International Service for Human Rights

The Reports in Short

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Reports of the Special Rapporteur on extrajudicial, summary or arbitrary executions[1]

Mandate holder

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Mandate

The mandate was established in 1982[2] and applies to all countries, irrespective of whether a State has ratified relevant international Conventions. The mandate is to examine 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 follows up on recommendations made in reports after visits to particular countries; continues to pay special attention to children, women, participants in demonstrations and other peaceful public manifestations, persons belonging to minorities, and individuals who are carrying out peaceful activities in defence of human rights and fundamental freedoms. 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 ICCPR, as well as its *Second Optional Protocol*. In the discharge of the mandate, the Special Rapporteur undertakes country missions and transmits urgent appeals to States.

Activities

- The Special Rapporteur has sent 117 communications during the period under review to 55 countries and 3 other actors, including 57 urgent appeals and 60 letters of allegation, concerning of total of more than 800 individuals. The proportion of Government replies received to communications remains low at an average of 46 per cent;
- In 2005, the Special Rapporteur has requested visits to China, India, Indonesia, the Islamic Republic of Iran, Nepal, Pakistan, Peru, the Russian Federation, Saudi Arabia, Thailand, Togo and Uzbekistan, to which only two countries have provided a firm affirmative answer.
- Mission to Nigeria from 27 June to 8 July 2005;
- Mission to Sri-Lanka from 28 November to 6 December 2005;
- As a follow-up procedure, the Special Rapporteur has sought information from appropriate sources and addressed letters to Honduras, Jamaica, the Sudan and Brazil seeking information on efforts to consider and implement the recommendations of the Special Rapporteur. None of the Governments have replied.

Annual Report[3]

Scope

The report outlines the activities conducted by the Special Rapporteur in 2005, provides a reflection on the strengths and weakness of the procedures used with a view to identifying ways in which to develop them more effectively, and reviews some of the central issues that arise at the national level in dealing with extra-judicial executions, including the principle of transparency and shoot-to-kill policies, in an attempt to highlight the linkages and potentially reinforcing and synergetic relationships among rights.

[1] Summaries prepared by Cléa Thouin, Intern, ISHR, supervised and edited by Meghna Abraham, Information Program, ISHR.
[2] Commission on Human Rights *Resolution 1982/29*.
[3] E/CN.4/2006/53, 8 March 2006.

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Summary and key conclusions

- The Special Rapporteur has sought to use straightforward language and identify necessary remedial steps in his communications in order to ensure that exchanges with Governments are productive and focused;
- The Special Rapporteur has sought to make the information regarding communications more accessible by classifying responses received in five categories: largely satisfactory response, cooperative but incomplete response, allegations rejected but without adequate substantiation, receipt acknowledged, and no response;
- The almost universally acknowledged loss of credibility by the Commission in recent years has much to do with its failure to take up cases in which particular Governments failed to invite or permit appropriate access to special procedures and the establishment of the **Human Rights Council** therefore represents a singular opportunity to develop **a more credible human rights system**.

Transparency:
The principle of transparency is central to the elimination of extra-judicial executions in two respects:

- The **right to political participation** is a human right in itself, as well as a critical attribute of good governance, and the right to information or to transparency has been recognised as a prerequisite for the legitimate exercise of public authority;
- Transparency is crucial to various techniques used to reduce the occurrence of **extra-judicial executions** and to inquire into their causes and potential remedial measures;
- For **national-level commissions of inquiry** to be credible and acceptable, their results and details of the investigation need to be made public. While some national commissions have been undertaken in good faith, most commissions are designed mainly to assuage outrage rather than to establish the truth. The Special Rapporteur plans to undertake a more detailed study on commissions;
- In a considerable number of countries, information concerning the **death penalty** is cloaked in secrecy. Such secrecy is incompatible with human rights standards in various respects, in particular since transparency is among the fundamental due process safeguards that prevent arbitrary deprivation of life;
- States often fail to comply with their obligation to effectively investigate, prosecute and commensurately punish violations of the right to life in **situations of armed conflict** through independent bodies, especially when members of the armed forces commit violations. This duty derives from the general obligation to ensure the right to life, which is non-derogable, regardless of the circumstances.

