous persons in rural areas, generally in the context of disputes over land. While the numbers of landless workers or indigenous persons executed each year does not form a large proportion of Brazil's total homicides, the killings that take place serve to reinforce a broader system of repression by demonstrating the lethal consequences of defying powerful actors. The Pastoral Land Commission reports on average approximately 40 murders per year of landless workers.<sup>154</sup> In the state of Pará alone, over 770 landless workers and other human rights defenders have been killed since 1971.<sup>155</sup> These killings generally occur in retribution for the activism of landless workers or during violent evictions from land settled by landless workers.<sup>156</sup> The *Conselho Indigenista Missionário* (CIMI) informed me that they estimate that about 10 summary

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<sup>153</sup> Constitution of Brazil, Art. 144.

<sup>154</sup> See Comissão Pastoral da Terra, "Assassinatos" at [www.cptnac.com.br](http://www.cptnac.com.br). In 2007, the most recent year for which there are homicide statistics, the number of homicides (28) was lower than the previous years' averages. (However, in 2007, the number of states in which murders took place increased from 8 to 14).

<sup>155</sup> Comissão Pastoral da Terra, Justiça Global, Terra de Direitos, "Violação dos direitos Humanos na Amazônia: Conflito e Violência na Fronteira Paraense" (November 2005), p. 33.

<sup>156</sup> For example, I received reports that on 21 October 2007, a few weeks prior to my visit, an armed militia group shot and killed Valmir Mota de Oliveira (42 years old), a leader of the *Movimento dos Trabalhadores Rurais Sem Terra* (MST), at the Via Campesina encampment at the GMO field of Syngenta Seeds, Santa Tereza do Oeste, Paraná. Five other farmers were also shot and seriously wounded. The MST leaders had been threatened for the previous 6 months by the militia, who were believed to have been employed by Syngenta.

executions of indigenous persons occur each year.<sup>157</sup> While individual killings are a result of structural land conflict issues, complex and long-term land use and ownership issues should not be used as an excuse for failing to take immediate action to prevent, prosecute and punish extrajudicial executions in this context. Land conflicts form the context in which these murders take place. But it is not the case that executions inevitably follow from conflicts over land. Executions occur because those who order and carry out the murders know that they will get away with it. Brazil must ensure that reported death threats are investigated and the perpetrators punished.

[...]

#### Appendix – Programme of the Visit

I met with the UN county team, and representatives of 29 civil society organizations. I received personal testimony from 46 witnesses, including inmates, indigenous Brazilians, landless workers, victims of death threats and gang or police extortion or violence, and families of people killed during large-scale police operations, or by death squads, militias, police or gangs. These witnesses spoke with me about personal and traumatic incidents in their lives, sometimes at great risk to their own security, and to them I am deeply grateful.

#### ***Report on Mission to Colombia (A/HRC/14/24/Add.2, 31 March 2010, ¶¶ 46, 76):***

46. Guerrilla activity has had an especially negative impact on indigenous communities and Afro-Colombian communities that are caught in the conflict between the Government and guerrilla groups. For example, in February 2009, the Awa indigenous community reported that 27 of its members had been massacred by the FARC in Narino; 8 bodies were later recovered. The killings are an example of the disregard shown by the FARC for civilians and the right to life. They also raise concerns about Government responsibility for preventing abuses and protecting civilians. Before the massacre, the *Defensoría's* Early Warning System<sup>158</sup> issued two risk reports, in 2007 and again in January 2009, warning that illegal armed groups, the FARC and ELN had moved into the Awa's territory and that the resulting combat operations placed the community at risk. The 2009 report specifically warned that the FARC was likely to retaliate against civilians it accused of collaborating with the military. Government authorities failed to respond and the killings occurred a month later.

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<sup>157</sup> These killings either occur in the context of disputes over land that has already been demarcated to indigenous groups pursuant to the requirements of Article 231 of the 1988 Constitution, but on which others trespass for the purposes of resource exploitation, or the killings occur over land which is not yet demarcated but which an indigenous group chooses to begin to reclaim. The National Foundation for Indians (*Fundação Nacional do Índio*, FUNAI) has responsibility for indigenous policies, and policing of indigenous areas is largely the responsibility of the Federal Police. I was told by NGOs and indigenous representatives that Federal Police presence was often non-existent or minimal. In indigenous areas known to have serious land conflicts, Federal Police presence should be increased, and police who work in and near indigenous areas should receive specialist training to sensitize them to the land issues and indigenous culture.

<sup>158</sup> Discussed in greater detail in Section X.B.

[...]

76. Indigenous and Afro-Colombian communities have been victimized by all parties to Colombia's conflicts. According to the Government, 1,039 indigenous persons were unlawfully killed between 2000 and May 2009. Figures compiled by indigenous groups show 1,007 community members killed in that period; 115 were allegedly killed by State forces, 402 by paramilitaries or other IAGs and 223 by guerrillas. Many of these deaths relate to militarily or economically significant locations. Historically, paramilitaries, sometimes in collusion with State forces, appropriated land from the indigenous or Afro-Colombians and committed massacres to intimidate local populations or overcome their resistance. More recently, IAGs and guerrilla forces fighting for control of land and the drug trade have killed or displaced community members. Indigenous and Afro-Colombian communities are often caught in an impossible bind in the conflict – between the demands of cooperation from State forces and those from illegal armed groups. Instead of providing protection, State forces often view efforts by the indigenous population to protect their rights as a form of subversiveness or collaboration with guerrillas.

***Joint Report on Mission to Columbia, by Special Rapporteurs Nigel S. Rodley and Bacre Waly Ndiaye, (E/CN.4/1995/111, 16 January 1995, ¶¶ 45, 127):***

*The Special Rapporteurs visited Columbia between 17 to 26 October 1994 and reported on the violence experiences and killings of indigenous persons in Columbia.*

45. Numerous members of peasant and indigenous organizations have also become victims of violence at the hands of the security forces and private justice and guerrilla groups in the context of land disputes in which they claimed their rights to certain areas, or for their activities aimed at the protection of their identity and organization. Thus, at least 78 indigenous leaders are said to have been killed in the past four years.

[...]

127. While the Special Rapporteurs acknowledge that effective protection of all those at risk of human rights violations is extremely resource intensive, they are obliged to recommend that substantially increased measures of protection be afforded to certain vulnerable sectors, such as threatened human rights groups, displaced persons, street children, trade unionists and indigenous groups. Those at risk should be consulted with a view to determining the most appropriate measures for each case. Such measures could include the extension of existing witness protection programmes or the financing of security personnel selected by the person under threat. The Special Rapporteurs believe that foreign resources already available should be used in this area. In the case of persons who have received threats, especially death threats, in addition to the measures of protection a proper investigation should be carried out in order to determine the origin of the threats and to initiate proceedings against their authors, in compliance with the pertinent international instruments.

## G. KILLINGS IN LAND-USE DISPUTES

*Report on Mission to the Philippines (A/HRC/8/3/Add.2, 16 April 2008, ¶¶ Summary, 37):*

*The Special Rapporteur visited the Philippines from 12 to 21 February 2007. Numerous killings take place in the context of land-use disputes and agrarian reform.*

Over the past six years, there have been many extrajudicial executions of leftist activists in the Philippines. These killings have eliminated civil society leaders, including human rights defenders, trade unionists and land reform advocates, intimidated a vast number of civil society actors, and narrowed the country's political discourse. Depending on who is counting and how, the total number of such executions ranges from 100 to over 800. Counter-insurgency strategy and recent changes in the priorities of the criminal justice system are of special importance to understanding why the killings continue.

Some of the other situations in which extrajudicial executions occur in the Philippines were also studied during the visit. Journalists are killed with increasing frequency as a result of the prevailing impunity as well as the structure of the media industry. Disputes between peasants and landowners, as well as armed groups, lead to killings in the context of agrarian reform efforts, and the police often provide inadequate protection to the peasants involved. A death squad operates in Davao City, with men routinely killing street children and others in broad daylight. While human rights abuses related to conflicts in western Mindanao and the Sulu archipelago have received less attention than those related to the conflict with the communist insurgency, serious abuses clearly do occur, and improved monitoring mechanisms are necessary.

[...]

### Killings Related to Agrarian Reform Disputes

37. Peasants claiming land rights through the Government's agrarian reform program find themselves implicated in conflicts among the Government, the CPP/NPA/NDF, and large landowners.<sup>159</sup> The Government established the Comprehensive Agrarian Reform Program (CARP) in 1988 to redistribute land to peasants.<sup>160</sup> The CPP/NPA/NDF views CARP as a "divide and rule scheme" to prevent the "genuine land reform of the

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<sup>159</sup> It is not always empirically clear whether a particular extrajudicial execution was related to the victim's participation in agrarian reform programs. This is especially so when the victim was a member of leftist peasant organization as well as other leftist civil society organizations. However, on a relatively narrow interpretation, I interviewed at least 10 witnesses to agrarian-reform related killings.

<sup>160</sup> *Comprehensive Agrarian Reform Law of 1988*, Republic Act No. 6657 (signed into law 10 June 1988); see also Republic Act No. 8532 (signed into law 23 February 1998). These statutes attempt to implement the State's constitutional obligation to "undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof" (Constitution of the Republic of the Philippines (1987), art. XIII, section 4).

revolutionary movement”.<sup>161</sup> Landowners generally oppose all redistribution programs, although the possibility of exploiting tensions between Government and CPP/NPA/NDF efforts has sometimes led to alliances of convenience. The options facing peasants are perhaps the most fraught, for even if they support the CPP’s long-term program, they may wish to avail themselves immediately of CARP’s benefits. This choice has, however, been discouraged by the CPP/NPA/NDF as well as by landowners. For their part, local Government officials are often more interested in protecting the holdings of local elites than the lives and land rights of peasants, and PNP protection for peasants attempting to take possession of land that has been awarded to them has often been strikingly inadequate in practice.

***Report on Mission to Brazil (A/HRC/11/2/Add.2, 23 March 2009, ¶¶ 40):***

*The Special Rapporteur visited Brazil from 4 to 14 November 2007. He reported on the executions of landless workers and the land conflicts in which these murders take place.*

**Death Squads and Extermination Groups**

40. Extermination groups are also responsible for the murders of landless workers and indigenous persons in rural areas, generally in the context of disputes over land. While the numbers of landless workers or indigenous persons executed each year does not form a large proportion of Brazil’s total homicides, the killings that take place serve to reinforce a broader system of repression by demonstrating the lethal consequences of defying powerful actors. The Pastoral Land Commission reports on average approximately 40 murders per year of landless workers.<sup>162</sup> In the state of Pará alone, over 770 landless workers and other human rights defenders have been killed since 1971.<sup>163</sup> These killings generally occur in retribution for the activism of landless workers or during violent evictions from land settled by landless workers.<sup>164</sup> The *Conselho*

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<sup>161</sup> Frank Fernandez, Spokesperson, NDF – Negros, “NDF Negros sympathizes with the farm workers of Had Velez-Malaga; condemns the conspiracy of Roberto Cuenca, Arroyo government and the Intengan-Gonzales clerico-fascist clique” (31 March 2007). The CPP/NPA/NDF itself advocates for a more extensive redistribution program following its contemplated victory and uses its clout today to adjust the relative shares received by landowners and sharecroppers: “The current minimum land reform program involves the reduction of land rent and abolition of usury, and the setting up of mutual aid and labor exchange systems among the peasantry. For the last 24 years, the revolutionary movement has carried out this minimum program in ever-widening areas of the countryside. . . . After the nationwide victory of the revolution, it shall be possible to carry out the maximum land reform program, which involves the confiscation of landlord property and the equitable distribution of the land to the landless tillers at no cost to them.” (“The 12 Points of the NDF Program”, included in *Declaration of Undertaking*, Annex A-1, Part II.)

<sup>162</sup> See Comissão Pastoral da Terra, “Assassinatos” at [www.cptnac.com.br](http://www.cptnac.com.br). In 2007, the most recent year for which there are homicide statistics, the number of homicides (28) was lower than the previous years’ averages. (However, in 2007, the number of states in which murders took place increased from 8 to 14).

<sup>163</sup> Comissão Pastoral da Terra, Justiça Global, Terra de Direitos, “Violação dos direitos Humanos na Amazônia: Conflito e Violência na Fronteira Paraense” (November 2005), p. 33.

<sup>164</sup> For example, I received reports that on 21 October 2007, a few weeks prior to my visit, an armed militia group shot and killed Valmir Mota de Oliveira (42 years old), a leader of the *Movimento dos Trabalhadores Rurais Sem Terra* (MST), at the Via Campesina encampment at the GMO field of Syngenta

*Indigenista Missionário* (CIMI) informed me that they estimate that about 10 summary executions of indigenous persons occur each year.<sup>165</sup> While individual killings are a result of structural land conflict issues, complex and long-term land use and ownership issues should not be used as an excuse for failing to take immediate action to prevent, prosecute and punish extrajudicial executions in this context. Land conflicts form the context in which these murders take place. But it is not the case that executions inevitably follow from conflicts over land. Executions occur because those who order and carry out the murders know that they will get away with it. Brazil must ensure that reported death threats are investigated and the perpetrators punished.

***Report on Mission to Kenya (A/HRC/11/2/Add.6, 26 May 2009, ¶¶ Summary, 38-44, 64, Appendix II)***

*The Special Rapporteur visited Kenya from 16 to 25 February 2009. He reported on the violence and killings that arise out of the context of land allocation.*

The Special Rapporteur concludes that, in Mt. Elgon, both the Sabaot Land Defence Force militia and the Government's security forces are engaged in widespread brutality, including torture and unlawful killings, against Mt. Elgon's residents. Detailed reports from a broad range of sources documenting this abuse have not been seriously investigated by the police or the military. Both groups remain in denial of such abuses and their response to systematic civil society reporting has been to methodically intimidate human rights defenders and witnesses.

[...]

Extrajudicial Executions in Mt. Elgon

38. The general background to the Mt Elgon violence is well recorded elsewhere, and I will only outline its basic contours here.<sup>166</sup> From the mid-1960s, various phases of a

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Seeds, Santa Tereza do Oeste, Paraná. Five other farmers were also shot and seriously wounded. The MST leaders had been threatened for the previous 6 months by the militia, who were believed to have been employed by Syngenta.

<sup>165</sup> These killings either occur in the context of disputes over land that has already been demarcated to indigenous groups pursuant to the requirements of Article 231 of the 1988 Constitution, but on which others trespass for the purposes of resource exploitation, or the killings occur over land which is not yet demarcated but which an indigenous group chooses to begin to reclaim. The National Foundation for Indians (*Fundação Nacional do Índio*, FUNAI) has responsibility for indigenous policies, and policing of indigenous areas is largely the responsibility of the Federal Police. I was told by NGOs and indigenous representatives that Federal Police presence was often non-existent or minimal. In indigenous areas known to have serious land conflicts, Federal Police presence should be increased, and police who work in and near indigenous areas should receive specialist training to sensitize them to the land issues and indigenous culture.

<sup>166</sup> See: Kenya Police, "Report into Violations of Human Rights in Mt Elgon Region" (2008); Kenya National Assembly, "Report of the Joint Visit to Mt Elgon Region by the Committees on Defence and Foreign Relations, and Administration, National Security and Local Authorities" (November 2008); Human Rights Watch, "All the Men Have Gone: War Crimes in Kenya's Mt Elgon Conflict" (2008); Kenya

settlement scheme (Chepyuk Settlement Scheme, Phases I, II and III) were initiated by the Government to resettle and provide land to the Ndorobo and Soy sub-clans of the Sabaot people.

39. The Sabaot Land Defence Force (SLDF) militia was born out of disputes over the fairness of allocations in Phase III.<sup>167</sup> The early membership of the SLDF appears to have primarily drawn its ranks from those who were unhappy with the results of Phase III and believed there was little alternative but to resist by force.<sup>168</sup> The SLDF also used varying degrees of intimidation and force to increase its ranks.<sup>169</sup> If members later became discontented with the activities of the SLDF, they were unable to leave without fear of fatal reprisals.<sup>170</sup>

#### Sabaot Land Defence Force Operations and Militia Atrocities (2006-2008)

40. It is clear that the residents of Mt Elgon district were terrorized by the SLDF militia for approximately two years (2006-2008). I spoke with many victims of SLDF abuse, and also with former members of the SLDF. From their testimonies, and together with police, Government, and civil society accounts, I have been able to form a detailed picture of the SLDF's operations and abuses. Intimidation, physical abuse, and killings appear to have been carried out for three primary reasons.

