



# International Service for Human Rights

## The Reports in Short

ISHR's summaries of documents for the UN Human Rights Council 4<sup>th</sup> Session

### **Report of the Special Rapporteur on extrajudicial summary or arbitrary executions<sup>1</sup>**

#### **Mandate holder**

Philip Alston

#### **Mandate**

The mandate was established in 1982<sup>2</sup>, and applies to all countries, whether or not they have signed the relevant Conventions. The mandate is to examine cases of extra-judicial, summary or arbitrary executions; to respond effectively to information that comes before the Special Rapporteur; and to enhance his/her dialogue with Governments. The Special Rapporteur also pays particular attention to women and children and those carrying out peaceful activities in defence of human rights and fundamental freedoms. He/she continues ensure that the mandate is understood and enacted under the broad legal framework.<sup>3</sup> The Special Rapporteur monitors the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of Article 6 of the *International Covenant of Civil and Political Rights (ICCPR)*, as well as its *Second Optional Protocol*. In the discharge of the mandate, the Special Rapporteur engages in communications and visits with countries, and follows up on recommendations made in reports after visits to particular countries.

#### **Activities**

- Annual report;
- The Special Rapporteur sent 135 communications to 51 countries and 2 other actors concerning a total of 1,531 individuals;
- Mission to Guatemala from 21 to 25 August 2006;
- Mission to Lebanon (7 to 10 September) and Israel (10 to 14 September);
- The Special Rapporteur continued to request and cement dates for a visit to the Islamic Republic of Iran in connection with their application of the death penalty for juveniles.

#### **Annual Report<sup>4</sup>**

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<sup>1</sup> Summary prepared by Alison Leon, Intern, ISHR and Hannah Klein, Intern, ISHR, edited by Gareth Sweeney, Information Program, ISHR.

<sup>2</sup> Commission on Human Rights, 11 March 1982 Resolution 1982/29

<sup>3</sup> Commission on Human Rights Resolution 1992/72, 5 March 1992; and General Assembly Resolution 45/162, 18 December 1990, which comprises the *Universal Declaration of Human Rights* and Articles 6, 14 and 15 of the *International Covenant on Civil and Political Rights*.

<sup>4</sup> A/HRC/4/20, 29 January 2007.

## Scope:

The report covers the Special Rapporteur's activities in 2006. It pays special attention to mercy killings and death sentences.

## Summary and key conclusions:

- **Recognition of mandate:** The USA has called into question the Special Rapporteur's mandate regarding the law that applies to violations of the right to life in armed conflict. While the mandate has been defined in terms of executions regardless of their context — with no mention of any limits to the legal framework that would exclude certain executions<sup>5</sup> — the USA questions the validity of oversight by the Rapporteur. As such, the Special Rapporteur warns that were the USA's stance to be recognized, any action perceived to fall under the "war on terror" would create a vacuum, pushing back the development of human rights regime by decades.
- **'Mercy killings':** The recent term 'mercy killings', which has been used to define certain killings in armed conflicts,<sup>6</sup> has been recognized by the Special Rapporteur as egregious in practice. Such killings are unacceptable under Article 12 of the First Geneva Convention, which provides for the wounded or sick to be 'respected and protected in all circumstances'. Although seen to be justified as acts of compassion, mercy killings reflect an underlying dehumanisation of the enemy and are a violation of international law.
- **'Most serious crime':** The debate needs to be clarified regarding the definition for what comprises a 'most serious crime', which is legally punishable by the death penalty. Currently, the jurisprudence by principle UN bodies establishes that a 'most serious crime' is characterized by loss of life involving the intentional act of violence.
- **Mandatory death penalty:** The Special Rapporteur continues to communicate to Governments that legislation which dictates the mandatory imposition of the death penalty should be repealed, and that instead, the death penalty must only be applied through individualized sentencing.

## Key recommendations:

- The Council should respond to the issue of **execution of those under 18 in Iran**, the only country still practicing this punishment. Despite continued efforts and requests by the Special Rapporteur, this issue has not been resolved, and steps must be taken by higher bodies.
- The Council should insist upon **upholding its established position of scrutinizing alleged violations** both of human rights and humanitarian law, even in the context of armed conflict.
- The death penalty should only be applied for **'most serious crimes'**, which cannot be interpreted subjectively by individual countries.
- The death penalty should only be **applied on an individual basis**, and should not be imposed as mandatory.

