



General Assembly

Distr.
GENERAL

A/HRC/8/3/Add.3
14 May 2008

ENGLISH ONLY

HUMAN RIGHTS COUNCIL

Eighth session

Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the Special Rapporteur on extrajudicial,
summary or arbitrary executions, Philip Alston**

Addendum* **

FOLLOW-UP TO COUNTRY RECOMMENDATIONS

* The present report is reproduced as received, in the language of submission only.

** Late submission.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION	1 - 7	3
II. SRI LANKA	8 - 67	5
A. Introduction	8 - 14	5
B. Compliance with human rights and humanitarian law	15 - 30	7
C. The ceasefire monitoring mechanism and civilian protection	31 - 34	10
D. International human rights monitoring	34 - 47	11
E. The Government's reliance on paramilitary groups	48 - 52	14
F. Policing and police accountability	53 - 60	15
G. Dialogue with the Tamil diaspora	61 - 62	17
H. Compensation for families victimized by extrajudicial executions	63	17
I. Rome Statute	64	18
J. Recommendations directed at the Liberation Tigers of Tamil Eelam.....	65 - 66	18
K. Conclusion	67	19
III. NIGERIA	68 - 99	19
A. Introduction	68 - 70	19
B. Commissions of inquiry	71 - 72	20
C. Death penalty	73 - 82	20
D. Executions and accountability	83 - 88	23
E. Police reform	89 - 91	25
F. Vigilantes and community policing	92 - 98	25
G. Conclusion	99	27
Annexes		
I. Sri Lanka - Summary of follow-up to each recommendation		28
II. Nigeria - Summary of follow-up to each recommendation		32

I. INTRODUCTION

1. This report tracks the implementation of recommendations made by the Special Rapporteur on extrajudicial, summary or arbitrary executions following visits to Sri Lanka (28 November to 6 December 2005) (E/CN.4/2006/53/Add.5) and Nigeria (27 June to 8 July 2006) (E/CN.4/2006/53/Add.4).
2. The primary role of the Special Rapporteur is to examine and respond effectively to credible allegations of extrajudicial executions. One of the principal working methods undertaken to fulfill this purpose is to conduct country visits to investigate allegations of violations of the right to life. Country visits are designed to ascertain the facts on a first-hand basis, to analyse the forms and causes of extrajudicial executions in a particular country, and to engage in constructive dialogue with the Government. They are followed by a detailed report and recommendations to the Government on how it can reduce the occurrence of extrajudicial executions, and promote accountability when they do occur.
3. Country visits can only achieve their full potential if Governments give serious consideration to the recommendations made. In recognition of this fact, the Commission on Human Rights requested States to carefully examine recommendations and to report to the Special Rapporteur on the actions taken on the recommendations (resolution 2004/37). At the seminar on “Enhancing and Strengthening the Effectiveness of the Special Procedures of the Commission on Human Rights” (2005), “[i]t was commonly agreed [by the participating Governments] that it was crucial that the findings of special procedures following a country visit were not merely consigned to a report, but formed the basis of negotiation and constructive open dialogue with States, with a view to working together on overcoming obstacles. It was stressed by many participants that States should cooperate fully with special procedures and that this encompassed incorporating their findings into national policies. Where States did not implement recommendations, they should provide information on why.”¹
4. In order to assess the extent to which States had implemented the recommendations, in 2006, the Special Rapporteur initiated follow-up reports on visits. The first follow-up report (E/CN.4/2006/53/Add.2) concerned the recommendations made by his predecessor, Ms Asma Jahangir, on her visits to Brazil, Honduras, Jamaica, and Sudan. This follow-up report assesses the progress made on the implementation of the recommendations of the first two missions - to Sri Lanka and Nigeria - conducted by Special Rapporteur Philip Alston.

¹ Report of the Seminar on Enhancing and Strengthening the Effectiveness of the Special Procedures of the Commission on Human Rights (E/CN.4/2006/116), para. 49, available at <http://portal.ohchr.org/pls/portal/docs/PAGE/SP_MH/E-CN4-2006-116.PDF>.