41. First, those occupying land desired by the SLDF - especially members of the Ndorobo sub-clan, who most SLDF saw as their "enemy" in land allocations - were chased out or killed.<sup>171</sup> Soy and others who were seen to be benefiting from the land allocations, or who criticized the land reform aims of the SLDF, also became victims.<sup>172</sup>

42. Second, as the SLDF increased its control over villages in the Mt Elgon region, anyone living in those areas who failed to follow SLDF rules or orders was punished commonly through having an ear cut off. Residents who refused to "donate" food or pay levies were beaten or killed.<sup>173</sup> The SLDF used "informers" within the villages, and those who were believed to have divulged information to the police were killed.<sup>174</sup> Such SLDF killings could take place anywhere, but typically took place at designated areas in the forests, where the victims' bodies were often just left on the ground surface, with previous victims.

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National Commission on Human Rights, "The Mountain of Terror: A Report on the Investigations of Torture by the Military at Mt Elgon" (May 2008).

<sup>167</sup> In Phase III, 1732 plots of 2.5 acres each were available for allocation. The plots were divided equally between the Ndorobo and Soy sub-clans, with each clan getting 866 plots. But some 7000 sought the 1732 plots.

<sup>168</sup> Appendix II: Case 15, Case 16.

<sup>169</sup> Appendix II: Case 14, Case 17.

<sup>170</sup> Appendix II: Case 16, Case 17.

<sup>171</sup> Appendix II: Case 14, Case 20.

<sup>172</sup> Appendix II: Case 16, Case 26.

<sup>173</sup> Appendix II: Case 18.

<sup>174</sup> Appendix II: Case 15, Case 19, Case 21.

43. Third, some killings were politically motivated. The members of the Mt Elgon District Security and Intelligence Committee (DSIC) acknowledged that the SLDF began and operated with political backing. The SLDF supported the candidacy of Fred Kapondi in the 2007 elections, and for each ward, the SLDF had its favoured candidate, based on that candidate's support for the land reallocations that the SLDF wanted. Supporters of rival parties, and especially of John Serut, who was running against Kapondi, were targeted by the SLDF.

44. Over 700 killings and 120 disappearances by the SLDF have to date been individually documented by local organisations; although this is likely a fraction of the total number.

[...]

#### Independent Investigations and Reform

64. Without a fair allocation of land in Mt Elgon, there is a strong likelihood of renewed violence. Many remain landless and homeless, and the underlying causes of the formation and growth of the SLDF have not been addressed. The Government should ensure that renewed re-allocation efforts are not accompanied by the same favouritism and corruption that defined previous allocations.

[...]

#### Appendix II – Selected Cases

Case 14: The witness, from Mt Elgon, was forced to join the SLDF in early 2007. The SLDF came to his home and told him that, while he did nothing to secure his land, they were fighting on his behalf in the forest. They forced him to go to the forest with them. His duties in the SLDF camp were to chop firewood and cook for the approximately 300 other members who lived in the camp. While he was with the SLDF in the forest, his wife was abducted and killed by the SLDF because she was a Ndorobo.

Case 15: The witness, a former SLDF member, joined the SLDF voluntarily in 2006. He lost some land in the land allocations, and - together with many other men from his village – joined the SLDF so that they could force the return of their land. He stayed in his village as an “informer” for the SLDF. Members of the SLDF subsequently raped his wife, and the witness fled from the area, and began to assist the police with intelligence about the location and operations of the SLDF. When the joint police-military operation began in March 2008, he provided further information to the security forces. He was provided a camouflage military uniform, and assisted in identifying SLDF members, and locating SLDF forest base camps.

Case 16: The witness, a former SLDF member, initially joined the SLDF voluntarily in 2006. He joined because he was not allocated land during the land allocations, and the land he had been living on was allocated to someone else. One of his neighbours, a senior SLDF member, told the witness about the SLDF and its aims. The witness then joined the

SLDF so that he could “fight for [his] land”. At least 20 other men from the witness’s village also joined. They resided in the forests around Mt Elgon. His brother was subsequently murdered by other SLDF members in a dispute over land allocations (the brother had been formally allocated land, and so he was considered by the SLDF to be a collaborator). The witness wanted to leave the SLDF at that point, but believed that if he left, he would be killed.

## H. ALLEGED CRIMINALS

*Report on Mission to Guatemala (A/HRC/4/20/Add.2, 19 February 2007, ¶¶ Summary, 19-20, 27-28, 54):*

*The Special Rapporteur visited Guatemala from 21 to 25 August, 2006.*

Today, a number of violent phenomena afflict Guatemala, including social cleansing, the rapidly rising killing of women, lynching, the killing of persons for their sexual identity or orientation, the killing of human rights defenders, and prison violence. In some cases, the State bears direct responsibility. There is strong evidence that some acts of social cleansing - executions of gang members, criminal suspects, and other “undesirables” - are committed by police personnel. Killings by prison inmates have been facilitated by guards. In other cases, the State bears indirect responsibility. With a criminal justice system unable to achieve more than a single-digit conviction rate for murder, the State bears responsibility under human rights law for the many who have been murdered by private individuals.

[...]

Social cleansing: executions of gang members and other “social undesirables” by government officials and private citizens

19. Based on my interviews with victims and others, I must conclude that allegations that personnel working for the División de Investigación Criminal (DINC) of the PNC are engaged in social cleansing are highly credible. The pattern is that the police will recruit an informant by agreeing to overlook the informant’s past or present criminal activities in exchange for cooperation and will then demand information regarding the identities and locations of gang members, suspected criminals, and other targets. Police will then drive to the location provided, typically without uniforms and in an unmarked vehicle, apprehend the person identified by the informant, and kill him or her at another location, sometimes following torture.<sup>175</sup>

20. One person I spoke with was a man in his early twenties who reported that he had been retained as an informant by DINC. As an informant, he was witness to a number of incidents of social cleansing. In one incident, a suspected car thief was arrested at his

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<sup>175</sup> The conclusions I reached based on interviews align with those reached by the PDH based on the much larger number of complaints that it has received of forced disappearances and extrajudicial executions by the PNC. With respect to forced disappearances by the PNC, the PDH received 9 complaints in 2004 and 23 in the first half of 2005. With respect to extrajudicial executions by the PNC, the PDH received 21 complaints in 2004 and 28 in the first half of 2005. PDH, *Las Características de las Muertes Violentas en el País* (Febrero 2006). Based on these complaints, the PDH identified four elements characterizing the conduct of the PNC alleged by victims and their family members: “1. Las víctimas de desaparición fueron detenidas de forma arbitraria, previamente. 2. La última vez que se les vio fue cuando agentes de la PNC les capturaban. 3. Utilización de vehículos sin placas e incluso patrullas con la identificación de la dependencia policial a la que pertenecen. 4. Ausencia de resultados de las investigaciones que permitan identificar a los responsables de los hechos.” PDH, *Las Características de las Muertes Violentas en el País* (Febrero 2006).

home during the night, without an arrest warrant, and his dead body was subsequently found with signs of torture. In other incidents, the people killed were said to be distributing marijuana. In another incident, he took part in a burglary carried out by DINC policemen in which they kidnapped the residents of the apartment, who were not seen again. When another informant told him that the police wished to harm him, he went into hiding; that informant was found dead with a bullet in his head after going to a meeting with those controlling him in DINC. The detailed accounts of this interlocutor were buttressed by those of a number of other individuals with whom I spoke. One individual had been tortured by the police for gang activity. Another had been taken away by police officers in an unmarked vehicle and threatened with death. Another well connected individual confirmed the involvement of DINC in such activities.

[...]

### Lynching: private violence filling a power vacuum left by the State

27. The lynching of suspected criminals by private individuals has been a persistent problem since the end of the armed conflict and its one that further illuminates a failure to fully transition from the era of armed confrontation. The most reliable data are those compiled by MINUGUA from 1996 to 2001. During those years, the annual number of lynchings ranged from 35 to 105, the number resulting in death ranged from 13 to 29, and the number of persons killed ranged from 23 to 54.<sup>176</sup> I have not found reliable statistics for 2002 to 2005, but, at the time of the visit, there had been 13 deaths from lynching in 2006. MINUGUA conducted an exceptionally thorough and well-reasoned study of lynching, and this continues to structure nearly all serious discussion of the phenomenon.

28. MINUGUA's study began with a general observation that the areas in which lynching is most widespread are areas that suffer disproportionate poverty, are predominantly indigenous, have a weak State presence, and experienced the most human rights violations during the armed confrontation. In seeking to explain this pattern, the study began by disproving several superficially plausible hypotheses. First, lynching is not the result of indigenous cultural traditions. Indeed, it found that lynching is a relatively recent phenomenon neither required nor permitted by the indigenous systems of justice. Second, lynching is not a simple continuation of the armed confrontation at a lower intensity. It found that lynchings are typically motivated neither by revenge for past violence nor by political or ideological agendas: 55 per cent are in response to crimes involving personal property. Third, lynchings are not opportunistic attacks on the vulnerable facilitated by the absence of State institutions: the vast majority of victims are men between the ages of 18 and 40.

[...]

### The Options for Maintaining Order and Controlling Crime

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<sup>176</sup> MINUGUA, "Los Linchamientos: Un Flagelo que Persiste" (July 2002), p. 6.

54. One approach to crime control that meets considerable support is that of the *mano dura*, cracking down on undesirable elements with an iron fist. In its more respectable forms, *mano dura* policy prioritizes harsh punishment and heavily-militarized sweeps over prevention, prosecution, and rehabilitation. In its more extreme forms - what one interlocutor termed “*super mano dura*” - it prioritizes force over legal process. There is a sense that a swift and brutal response to crime is more likely to be effective than the inherently more lengthy process of investigation, arrest, prosecution, trial, and punishment. Indeed, given the failings of the criminal justice system, turning to on-the-spot executions of suspected criminals appears to some as the only available option.

***Report on Mission to Brazil (A/HRC/11/2/Add.2, 23 March 2009, ¶¶ Summary, 9, 24-26, 34, 77):***

*The Special Rapporteur visited Brazil from 4 to 14 November 2007.*

(...) States have an obligation to protect their citizens by preventing and punishing criminal violence. This obligation, however, goes together with the State’s duty to ensure respect for the right to life of all citizens, including that of criminal suspects. There is no conflict between the right of all Brazilians to security and freedom from criminal violence and the right not to be arbitrarily shot by the police. Murder is not an acceptable or effective crime-control technique.

High crime and homicide rates affect the entire populace, but they disproportionately affect the poorer classes, particularly those in favelas. There is a strong negative correlation between average income and the homicide rate in an area. In some cities the homicide rate in poor areas is 4.5 times that of wealthy areas. (In the city of Rio de Janeiro, for example, the poor areas of Zona Norte 2 and Baixada had homicide rates per 100,000 between 2000-2005 of 56.8 and 55.2 respectively, while the wealthy area of Zona Sul had a rate of 12.6 per 100,000. See Instituto de Segurança Pública (ISP-RJ).) While the middle and upper classes can seek to protect themselves through gated communities and private security guards, favela residents live in areas largely devoid of state power, and face daily violence. Favela residents are then further disadvantaged socially and when seeking employment. They are tainted with the crime associated with their area of residence. This “criminalization of poverty” is so pervasive that even Rio de Janeiro’s Secretary for Public Security publicly expressed the view that “a gunshot in Copacabana [a wealthy neighborhood] is one thing” but “a gunshot in Coréia, in the Complexo do Alemão [favelas] is another”. (Italo Nogueira, “Para secretário, tiro em Copacabana ‘é uma coisa’ e, no Alemão, ‘é outra’”, *Folha de São Paulo* (24 October 2007).) This attitude permeates the state response to criminal violence, which has often been to adopt aggressive military style policing of poor neighborhoods, or to fail to take serious action against police who kill suspected criminals and other citizens. In many areas, as detailed below, police are themselves a major cause of insecurity for residents, and are responsible for many killings.

[...]

## Extra-Judicial Executions by On-Duty Police

9. On-duty police are responsible for a significant proportion of all killings in Brazil.<sup>177</sup> While São Paulo's official homicide rate has reduced in recent years, the number of killings by police has actually increased over the last three years, with on-duty police in 2007 killing one person a day.<sup>178</sup> In Rio de Janeiro, on-duty police are responsible for nearly 18% of the total killings,<sup>179</sup> and kill three people every day. Extrajudicial executions are committed by police who murder rather than arrest criminal suspects, and also during large-scale confrontational "war" style policing, in which excessive use of force results in the deaths of suspected criminals and bystanders.

[...]

### "War" on crime and large-scale police operations in Rio de Janeiro

24. The expert reports found strong evidence of extrajudicial executions. Of 19 killed, 14 showed signs of 25 gunshot entry wounds in the back of their bodies. Six victims showed signs of 8 entry wounds in the head and face. Five victims showed signs of point-blank shots.<sup>180</sup> This information, together with the high number of shots per victim (over 3), the fact that different guns were used to shoot the same victim, and analysis of the sequence and trajectory of shots, led the experts to infer that a number of the victims had been executed. But, given the many deficiencies in the original forensic analysis, both reports stated that it was impossible to conclude definitively whether the victims were executed.

25. I asked Rio de Janeiro officials to respond to these findings. They attacked the experts' credentials, and told me that the experts lacked the constitutional authority to carry out such investigations. I requested, but did not receive, a scientifically based state response to the experts' report. I also asked the responsible Civil Police what investigations had been carried out to ascertain whether each killing was in fact the result of justifiable and necessary use of force. But they were unable to provide me with any evidence that they had conducted serious investigations into any of the killings. In fact, I was told that they assume that Military Police officers registering a resistance case are telling the truth. The principal response I was given was that each of the 19 deceased had

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<sup>177</sup> In fact, the real homicide rate for many states in Brazil, including Rio de Janeiro and São Paulo, is significantly higher than official statistics suggest because on-duty killings by police are excluded from the homicide statistics.

<sup>178</sup> In 2005, there were 278 cases of "resistance followed by death". In 2006, there were 495 (the increase is largely accounted for by the large numbers of resistance cases recorded in May). In 2007, up to October, 311 cases were recorded. See: Government of São Paulo, "Resposta à ONU - resistência seguida de morte", p. 1.

<sup>179</sup> According to official statistics, there were 6,133 murders (not including killings by police) in Rio de Janeiro in 2007. There were 1,330 citizens killed by police. The total number of killings was 7,463. In 2006, the percentage of killings by police was 14% (there were 6,323 murders, and 1,063 citizens killed by police (7,386 total)). See: Rio de Janeiro, Public Security Institute (Instituto de Segurança Pública), 19 March 2008.

<sup>180</sup> A "tattooing" or "stippling" effect on the skin around a bullet entry wound is caused by gunpowder residue on the skin, and can be used to analyse the muzzle to target distance.

criminal records. It is difficult to understand how this could have been known by the police when they killed the individuals. Moreover, the claims were firmly denied by families of several victims, including that of a 14 year old boy, David Souza de Lima, who was shot 4 times in the back. The assertion by police of victims' criminality is an extremely telling and worrying "justification" for killings. A victim's criminal record says absolutely nothing about whether they were killed in self-defence, or whether the police used justifiable force. The appropriate response to a criminal act is arrest, not execution.

26. The degree to which the killing of "criminals" is tolerated and even publicly encouraged by high level Government officials goes a long way to explaining why the numbers of killings by police are so high, and why they are so inadequately investigated. Current Secretary for Public Security José Mariano Beltrame commented that, while police did their best to avoid casualties, one could not "make an omelet without breaking some eggs".<sup>181</sup> Such public statements, and the military-style methods used in mega-operations, have led favela residents to become increasingly cynical about the police. The view that police operations are planned for the very purpose of killing poor, black, young men is surprisingly mainstream. The official rhetoric of "war", the acquisition of military hardware, and violent police symbols only make these views more broadly acceptable.<sup>182</sup>

[...]