Shoot-to-kill policies:

- 'Shoot-to-kill' policies pose a real threat to human rights-based enforcement approaches and to the right to life. While human rights law already permits the use of lethal force when doing so is strictly necessary to save human life, the rhetoric of 'shoot-to-kill' serves only to replace clear legal standards with a **vaguely defined license to kill**, and suggests that it is futile to operate inside the law in the face of terrorism;
- States that employ shoot-to-kill policies for dealing with suicide bombers must develop legal frameworks to properly incorporate intelligence information and analysis into both the operational planning and post-incident accountability phases of State responsibility. If there is a solid factual basis for believing that a suspect is a suicide bomber capable of detonating his explosive if challenged, and if, to the extent possible, that information has been evaluated by persons with appropriate experience and expertise, the immediate use of lethal force may be justified. However, States employing shoot-to-kill procedures must ensure that only such solid information, combined with the adoption of appropriate procedural safeguards, will lead to the use of lethal force;
- The use of shoot-to-kill tactics also imports the language of international humanitarian law into situations that are essentially matters of law enforcement and should be dealt with within the framework of human rights;
- As there is no legal basis for shooting to kill for any reason other than near certainty that to do so otherwise will lead to loss of life, it is essential to account for the legal implications of the **limited information** officers will almost invariably have.

Key recommendations

- The Human Rights Council should establish a procedure whereby specific cases of persistent or especially problematic **non-cooperation with mandate-holders** are flagged and taken up by the Council;
- **Transparency is essential wherever the death penalty is applied** and the oversight required to safeguard the right to life depends on the detailed disclosure of the State of information relating to the

number of persons sentenced to death, the number of executions carried out, the number of death sentences reversed or commuted, and the number of instances of clemency;
- Persons sentenced to death, their families and their lawyers should be provided with timely and reliable information on the procedures and timing of appeals, clemency petitions and executions;
- The **use of lethal force by law enforcement officers must be regulated within the framework of human rights law** and the rhetoric of shoot-to-kill should never be used;
- When States allow the **use of lethal force without prior warnings** such as has been done by some States dealing with the threat of suicide bombers, a prior graduated use of force, or clear signs of an imminent threat, they must provide alternative safeguards to ensure the right to life;
- States must develop **legal frameworks to properly incorporate intelligence information** and analysis into both the operational planning and post-incident accountability phases of State responsibility;
- States must establish **institutions** capable of complying with the human rights obligations to effectively and independently **investigate alleged violations of the right to life** and punish those responsible, even during armed conflict;
- There is a need for a **detailed study of national-level investigations** of major incidents involving alleged violations of international human rights or humanitarian law by armed or security forces, to identify challenges and best practices in this area;
- There is a need for **more sustained analysis of appropriate accountability mechanisms for the police**.

Report on transparency and the imposition of the death penalty[4]

Scope

The report analyses the legal basis of the 'transparency obligation' of States with regard to the death penalty and examines case studies that illustrate the major problems that exist in this area. "It builds upon the proposition that '[c]ountries that have maintained the death penalty are not prohibited by international law from making that choice, but they have a clear obligation to disclose the details of their application of the penalty' (E/CN.4/2005/7, para. 59)"[5]. The report is based on Information from various sources, including Government responses to a *note verbale* sent by the Special Rapporteur. Governments that responded included Belarus, China, Democratic People's Republic of Korea, Egypt, India, Saudi Arabia, Singapore, and Vietnam.