5. In keeping with past practice,² this follow-up report was compiled based on information received from a variety of sources. The Special Rapporteur requested the observations of each Government on the steps taken with a view to implementing the recommendations made, including information regarding recommendations that were not followed. The Special Rapporteur also sought information regarding follow-up measures to each of the recommendations from non-State sources, including non-governmental organizations and civil society groups. (A summary of this information was sent to each Government for its comments prior to this report's submission to the Council.)

6. By way of overview, the recommendations made in the Special Rapporteur's report on Sri Lanka have not been implemented. Recommendations directed to the Government have been all but completely disregarded, and in most areas there has been significant backward movement. The same is true of recommendations directed to the Liberation Tigers of Tamil Eelam (LTTE). The ceasefire monitoring mechanism did make significant efforts to implement the recommendations directed to it, but its mandate has since been terminated. This failure to adopt measures necessary to ensure respect for human rights cannot be attributed simply to the outbreak of large-scale hostilities. Wars may be fought while respecting the provisions of international human rights and humanitarian law. The Government and the LTTE have, however, chosen to conduct this conflict in a manner that treats human rights and human rights defenders as obstacles to effective tactics. It is imperative that the Human Rights Council address this crisis.

7. With respect to the recommendations made to Nigeria in January 2006, very little progress has been made. Nigeria has enacted some reforms in partial fulfillment of the Special Rapporteur's recommendations. A significant pay increase for the least paid police has been announced for 2008. Amnesty and the commutation of some sentences for death row inmates was announced, but not fully implemented. Community policing has been expanded, but is not yet being conducted satisfactorily. For the majority of the recommendations made, Nigeria has failed to make any progress at all. Commission of inquiry reports are still not made public. Twelve states still permit the death penalty for sodomy and adultery. Police continue to kill with impunity. Police corruption is rampant. On some issues, the situation has deteriorated since the Special Rapporteur's visit three years ago. The problem of violence by vigilantes and criminal organizations has significantly worsened. And despite claims for many years by Nigeria that it has had a moratorium on the death penalty, it has become apparent that the death penalty has in fact been carried out in secret.

² E/CN.4/2005/7, para. 30; E/CN.4/2006/53/Add.2, para. 4.

II. SRI LANKA³

A. Introduction

8. The Special Rapporteur visited Sri Lanka from 28 November to 6 December 2005 and published his findings and recommendations on 27 March 2006. After conducting extensive interviews in the districts of Ampara, Batticaloa, and Kilinochchi, as well as Colombo, the Special Rapporteur concluded that extrajudicial executions were widespread and included political killings designed to suppress and deter the exercise of civil and political rights as well as killings of suspected criminals by the police. The Special Rapporteur found that both Government forces and the LTTE were responsible and that the perpetrators enjoyed complete impunity. He found that the investigations carried out by the police were completely inadequate. However, the Special Rapporteur identified the National Police Commission (NPC) as having the potential to effect reforms. The Special Rapporteur also found that other external oversight mechanisms held great potential. The National Human Rights Commission (NHRC) was providing some accountability, and the mechanism established to monitor the ceasefire, the Sri Lanka Monitoring Mission (SLMM), had the capacity if not yet the will to seriously investigate attacks on civilians. The Special Rapporteur's recommendations identified specific measures required to improve the situation in Sri Lanka with respect to these problems. As this follow-up report documents, these recommendations have been all but completely disregarded.

³ Some of the information received by the Special Rapporteur was provided on a confidential basis, but much of it is reflected in various public reports including: *'Afraid even to say the word': Elections in Batticaloa District: Report of a joint civil society visit to Batticaloa, 16-18 February 2008* (26 February 2008); Center for Policy Alternatives, *Policy Brief on Humanitarian Issues* (December 2007); 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); Human Rights Watch, *Recurring Nightmare: State Responsibility for "Disappearances" and Abductions in Sri Lanka* (March 2008); International Crisis Group, *Sri Lanka's Return to War: Limiting the Damage* (20 February 2008); Law and Society Trust, *Under Fire: Persons in Humanitarian Service: A Preliminary Report on Killings and Disappearances of Persons in Humanitarian Service in Sri Lanka, January 2006 - December 2007* (7 March 2008); 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); University Teachers for Human Rights (Jaffna), *Slow Strangulation of Jaffna: Trashing General Larry Wijeratne's Legacy and Enthroning Barbarism* (4 December 2007); University Teachers for Human Rights (Jaffna), *The Second Fascist Front in Sri Lanka: Towards Crushing the Minorities and Disenfranchising the Sinhalese* (21 February 2008).