### Militias and Para-Policing

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<sup>181</sup> Bia Barbosa, "OEA recebe denúncia contra megaoperação no Complexo do Alemão", Carta Mayor, 25 July 2007. These views have considerable public support, because many people have little faith in the normal work of the police and other components of the criminal justice system. Fifty percent of Brazilians state that they do not even report crimes to the police because it would be a "waste of time". (See William C Prillaman, "Crime, Democracy, and Development in Latin America", Centre for Strategic and International Studies, Policy Papers on the Americas, Volume XIV, Study 6 (June 2003), p. 9. A Brazilian Judges' Association surveys show that citizens lack faith in the judiciary and consider it corrupt, slow, and mysterious. (AMB, Pesquisa qualitativa "Imagem do Poder Judiciário", Brasília, 2004, p. 61.) In a context of soaring crime rates, widespread citizen fear and insecurity, lack of faith in the police, and lack of trust in the judicial system, it is perhaps not surprising that many Brazilians support "tough" law and order approaches and the extrajudicial execution of suspected criminals: a 2002 Rio de Janeiro survey found that 47% supported the killing of murderers and thieves by police. See William C. Prillaman, "Crime, Democracy, and Development in Latin America", Centre for Strategic and International Studies, Policy Papers on the Americas, Volume XIV, Study 6 (June 2003), p. 14.

<sup>182</sup> In 2002, police acquired a military-style armoured vehicle, known colloquially as the *caveirão*, or "big skull", so named because the BOPE's emblem - a skull impaled on a sword, backed by two pistols - is displayed on the side of the vehicle. It can carry 12 armed officers, and has a modified turret and rows of firing positions along each side of the vehicle. By 2006, Rio had 10 of the vehicles. The vehicle is equipped with loudspeakers, and I received testimony from favela residents and civil society that police used the loudspeakers to threaten residents. The *caveirão* causes significant fear in the community. Given the intensity of criminal violence in Rio de Janeiro, armoured vehicles may be useful policing tools in the short-term since police should not be required to work at undue risk to their own lives. Armoured vehicles - when used properly - can improve police safety. However, their use should be restricted to circumstances in which it is indispensable in order to protect the lives of police. To reduce abuse their use should be monitored, and each deployment carefully recorded with audio and visual equipment installed on the inside and outside of the vehicle.

34. As reported to me by police investigators, public prosecutors, civil society, and residents of militia-controlled areas, militias are groups composed of police, ex-police, firefighters, prison guards, and private citizens, who attempt to “take over” geographical areas, and engage in extra-state “policing”. Like gangs, their motivations for such control are often economic - militias extort shop owners, and control the supply of gas, cable and transport services. Militias also seek to justify their control by contending that they are “protecting” residents from violent gangs and traffickers. However, for residents, rule under a militia is often just as violent and insecure as rule under a gang. Militias extrajudicially execute suspected traffickers while forcing them out of the area, execute other suspected criminals, intimidate residents, and threaten and kill those who speak out against the militia or are perceived to have allegiances to other groups vying for control.

[...]

### Recommendations

77. State Governors, Secretaries for Public Security, and Police Chiefs and Commanders should take the lead to make publicly clear that there will be zero tolerance for the use of excessive force and the execution of suspected criminals by police.

***Report on Mission to Kenya (A/HRC/11/2/Add.6, 26 May 2009, ¶¶ 6, 9-10, 16-17, 19, 23, Appendix II)***

*The Special Rapporteur visited Kenya from 16 to 25 February 2009. He reported on police executions of suspected criminals.*

### Extrajudicial Executions by Police

6. There are six primary factors which account for the frequency with which police can kill at will in Kenya: (i) official sanctioned targeted killings of suspected criminals; (ii) a dysfunctional criminal justice system incentivizes police to counter crime by killing suspected criminals, rather than arresting them; (iii) internal and external police accountability mechanisms are virtually non-existent; there is little check on, and virtually no independent investigations of, alleged police abuses; (iv) use of force laws are contradictory and overly permissive; (v) witnesses to abuse are often intimidated, and fear reporting or testifying; and (vi) the police force lacks sufficient training, discipline and professionalism.

[...]

### Evidence of Widespread Killings by Police

9. The Government has a clear obligation to protect citizens from Mungiki and other criminal violence, while respecting human rights, including the right to life. Suspects should be arrested, charged, tried and punished accordingly. In a context of violent

criminality, police will inevitably be required to use force on occasion, and sometimes lethal force in order to protect life. The police, including the Police Commissioner, assured me that there have been no unlawful police killings. However, as I detail below, the evidence is compelling that the police respond - frequently - with unlawful force: murdering, rather than arresting suspects. Further, investigations by police are so deficient and compromised that claims by the police that all killings are lawful are inherently unreliable and unsustainable.

10. During my mission, I received compelling evidence that death squads - including one called *Kwekwe* - exist within the police force in Kenya, and that these squads were set-up to eliminate the Mungiki and other high-profile suspected criminals, upon the orders of senior police officials. Detailed evidence was provided by civil society investigations,<sup>183</sup> witnesses to the squad's activities, survivors of attempted killings, family members of deceased or disappeared victims, and victim autopsy reports indicating shots at close range and back entry wounds. A further key component of this evidence is the now public testimony of a police whistleblower, who recorded his statement in July 2008, before he was murdered while in hiding in October 2008. His account provides, in precise and often excruciating, detail the composition and operations of the death squad in which he was a part, and the circumstances of the murder of 67 persons between February 2007 and July 2008. Together, this evidence implicates the Commissioner of Police, and senior police officials from the Criminal Investigation Division, Special Crime Unit, and the Criminal Intelligence Unit. From this large amount of testimony, it is possible to set-out in detail the operations of the death squads:

- The suspected Mungiki or other criminal suspects appear to nearly always be known and individually targeted by police in advance. The police carrying out the operations (those driving the vehicles and committing the murders) are generally ordered by senior police to pick up a specified individual at a particular location (often his home, workplace, or a road on which he is believed to be traveling).<sup>184</sup>
- While most suspects are individually targeted, police will generally also detain others who may be accompanying the target at the time of arrest.
- Very often, the initial detention is witnessed by family members, co-workers, or bystanders.<sup>185</sup> In one well-known case, a man was actually photographed by a member of the press while being arrested.<sup>186</sup>
- Some suspects are murdered at the location of arrest. They are generally ordered by the police to lie down on the ground and are then shot. Police then attempt to set the crime scene to look like a "shoot out" occurred between criminals and police - weapons will be placed next to the bodies of the suspect, and fired into

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<sup>183</sup> E.g., KNCHR, *The Cry of Blood: Report on Extra-Judicial Killings and Disappearances* (September 2008).

<sup>184</sup> E.g. Appendix II: Case 6, Case 7, Case 8, Case 9.

<sup>185</sup> Appendix II: Case 4, Case 7, Case 8, Case 11, Case 13.

<sup>186</sup> Appendix II: Case 3.

the air to give the appearance of an exchange of fire. Such victims are often taken to the mortuary by the police.<sup>187</sup>

- In other cases, the suspects are not immediately murdered, but are taken from the site of initial detention in generally unmarked police vehicles or private vehicles.<sup>188</sup> The squads frequently work in convoys of 2-5 vehicles.
- Once detained, the suspect is most often held irregularly, and no record of the detention is made in the police Occurrence Book. Some suspects will be taken to police stations, or moved between multiple stations. Others are held in vehicles for a number of hours. Once family members realize that their relative was arrested or is missing, they generally embark on a search of police stations.<sup>189</sup> Family members usually report obstruction or intimidation from officials in this process.
- In some cases, the police demand a ransom from the detainee, or call the relatives and demand a ransom upon threat of death to the detainee. In many cases, payment of the ransom is sufficient to obtain the detainee's release. Some victims have been detained and forced to pay ransoms on multiple occasions. Others have paid the ransom, but were then followed by police and subsequently murdered.<sup>190</sup>
- Those suspects who are murdered in locations other than the site of initial detention are generally eventually taken in vehicles to a remote area, such a forest or farmland. Many of these individuals are interrogated and tortured for a number of hours. Those who are suspected Mungiki are asked about their role in the Mungiki sect, and for the names and details of other Mungiki members or leaders.<sup>191</sup>
- During the detention or interrogation period, there is often communication via mobile phone between the interrogating officers, and senior officers at headquarters or police stations. In at least one case, the interrogations were tape-recorded, and played back via phone to senior police.<sup>192</sup>
- Those suspects taken to remote areas are typically killed through strangulation, or by being beaten to death by pangas (machetes), rungus (sticks), or other means. Their bodies are generally left in the forest or farm area, and found by local residents.<sup>193</sup>

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<sup>187</sup> Appendix II: Case 3.

<sup>188</sup> Appendix II: Case 6, Case 7, Case 9.

<sup>189</sup> Appendix II: Case 3, Case 7, Case 11, Case 13.

<sup>190</sup> Appendix II: Case 4, Case 5, Case 6.

<sup>191</sup> Appendix II: Case 7.

<sup>192</sup> Appendix II: Case 7.

<sup>193</sup> Appendix II: Case 6, Case 7, Case 9.

- Many victims are last seen by witnesses or family members being arrested by police, but are never found.<sup>194</sup>

[...]

### Official Responses to Allegations

16. In other respects, however, the police response to my visit has consisted of continued denials of all wrongdoing, ad hominem attacks against me, and apparent police involvement in the broad daylight assassination of two human rights defenders with whom I met. Rather than in any way addressing the substance of the allegations contained in my initial statement, some police officials have sought to structure public debate so that criticisms of police actions are equated with condoning criminal activity. In this way, the police have tried to position civil society - and also my own reporting - as aligned with the interests of criminal organizations. This in turn sets up the police to launch further attacks against the Mungiki and others, while failing to take any steps to address the real issues. Efforts to monitor and reform policing so that it is carried out with respect for human rights do not mean being “soft” on crime. Security policies only truly provide security if the rights of all - victims, the general public, police, and criminals - are respected. The violent police response to crime has done nothing to promote security. Innocent bystanders have been shot by police, the public has lost faith that the police force can protect them, and the police have undertaken few if any measures to investigate and prosecute those Mungiki and other criminals who continue to terrorize and extort private citizens.

17. Criminals should be arrested, not taken to a forest and tortured to death. In Kenya, members of criminal organisations - because of their regular intimidation of residents - are easily identifiable. This was repeatedly noted by witnesses to Mungiki violence and matatu drivers. If the police were serious about crime control, they would be able to locate and arrest suspects. Unfortunately, in many Mungiki controlled areas, police profit from criminal control by accepting bribes to permit continued Mungiki control. And in cases reported directly to me in the presence of the police, when called to respond to Mungiki extortion police officers have taken no action against the criminals, but instead exploited for themselves the opportunity to extort the public.

[...]

### Removal of the Police Commissioner

19. While the current Police Commissioner was originally seen as a potential reformer, and rapidly established a highly centralized leadership style, he has since become the major single obstacle to police reform. As section II. B above indicates, there is abundant evidence linking him to a central role in devising and overseeing the policy of extrajudicially executing large numbers of “suspected criminals”. He flatly refuses to acknowledge that any unlawful killings are taking place, derides detailed and compelling

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<sup>194</sup> Appendix II: Case 4, Case 8, Case 13.

reports to the contrary, blocks investigations, and prevents all transparency.

[...]

### Accountability and the Criminal Justice System

23. The criminal justice system as a whole was widely described as “terrible”. Investigation, prosecution, and judicial processes are slow and corrupt. Predictably, this leads to widespread distrust of the system, and impunity for criminals (particularly for those with power and money). It also acts as an incentive for police to kill, rather than arrest suspects: because of the low probability of securing convictions, many police think it is easier and more effective to take “justice” into their own hands. And, significantly, police themselves also benefit from the systemic faults - they are rarely held to account for the abuses they commit.

[...]

### Appendix II – Selected Cases

Case 3: Benson Mwangi Waraga was a tailor, and photographed by the media while being arrested by police on 17 May 2007. Apparently, the police had entered the tailor’s building in pursuit of suspected criminals. Mr Waraga and his employees were arrested along with a number of other people found in the building. At the police station, Mr Waraga was taken to a separate room from the other detainees and from his employees. His employees were released from custody on 18 May. Mr Waraga’s family unsuccessfully attempted to find him at the police station. On 19 May, they found his body at City Mortuary. (The body was recorded as “unknown”). The family was told by mortuary staff that police had brought the body to the mortuary. A pathologist report states that Mr Waraga died due to “multiple organ injuries due to multiple gunshots” and that the “fatal bullets were shot from behind.” According to the police whistleblower testimony, the tailor and three other suspects were picked up from the Kamukunji police station, taken to City Park, and shot at 7.00 pm. Firearms were planted on the men. According to family members, they made complaints to the police, but the CID officer they reported to stated that he could not get statements from the officers believed to be responsible because they were his seniors.

Case 28: The male witness, from Mt Elgon, was arrested early in the morning in his village by security officials, together with two male relatives, and a group of other men in March 2008. The head of the security officers identified himself as an “Army Major”. The men were ordered to lie down, and the officials beat them. The witness showed the officials his employment card, and he was released. His male relatives were taken to Kapkota. The witness searched for his relatives, but did not find them. In June 2008, the witness went to the police station. He was told not to ask about the relatives again, because, according to the police officer, they were “criminals”.

## I. PRISONERS

### *Report on Mission to the Democratic Republic of the Congo (A/HRC/14/24/Add.3, 1 June 2010, ¶¶ 82-87):*

82. Prison conditions, per se, do not come within my mandate. But the atrocious state of prisons across the DRC leads to frequent deaths of detainees. The Minister of Justice acknowledged to me that prison conditions are “horrible” and that many people in detention die of hunger. The Government is failing in its duty to ensure even minimum detention conditions. As a result, prisoners die from preventable causes, and there are regular riots and escapes. Almost non-existent records and monitoring mean that it is not known how many deaths in prisons there actually are, although information provided by one source recorded 23 deaths in 2009 at one prison in Kinshasa alone.

83. The central Government provides only one prison in the entire country with a budget. The rest are required to support themselves. Some receive assistance from the provincial authorities, but many rely completely on private support extracted by individual prison directors. Most prisoners survive on food brought to them by their families. Those without family assistance slowly starve.

84. At Goma Central Prison I interviewed authorities and detainees. Like the vast majority of DRC prisons, it is controlled by the prisoners themselves – state authorities only act as guards outside the facility.<sup>28</sup> Internal prison violence is thus predictably common. Independent monitoring is heavily restricted since the security of visiting monitors cannot be assured. In June 2009, there was a mutiny and escape attempt at the prison. Security was so poor that male prisoners broke into the female section of the prison, raped some 20 female detainees, and killed a police officer and a prisoner. Before this incident, François Gacaba, a prisoner who had been convicted of rape by a military tribunal, was freed by sixty armed men who attacked the prison.

85. Prison overcrowding is also endemic across the country. The Goma prison was built for 150, but at the time of my visit there were 793 detainees, including eleven women and eight children. The prison director stated that there was a permanent shortage of food. Detainees reported the complete absence of medical services, leading to frequent preventable deaths due to illnesses such as diarrhea. They also reported significant inter-prisoner violence, and stated that while food was received once a week from the director, the strongest prisoners took the bulk of it. Many of the prisoners had never seen a judge or prosecutor.

86. The prison system is in such disarray that even the number of prisons and prisoners in the country is unknown. Accurate records of the prison sentences of convicted criminals are not maintained. As judges from the Supreme Court explained, monitoring and recordkeeping is so poor in the criminal justice system that people can serve years beyond their sentence, simply because the authorities do not know to release them, greatly contributing to over-crowding, resentment, and prison violence.

87. In addition, security and intelligence agencies, including the Republican Guard and Army military intelligence, operate detention facilities, although they have no legal authority to detain. Their goal is to suppress political opposition, and their operations are unchecked.