Summary and key recommendations

Although the death penalty is not prohibited by international law, when its administration is cloaked in secrecy, its use is potentially inconsistent with respect for the right to life.
- There is a widespread lack of compliance with the obligation to administer the death penalty in a transparent manner but countries do not tend to fall neatly into "transparent" and "opaque" categories.
- The failure to comply with transparency obligations can not be based on reasons of crime control or the traditional purposes of punishment, such as deterrence or retribution.
- Transparency is among the **fundamental due process safeguards** that prevent the arbitrary deprivation of life. It is derived from Article 14 (1) of the *International Covenant on Civil and Political Rights* (ICCPR) guarantees that everyone shall be entitled to a public hearing.
- Article 14 also narrowly limits the **scope for secrecy** at trial to reasons of the general interest of a democratic society in morals, public order and national security; the privacy interests of the parties; and the interests of justice require it. However, this secrecy may never extend beyond the hearing itself and judgements, with the narrowest exceptions, must be made public.
- Even during a **state of emergency**, derogation from transparency rights is never permitted in death penalty cases as the permissible scope of derogation from due process rights is always tightly circumscribed.
- Publicity must be more than formal and both the general public and every organ of the government have an interest in comprehensive and reliable information on the use of the death penalty.
- A lack of transparency regarding the **post-conviction process** and timetable for execution can lead to violations of two sets of rights: it may undermine due process rights and could lead to miscarriages of justice but it could also constitute inhuman or degrading treatment or punishment for the prisoner and his/her relatives.

[4] E/CN.4/2006/53/Add.3, 24 March 2006.
[5] P. 2 of the report.

Case studies

- Many countries, such as China and Japan, rely on public opinion within their countries to justify capital punishment policies. However in many situations, non-compliance with transparency obligations means that the public lacks the information necessary to make these determinations.
- 'Retentionist'[6] countries are especially unlikely to provide information on the use of the death penalty. In a survey by the Secretary-General, 87 per cent of retentionist countries did not respond to requests for information.
- The most frequently cited rationale for not disclosing information on the death penalty is protection of **national security**, as evidenced by the responses of the Governments of Vietnam and China.
- The national security concerns that underpin death penalty information being classified as a "State secret" lack legal justification as article 14 of ICCPR only permits secrecy on these grounds at the trial stage.
- The secrecy that Japan maintains around the death penalty is an official policy, justified by the right to privacy of the prisoner and his/her family. Individual rights to dignity and privacy do sometimes outweigh transparency obligations, as in the case of public executions. They, however, do not justify the denial of information to the very person whose privacy rights are being invoked and they cannot offset transparency obligations when the prisoner does not desire his/her experience to be private.

Key conclusions

- Any meaningful public debate must take place after **disclosure of detailed information** of the number of persons sentenced to death; the number of executions actually carried out; the number of death sentences reversed or commuted on appeal; the number of instances in which clemency has been granted; the number of persons remaining under sentence of death; and each of the above broken down by the offence for which the person was convicted.
- Condemned persons, their families and their lawyers should be provided with timely and reliable information on the procedures and timing of appeals, clemency petitions, and executions.

Mission to Nigeria[7]

Scope

The report is based on several visits and extensive interviews undertaken in four states and the Federal territory of Abuja in Nigeria. It outlines four representative case studies and provides an overview of the major problems and the main pathologies affecting the Nigerian criminal justice system.

Summary and key conclusions

In spite of all the efforts made by the Government of Nigeria to combat corruption and consolidate the restoration of democracy, there remain serious problems in relation to extrajudicial executions. One NGO recorded 2,087 cases of extra-judicial executions in 2004 and the fact that there had not been a single prosecution in any of these cases. The problems are illustrated by four case studies: the framing and killing of six innocent civilians by the Police in Apo in June 2005; the extrajudicial execution in police custody of alleged armed robbers in Enugu in January 2005; the killing by security forces of innocent bystanders who witnessed their conduct during communal violence in Kano in May 2004; and the death penalty by stoning under sharia law for private sexual acts such as adultery and homosexuality.

Major issues:

There are three major concerns with the **death penalty** in Nigeria:

- Widespread **procedural irregularities**, including the use of torture by police to extract confessions, the lack of legal representation in capital cases, and death sentences handed down by military tribunals;
- Atrocious **death row conditions** and an average 20-year stay on death row;
- The operation of **sharia law** in 12 states, which warrants the imposition of death by stoning for adultery (*zina)* or sodomy in contravention of Nigerian and international law. Furthermore, the very existence of such laws invites abuse by individuals and in the case of *zina*, a campaign of persecution of women.