9. According to information received by the Special Rapporteur, extrajudicial executions have increased dramatically since he visited Sri Lanka at the end of 2005. This increase in extrajudicial executions has been accompanied by efforts to dismantle existing mechanisms to ensure the accountability of security forces for human rights violations. It is tempting to ascribe these trends to the failure of the ceasefire and the outbreak of hostilities. But this is, at best, only a partial explanation.

10. It is possible to fight a conflict while complying with human rights and humanitarian law. International humanitarian law is framed by a balance between the demands of humanity and demands of military necessity. Similarly, while international human rights law applies during armed conflict, it permits specified limitations to accommodate national security concerns and derogations during times of public emergency. It was the considered judgement of the States parties to the treaties constituting these legal regimes that there is no legitimate military rationale for committing prohibited acts of violence.

11. Human rights and humanitarian law are applicable even if the conflict may be characterized as a “war on terror” (as the Government suggests) or as a “national liberation struggle” (as the LTTE suggests). Individuals who commit serious violations of these rules continue to run the risk of prosecution.

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.

13. At another level, the view that human rights violations are necessary has led the Government and the LTTE to see human rights defenders as traitors and enemies and any mechanism for providing accountability as an obstacle to victory.

14. This would appear to explain why the recommendations of the Special Rapporteur to the Government and the LTTE have been almost completely disregarded. It does not, however, explain why there has been no meaningful responses by the Human Rights Council or the General Assembly. Even when the Special Rapporteur stated unambiguously that “[t]oday the alarm is sounding for Sri Lanka” and that “[i]t is on the brink of a crisis of major proportions” and provided recommendations as to how the General Assembly could take steps to avert this crisis, no action was taken. This follow-up report provides an opportunity for action. The international community, including the Human Rights Council, ought to make clear to both parties to the conflict that impunity is impossible in the long-run and that international support and condemnation are tied to respect for human rights.

B. Compliance with human rights and humanitarian law

1. Overview

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.”⁴ 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.⁵

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.

2. 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

⁴ International Crisis Group, *Sri Lanka's Return to War: Limiting the Damage* (20 February 2008), page 9.

⁵ *Cited in ibid.*, page 5.

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.

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.⁶ 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.

3. The Wannu

21. The Wannu comprises the districts of Kilinochchi and Mullaitivu along with some of Mannar and Vavuniya. This area is under LTTE control but is subject to continual Government bombardment and incursions.

22. Presumably there are cases of LTTE killings within this area, whether by its fighters or pursuant to the orders of its judiciary, but the Special Rapporteur is not aware of any reliable statistics on these killings. The NorthEast Secretariat on Human Rights (NESOHR), which is based in the LTTE's administrative centre of Kilinochchi, ignores violations committed by the LTTE.

⁶ 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."

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 2008.⁷ 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.

4. 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 of military confrontations during this campaign. Estimates place the number of such civilian deaths as between 300 and 500.⁸

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.⁹

27. A particularly common scenario appears to be that someone who is believed to have previously supported the LTTE is killed for failing to provide requested assistance to the TMVP. There is also an electoral dimension to this violence as the TMVP attempts to displace other political parties as the representative of Tamils in the East.

5. 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.

⁷ 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).

⁸ See International Crisis Group, *Sri Lanka's Return to War: Limiting the Damage* (20 February 2008), page 9.

⁹ 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).

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.¹⁰

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.

C. 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 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”.¹¹ 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.

¹⁰ 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).

¹¹ SLMM, press release of 29 April 2006.