***Report on Mission to Brazil (A/HRC/11/2/Add.2, 23 March 2009, ¶¶ 10, 41-48, 99):***

*The Special Rapporteur visited Brazil from 4 to 14 November 2007. He reported on the killings in state detention facilities by inmates, prison guards, police or as a result of gang-related violence,*

#### May 2006 Violence in São Paulo

10. The 12-20 May 2006 violence began when the PCC gang organized simultaneous prison riots across São Paulo.<sup>195</sup> The gang held inmates' families hostage at the prisons, and extended the violence beyond the prison system and across the state, spreading fear throughout São Paulo. The PCC attacked public buildings, burned buses, and murdered over 40 law enforcement officials and prison guards. Police responded by killing 124 suspected gang members and criminals.

[...]

#### Prisons and Extrajudicial Killings in Detention

41. Killings in state detention facilities in Brazil occur primarily in the context of prison riots and gang-related inmate violence, during which the perpetrators are inmates, prison guards, or police sent in to quell the disturbance or rebellion.<sup>196</sup> While the precise trigger

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<sup>195</sup> The PCC was formed in 1993, originally presenting itself as a prisoners' rights group, in response to poor prison conditions and particularly the killing of 111 prisoners by São Paulo Military Police on 2 October 1992 in what has become known as the "Carandiru Massacre". Over time, the gang became increasingly violent, engaging in armed confrontation with rival gangs (particularly the Third Capital Command), drug and weapons trafficking, and organized prison rebellions. At the time of the May 2006 violence, it was widely reported in the press that the PCC violence was organised to protest the planned transfer of key PCC members to solitary confinement in the Presidente Venceslau prison, although the reasons for the violence have never been clearly determined. Government officials acknowledged that the use of mobile phones by prisoners continues to be widespread due to corruption and the failure to adequately search visitors. Mobile phone use by inmates allows state-wide riots to be coordinated, and for incarcerated organized crime leaders to continue their activities. State authorities have acknowledged the importance of curbing mobile phone use, have introduced metal detectors, and have made it a criminal offence for a public official to smuggle a phone into prison. However, given the continuing availability of mobile phones in prisons, additional measures should be considered. Notably, the government should continue to increase the numbers of detectors available, and consider purchasing technology that would block mobile phone signals within prisons.

<sup>196</sup> Major prison riots include: In October 1992, 111 prisoners were killed when Military Police attempted to regain control of the Carandiru prison in São Paulo following a riot; one person was convicted in relation to these deaths, but his conviction was overturned in February 2006. In 2001, there were riots in 29 separate facilities simultaneously in São Paulo. In 2002, 10 died and 60 escaped from the Embu das Artes jail in São Paulo. In 2003, 84 prisoners escaped from the Silvio Porto prison in Paraíba. In 2004, 14 inmates were killed and some were mutilated during an uprising at the Urso Branco prison in Rondônia. In 2004, 34

for each killing is unique,<sup>197</sup> there are a number of general factors which facilitate excessive violence throughout the prison system. Significantly, these factors not only lead to inmate unrest but have encouraged the growth of a parallel gang power in prisons. The failure of the state to meet basic inmate needs and security encourages the growth of gangs by creating a power vacuum in which gangs are able to present themselves as securing benefits for inmates. This not only results in excessive prison violence, but as the events of May 2006 in São Paulo clearly demonstrate, has effects far beyond the prison walls. Broader crime control efforts must take into account the key role played by prisons in gang growth, and the failure of the prison system to curb the activities of organized crime.

### Analysis of the Factors Facilitating Prison Violence

42. Brazil's poor prison conditions and severe overcrowding are well-documented.<sup>198</sup> The national prison population has risen sharply over the last decade, and the incarceration rate has more than doubled.<sup>199</sup> The dramatic rise - caused by the slowness of the judicial system, poor monitoring of inmate status and release entitlement, increased crime rates, high recidivism rates, and the popularity of tougher law and order approaches favouring longer prison terms over alternative sentences - has resulted in severely overcrowded prisons. The prison system was designed to hold only 60% of the inmates actually detained nationwide,<sup>200</sup> and many individual prisons are two or three times over capacity.<sup>201</sup>

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inmates died during a riot at Benfica prison in Rio de Janeiro. In 2007, 25 inmates were burned to death by other inmates at the Ponte Nova prison in Minas Gerais.

<sup>197</sup> For the genesis of the May 2006 riots in São Paulo, see Part III(C)(1). For another example, the August 2007 violence in Minas Gerais was reportedly a result of conflict between gangs.

<sup>198</sup> See, for example: Report of the Special Rapporteur on Human Rights on the question of torture (20/8 - 12/9/2000), report E/CN.4/2001/66/Add.2.

<sup>199</sup> In 1995, the inmate population was 148,760, or 93 per 100,000. By 2006, it had jumped to 401,236, or 213.8 per 100,000: See Ministério da Justiça; Centro de Estudos de Segurança e Cidadania.

<sup>200</sup> (2006). Ministério da Justiça; Centro de Estudos de Segurança e Cidadania.

<sup>201</sup> The problem in the state of São Paulo is especially acute. São Paulo contains 20% of the nation's population but 40% of its prison population. As of 30 October 2007 there were 140,680 inmates in 143 penitentiaries (currently beyond capacity by 44,807 inmates), and a further 11,073 in police lock-ups. (See Secretaria da Administração Penitenciária Gabinete do Secretário.) A prison I visited in São Paulo which is a provisional detention centre for those awaiting trial or conviction is currently at three times its capacity. At 9 August 2007, it held 1,438 inmates, with a capacity for 512. (See "Relatório referente à visita realizada prisional Centro de Detenção Provisória II de Pinheiros em 9 de agosto de 2007 pelo Conselho da Comunidade da Comarca de São Paulo".) On the day I visited, 6 November 2007, it was holding 1,520 inmates. Cells equipped for eight regularly hold up to 25 inmates, who take turns sleeping on beds or the floor. Although the law provides for access to work and education, nationally, as of December 2004, only about 18% of the total number of those in prison were involved in any form of education. (UNESCO Office (Brazil), *Education for Freedom: Trajectory, Debates and Proposals of a Project for Education in Brazilian Prisons*, (March 2007), p. 34; Constitution of Brazil, Art. 208; Law no 9.394/96 (Bases and Directives for Education - Art 37 § 1), CEB Technical Opinion no 11/2000, Law no 10.172/2001 (National Education Plan), Law no 7.21-/84 (Law of Penal Execution), and CNPCP Resolution no 14/94 (Basic Regulations for the Treatment of Prisoners).) Rates in São Paulo in 2007 remained low: 17.21% of inmates had access to education; 42.34% to work; and 40.45% were involved in no activity whatsoever. (See Secretaria da Administração Penitenciária Gabinete do Secretário.) Given that the inmate

43. Senior Government officials responsible for prison administration affirmed that there are problems with physical abuse and corruption by prison guards. While I was informed by officials at one prison I visited that there were no mistreatment issues and thus no guards had been punished, this picture contrasts with that presented by those with legal authority to monitor the prison, by civil society groups, and by inmates whom I interviewed. The Judge of Penal Execution, for example, has been involved in various legal actions relating to beatings by groups of prison officials against inmates at this facility.<sup>202</sup> Inmates with whom I spoke had witnessed and received beatings. It is telling that the threat of retaliation for making a complaint against a prison official is so serious that prison monitors consider any such complaints likely to be true. The inmates who I interviewed were afraid to even have it known that they had spoken with me, fearing reprisals from other inmates and prison officials.

44. Delays in processing transfers, together with warden violence and poor general conditions encourage the growth of gangs in prisons, which can justify their existence to the prison population at large by purporting to act on behalf of prisoners to obtain benefits and prevent violence. Poor prison administration and conditions thus facilitate not only riots, but directly contributes to the growth of criminal gangs.<sup>203</sup>

45. In most prisons, the state fails to exert sufficient control over inmates, and lets gangs (or other prisoners in “neutral prisons”) sort out amongst themselves matters of internal prison security. Selected inmates are often given more power over other prisoners’ daily lives than guards. They assume control of (sometimes brutal) internal discipline and the distribution of food, medicine, and hygiene kits.<sup>204</sup> This practice often results in allowing gang-leaders to run prisons.

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population is largely young (over 50% are under 30), poor (95%), and uneducated (over 65% have less than an eighth grade education, 12% are illiterate), the lack of education and work fails to provide inmates with alternatives to crime upon release, and helps to ensure that prisons are a training ground for future criminal activity.

<sup>202</sup> Poder Judiciário São Paulo - 1a Vara das Execuções Criminais da Comarca de São Paulo, Juiz de Direito Titular da 1a Vara das Execuções Criminais da Comarca de São Paulo e Corregedor dos Presídios (18 October 2007).

<sup>203</sup> The movement of inmates through the prison system - from police lock-ups, to provisional detention centres awaiting trial or conviction, to closed prisons, to open prisons, and eventual release - is largely not recorded electronically. (Brazil’s National Penitentiary Department (*Departamento Penitenciário Nacional*) has created software called “Infopen Management”, through which inmates’ details can be electronically stored. At present, approximately 28,000 inmates (about 7% of the total prison population) have been registered in this way.) Together with inadequate monitoring of each inmate’s status, this means that inmates are frequently held in the incorrect facility. For example, inmates can be held in closed detention when the inmate is already entitled to be held in open detention and thus able to work in the community during the day. Prison monitors with whom I spoke noted that it was not uncommon for inmates to be held one year beyond the time they should have been moved or released. One inmate whom I interviewed had been detained over a year, and had already been tried, but knew nothing about his proceedings, or why he was still in provisional detention. Another inmate, arrested in late 2005, had had various hearings but was unaware of the status of the proceedings.

<sup>204</sup> These prisoners are known by various euphemisms, including “*faxinas*” (janitors) and “*chaveiros*” (key-holders).

46. Many prisons throughout Brazil require inmates to designate which gang they belong to when they enter the prison system for the first time. Prison administrations adopted this practice as a way to better control prison populations and to reduce inter-gang conflict in prisons – one particular prison or prison wing will, for example, only hold members of the Red Command gang, while another will only hold members of the Friends of Friends gang. In Rio de Janeiro, even when a new inmate has no gang affiliation whatsoever, he may be required by prison administrators to pick a gang with which to be affiliated. A prisoner who refuses is simply assigned to a gang by the prison administration. The state practice of requiring gang identification essentially amounts to the state recruiting prisoners into gangs. Ultimately, this contributes to the growth of gangs outside prison and elevates crime rates more generally. Given the power that gangs have now established in the prison system, rival gangs must clearly remain separated to avoid prison riots and deaths. But it is important to take all available steps to avoid turning common criminals into committed gang members. While in theory some states have “neutral” prisons in which prisoners without any gang affiliation may be placed, there need to be more of these, and their neutrality needs to be better preserved in practice.

### Prison Oversight

47. There are many bodies with the legal authority to investigate prison conditions, but they have not provided adequate oversight in practice. This lack of external oversight has permitted poor prison conditions and abuses of power to continue. The law provides for a number of organs to inspect and monitor prisons.<sup>205</sup>

48. However, inmates I interviewed had rarely seen or even heard of a visit by an external prison monitor. They were aware of rare visits by prison internal affairs, but no inmate with whom I spoke knew of a visit by a judge, prison council, or other prison oversight body. It is essential for the effectiveness of complaint mechanisms that monitoring is not only done regularly, but also that it is visible to inmates. The mere existence of an internal oversight office is grossly inadequate in a context where prisoners are too afraid to make any complaint.

[...]

### Recommendations

99. While avoiding steps that would further endanger inmates, the government should take steps to end gang-control of prisons, including:

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<sup>205</sup> Lei de Execução Penal, Lei No. 7.210 (adopted 11 July 1984). In practice, the key actors are the Judges of Penal Execution and the Community Councils. Judges of Penal Execution are required to inspect prisons monthly and have the power to “interdict, in all or in part, any penal establishment that is functioning under inadequate conditions or infringing the provisions of [the law]”. The number of such judges is, however, insufficient to meet their extensive responsibilities. In São Paulo, for example, there is just one Judge of Penal Execution for the capital, who is responsible for monitoring 10,000 inmates in nine prisons. This makes it impossible for the Judge to adequately monitor inmate status and prison conditions.

- (a) All practices that encourage or require new prison inmates to choose a gang affiliation should be discontinued. Inmates should be able to identify as “neutral” and be placed in truly neutral prisons;
- (b) Mobile phones should be eliminated from prisons through the more rigorous use of metal detectors and through the installation of technology that blocks mobile phone signals;
- (c) Prison authorities should reassert day-to-day control of internal prison administration so that prison guards, not inmates, are responsible for internal discipline;
- (d) All inmates’ benefits and location in the prison system should be recorded electronically, and prisoners moved from one type of detention to another when they are so entitled. Inmates and judges of penal execution should be able to access the digital record of prisoner entitlements;
- (e) Overcrowding should be reduced through more use of alternative sentences, open prison regimes, and the construction of new prisons.

***Report on Mission to Nigeria (E/CN.4/2006/53/Add.4, 7 January 2006, ¶¶ 30-31, 50-51, 68-71, 104):***

*The Special Rapporteur visited Nigeria from 27 June to 8 July 2005. He reported on the poor prison conditions and the common deaths in custody.*

#### Conditions on Death Row

30. The average period spent on death row is 20 years.<sup>206</sup> From the observations of the Special Rapporteur the resulting health risks to these prisoners are immense. Prisons are overcrowded and unsanitary and many prisoners develop serious illnesses that often go untreated.<sup>207</sup> In addition, and partly as a result of these conditions, a significant number of these “condemned convicts” suffer from serious mental illnesses for which they receive no treatment or care.

31. Because of the abusive use of the death penalty by Nigerian military governments most of today’s civilian Governors are extremely reluctant to sign execution warrants. For the reasons discussed above, signing such warrants would seriously risk the execution of an innocent person. This does not, however, justify the standard alternative: 20 years on death row, in life threatening health circumstances and in constant fear of the possibility of execution. In order to avoid the result that a death sentence is replaced by a life sentence plus the cruel and inhuman treatment of the uncertainty of remaining

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<sup>206</sup> At least one prisoner has been on death row in Lagos since 1981.

<sup>207</sup> Further discussion of prison conditions can be found below under the heading “The prison system and deaths in custody”.

formally on death row, the sentences of all death row inmates whose appeals have been completed should be commuted to life imprisonment.<sup>208</sup>

[...]

### Deaths in Custody

50. Numerous prisoners reported being systematically tortured by the police to extract a confession. Techniques include hanging from the ceiling<sup>41</sup> and severe beatings, followed by the denial of food, water and medical care, and being left to die in the cells. The State Intelligence and Investigation Bureaux (SIIBs) and local CIDs were consistently named as places where such events are commonplace. Prison medical staff also confirmed regularly receiving prisoners who had been badly beaten by the police.

51. Police have systematically encouraged a practice whereby medical personnel will not treat individuals reporting with bullet or knife wounds before receiving police authorization. Since permission is often delayed or withheld, many casualties occur.<sup>209</sup>

[...]

### The Prison System and Deaths in Custody

68. Deaths in custody and the many prisoners on death row make the Nigerian prison system highly relevant to this report. On the basis of a largely malfunctioning justice system, Nigeria tolerates an arbitrary and especially harsh form of punishment of alleged criminals. Of approximately 44,000 prisoners, some 25,000, or well over 50 per cent, have yet to face trial.<sup>210</sup> About 75 per cent of the latter have been charged with armed robbery, which is a capital offence. Three-quarters of those were not able to get legal assistance from the Legal Aid Council and a shocking 3.7 per cent remain in prison because of lost case files. Many of the 25,000 with whom the Special Rapporteur spoke are held in seriously health-threatening conditions, some for periods of 10-14 years.

69. Almost no accused with access to money will suffer this fate. Such unconscionable incarceration practices become the “privilege” of the poor. Some State Chief Judges are highly conscientious in carrying out regular visits with a view to ordering the release of those held longer than their alleged crime could possibly warrant,<sup>211</sup> but others are slow

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<sup>208</sup> I thus fully endorse the recommendation to this effect contained in *The Report of the National Study Group on Death Penalty*, Abuja, August 2004, p. 81. In terms of the legal practicalities of such a measure see *Sibiya and Others v DPP*, Constitutional Court of South Africa, Case CCT 45/04, 7 Oct. 2005.