The **Nigerian police force** is faced with serious under-funding while being confronted with a high rate of violent crime. As a result, abuses such as corruption, torture, arbitrary and excessive use of force and

[6] Countries that choose to retain the death penalty.
[7] E/CN.4/2006/53/Add.4, 7 January 2006.

extrajudicial executions are common. The domestic legal framework, which elevates **armed robbery** to the level of a capital offence, facilitates extra-judicial executions, as the police are given a justification to shoot to kill any person who has committed a capital offence and is seeking to flee. Furthermore, the rules for guidance for the use of firearms by the police are deeply flawed and practically provide the police with close to a *carte blanche* to shoot and kill at will. Other problems include the failure to adequately investigate police misconduct and the related impunity that the police force enjoys. There are also problems caused by the use of the **military** for policing, the hiring of private security forces by oil companies, and the open and covert support for **vigilante groups** by State officials. These practices pose problems of abuses and accountability, such as attacks by the military on towns to exact revenge on civilians for militia attacks on the army, and killing of hundreds of civilians with impunity.

Extra-judicial killings are also closely linked to the remarkable **inadequacies of almost all levels of the Nigerian criminal justice system**:

- There is a lack of expertise and material to support investigation, including forensic investigation, ballistics experts or coroners;
- Only the police are authorised to undertake investigations, even when principal suspects are police officers. This is particularly problematic in view of the police's under-funding;
- Multiple adjournments of cases result in people being held in prison without a trial, for longer periods than if they actually been convicted;
- The police can hold suspects more or less indefinitely in legal limbo, as a result more than 50 per cent of prisoners, many of whom are poor people, are under-trial prisoners.

In recent years, **large-scale violence between religious and/or ethnic groups**, rooted in the high number of ethnic groups in conflict over power, land or resources, has also cost thousands of lives. Government action and inaction and the failure of security forces to react quickly or even pre-emptively, have further contributed to these conflicts. Although religious events often trigger these events, religion is often exploited for populist reasons.

Key recommendations

- The Government should reiterate that the imposition of the **death penalty** for offences such as **adultery** and **sodomy** is unconstitutional and all persons sentenced to death or life imprisonment under martial law should have their convictions reviewed. **Armed robbery** should be removed from the list of capital offences;
- An annual register should be published to report fully, promptly and accurately on all **deaths at the hands of police**;
- Professionally staffed and well-equipped **forensic laboratories** should be established;
- The **rules on the use of firearms** by the police should be amended immediately to conform to the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, emphasising the principles of proportionality and the use of lethal force as an absolute last resort;
- There should be an independent external review of the Police Service Commission, designed to establish an effective **police accountability system**, based on the South African model;
- The Federal Government should prepare and publish an authoritative **inventory of all vigilante groups** enjoying any form of official support, and the relevant authorities should regulate them, as well as investigate and prosecute any such illegal activity;
- Legislation should be enacted making it an offence for police and military officers to fail to cooperate with official inquiries into extra-judicial executions;
- The international community should support these reform efforts.

Mission to Sri Lanka[8]

Scope

The report is based on visits and extensive interviews undertaken during a mission to Sri Lanka from 28 November to 6 December 2006. Its aim is to contextualise extra-judicial killings and identify measures that might address the underlying causes and lead to an improved situation.

Summary and key conclusions

[8] E/CN.4/2006/53/Add.5, 27 March 2006.