## **Mission to Guatemala<sup>7</sup>**

### **Scope**

The Special Rapporteur visited Guatemala from 21 to 25 August 2006. The report describes that the situation of summary executions in Guatemala and explains that the State bears certain responsibility because of the high rates of violent crime, including murder, and the low conviction

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<sup>5</sup> Commission on Human Rights Resolution 1982/29, para 2; ECOSOC Resolution 1982/35, para 2.

<sup>6</sup> Mercy killings involve killings, usually shooting, of wounded soldiers, with the main justification as putting severely injured persons 'out of their misery'. See the Special Rapporteur's full report, pages 9-11.

<sup>7</sup> A/HRC/4/20/Add.2, 19 February 2007.

rates. The Rapporteur also alludes to situations where the State might have played a direct or indirect role in summary executions.

### **Summary and key conclusions:**

- The Peace Accords provide a comprehensive plan for improving the human rights situation in Guatemala. International involvement in the peace process has decreased significantly since the Peace Accords were signed and the Rapporteur argues that possibilities for further progress rest on the shoulders of the Guatemalan Government and civil society.
- Insofar as illegal tactics are being employed by the State, it is with broad acceptance among the political and social elite, as well as significant segments of the general population.

### **Social cleansing:**

- The Rapporteur introduces his discussion of murder in Guatemala by stating that in most situations ordinary murders by private persons constitute simple crimes and do not give rise to any State responsibility. He argues, however, that once a pattern emerges showing that the Government's response to these killings is clearly inadequate, the State becomes responsible under international human rights law for failing to exercise due diligence and honour obligations it has assumed under international law.
- Guatemala is experiencing a high murder rate, which has increased by 64% over the past five years. One explanation for this is the re-emergence of the practice of "social cleansing" to deal with gang violence. A significant number of youth are summarily executed for their presumed participation in crime or membership of gangs.
- Estimates as to the overall membership of youth gangs vary widely, from 35,000 according to the non-governmental Coordinadora Juventud por Guatemala, to 165,000 to 200,000 according to the Ministry of Interior.
- Incidents of social cleansing are not effectively investigated and there is little official data available. However, in 2005 the bodies of 12% of all murder victims were found in a location other than where they died. Since gangs typically kill quickly and flee quickly, the Rapporteur suggests that less vulnerable groups engaged in execution for purposes of intimidation are responsible for these murders.
- The Rapporteur reported allegations, which he believed to be highly credible, that personnel working for the División de Investigación Criminal (DINC) of the PNC are engaged in social cleansing. The pattern is that the police will recruit an informant; demand information regarding the identities and locations of gang members, suspected criminals, and other targets; drive to the location provided, typically without uniforms and in an unmarked vehicle; apprehend the person identified by the informant; and kill them at another location, sometimes following torture. Evidence shows that this is more than the actions of a few rogue officers. Although these killings may not be an officially sanctioned-policy, their frequency indicates that they present an issue of institutional responsibility.

### **Femicide:**

- The female homicide rate has increased by 117% over five years. Suggested reasons for this include: that as more women enter areas of life traditionally reserved for men, they are targeted to put them in their place; in connection with organised crime, women are killed to put pressure on their husband or boyfriend; and men feel increasingly free to rape and murder women on account of the climate of impunity.

### **Lynching:**

- Between 1996 and 2001, the annual number of lynchings resulting in death ranged from 13 to 29. In the first 7 months of 2006, there were 13 deaths from lynching.

- The areas in which lynching is most widespread are those that suffer disproportionate poverty, are predominantly indigenous, have a weak State presence, and experienced the most human rights violations during the armed confrontation. These lynchings result from a power vacuum following the withdrawal of the counter-insurgency apparatus. As the State has not fully replaced this apparatus with civilian institutions, this power vacuum appears to be being filled by demobilised PACs and former soldiers.