<sup>209</sup> One State Police Commissioner strenuously denied that any such rule existed but virtually confirmed the practice by adding that it would be only prudent for a doctor first to seek police advice rather than giving treatment and risk being an accomplice to crime.

<sup>210</sup> O. Ezigbo, “25,000 Inmates Awaiting Trial”, *This Day*, September 2, 2005, at <http://allafrica.com/stories/200509050323.html>.

<sup>211</sup> Section 35(1) of the Nigerian Constitution provides that “...a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.” This serves to

and unsystematic and many inmates awaiting trial are rarely visited. One way forward is to resolve that any prisoner held for more than five years without trial should be entitled to an immediate court appearance and benefit from a presumption that s/he should be released. Similarly, any prisoner whose hearing is adjourned more than five times should benefit from the presumption of release. Prisoners whom the Special Rapporteur met who in ten years have been subject to more than 50 adjournments are living testimony to a system which simply does not care about people once they are in prison.

70. Prison conditions in general are not part of the Special Rapporteur's mandate. However, because of the numbers of individuals on death row and the fact that perhaps a majority of inmates are charged with capital offences (armed robbery or murder), a comment on prison conditions is warranted. The Special Rapporteur heard impressively few accusations of official abuse, but the lack of resources to ensure humane conditions was decried by almost everyone, including senior administrators. Common phenomena included: considerably in excess of 100 prisoners in cells designed to hold 25, unsanitary conditions which breed terrible illnesses, untreated illnesses leading to death, and food which is wholly inadequate. Money to improve prison conditions is never on politicians' lists of priorities, but it is absolutely essential. While death row conditions are harsh, they are often better than those endured by the vast numbers awaiting trial. Most deaths in custody are due to atrocious conditions rather than intentional ill-treatment.

71. Some interlocutors spoke of the need for a Minister for Prisons, a Prison Service Commission, or the need to decentralize control over prisons to the State level. The Special Rapporteur was in no position to choose among the different options but it is clear that an enhanced mechanism for monitoring and public reporting on prison conditions is urgent and indispensable.

[...]

### Recommendations

#### 104. The death penalty

(a) The Federal Government should reiterate that the imposition of the death penalty for offences such as adultery and sodomy is unconstitutional. It should commit to undertaking a constitutional challenge at the earliest opportunity;

(b) The sentence of every prisoner who has served more than five years on death row should be commuted immediately and consideration given to commuting all such sentences;

(c) All persons sentenced to death or life imprisonment under martial law should have their convictions reviewed in recognition of the highly unsatisfactory due process protections applied at the time. Since judicial review is probably beyond the capacity of

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highlight the perversity of making the generic offence of armed robbery a capital offence. The result is that a petty thief can be jailed for ten years or more while (forlornly) awaiting trial.

an inefficient and overstretched court system, an administrative procedure should undertake an initial vetting of all such convictions and make recommendations to the Government;

(d) UNICEF should commission a consultant to review the files of all prisoners on death row for crimes committed before they were 18. Judicial review should then be sought to ensure compliance with the Convention on the Rights of the Child.

***Report on Mission to the Democratic Republic of the Congo (E/CN.4/2003/3/Add.3, 4 November 2002, ¶¶ 21, 31):***

*The Special Rapporteur visited the Democratic Republic of the Congo from 16 to 22 June, 2002. He reported on cases of prisoners shot dead.*

21. According to the report by the official Commission of Inquiry appointed by RCD-G, seven persons were killed by members of the population heeding the call of the dissidents to attack “Rwandans”: Mr. Ndayire, a Rwandan businessman, was stoned to death in front of the “Lengema” building; the bodyguard of Commander Nguizama, called “Zairois”, was taken out of prison and shot dead and his body burned in central Kisangani; Commander Saidi was stoned and hacked to death with machetes outside the municipal building in Mangobo; a visitor, Bongungu Fili, was killed by crowds looking for RCD-G Commander “Franck” in his residence on Mamayemo Avenue; a 3-year-old child was killed in the same incident, apparently by a stray bullet; a police officer named Okito, an ethnic Hema, who was the commander of the Lumbulumbu camp, was killed in Mangobo; and a young woman called “Yalanga” was killed with machetes, apparently because of her “Rwandan appearance”. Information provided by international and independent local observers identify the same victims of alleged mob killings committed during the occupation of the RTNC radio station.

[...]

31. In the detention centre at the headquarters of the Seventh Brigade in Kisangani, 17 deserters (rebels) were under arrest. The following prisoners were present at the time of the Special Rapporteur’s visit at the detention centre: Bemvide Gegbele, Kongolo Ekofo, Jean-Claude Azagu, Roger Besoke, David Bofola, Toso Alomo, Gelongo Bolima, Nyembo Kitenge and Kasongo Monga. Another prisoner in the same group, Mudaka Akungu, had reportedly been hospitalized, and the remaining seven sent for “reorientation”. One prisoner had been released earlier. The Special Rapporteur met three of these persons, who were in fear for their lives. During her visit to the detention centre and subsequently, the Special Rapporteur learned of prisoners who had been taken out of the detention centre and shot dead. The families of these prisoners were given no information about their fate and whereabouts. They had learned from an escaped soldier that some of the detainees were shot dead while being taken to another place.

***Press Statement by the UN Special Rapporteur on Extrajudicial Executions – Mission to the Democratic Republic of the Congo (5-15 October 2009):***

Deaths in prisons

My interlocutors, including the Minister of Justice, who is responsible for the penitentiary system, unanimously agreed that prison conditions are atrocious. I visited the Central Prison of Goma and spoke with detainees there. In a prison built to hold 150, over 800 prisoners live in squalor. They receive one inadequate meal per day from the prison authorities, and rely essentially on food brought by their families. Because internal control of the prison is entirely left to the inmates, the stronger prisoners take the lion's share of the provided food. The weaker prisoners and those without family nearby gradually become emaciated, and especially vulnerable to disease. Not surprisingly, many die in prison.

The number of prisons and prisoners in the Congo is unknown. Totally inadequate records of prisoners are kept and many are left rotting in prison even after their sentence has been served. The great majority of prisoners have never been tried before a judge. In essence, the prison system seems to be a depository for the enemies of the state and for those too poor to buy their way out of the justice system. The abominable conditions, together with corruption and minimal state control, mean that escapes are common, thus adding further to impunity.

Recommendations

5. Being imprisoned in a DRC jail is often a fate worse than hell. Far too many detainees are killed by a negligent and callous prison system. The actual number of prisons and prisoners is unknown. Prison over-crowding is shocking, even by the standards of a very poor country. Vast numbers are held without trial for years on end, and many are starved slowly to death. A reasonable budget for every prison should be established, and a census of the prison population undertaken within six months. The amount of time prisoners are kept in pre-trial detention must conform to international human rights standards. Prisoners detained in violation of these standards should be released, and all facilities operated by actors without the lawful authority to do so should be closed.

***Report on Mission to the Central African Republic (A/HRC/11/2/Add.3, 27 May 2009, ¶¶ 1, 25, 47):***

1. From 31 January to 7 February 2008, the Special Rapporteur undertook a mission to the Central African Republic to inquire into the phenomenon of extrajudicial killings. His mission primarily focused on killings in the context of the non-international armed conflict which was then ongoing in the north-west of the country.<sup>212</sup> The Special

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<sup>212</sup> The Special Rapporteur did not visit the north-east. Although reports documented abuses during that conflict, there had been a ceasefire agreement since April 2007, which was still in effect at the time of the Special Rapporteur's visit.

Rapporteur also investigated killings by police, deaths in custody and in prisons, and the killing of so-called “witches”.<sup>213</sup>

[...]

#### Extrajudicial Executions by Government Forces

25. One significant incident about which the Special Rapporteur received much detail was a massacre of civilians in Paoua on 29-31 January 2006. On 29 January, the APRD attacked Paoua, looting Government offices and attacking the prison and police station. After initially retreating, soldiers from the FACA and the GP were then able to force the rebels to flee the area. However, instead of ensuring the safety of the population of Paoua during and after the APRD attack, the GP reinforcements from Bossangoa attacked Paoua’s residents, killing at least 33 civilians. The Special Rapporteur spoke with one witness whose house was ransacked by the APRD on the first day of the attack, and then witnessed the GP burning down his neighbours’ homes and killing four Paoua residents. Other witnesses saw one incident in which three civilian men from Paoua were shot by Government soldiers while the men were trying to flee the fighting. Witnesses described how the GP fired indiscriminately into gatherings of civilians in the town. After the APRD attack, soldiers also entered civilian homes, took men outside, and executed them. Other civilians detained by the FACA were also tortured to death. One victim was detained with seven other men from Paoua and taken to the FACA base. All of the detained men were beaten, and left in the sun for two days; only one survived.

[...]

#### Law Enforcement Killings and Deaths in Custody

47. Third, killings also occur in prisons, after detainees have been convicted, or while they are awaiting trial. Detailed accounts of security guards in prisons torturing inmates to death were provided. These deaths occur in the context of extremely poor prison conditions and nearly non-existent prison oversight. Detainees are sometimes also detained arbitrarily, held without even minimal respect for due process. In Bangui, prosecutors - upon instructions of the Justice Minister - do carry out inspections of detention centres on a weekly basis, and this has led to the release of some prisoners arbitrarily detained. However, at the time of the Special Rapporteur’s visit, this practice only occurred in the capital. Detainees legitimately fear reprisals for reporting abuses. In fact, in many areas, there is no external Government prison monitor to whom an inmate *could* report abuses. When deaths in custody are reported, it is simply alleged by prison officials that the prisoner died of an illness, and that is the end of the matter.

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<sup>213</sup> The Special Rapporteur did not visit the north-east. Although reports documented abuses during that conflict, there had been a ceasefire agreement since April 2007, which was still in effect at the time of the Special Rapporteur’s visit.

## **J. GAY, LESBIAN, BISEXUAL, TRANSGENDER AND QUEER (GLBTQ)**

### ***Report on Mission to Colombia (A/HRC/14/24/Add.2, 31 March 2010, ¶ 74):***

74. Important targets of unlawful killings by both Colombian State forces and IAGs have historically included human rights defenders, trade unionists, proponents of women's, victims' and minority rights, lesbian, gay, bisexual or transgender individuals or people with physical or mental disabilities. Statistics about the number of unlawful killings of people in each of these categories differ,<sup>214</sup> but the incontrovertible reality remains that they continue to be disproportionately killed or threatened and are especially vulnerable. Government efforts to hold perpetrators accountable are weak. For example, of 877 trade unionists killed between 1984 and 2008, only 106 cases have reached the sentencing stage, while the vast majority (621) remain at the initial investigative stage. Impunity for killings by State forces and by paramilitaries and IAGs continues.<sup>215</sup>

### ***Report on Mission to Guatemala (A/HRC/4/20/Add.2, 19 February 2007, ¶¶ 12, 32-34):***

*The Special Rapporteur visited Guatemala from 21 to 25 August, 2006. He reported on murders motivated by hatred towards persons identifying as gay, lesbian, transgender and transsexual.*

12. The scope of the State's responsibility under international law is, thus, much broader than the scope of the criminal offence of "extrajudicial execution" under Guatemala's criminal law. That criminal offence encompasses killings by agents of the State as well as killings by private persons with the authorization or acquiescence of agents of the State, but does not include murders for which impunity is conferred by Government inaction.<sup>216</sup> The concept of "extrajudicial execution" under international law does include such murders accompanied by impunity and addresses the responsibility of the State rather than of individual perpetrators. Thus, regardless of the extent to which State agents may be involved, the evidence shows that the State has responsibility under international human rights law for the widespread killings of gang members; gay, lesbian, transgender, and transsexual persons; human rights defenders; women; and prison inmates (see chapter III).

[...]

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<sup>214</sup> According to the Government, 470 trade unionists were killed between 2000 and May 2009. The vast majority of the deaths (331) were categorized as committed by unknown perpetrators, with 107 (through 2006) by paramilitaries and 2 by "public servants" (Government response). According to CCJ, between 1986 and 2008, there were 41 cases of extrajudicial executions of trade unionists directly attributable to State forces. The International Trade Union Confederation states that 27 trade unionists were murdered in Colombia between January and September 2009 (see <http://www.itucsi.org/colombia-trade-unions-in-mourning.html>). In addition, based on information provided by CCJ, at least 49 human rights defenders were killed in 2008 and, between January 2008 and May 2009, at least 25 human rights defenders had been murdered or disappeared. The Government did not provide statistics on human rights defenders.

<sup>215</sup> See sections IV.C (iii) and VI.A (i) and C.

<sup>216</sup> Código Penal (Decreto 17-1973), as amended by Decreto número 48-1995, art. 132 bis. *See also* Humberto Henderson, "La ejecución extrajudicial o el homicidio en las legislaciones de América Latina", *Revista IIDH*, vol. 43, pp. 281-298 (2006).

## Impunity for Attacks Targeting People for Being Gay, Lesbian, Transgender, or Transsexual

32. There has been impunity for murders motivated by hatred towards persons identifying as gay, lesbian, transgender, and transsexual. Credible information suggests that there were at least 35 such murders between 1996 and 2006.<sup>217</sup> Given the lack of official statistics and the likely reticence if not ignorance of victims' family members, there is reason to believe that the actual numbers are significantly higher.

33. In most cases, there is no credible information regarding the identity of the murderer. In the absence of effective investigations, it cannot be said with certainty that all of these killings have been motivated by the sexual identity of the victim, but the circumstances - e.g., the killers firing from a car in an area of Guatemala city known to be frequented by transgender sex workers - often suggest this to be the case. In those cases with witnesses, both government officials and private citizens have been implicated.

34. I spoke with one individual, Sulma, who was herself attacked and whose friend was killed. On 16 December 2005, around 11.30 p.m., Paulina and Sulma - both transgender persons - were approached in a central area of the capital by four persons riding motorbikes and wearing police uniforms. Without saying a word, the four persons opened fire on them. Paulina died of her injuries in the hospital three hours later. Sulma was severely injured but survived. She was granted police protection. However, the policemen guarding her at the hospital repeatedly told her that she should stop making statements on the incident to investigators and others, as she was putting her life at risk by doing so. Uncertain whether this was well meant advice or veiled death threats, she moved to a secret location. At the same time, she successfully applied for interim measures of protection from the Inter-American Commission of Human Rights. While there is a case file concerning the lethal attack on Paulina and Sulma opened at the Prosecutor's Office, the proceedings had not made any progress at the time of my visit to Guatemala. Even before my visit, on 10 February 2006, I had already sent a communication to the Government of Guatemala, seeking information on the investigations into this crime and the measures taken to protect Sulma. To date, I have not received a reply.

### ***Report on Mission to Columbia by Special Rapporteurs Nigel S. Rodley and Bacre Waly Ndiaye (E/CN.4/1995/111, 16 January 1995, ¶¶ 49):***

*The Special Rapporteurs visited Columbia from 17 to 26 October, 1994. They reported on the torture and killings of persons considered "undesirable", such as homosexuals.*

49. In addition to criminals, persons from other sectors of the population whose presence was considered undesirable became the targets of such killings: prostitutes, homosexuals, beggars, drug consumers and street children. The killings are often preceded by torture,

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<sup>217</sup> Jorge López Sologaitoa, *Guatemala: El Rostro de la Homofobia* (Organización de Apoyo a una Sexualidad Integral frente al SIDA, 2006).

allegedly with the purpose of making it impossible to identify the victim (and therefore to carry out an investigation) and sending an intimidatory message to the above sectors. Several sources expressed their concern to the Special Rapporteurs that, over the years, "social cleansing" had become more and more accepted and acceptable, as a solution to the question of how to deal with marginalized sectors of the population. The qualification "desechables" (disposable) for those regarded as undesirable has gained legitimacy.