- The Ceasefire Agreement (CFA) of 2002 between the Government and the rebel Liberation Tigers of Tamil Eelam (LTTE) has been under unprecedented stress: the ceasefire that was agreed upon has been consistently broken by a **series of political killings** to repress and divide the population for political gain.
- Killings in general are symptomatic of the widespread use of **police torture**; of the **failure to control abuses** committed or tolerated by the military; and the systematic efforts by various armed groups, particularly the **LTTE**, to **kill Tamils** who refuse to support the LTTE and to **provoke military retaliation**.
- One disturbing aspect of post-ceasefire violence has been the **use of killing to control the Tamil population**. Many Tamil and Muslim civilians have been killed because they have sought to exercise their freedoms of expression, association and participation in ways that are not supportive of the LTTE.
- Extra-judicial executions also target members of other Tamil militant groups, mainly to uphold the LTTE's proclaimed role as the "sole representative" of the Tamil people.
- Almost **none of these extra-judicial executions have been effectively investigated** and there have been remarkably few convictions, with many police officers operating under the impression that investigating any crime presumed to involve the LTTE would imperil the ceasefire. There is also a complete lack of cooperation between Government and policing forces that operate in LTTE controlled areas.
- The "**Karuna group**", which split from the LTTE in March 2004, has killed and terrorised LTTE cadres and suspected supporters. Both the Government and the LTTE have been shifting responsibility towards each other for the demobilisation of this group, with the LTTE accusing the Government of providing logistical support and arms to the Karuna group.
- The causes of **deaths in police custody** include the inadequate training of police in criminal investigation work; the widespread use of torture to extract confessions; and the failure to impose effective disciplinary and criminal sanctions against police officers who are guilty of torture.
- There have been efforts to improve the police, such as the creation of the **National Police Commission** with power over police discipline and a mandate to respond to public complaints but these efforts cannot be sustained without political support, adequate resources or a functioning system of criminal justice.
- Extra-judicial killings are not only contrary to the CFA, but also to **international human rights** and **humanitarian law**. The Government has human rights obligations because it is a party to the *International Covenant on Civil and Political Rights*, but so does the LTTE to some extent, in view of the significant control it exercises over a territory and population.
- Both the Government and the LTTE have formally taken upon themselves obligations under the Geneva Conventions, which prohibits the murder of persons who do not take an active part in hostilities. All parties to the conflict are also bound by customary international humanitarian law.
- The weakness of the **Sri Lanka Monitoring Mission** (SLMM), which verifies compliance with the CFA, include its narrow interpretation of its mandate to exclude investigations; the conflict of interest inherent in its link with the facilitator of the peace process; and the inadequate amount of information it makes public.

Key recommendations

- The Government and the LTTE should complement the CFA with a **wide-ranging human rights agreement** and an effective **international human rights monitoring mechanism**.
- All parties to the conflict, including the Karuna group, must comply with their legal obligations under the **Geneva Conventions** and **customary humanitarian law**, prohibiting murder of persons taking no active part in hostilities.
- The **SLMM** should be de-linked from the role of facilitating the peace process and its work should be strengthened, notably with the technical and advisory support of OHCHR.
- The Government should unambiguously instruct the police to **investigate all killings** vigorously and a program is urgently needed to provide essential **training in criminal detection** and **investigation**.
- The Government should provide the **National Police Commission** with the resources required to enable it to effectively exercise its investigative and disciplinary powers.
- The Government should ratify the ***Rome Statute of the International Criminal Court***.
- The LTTE should **denounce** and **condemn any killing** attributed to it for which it denies responsibility and should **refrain from violating human rights**.

Follow-up to country recommendations[9]

Scope

The report discusses the follow-up measures taken on the recommendations made by the Special Rapporteur on extrajudicial, arbitrary or summary executions in four country missions[10] to Honduras[11], Jamaica[12], Brazil[13] and the Sudan[14]. The Special Rapporteur sent letters to the four Governments summarising information from inter-governmental organisations, NGOs and civil society groups on follow-up and requested observations on efforts made to consider and implement the recommendations.

Summary and key conclusions

- **Country visits can only achieve their full potential** if Governments give **serious consideration to the recommendations** made by Special Procedures as a result of their visits.
- Governments, which participated in the 2005 seminar on "Enhancing and Strengthening the Effectiveness of the Special Procedures of the Commission on Human Rights", agreed that it was crucial that the findings of Special Procedures form the basis of negotiations and constructive open dialogue with States.
- In view of the "common agreement" on the "crucial role" of follow-up to recommendations by special procedures, **it was disappointing that none of the four Governments submitted any observations.** Information from other sources, though valuable, is not a substitute for the views of the Governments concerned.
- The overall picture that emerges is not encouraging; some **minimal follow-up** has occurred but in general the **recommendations appear to have made little impact**.