D. International human rights monitoring

35. In the Special Rapporteur's report on his visit to Sri Lanka, he recommended the establishment of an international human rights monitoring mission.¹² In a subsequent report to the General Assembly, following the expulsion of EU nationals from the SLMM, he emphasized the urgency of this need and elaborated on why international human rights monitoring could play an important role in Sri Lanka.¹³ He observed that the conflict between the Government and LTTE is ultimately a struggle for legitimacy, not territory. In other words, the conflict has no military solution, and mere adjustment of the facts on the ground will not fundamentally change either party's position in future negotiations. Thus, precisely because the struggle for legitimacy, including international legitimacy, is so central to this conflict, the international community is exceptionally well positioned to contribute to its amelioration and, ultimately, to its resolution. Thus the critical need is for international human rights monitoring that would definitively identify those responsible for abuses. Effective monitoring would stand a real chance of inducing genuine rather than simulated respect for human rights. Such respect - worthwhile in its own right - would, in turn, also create an environment in which the country's communities might be able to envision a future in which they did not fear peace as well as war. These considerations remain valid today as an increase in human rights abuse has been accompanied by a decrease in human rights monitoring of any form.

36. The Government has made no progress in implementing this recommendation and, since the Special Rapporteur's visit, the need for an international human rights monitoring mission has increased significantly. On the one hand, the level of human rights abuse has increased immensely. On the other hand, national mechanisms for human rights monitoring have been continuously weakened.

37. The National Human Rights Commission (NHRC) is no longer independent of the executive branch of Government since its members are now directly appointed by the President. (See Part II(F).) Since the appointment of new members, the NHRC has not issued any reports on high profile human rights violations. It has, moreover, refused even to regularly release information on the allegations that it has received. The NHRC no longer meets the requirements laid out in the Principles relating to the status and functioning of national institutions for protection and promotion of human rights ("Paris Principles"),¹⁴ and it has been demoted to "observer status" by the international body charged with monitoring compliance with these principles.¹⁵

¹² See also A/61/311, paras. 18-23, 67.

¹³ A/61/311, para. 21.

¹⁴ GA Res. 48/134 (20 December 1993).

¹⁵ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, "Report and Recommendations of the Sub-Committee on Accreditation" (22 to 26 October 2007).

38. The Government has cited the establishment of a commission of inquiry into 15 high-profile incidents (a 16th was subsequently added) involving extrajudicial executions as reflecting its seriousness about human rights accountability. Indeed, when the President announced his intention to invite an international commission to inquire into recent killings, disappearances and abductions in Sri Lanka, the Special Rapporteur noted that the establishment of a “truly independent international inquiry” was “a potentially very important initiative”.¹⁶

39. The commission has, however, failed to provide accountability for extrajudicial executions. In the end, instead of inviting an international commission of inquiry, the Government established a national commission of inquiry complemented by an international body charged with, *inter alia*, “Observ[ing] . . . the investigations and inquiries conducted by the Commission of Inquiry, with the view to satisfying that such inquiries are conducted in a transparent manner and in accordance with basic international norms and standards pertaining investigations and inquiries.” The individuals appointed to the International Independent Group of Eminent Persons (IIGEP) were highly respected lawyers with deep commitment to human rights. As an indication of the caliber of individuals involved, the chairman was P.N. Bhagwati, who was formerly Chief Justice of the Supreme Court of India and who currently serves on the UN Human Rights Committee.

40. The conclusion of the IIGEP that the commission of inquiry has been an ineffective mechanism for providing accountability must be given great weight:

In summary, the IIGEP concludes that the proceedings of inquiry and investigation have fallen far short of the transparency and compliance with basic international norms and standards pertaining to investigations and inquiries. The IIGEP has time and again pointed out the major flaws of the process: first and foremost, the conflict of interest at all levels, in particular with regard to the role of the Attorney General’s Department.

Additional flaws include the restrictions on the operation of the Commission through lack of proper funding and independent support staff; poor organization of the hearings and lines of questioning; refusal of the State authorities at the highest level to fully cooperate with the investigations and inquiries; and the absence of an effective and comprehensive system of witness protection.

The Eminent Persons are fully aware of the overall context in which the Commission is operating, which makes its activities, however diligent, incapable of eliciting the kind of facts that would be necessary to ensure that justice is seen to be done. Underlying it all was the impunity that had led to the prior fruitless investigations that, in turn, led to the setting up of the Commission. There is a climate of threat, direct and indirect, to the lives of anyone who might identify persons responsible for human rights violations, including those who are likely to have been committed by the security forces. Civilian eye witnesses have not come forward to the Commission. Security forces’ witnesses preferred to make

¹⁶ Press Statement, 5 September 2006.

themselves look incompetent rather than just telling what they know. Accordingly, it is evident that the Commission is unlikely to be in a position to pursue its mandate effectively.