## K. JOURNALISTS

### ***Press Release of UN Special Rapporteurs Philip Alston and Philip La Rue on the Amputuan Massacre in Maguidanao, 2 Dec. 2009:***

The brutal killing of 57 people in Maguidanao, including some 30 journalists, should be seen as a watershed moment for the Philippines, according to two United Nations human rights experts. Philip Alston, Special Rapporteur on extrajudicial executions, and Frank La Rue, Special Rapporteur on freedom of opinion and expression, said that “the premeditated killing of political opponents, combined with a massive assault on the media, must be tackled at various levels that go well beyond standard murder investigations.”

(...)

“This will require a thorough-going investigation of the broader context to be undertaken by a credible and independent body, appointed with full legal powers to carry out an effective inquiry and make recommendations.” The UN experts expressed their particular dismay at the wholesale killings of journalists and emphasized that any broader inquiry into the political system would need to focus on the ways and means of enhancing protection for journalists in the future.

### ***Report on Mission to the Philippines (A/HRC/8/3/Add.2, 16 April 2008, ¶¶ Summary, 38, 45, Appendix B):***

*The Special Rapporteur visited the Philippines from 12 to 21 February, 2007, during which he reported the increasing frequency of violence towards and killings of journalists.*

Some of the other situations in which extrajudicial executions occur in the Philippines were also studied during the visit. Journalists are killed with increasing frequency as a result of the prevailing impunity as well as the structure of the media industry. Disputes between peasants and landowners, as well as armed groups, lead to killings in the context of agrarian reform efforts, and the police often provide inadequate protection to the peasants involved. A death squad operates in Davao City, with men routinely killing street children and others in broad daylight. While human rights abuses related to conflicts in western Mindanao and the Sulu archipelago have received less attention than those related to the conflict with the communist insurgency, serious abuses clearly do occur, and improved monitoring mechanisms are necessary.

[...]

### **Killings of Journalists**

38. Journalists are killed with increasing frequency. From 1986 to 2002, the number killed averaged between 2 and 3 per year, depending on how one counts.<sup>218</sup> During 2003-2006, the number killed averaged between 7 and 10. However, while the trends coincide and the two phenomena are often joined in the public mind, the killings of journalists appear to have different causes than the killings of leftist activists. The views of journalists and organizations for the protection of journalists with whom I spoke were that most of these killings had local roots.<sup>219</sup> Some killings had been perpetrated to prevent journalists from exposing information related to the crimes and corruption of powerful individuals. Other killings resulted from local disputes in which the journalists had participated by publicly promoting one side or the other. This problem is exacerbated by the structure of the media industry. Many broadcasters are “block-timers” who purchase airtime and then pay for this airtime and seek a profit by selling advertising. Sometimes they also earn money through so-called “AC/DC” journalism — “attack, collect; defend, collect”. Approximately three quarters of journalists killed are broadcasters, and nearly half of these are block-timers.<sup>220</sup> Needless to say, however questionable the practices of some journalists may be, these do not justify murder. There is a lamentable degree of impunity for murders of journalists.

[...]

### The Criminal Justice System

45. There is impunity for extrajudicial executions. No one has been convicted in the cases involving leftist activists,<sup>221</sup> and only six cases involving journalists have resulted in convictions.<sup>222</sup> The criminal justice system’s failure to obtain convictions and deter future killings should be understood in light of the system’s overall structure. Crimes are investigated by two bodies: the PNP, which is organized on a national level but is generally subject to the “operational supervision and control” of local mayors; and the National Bureau of Investigation (NBI), which is centrally controlled.<sup>223</sup> Prosecutors,

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<sup>218</sup> The records maintained by civil society organizations indicate the following number of journalists killed by year, since 1986: [see chart in footnote 52 of the original report].

<sup>219</sup> I interviewed witnesses regarding 5 extrajudicial executions of journalists and 1 frustrated extrajudicial execution. I also received case files regarding a further 36 cases of extrajudicial execution.

<sup>220</sup> The relationship between the structure of the media industry and the frequency with which journalists are killed has been extensively studied by civil society organizations. See Abi Wright, “On the Radio, Under the Gun: Behind the Rising Death Toll of Radio Broadcasters in the Philippines”, CPJ (15 August 2005); Rachel E. Khan and Nathan J. Lee, “The Danger of Impunity”, CMFR (5 September 2005).

<sup>221</sup> According to Task Force Usig, of the 116 cases of slain party list members or militants that it considers within its remit, their current status is as follows: [see table and rest of footnote 62 of the original report].

<sup>222</sup> According to Task Force Usig, of the 26 cases of slain media men that it considers within its remit, their current status is as follows: [see table and rest of footnote 63 of the original report].

<sup>223</sup> Prior to 1991, the police forces of the Philippines, comprising the Philippine Constabulary and the Integrated National Police, formed a branch of the AFP. However, the 1987 Constitution provided that, “The State shall establish and maintain one police force, which shall be national in scope and civilian in character, to be administered and controlled by a national police commission. The authority of local executives over the police units in their jurisdiction shall be provided by law.” (Constitution of the Republic of the Philippines (1987), art. XVI, section 6). To implement this provision, DILG, the PNP, and the National Police Commission (NAPOLCOM) were established by the “Department of the Interior and Local Government Act of 1990” (Republic Act No. 6975) (signed into law 13 December 1990). The PNP

who are organized in the National Prosecution Service (NPS) of the DOJ, determine whether there is probable cause and then prosecute the cases in the courts.<sup>224</sup> This is the normal process; however, in cases implicating public officials, the Ombudsman should take over the investigation and conduct the prosecution.

[...]

#### Appendix B – Programme of the Visit

3. From the Philippine National Police (PNP), I met the commander in charge of Task Force Usig, the group overseeing investigation into killings of leftist activists and journalists, the Police Chief Superintendent, the Inspector General (head of the Internal Affairs Service), the Davao District PNP chief, and regional heads of Task Force Usig in Baguio and Davao. From the Department of Justice (DOJ), I met the Chief State Prosecutor, the City Prosecutors of Baguio and Davao, the head of the witness protection program in Baguio, the head of the National Bureau of Investigation (NBI), the head of the NBI in Baguio, and the deputy head of the NBI in Davao. From the Armed Forces of the Philippines (AFP), I met the Chief of Staff, numerous senior staff officers, and local and regional commanders in Baguio and Davao. I also met with the Mayor of Davao, Rodrigo Duterte.

[...]

7. I spoke with members of a large number of civil society organizations representing diverse views. These included organizations associated with both Karapatan and the

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and NAPOLCOM are both found within DILG. The NAPOLCOM is “an agency attached to [DILG]” that exercises “administrative control and operation supervision” over the PNP. (Republic Act No. 6975, sections 13-14 (as amended by Republic Act No. 8551).) The NAPOLCOM comprises a Chairperson, four regular Commissioners, and the Chief of PNP. Of the regular Commissioners, three “shall come from the civilian sector who are neither active nor former members of the police or military” and one “shall come from the law enforcement sector either active or retired”. (Republic Act No. 6975, section 13 (as amended by Republic Act No. 8551).) While the PNP is a national organization, local executives exercise considerable control over its operations. City and municipal mayors are “deputized” as representatives of the NAPOLCOM, and “exercise operational supervision and control over PNP units in their respective jurisdictions” including the “power to direct, superintend, and oversee the day-to-day functions of police investigation of crime, crime prevention activities, and traffic control in accordance with the rules and regulations promulgated by the [NPC]”. (Republic Act No. 6975, section 51(b) (as amended by Republic Act No.8551)). However, the Commission on Elections (COMELEC) assumes control during the 30 days before and the 30 days after elections. Moreover, NAPOLCOM may “suspend or withdraw” local control at any time for any of four specified reasons: “[f]requent unauthorized absences”, “[a]buse of authority”, “[p]roviding material support to criminal elements”, or “[e]ngaging in acts inimical to national security or which negate the effectiveness of the peace and order campaign”. (Republic Act No. 6975, sections 51(b), 52 (as amended by Republic Act No.8551)).

The National Bureau of Investigation (NBI) is another law enforcement body. However, in contrast to the semi-decentralized PNP, the DOJ controls the operations of the National Bureau of Investigation (NBI) throughout the country. (Republic Act No. 157 (signed into law 19 June 1947) (as amended).)

<sup>224</sup> The structure of the NPS was established in Presidential Decree No. 1275, “Reorganizing the Prosecution Staff of the Department of Justice and the Offices of the Provincial and City Fiscals, Regionalizing the Prosecution Service, and Creating the National Prosecution Service” (11 April 1978).

Philippine Alliance of Human Rights Advocates (PAHRA), as well as the Free Legal Assistance Group (FLAG), Peace Advocates for Truth, Healing and Justice (PATH), among other human rights organizations. I also spoke with trade unionists, and representatives of organizations devoted to the protection of journalists, and a range of other civil society organizations.

***Press Statement by the Special Rapporteur, “Extrajudicial Killings Have a Corrosive Effect on Civil Society and Political Discourse in the Philippines”, February 21, 2007:***

It may help to specify the types of killing which are of particular concern in the Philippines:

- Killings by military and police, and by the NPA or other groups, in course of counter insurgency. To the extent that such killings take place in conformity with the rules of international humanitarian law they fall outside my mandate.
- Killings not in the course of any armed engagement but in pursuit of a specific counter-insurgency operation in the field.
- Killings, whether attributed to the military, the police, or private actors, of activists associated with leftist groups and usually deemed or assumed to be covertly assisting CPP-NPA-NDF. Private actors include hired thugs in the pay of politicians, landowners, corporate interests, and others.
- Vigilante, or death squad, killings
- Killings of journalists and other media persons.
- 'Ordinary' murders facilitated by the sense of impunity that exists.

***Press Statement by the UN Special Rapporteur on Extrajudicial Executions – Mission to the Democratic Republic of the Congo (5-15 October 2009):***

In addition to the issues discussed above, the report I will present to the Human Rights Council will also consider problems relating to the role of the police vigilante and mob justice killings, the killing of journalists and “witches”, and the protection of human rights defenders. The latter issue is of particular importance given the constant harassment and intimidation to which the defenders are subjected.

***Report on Mission to the Democratic Republic of the Congo (A/HRC/14/24/Add.3, 1 June 2010, ¶¶92-93):***

92. Journalists and human rights defenders have been routinely harassed and intimidated because of their work on human rights violations and impunity.<sup>225</sup> Those working in the eastern part of the DRC appear to be particularly vulnerable to attack, as are those supporting the work of the ICC.<sup>226</sup> Government officials have stigmatized human rights defenders for their advocacy, especially where it concerns violations by state actors, and

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<sup>225</sup> See Appendix II for details.

<sup>226</sup> <http://frontlinedefenders.org/node/2148>

officials have been implicated in a number of cases of harassment, death threats and killings of activists.

93. The intimidation aims to silence individual activists, prevent investigations, and instill widespread fear amongst civil society. Threats and attacks against human rights defenders have gone largely unpunished, as local authorities often fail to adequately investigate and prosecute those responsible.

## L. VICTIMS OF “SOCIAL CLEANSING”

*Report on Mission to Guatemala (A/HRC/4/20/Add.2, 19 February 2007, ¶¶ Summary, 6-7, 15-21, 23, 26, 54-55, 63):*

*The Special Rapporteur visited Guatemala from 21 to 25 August, 2006.*

Today, a number of violent phenomena afflict Guatemala, including social cleansing, the rapidly rising killing of women, lynching, the killing of persons for their sexual identity or orientation, the killing of human rights defenders, and prison violence. In some cases, the State bears direct responsibility. There is strong evidence that some acts of social cleansing - executions of gang members, criminal suspects, and other “undesirables” - are committed by police personnel. Killings by prison inmates have been facilitated by guards. In other cases, the State bears indirect responsibility. With a criminal justice system unable to achieve more than a single-digit conviction rate for murder, the State bears responsibility under human rights law for the many who have been murdered by private individuals.

[...]

### Background

6. While the Peace Accords are one of the legacies shaping Guatemalan society today, the armed confrontation has left its own legacy as well. Some of the practices characterizing the later phases of the counter-insurgency have re-emerged as desperate and lawless methods for “fighting crime”. The practice of “social cleansing”, for instance, reprises the practice of “selective killing”. The partial character of the Peace Accords’ implementation has also had second-order negative consequences. For instance, while the State disbanded the PACs and withdrew the military from much of the countryside, it did little to establish institutions of civilian governance to take their place, leaving a power vacuum that has facilitated the development of “lynching” as a means of providing order.

7. There are now more killings per day than there were during the post-genocide of the armed confrontation. The killing of women, the execution of selected individuals by elements within the police and military, gang and crime-related killings, social cleansing, and other acts of violence have created a widespread sense of insecurity among the population. There are 5,000 or more killings per year, and the responsibility for this must rest with the State. And the death toll is only the beginning of the cost, for a society that lives in fear of killing is unable to get on with its life and business in the ways that it wants. The rich can protect themselves, up to a point, but the rest of the society lives with the fear that a random killing could affect them or their loved ones at any moment.

[...]

Social Cleansing: Executions of Gang Members and Other “Social Undesirables” by Government Officials and Private Citizens

15. Guatemala is experiencing a high and rising murder rate. In 2001, there were 3,230 homicides; in 2002, 3,631; in 2003, 4,236; in 2004, 4,507; in 2005, 5,308; and by mid-August 2006, there had been 2,905.<sup>227</sup> In other words, the homicide rate increased an alarming 64 per cent over five years.<sup>228</sup> (By comparison, the population increased by 8 per cent.<sup>229</sup>) In this context, it is natural that few believe that the criminal justice system is functioning properly. One response has been the emergence - or re-emergence - of social cleansing as a desperate and lawless means of confronting gang violence. Today, a significant number of youth are summarily executed for their presumed participation in crime or membership in gangs.

16. The principal gangs active in Guatemala are Mara 18 and Mara Salvatrucha, which also operate in other Central American countries and parts of the United States. Estimates as to the overall membership of youth gangs vary widely, from 165,000 to 200,000 according to the Ministry of Interior to no more than 35,000 according to the non-governmental Coordinadora Juventud por Guatemala.<sup>230</sup> There are no reliable statistics on how many murders involve gang members as perpetrators or victims. One report I received draws on data from the National Civil Police (Policía Nacional Civil, PNC) and attributes 40 per cent of the violent deaths in Guatemala to “fights between gangs”. Civil society organizations express strong doubts, however, with regard to the attribution by the authorities of the majority of the killings to “fights between gangs” as discounting the contributions of organized crime and of the security forces themselves.<sup>231</sup>

17. Incidents of social cleansing are not effectively investigated, so official data provide no insight into their prevalence. However, a detailed study by the Procuradía de los Derechos Humanos (PDH) provides a rough picture.<sup>232</sup> The PDH systematically reviewed newspaper stories concerning violent deaths and tabulated the characteristics of each reported death. It found that in 2005, 63 murder victims had been dispatched with a final

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<sup>227</sup> These data are based on PNC figures and were provided to the SR by the PDH.

<sup>228</sup> The homicide rate includes acts of social cleansing. Based on the PDH’s count of likely social cleansing victims over the years studied, roughly nine percentage points of this increase may be due to acts of social cleansing.

<sup>229</sup> United States Census Bureau, International Data Base, Table 001 for Guatemala, *available at* <http://www.census.gov/ipc/www/idbprint.html>.

<sup>230</sup> *Informe al Señor Philip Alston* (Agosto 2006) [*Informe*], p. 38. (This report was drafted by Casa Alianza, Centro para la Acción Legal por los Derechos Humanos (CALDH), Centro Internacional para Investigaciones en Derechos Humanos (CIIDH), Coordinadora Nacional de Organizaciones Campesinas (CNOG), Grupo de Apoyo Mutuo (GAM), Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG), Movimiento Nacional por los Derechos Humanos (MNDH), Oficina de Derechos Humanos del Arzobispado de Guatemala (ODHAG), Organización de Apoyo a una Sexualidad Integral frente al SIDA (OASIS), and Plataforma Agraria.)

<sup>231</sup> The relationships between the gangs, organized crime, and deviant elements of the security forces are widely commented upon but difficult to disentangle. One interlocutor who had investigated this matter was of the opinion that there is some cooperation between the gangs and small-scale organized crime, with gang members being hired as informants, lookouts, or hit men. In contrast, he suggested, the large-scale organized crime of international drug traffickers cooperates closely with deviant elements in the police and military but views gangs as a nuisance or unwelcome competition.