Lessons for the Human Rights Council

- It is always going to be **difficult to determine cause and effect between the recommendations** made by the Special Procedures and the **legal and policy reforms** subsequently adopted by Governments.
- The **value of visits by Special Procedures** should not be assessed solely in terms of the formal adoption of measures to give effect to their recommendations. Country visits have a **variety of potentially helpful outcomes**, such as encouraging actors to see issues in terms of human rights, acting as a catalyst to a domestic review of policy options and providing reassurance to civil society groups and victims.
- Despite this, a **consistent pattern of neglect of relevant recommendations** should ring alarm bells among those concerned to ensure that the international human rights regime is capable of making a positive difference.
- The present system almost encourages mandate holders to ignore the **practicalities related to the implementation of their recommendations**.
- Taking Special Procedures recommendations seriously would encourage mandate holders to **make their recommendations specific** and **easier to implement** and would **oblige Governments to spell out their concerns** with recommendations rather than simply ignore the reports.

Key Recommendations

- The Council on Human Rights should request each mandate holder to **rank their recommendations** in order of importance and urgency and identify five most important recommendations.
- The Council should **request Governments to respond to the Council** and the **mandate holders** within 12 months of submission of the report on why the recommended steps have or have not been taken.
- The Council should **reflect this process** as part of its regular **reviews of country situations**.
- **OHCHR** should have a central role to play in supporting the joint efforts of States and Special Procedures in this regard.

[9] E/CN.4/2006/53/Add.2, 28 February 2006.
[10] Please see the original report for the discussion on each country.
[11] Pp.9-16.
[12] Pp.16-25.
[13] Pp.25-34.
[14] Pp.34-52.

Summary of cases transmitted to Governments and replies received[15]

Scope

The report contains an account of communications sent to Governments up to 1 December 2005, communications sent after that date to which responses were received in time for inclusion, and replies received up to the end of January 2006.

Summary and key conclusions

The report summarises the correspondence regarding each communication under four headings:

- **Violations alleged**: death penalty safeguards; death threats; deaths in custody; deaths due to excessive use of force; deaths due to attacks or killings; violations of the right to life during armed conflicts; expulsion; and impunity.
- **Subject of appeal**.
- **Character of reply**: largely satisfactory response; cooperative but incomplete response; allegations rejected but without adequate substantiation; receipt acknowledged; and no response.
- **Observations of the Special Rapporteur**.
- The table summarising communications also report the **number** and **category of individuals concerned**.

Please note that countries that have replied to current or previous communications are marked with an asterix:

- The Special Rapporteur sent communications to Afghanistan, Algeria*, Australia*, Bangladesh*, Barbados, Brazil*, Burundi, Chad, China*, Colombia*, Democratic Republic of the Congo, Côte d'Ivoire*, Egypt*, Ethiopia, Haiti, India, Indonesia*, Islamic Republic of Iran*, Iraq*, Ireland*, Israel*, Jamaica*, Japan*, Kenya, Kyrgyzstan*, Lebanon, Libyan Arab Jamahiriya, Morocco, Mauritania, Mexico*, Myanmar*, Nepal*, Nigeria*, Pakistan*, Papua New Guinea, Peru, Philippines*, Russian Federation, Saudi Arabia*, Serbia and Montenegro*, Singapore*, Spain*, Sri Lanka*, Sudan, Syrian Arab Republic*, United Republic of Tanzania*, Thailand*, Trinidad and Tobago, Tunisia*, Turkey*, United Kingdom of Great Britain and Northern Ireland*, United States of America, Uzbekistan*, Venezuela*, Vietnam*, Yemen*, Zimbabwe*, the Liberation Tigers of Tamil Eelam, the Palestinian Authority, and the United Nations Stabilisation Mission in Haiti*.

[15] E/CN.4/2006/53/Add.1, 27 March 2006.