#### **Impunity for attacks targeting gay, lesbian, transgender, or transsexual persons:**

- Credible information suggests that between 1996 and 2006, there were at least 35 murders motivated by hatred towards persons identified as gay, lesbian, transgender and transsexual. There is reason to believe that the actual number is significantly higher.
- When the Rapporteur made inquiries into the investigations into a specific case, he received no reply from the Government of Guatemala.

#### **Attacks on human rights defenders:**

- From 2000 through to the Rapporteur's visit, at least 64 human rights defenders have been murdered. Few of these attacks are investigated and even fewer result in convictions.
- The Rapporteur states that the killing of human rights defenders has increased in large part due to the failure to investigate and punish those responsible.

#### **The State's responsibility for prison violence:**

- The Rapporteur states that many of the violent deaths in custody in Guatemala indicate either actions or omissions that could reasonably be expected to result in death.
- There are reports of wardens arming rival gang members, enabling them to enter the cells of the victims and hanging blankets in front of the CCTV camera, while the prisons and authorities failed to intervene to stop the killing.
- These actions appear to be a result of significant power ceded to gang leaders by prison authorities. The Rapporteur argues that failure to stop them shows a lack of due diligence by the State.

#### **How the State has fostered impunity for murder:**

- Guatemala has an alarmingly low conviction rate for murder, estimated to be considerably below 10%.
- The police force appears to be massively under-resourced. To match the policing levels in El Salvador, the number of police would have to be doubled. This problem means that the police force is being supplemented by the military, which marks significant remilitarisation. Similarly, the public prosecution services are noted to have severely limited resources.
- The Rapporteur lists other impediments to conviction including: a lack of coordination and cooperation between the police and the public prosecution services; the lack of facilities for forensic investigations, meaning investigations rely largely on testimonials; and officials corrupted either by intimidation or financial inducement. This corruption appears to be based on organised "illegal groups" and "clandestine apparatuses".
- In December 2006, the Government reached an agreement with the UN to establish an International Commission against Impunity in Guatemala (CICIG). This organisation will act as a "third-party prosecutor" intervening in a prosecution on behalf of the victim. The Rapporteur notes the CICIG is not a panacea and other reforms are required.

#### **The options for maintaining order and controlling crime:**

- The Rapporteur argues that Guatemala faces a choice – to realise the vision of the Peace Accords or employ the brutal tactics of the *mano dura* and never fully escape the armed confrontation of the past.

- The *mano dura* approach prioritises harsh punishment and heavily-militarised sweeps over prevention, prosecution, and rehabilitation. Guatemala's recent history demonstrates the concrete danger of this approach to crime control, with the methods difficult to distinguish from the tactics of counter-insurgency.
- Instead, the Rapporteur urges Guatemala to develop a working criminal justice system aimed at ensuring the rule of law. He notes that although almost all of the formal rhetoric of the political parties endorses this approach, almost every element of the current system is radically underfunded, dysfunctional or both. Further, he argues that there is little real political will to end impunity, with diffidence amongst the elite and in Congress regarding the commitments made in the Peace Accords. For the wealthy, effective policing is said to be a low priority, in part due to their reliance on security guards. In the political establishment, the Rapporteur notes a sense that the State has very limited responsibilities to society.
- While a lack of resources is frequently sighted as the chief impediment to establishing an effective criminal justice system, Guatemala is not exceptionally poor and it could readily afford a criminal justice system on a par with that provided in other Central American countries. He states that the reason the executive branch of the States has so little money to spend on the criminal justice system is that the legislative branch imposes very low taxes.

### **Recommendations:**

- The resort to executions of suspects and other persons considered socially undesirable as a strategy for ensuring order and reducing crime should be categorically rejected at every level of Government.
- The practice of social cleansing should be relentlessly tackled by Government bodies.
- Lynching can be combated by revitalising indigenous systems of justice; extending the presence of State criminal justice institutions geographically and by better adapting their working methods to the needs of rural communities.
- An effective witness protection programme must be introduced to overcome impunity in cases involving powerful perpetrators.
- The State must fully accept its responsibility in the area of criminal justice and put the necessary resources into developing an effective and just criminal justice system.
- Congress should enact the legislation required to implement the CICIG and realise the Peace Accords.
- The donor community should carefully consider whether its assistance is doing as much as possible to push the State to assume its own responsibilities.