<sup>232</sup> PDH, *Las Características de las Muertes Violentas en el País* (Febrero 2006) provides data for 2004-2005; a PDH report prepared for the SR provides some updates for January to June 2006.

kill shot (*tiro de gracia*) and that the corpses of 305 murder victims showed signs of torture.<sup>233</sup> Between January and June 2006, the numbers were 151 (kill shots) and 435 (torture). In 2005, the bodies of 12 per cent of all murder victims - 648 of 5,338 - were found in a location other than where they died. Information about the victims does not provide sure information about the perpetrators. However, as the PDH noted, gangs typically kill quickly and flee quickly to avoid being captured or killed, suggesting that other, less vulnerable groups engaged in execution for purposes of intimidation are responsible for these murders.

18. Many of my interlocutors suggested that most instances of social cleansing are carried out or at least initiated by private individuals. A paradigmatic example often given is that of the shopkeeper being extorted by gang members and opting to contract with either private hit men or off-duty police officers to execute the gang members. One particularly disturbing expression of the problem of social cleansing by private individuals is that there is a Guatemalan website that permits users to anonymously denounce individuals as gang members and makes publicly available their names and street addresses.<sup>234</sup> Most such interlocutors also believed that police officers are involved in a more official capacity but tended to see this as a less common phenomenon. The inquiries that I made were not such as to be able to gauge the relative frequency of official versus non-official social cleansing; however, those that I met who shared first-hand knowledge of social cleansing located the responsibility with the police, and it is this kind of social cleansing that I will discuss in greater depth here.

19. Based on my interviews with victims and others, I must conclude that allegations that personnel working for the División de Investigación Criminal (DINC) of the PNC are engaged in social cleansing are highly credible. The pattern is that the police will recruit an informant by agreeing to overlook the informant's past or present criminal activities in exchange for cooperation and will then demand information regarding the identities and locations of gang members, suspected criminals, and other targets. Police will then drive to the location provided, typically without uniforms and in an unmarked vehicle, apprehend the person identified by the informant, and kill him or her at another location, sometimes following torture.<sup>235</sup>

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<sup>233</sup> Note that a *tiro de gracia* is also counted as a sign of torture.

<sup>234</sup> See [www.unidoscontralasmareas.com](http://www.unidoscontralasmareas.com) last viewed 30 October 2006. When I last viewed the site, there were details on 113 purported gang members. The exhortations to engage in social cleansing in the site's discussion forums illustrate the dangers inherent in this kind of anonymous, public denunciation.

<sup>235</sup> The conclusions I reached based on interviews align with those reached by the PDH based on the much larger number of complaints that it has received of forced disappearances and extrajudicial executions by the PNC. With respect to forced disappearances by the PNC, the PDH received 9 complaints in 2004 and 23 in the first half of 2005. With respect to extrajudicial executions by the PNC, the PDH received 21 complaints in 2004 and 28 in the first half of 2005. PDH, *Las Características de las Muertes Violentas en el País* (Febrero 2006). Based on these complaints, the PDH identified four elements characterizing the conduct of the PNC alleged by victims and their family members: "1. Las víctimas de desaparición fueron detenidas de forma arbitraria, previamente. 2. La última vez que se les vio fue cuando agentes de la PNC les capturaban. 3. Utilización de vehículos sin placas e incluso patrullas con la identificación de la dependencia policial a la que pertenecen. 4. Ausencia de resultados de las investigaciones que permitan identificar a los responsables de los hechos." PDH, *Las Características de las Muertes Violentas en el País* (Febrero 2006).

20. One person I spoke with was a man in his early twenties who reported that he had been retained as an informant by DINC. As an informant, he was witness to a number of incidents of social cleansing. In one incident, a suspected car thief was arrested at his home during the night, without an arrest warrant, and his dead body was subsequently found with signs of torture. In other incidents, the people killed were said to be distributing marijuana. In another incident, he took part in a burglary carried out by DINC policemen in which they kidnapped the residents of the apartment, who were not seen again. When another informant told him that the police wished to harm him, he went into hiding; that informant was found dead with a bullet in his head after going to a meeting with those controlling him in DINC. The detailed accounts of this interlocutor were buttressed by those of a number of other individuals with whom I spoke. One individual had been tortured by the police for gang activity. Another had been taken away by police officers in an unmarked vehicle and threatened with death. Another well connected individual confirmed the involvement of DINC in such activities.

21. The evidence shows that social cleansing is more than the actions of a few rogue officers. This does not mean that it has risen to the level of officially-sanctioned policy, but the frequency and regularity of social cleansing does indicate that it presents an issue of institutional responsibility.<sup>236</sup> Neither can the well-documented involvement of the police in social cleansing prior to the Peace Accords be overlooked. The practice of social cleansing today appears to represent the reintroduction of practices of selective killing and social cleansing that emerged in the later phases of the armed confrontation.<sup>237</sup> During the armed confrontation, intelligence services of the police and military were often involved both in gathering information on possible threats to the State and in eliminating them - without recourse to any judicial process. Today, not only is the modus operandi similar but some of the same intelligence institutions appear to be involved. In particular, the Cuerpo de Detectives of the Policía Nacional, a predecessor of the PNC's DINC, was named by Project for the Recovery of Historical Memory (Recuperación de la Memoria Histórica, REMHI) as having been involved in social cleansing operations during the armed confrontation.<sup>238</sup> While efforts to clean up the PNC have been made, resulting in the expulsion of over 100 policemen in 2005 and an even higher number in the first eight months of 2006, groups engaged in social cleansing evidently continue to operate.<sup>239</sup>

[...]

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<sup>236</sup> The study by the PDH shows a dramatic increase in murders that carry the indications of social cleansing in 2005 and 2006 as compared to 2004. This too provides some evidence that the practice reflects a shift in institutional practice rather than the capricious brutality of individual officers. However, the significant shift in the percentage of murders that went unreported in the press suggests the need for further research before drawing strong conclusions about trends. In 2004, 33 per cent of murders recorded by the PNC were covered by the media; in 2005, 66 per cent of murders recorded by the PNC were covered by the media. PDH, *Las Características de las Muertes Violentas en el País* (Febrero 2006).

<sup>237</sup> *Guatemala: Nunca Más* (REMHI), vol. 2, Ch. 3.

<sup>238</sup> REMHI, vol. 2, Ch. 1.

<sup>239</sup> Ministerio de Gobernación, "Cuadros estadísticos de expedientes conocidos y elementos involucrados durante el año 2005 [y 2006]".

### “Femicide”: the unexplained surge in murders of women

23. These murders of women are collectively referred to as “*femicidio*”, suggesting that they constitute a discrete phenomenon. However, the causes of this upward trend remain poorly understood. I asked numerous interlocutors what they understood the causes of this upsurge to be, and I received a very large number of hypotheses, including:

- As more women enter areas of life traditionally reserved for men, they are targeted to put them in their place;
- As more women enter areas of life traditionally reserved for men, they become more exposed to the kinds of murder men have traditionally suffered;
- In connection with organized crime, women are killed to put pressure on their husbands or boyfriends;
- Men feel increasingly free to rape and murder women given the climate of impunity;
- Police are increasingly engaged in the social cleansing of gang members and associates and, in doing so, do not grant women any special dispensation.

[...]

26. The hypothesis that the rising number of female murder victims is due to the increasing use of social cleansing would point in another direction. The fact that a significant and rapidly growing number of female murder victims show signs of intimate violence is often cited as indicating that these are gender-based crimes. However, when these murders are placed in the broader context of murders involving torture and other abuse, the data lead to more equivocal conclusions. A PDH study based on media reports showed that, among those murder victims who experienced torture or abuse, the acts committed by the perpetrators were generally similar whether the victim was male or female. Of those bodies showing signs of torture or abuse, roughly 40 per cent of both male and female corpses showed signs of strangulation, about 15 per cent of female corpses were left naked and about 11 per cent of male corpses were. The one notable distinction was that while 15 per cent of the female corpses showed signs of sexual abuse, none of the male corpses did. The increase in female homicides involving abuse or torture shown in the PDH study would account for at least two fifths of the increase in total female homicides shown in police statistics. Finally, the PDH study found that, in 2005, 18 per cent of homicide victims whose bodies showed signs of torture or other physical abuse were women, while only 10 per cent of all homicide victims were women. The most obvious explanation of these data is that while women have been relatively immune from some forms of social violence, both men and women are being targeted by social cleansing. It is impossible to be sure of any explanation for this pattern of violence against women without effective investigations and prosecutions, but it appears likely that at least some of it is due to social cleansing rather than gender-specific reasons. Further research is needed, and strategies must be adopted to confront the full range of threats to women’s lives.

[...]

### The Options for Maintaining Order and Controlling Crime

54. One approach to crime control that meets considerable support is that of the *mano dura*, cracking down on undesirable elements with an iron fist. In its more respectable forms, *mano dura* policy prioritizes harsh punishment and heavily-militarized sweeps over prevention, prosecution, and rehabilitation. In its more extreme forms - what one interlocutor termed "*super mano dura*" - it prioritizes force over legal process. There is a sense that a swift and brutal response to crime is more likely to be effective than the inherently more lengthy process of investigation, arrest, prosecution, trial, and punishment. Indeed, given the failings of the criminal justice system, turning to on-the-spot executions of suspected criminals appears to some as the only available option.

55. However, not only does the summary execution of criminal suspects and other "undesirables" violate international law, but Guatemala's own recent history demonstrates the concrete danger of this approach to crime control. To the outside observer, the rhetoric of *mano dura* bears an uncanny resemblance to that of the "national security" doctrine that was implemented in many Latin American States in the 1970s and early 1980s and brought unqualified disaster. In concrete terms, moreover, the methods are difficult to distinguish from the tactics of counter-insurgency. The "selective killing" that swept Guatemala throughout the 1980s and early 1990s is notably similar to the "social cleansing" plaguing Guatemala today. Similarly, the lynchings taking place throughout the country today are strongly reminiscent of the counter-insurgency practices of the PACs during the armed confrontation. To the outside observer, it is difficult to understand why the continuing use of these practices is not a matter of universal concern. Unfortunately, however, it appears that even for many who suffered greatly during the armed confrontation, the methods of counter-insurgency remain the most obvious means of maintaining "order". It would be prudent for all Guatemalans to carefully consider whether they want Guatemala to move fully beyond its legacy of armed confrontation or for it to, instead, remain in a permanent state of low-intensity lawless violence.

[...]

### Conclusions and Recommendations

63. Guatemalans are not ignorant of the problems confronting their country and are aware of the policies that could be pursued to ameliorate those problems. First, Guatemala has the detailed plan for social transformation provided in the Peace Accords. Moreover, Guatemala has received copious recommendations from the international community on how to realize the commitment made in the Peace Accords and its obligations under international human rights law. In addition to the many reports by government commissions and national and international non-governmental organizations, there have been a multitude of reports from MINUGUA, OHCHR, the United Nations Human Rights Committee, and the special procedures of the former Commission on Human Rights, now the Human Rights Council. The question today is less what should be done

than whether Guatemala has the will to do so. Thus, with the understanding that other reports have already provided sound and widely-understood recommendations regarding nearly every facet of the problem of extrajudicial executions facing Guatemala today, I will be sparing in my recommendations and succinct in my conclusions:

(...)

- While there is insufficient information to reliably determine how many killings are committed by State agents versus private individuals, both appear to be widespread. Any strategy to confront these killings must have two prongs:
  - Relentlessly root out the practice of social cleansing by government bodies;
  - Reform and expand the criminal justice system - especially the PNC and the Ministerio Público - to effectively investigate and prosecute murders;

(...)

***Report on Mission to Brazil by Special Rapporteur Asma Jahangir (E/CN.4/2004/7/Add.3, 28 January 2004, ¶¶ 41, 44):***

*The Special Rapporteur visited Brazil from 16 September to 8 October 2003. She reported on killings by death squads as a means of delivering justice to those that they consider “undesirable”.*

#### Deaths Due to Excessive Use of force and Extrajudicial Killings Attributed to Law-Enforcement Officials

41. A further cause of concern for the Special Rapporteur is the fact that this increase in police lethality seems to be condoned by a section of public opinion and taken over by State authorities which considers it as being a necessary and unavoidable product of crime control. The Special Rapporteur also deplores that a legacy of violence inherited from the Brazilian military dictatorship continues to shape the prevailing ethos of certain divisions of the military police. She regrets that some members of the police exploit the overall climate of violence in order to deliver rough and easy justice to those that they consider socially “undesirable”.

(...)

#### Death Squads

44. The motives of such killings by death squads are not always clear but the Special Rapporteur was able to identify some patterns. In Santo Antonio de Jesus, she heard numerous reports of killings and disappearances of youngsters perpetrated by a military police nicknamed “Pomponet” who, with the alleged support of influential residents, took it upon himself to “socially cleanse” the area. In Maraba, in the State of Pará, the Special

Rapporteur received information according to which a police inspector nicknamed “Robocop” was heading a death squad whose objective was to shoot on sight any burglar. In San Geraldo do Araguaia in the State of Pará, a landowner who failed to obtain an eviction order from a judge, hired seven police officers to evict a landless group of rural workers who had invaded his property. One person was killed as a result of this operation.

***Report on Mission to Columbia by Special Rapporteurs Nigel S. Rodley and Bacre Waly Ndiaye (E/CN.4/1995/111, 16 January 1995, ¶¶ 20, 48-50, 69, 130):***

*The Special Rapporteurs visited Columbia from 17 to 26 October, 1994. They reported on the elimination by death squads of marginalized and impoverished sectors of the population, referred to as “social cleansing”.*

20. Colombia, a country of 1,200,000 km<sup>2</sup> and 36 million inhabitants, has one of the world’s highest record of homicides: according to official figures, during the past 15 years, figures increased from approximately 10,000 homicides in 1980 to 20,000 in 1988, and came close to an estimated 30,000 in 1994. According to data published by Justicia y Paz, during the administration of President César Gaviria, between June 1990 and June 1994, a total of 9,497 persons were killed for political or ideological motives: 3,202 were said to have lost their lives in political killings, 4,971 in presumably political killings and 1,324 fell victims to “social cleansing”. A further 5,358 are reported to have died during armed confrontations during the same period, including civilians (438), State agents (1,478) and persons presumed to be combatants (3,442). For the period from July 1993 to June 1994, more than 4,000 people were said to have been killed for political or ideological motives. This means an average of 10 victims of violence per day: six as victims of political killings, one in the context of “social cleansing” and three in armed confrontations. Between January 1993 and March 1994, members of the State security forces (50.28 per cent) and paramilitary groups (18.98 per cent) together were imputed to have committed almost 70 per cent of alleged extrajudicial, summary or arbitrary executions. Guerrilla groups (24.79 per cent) and militias (4.57 per cent)<sup>240</sup> were said to account for the remaining 30 per cent. However, in approximately 77 per cent of all cases, the authorship of violations of the right to life could not be ascertained. For the same period, Justicia y Paz recorded 436 cases of torture.<sup>241</sup> Furthermore, one person is said to disappear every day, leading to a total of 700 cases of disappearances reported by Justicia y Paz for the period between June 1990 and June 1994. In many cases, the victims are reportedly found dead a few days after their disappearance. The Working

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<sup>240</sup> The denomination “militias” is used for armed wings of the guerrilla groups operating mainly in urban areas.

<sup>241</sup> During their mission, the Special Rapporteurs were repeatedly told that incidents of torture were often not denounced, particularly when preceding enforced disappearances or extrajudicial, summary or arbitrary executions. It may therefore be presumed that its incidence is much higher than the figures published by Justicia y Paz.

Group on Enforced or Involuntary Disappearances currently has 717 cases of unresolved disappearances in Colombia on its books.<sup>242</sup>

[...]