These inherent and fundamental impediments inevitably lead to the conclusion that there has been and continues to be a lack of political and institutional will to investigate and inquire into the cases before the Commission.¹⁷

41. The IIGEP explained that it was, thus, “terminating its role in the process not only because of the shortcomings in the Commission’s work but primarily because the IIGEP identifies an institutional lack of support for the work of the Commission”.¹⁸

42. There are number of other actors that potentially play ad hoc but vital roles in ensuring some measure of human rights monitoring in conflict-affected areas. These include humanitarian organizations, individual and organized human rights defenders, and journalists. Unfortunately, the Government has placed severe restrictions on access to the areas of conflict, especially for those involved in protection. Moreover, such individuals have been targeted with impunity, greatly impeding the role they can play in providing protection.

43. According to a study by the Law and Society Trust, from January 2006 through December 2007, 44 humanitarian workers were killed, and 23 were disappeared.¹⁹ The worst affected organizations were Action Contre la Faim (17 dead), the Tamils Rehabilitation Organization (9 dead), the Danish Demining Group (6 dead), Halo Trust (6 dead), and the Sri Lanka Red Cross Society (4 dead), but a total of more than 18 organizations have been affected. While most of these individuals were involved in the provision of humanitarian aid rather than human rights monitoring or protection activities, their deaths demonstrate the enormous challenge facing any private initiative to reduce the brutality of the conflict.

44. Human rights defenders run enormous risks in tracking violations and advocating for justice. The attacks on the Civil Monitoring Commission (CMC), which tracks disappearances and extrajudicial executions, provides one prominent example. In November 2006,

¹⁷ IIGEP, Public Statement, 6 March 2008.

¹⁸ IIGEP, Public Statement, 6 March 2008.

¹⁹ Law and Society Trust, *Under Fire: Persons in Humanitarian Service: A Preliminary Report on Killings and Disappearances of Persons in Humanitarian Service in Sri Lanka, January 2006 - December 2007* (7 March 2008). The list of humanitarian workers killed was compiled “based on information available to us via staff of humanitarian agencies, other civil society groups and media, as well as information gathered through frequent visits to the North and East”. While all of those listed had been involved in humanitarian service, the report notes that, “It is often not clear whether the incidents are the result of the person’s involvement with a particular organization or project, or the nature of their work, or whether it is due to reasons that have nothing to do with these involvements.”

Nadaraja Raviraj, co-founder of the Civil Monitoring Commission was killed in broad daylight in Colombo. Mano Ganesan, also a co-founder of that organization, has expressed serious and well-founded fears for his own safety.

45. The significant number of journalists killed - depending on the criteria used, between 6 and 10 have been killed since 2006²⁰ - has also prevented and deterred the press from closely scrutinizing conflict-related violence.

46. The Government has permitted the resident UN Senior Human Rights Advisor to expand the UN mission's capacity for providing technical assistance to Government institutions. However, there is still no OHCHR office with a monitoring and reporting mandate.

47. While the need to establish an international human rights monitoring mission has grown, no such mission can be established without the consent of the Government and the cooperation of all parties. The Government has steadfastly and actively opposed any such initiative.

E. The Government's reliance on paramilitary groups

48. The Government has relied extensively on paramilitary groups to maintain control in the East and, to a lesser extent, in Jaffna. There is evidence that these groups conduct operations with the Government forces and are responsible for extrajudicial executions.

49. In March 2004 the LTTE commander of the Eastern Province, Vinayamurthy Muralitharan, who is better known by his alias, "Karuna", split with the LTTE leadership in the Northern Province, initially taking with him perhaps one fourth of the LTTE's cadres. At the time of the Special Rapporteur's visit, the relationship between the Government and the Karuna group remained unclear. The Special Rapporteur observed that many of the people he spoke with in the Army and the Police Special Task Force (STF) noted that the split had been beneficial for the Government. However, the Special Rapporteur found "no clear evidence of official collusion" but only "strong circumstantial evidence of (at least) informal cooperation between Government forces and members of the Karuna group".²¹ Noting that facilitating the Karuna group's actions would show a dangerous indifference to the many civilians in the East who have been killed as a consequence of the low-intensity conflict, he recommended that the Government should publicly reiterate its renunciation of any form of collaboration with the Karuna group, and should demonstrably take action to discipline military officers who breach this rule.