#### “Social Cleansing”

48. The elimination of marginalized and impoverished sectors of the population has been a steady phenomenon during the past 15 years, particularly in urban areas of Colombia. After the first such killings in 1979 in the city of Pereira, where a "death squad" killed a number of criminals, this form of violence quickly spread to other cities of Colombia: Medellín and Bogotá in 1980, Cali and other cities in the Cauca valley in 1981, Bucaramanga and other urban areas in the Magdalena Medio region in 1983. Since then, "social cleansing" killings were reported to have occurred in all departments of Colombia. Antioquia, Atlántico, Distrito Capital, Santander and Valle del Cauca were those most affected. According to non-governmental organizations, by 1990 approximately 400 persons per year were victims of this kind of violence, whereas 505 deaths were registered for 1992. These figures, together with other elements, such as the threats that often precede the killings and the modus operandi of the authors, suggest that the phenomenon is not just a casual one.

49. In addition to criminals, persons from other sectors of the population whose presence was considered undesirable became the targets of such killings: prostitutes, homosexuals, beggars, drug consumers and street children. The killings are often preceded by torture, allegedly with the purpose of making it impossible to identify the victim (and therefore to carry out an investigation) and sending an intimidatory message to the above sectors. Several sources expressed their concern to the Special Rapporteurs that, over the years, "social cleansing" had become more and more accepted and acceptable, as a solution to the question of how to deal with marginalized sectors of the population. The qualification "desechables" (disposable) for those regarded as undesirable has gained legitimacy.

50. "Social cleansing" killings are typically carried out by "death squads". Over the years, many different groups have made their appearance in different cities throughout the country. Reportedly, police personnel often participate in "death squads". Sometimes, these groups are said to be organized by shopkeepers of an area with the aim of cleaning their streets of persons whose presence is regarded as a threat. Even where the "death squads" are composed of private gunmen, the police reportedly do not intervene. According to the information received by the Special Rapporteurs, virtually no attempts on the part of the security forces to dismantle or disarm such groups and prosecute their members are known. In a small number of cases, disciplinary proceedings were said to have been opened. In one instance only, such proceedings concluded with the dismissal of 15 police officers and other sanctions against a further 34 policemen, after the Archbishop of Pereira denounced their involvement in "social cleansing" killings in 1991.

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<sup>242</sup> See report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1995/36), paragraphs 126-136.

In other cases, the policemen involved were said to have been transferred to other areas of the country, thus impeding the progress of the disciplinary proceedings.

[...]

### Valle del Cauca

69. According to the information received, the situation in the department is marked by the predominance of three drug cartels: the Cartel de Cali, the Cartel del Centro del Valle based in the region of Buga/Tuluá, and the Cartel del Norte del Valle, in the area of Cartago/Pereira. In urban areas, drug-related violence, common crime, settling of accounts between private individuals by means of violence and "social cleansing" account for a large number of violent deaths, often involving agents of the security forces. In the rural areas, violations of the right to life and physical integrity take place in the context of the activities of the central and northern cartels; of operations carried out by the security forces cooperating with them, sometimes through paramilitary groups; and of the repression, also sometimes through paramilitary groups of armed insurgents and of those carrying out activities to bring about social and economic change in the area.

[...]

### Recommendations

130. The Special Rapporteurs also appeal to the authorities to adopt measures to protect those at risk of "social cleansing" killings, in particular street children. Such measures could include assistance and education programmes, as well as support for initiatives taken by the marginalized sectors themselves.

### ***Report on Mission to Kenya (A/HRC/11/2/Add.6, 26 May 2009, ¶¶ 9-10):***

*The Special Rapporteur visited Kenya from 16 to 25 February 2009. He reported on the death squads plans to eliminate citizens from Mungiki.*

### Evidence of Widespread Killings by Police

9. The Government has a clear obligation to protect citizens from Mungiki and other criminal violence, while respecting human rights, including the right to life. Suspects should be arrested, charged, tried and punished accordingly. In a context of violent criminality, police will inevitably be required to use force on occasion, and sometimes lethal force in order to protect life. The police, including the Police Commissioner, assured me that there have been no unlawful police killings. However, as I detail below, the evidence is compelling that the police respond - frequently - with unlawful force: murdering, rather than arresting suspects. Further, investigations by police are so deficient and compromised that claims by the police that all killings are lawful are inherently unreliable and unsustainable.

10. During my mission, I received compelling evidence that death squads - including one called *Kwekwe* - exist within the police force in Kenya, and that these squads were set-up to eliminate the Mungiki and other high-profile suspected criminals, upon the orders of senior police officials. Detailed evidence was provided by civil society investigations,<sup>243</sup> witnesses to the squad's activities, survivors of attempted killings, family members of deceased or disappeared victims, and victim autopsy reports indicating shots at close range and back entry wounds. A further key component of this evidence is the now public testimony of a police whistleblower, who recorded his statement in July 2008, before he was murdered while in hiding in October 2008. His account provides, in precise and often excruciating, detail the composition and operations of the death squad in which he was a part, and the circumstances of the murder of 67 persons between February 2007 and July 2008. Together, this evidence implicates the Commissioner of Police, and senior police officials from the Criminal Investigation Division, Special Crime Unit, and the Criminal Intelligence Unit. From this large amount of testimony, it is possible to set-out in detail the operations of the death squads:

- The suspected Mungiki or other criminal suspects appear to nearly always be known and individually targeted by police in advance. The police carrying out the operations (those driving the vehicles and committing the murders) are generally ordered by senior police to pick up a specified individual at a particular location (often his home, workplace, or a road on which he is believed to be traveling).<sup>244</sup>
- While most suspects are individually targeted, police will generally also detain others who may be accompanying the target at the time of arrest.
- Very often, the initial detention is witnessed by family members, co-workers, or bystanders.<sup>245</sup> In one well-known case, a man was actually photographed by a member of the press while being arrested.<sup>246</sup>
- Some suspects are murdered at the location of arrest. They are generally ordered by the police to lie down on the ground and are then shot. Police then attempt to set the crime scene to look like a "shoot out" occurred between criminals and police - weapons will be placed next to the bodies of the suspect, and fired into the air to give the appearance of an exchange of fire. Such victims are often taken to the mortuary by the police.<sup>247</sup>
- In other cases, the suspects are not immediately murdered, but are taken from the site of initial detention in generally unmarked police vehicles or private vehicles.<sup>248</sup> The squads frequently work in convoys of 2-5 vehicles.

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<sup>243</sup> E.g., KNCHR, *The Cry of Blood: Report on Extra-Judicial Killings and Disappearances* (September 2008).

<sup>244</sup> E.g. Appendix II: Case 6, Case 7, Case 8, Case 9.

<sup>245</sup> Appendix II: Case 4, Case 7, Case 8, Case 11, Case 13.

<sup>246</sup> Appendix II: Case 3.

<sup>247</sup> Appendix II: Case 3.

<sup>248</sup> Appendix II: Case 6, Case 7, Case 9.

- Once detained, the suspect is most often held irregularly, and no record of the detention is made in the police Occurrence Book. Some suspects will be taken to police stations, or moved between multiple stations. Others are held in vehicles for a number of hours. Once family members realize that their relative was arrested or is missing, they generally embark on a search of police stations.<sup>249</sup> Family members usually report obstruction or intimidation from officials in this process.
- In some cases, the police demand a ransom from the detainee, or call the relatives and demand a ransom upon threat of death to the detainee. In many cases, payment of the ransom is sufficient to obtain the detainee's release. Some victims have been detained and forced to pay ransoms on multiple occasions. Others have paid the ransom, but were then followed by police and subsequently murdered.<sup>250</sup>
- Those suspects who are murdered in locations other than the site of initial detention are generally eventually taken in vehicles to a remote area, such a forest or farmland. Many of these individuals are interrogated and tortured for a number of hours. Those who are suspected Mungiki are asked about their role in the Mungiki sect, and for the names and details of other Mungiki members or leaders.<sup>251</sup>
- During the detention or interrogation period, there is often communication via mobile phone between the interrogating officers, and senior officers at headquarters or police stations. In at least one case, the interrogations were tape-recorded, and played back via phone to senior police.<sup>252</sup>
- Those suspects taken to remote areas are typically killed through strangulation, or by being beaten to death by pangas (machetes), rungas (sticks), or other means. Their bodies are generally left in the forest or farm area, and found by local residents.<sup>253</sup>
- Many victims are last seen by witnesses or family members being arrested by police, but are never found.<sup>254</sup>

(...)

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<sup>249</sup> Appendix II: Case 3, Case 7, Case 11, Case 13.

<sup>250</sup> Appendix II: Case 4, Case 5, Case 6.

<sup>251</sup> Appendix II: Case 7.

<sup>252</sup> Appendix II: Case 7.

<sup>253</sup> Appendix II: Case 6, Case 7, Case 9.

<sup>254</sup> Appendix II: Case 4, Case 8, Case 13.

## M. POLITICAL ASSASSINATIONS

### *Report on Mission to Nigeria (E/CN.4/2006/53/Add.4, 7 January 2006, ¶¶ 77):*

*The Special Rapporteur visited Nigeria from 27 June to 8 July, 2005. He noted the political assassinations of many leading figures.*

77. In recent years many leading political figures have been assassinated.<sup>255</sup> Prosecutions have been rare and convictions almost non-existent. One interlocutor suggested that this was unsurprising since many of those killed would have been involved in shady financial deals. Others, including the Minister for Justice, invoked the absence of an effective police forensic capacity. The de facto impunity enjoyed for these crimes risks undermining Nigerian democracy, and the 2007 election year threatens many more killings unless impunity is ended.

### *Report on Mission to the Democratic Republic of the Congo (A/HRC/14/24/Add.3, 1 June 2010, ¶¶ 68-72, 77-80):*

68. The serious problem of politically motivated human rights abuses in the west of the country, including killings of opposition supporters, receives disturbingly little attention. Hundreds of civilians were killed by the DRC's security forces in 2007 and 2008 in attempts to counter the threat posed by political opposition. It appears that no-one has been held criminally responsible for any of these killings, and nothing has been done to reform the security agencies to prevent similar abuses in the future. At the time of my visit, intimidation and arbitrary detentions of presumed opposition supporters were ongoing. There is a very high risk of further violence during the next election period if urgent steps are not taken to reform the security sector.

#### *A. Killings in Kinshasa*

69. In March 2007, over 300 people were killed in Kinshasa in politically motivated violence in the context of an attempt by the DRC's security forces (under the control of President Kabila) to end the threat posed by the private armed guards of then Senator Jean- Pierre Bemba.<sup>256</sup>

70. In late 2006, Bemba lost Presidential elections to Kabila, but he continued to maintain at least 400 of his own guards. Bemba refused to integrate his soldiers into the regular Congolese army, and in March 2007, a street battle erupted between Bemba's guards and

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<sup>255</sup> One list provided to me identified 48 "high profile attacks, murders and assassinations" between Sept 1999 and March 2004. See generally Civil Liberties Organisation, *Clear and Present Danger: The State of Human Rights and Governance, Year 2004* (Lagos, 2005). One example was Chief Lamidi Adedibu, a prominent politician in Ibadan, the Oyo State capital, who was shot dead in his car on 16 July 2005. The assailants escaped. "Suspected assassins kill Adedibu's associate" *The Punch*, Monday, July 18, 2005.

<sup>256</sup> Bemba was arrested in Belgium on 24 May 2008, following the lifting of a sealed arrest warrant issued by the ICC. Bemba is accused of crimes committed in the Central African Republic, including torture, rape and murder. He is currently in custody, awaiting trial at the ICC.

FARDC soldiers. Hundreds of civilians were killed during these clashes, with indiscriminate and excessive force used by both sides.

71. Following the initial clashes, the FARDC, Republican Guard and other Government security forces carried out targeted killings of actual and presumed Bemba supporters, and tortured and killed those they had unlawfully detained at Republican Guard controlled detention facilities like the one at Camp Tshatshi, or the Services Spéciaux facility at their Kin Mazière base. Individuals were removed from detention, executed, and their bodies were buried or dumped in a nearby river. UN officials at the time found at least 30-40 bodies in the river.

72. MONUC and NGOs encountered serious obstacles in attempting to investigate the March events. Government officials tried to block external investigators from visiting sites such as morgues, detention facilities, and the river to collect evidence. Family members seeking information about their relatives were intimidated, and sometimes arbitrarily detained. Compelling reports by the UN and NGOs detailing security agency abuses<sup>257</sup> have not resulted in any Government response to investigate or hold its officials to account.

[...]

77. There are credible reports of various Government agencies having carried out unlawful killings and other serious human rights abuses, especially arbitrary detentions, in the west. They include the National Congolese Police (especially the Simba Battalion, the Integrated Police Unit, and the Services Spéciaux), the National Intelligence Agency, the Republican Guard, and the army's military intelligence agency (often referred to by its former name, DEMIAP). The Republican Guard especially has been at the center of abuse allegations. Tasked with protecting the President, it is believed to include some 10,000- 15,000 soldiers. During the DRC's transition period, there were attempts to integrate the Republican Guard into the FARDC, but it continues to operate outside of the command structures of the army, and reports directly to the President.

78. These forces are able to kill with impunity. They are subject to no independent oversight, there is little clarity as to their respective roles, and political elites have been able to command them outside of formal structures. The Government has shown no appetite for reform, and the international community has not always spoken out strongly against abuses, despite numerous incidents of large-scale killings.

79. I spoke with numerous individuals who had been arrested, accused of being Bemba party supporters, and detained for long periods. Some had been released only a few weeks before my mission took place. A number of those I interviewed provided credible evidence of having been tortured during questioning of their political allegiances. They

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<sup>257</sup> Amnesty International, *Democratic Republic of the Congo: Torture and killings by state security agents still endemic* (October 2007); Human Rights Watch, "We Will Crush You" – *The Restriction of Political Space in the Democratic Republic of the Congo* (November 2008); MONUC, *Rapport special – Enquête spéciale sur les événements de mars 2007 à Kinshasa* (January 2008).

were subjected to lengthy and arbitrary detention in inhumane conditions without access to legal counsel or a judge. These cases are serious violations on their own terms. But they also sound alarm bells ahead of the next national elections. They highlight the security forces' ability to operate outside the law and to intimidate the civilian population.

80. Because political activity in Bas Congo is seen to threaten the Government, one may expect targeted killings designed to intimidate BDK supporters and suppress the opposition, as well as deaths from excessive use of force in quelling BDK demonstrations, as the next election approaches.

***Report on Mission to the Democratic Republic of the Congo by Special Rapporteur Asma Jahangir (E/CN.4/2003/3/Add.3, 4 November 2002, ¶¶ 12-13):***

*The Special Rapporteur visited the Democratic Republic of the Congo from 16 to 22 June, 2002. She reported on the assassination of President Laurent Kabila.*

12. For a better understanding of the context in which the present incidents have occurred, it is important to recall that an extremely complex process has been ongoing for several years with the aim of finally achieving lasting peace in the Democratic Republic of the Congo. The country is divided into territories controlled variously by the Government and several rebel factions. In 1997, President Laurent Desiré Kabila overthrew the authoritarian regime of Mobutu Sese Seko in an armed operation. Mr. Kabila continued a policy of authoritarianism and the armed conflict did not end.

13. The state of war between the Government and rebel force worsened in 1998. Negotiations ended in the Ceasefire Agreement concluded in Lusaka on 10 July 1999 which provided for a political dialogue among the Government, rebel factions, the unarmed opposition and elements of civil society. The Ceasefire Agreement included provisions for normalization along the country's borders and the control of arms trafficking and infiltration by armed groups. Furthermore, it provided for the establishment of a Joint Military Commission (JMC) composed of two representatives of each party under the chairmanship of the Organization of African Unity (now the African Union). The Democratic Republic of the Congo signed the Ceasefire Agreement along with Angola, Namibia, Rwanda, Uganda and Zimbabwe. The Movement for the Liberation of the Congo (MLC) and the Congolese Rally for Democracy (RCD) signed the Agreement on 1 and 31 August 1999, respectively. However, RCD-G did not sign it. A few months later the peace process was interrupted and Laurent Kabila in essence withdrew from it. On 16 January 2001 Laurent Kabila was assassinated by one of his guards. He was succeeded in the presidency by his son, Joseph Kabila, who renewed the peace process.