50. The situation has changed dramatically since the Special Rapporteur's visit took place. In March 2007, the Government claimed to have succeeded in retaking all LTTE-controlled areas in the East. Shortly thereafter, the Karuna group - which has rechristened itself as a political

²⁰ Committee to Protect Journalists (www.cpj.org); Reporters sans Frontières (www.rsf.org). The Government provided information on some of these cases in a letter received 21 November 2007 and reproduced in the addendum to the annual report concerning communications.

²¹ E/CN.4/2006/53/Add.5, para. 16.

party, the TMVP - broke into factions headed by Karuna and Pillaiyan (the commonly used alias of Sivanesanathurai Chanthirakanthan). While Karuna has since been detained in the United Kingdom, accounts indicate that there continue to be multiple factions with distinct chains of military command. There are also strong indications that these factions no longer constitute truly independent armed groups but instead receive direction and assistance from the security forces.

51. In Jaffna, another paramilitary group, the EPDP, also works closely with Government security forces and is dependent on their protection and support. The EPDP dates from an earlier era than the TMVP factions. When the conflict began, there were other Tamil militant groups fighting alongside the LTTE. However, during the 1980s the LTTE repeatedly attacked these groups, killing many of their members. Some of the groups subsequently cooperated with the Indian Peace Keeping Force (1987-1990) or the Government in fighting the LTTE, and many of them also entered into electoral politics. The CFA required the Government to disarm these groups. The Special Rapporteur noted that compliance had not been perfect - for example, a government official had confirmed that armed EPDP cadres continued to operate in the islands off the Jaffna peninsula - but he found that there was little evidence that most members of these groups do other than non-military, political work. As a general observation, this remains true, but there is substantial evidence that today the EPDP is committing extrajudicial executions in support of the Government security forces in Jaffna.

52. The Government has completely failed to comply with the recommendation made by the Special Rapporteur that it renounce all collaboration with the Karuna group. Instead, the Government has intensified its collaboration with a range of paramilitary groups. The Government should recognize that, regardless of the formal relationship between its security forces and these paramilitary groups, it cannot avoid international legal responsibility for their actions.²² Military commanders and other Government officials should also recognize that acting through a paramilitary group will not suffice to prevent them from having individual criminal responsibility for extrajudicial executions and other abuses.

F. Policing and police accountability

53. During his visit, the Special Rapporteur found that the police failed to respect or ensure the right to life. He noted that the underlying cause was that the police had become a counterinsurgency force. Police officers were accustomed to conducting themselves according to the broad powers provided them under emergency regulations rather than to those provided by the code of criminal procedure. Indeed, most police officers had never received significant training in criminal detection and investigation. The police force also lacked the language skills to effectively police in the Northeast, given that the force was only 1.2 per cent Tamil and 1.5 per cent Muslim with few Sinhala officers speaking Tamil proficiently.

54. The Special Rapporteur observed that these deficiencies in the police force had resulted in failures to respect and ensure the right to life. There were a number of credible reports of police summarily executing suspects, and the widespread use of police torture had resulted in additional

²² E/CN.4/2005/7, para. 69.

deaths. The Government had also failed to effectively investigate most political killings. This was due partly to the police force's general lack of investigative ability and partly to its reluctance to pursue cases that might implicate the ceasefire.

55. The Special Rapporteur found that the Government's response to human rights violations by the police was unsatisfactory. The system for conducting internal police inquiries was structurally flawed and, indeed, inquiries had not been held into the cases the Special Rapporteur presented to the Government. The one relatively bright spot was the National Police Commission (NPC), which had been established in 2001 by a constitutional amendment with a mandate to conduct independent investigations and effective disciplinary procedures for police misconduct. While many actors had favorable impressions of its early efforts to improve accountability, the Special Rapporteur noted that the NPC's long-term effectiveness was threatened by the lack of a strong constituency supporting its independence.

56. More than two years later, the Government has completely failed to implement the Special Rapporteur's recommendations for improving police respect for human rights, police effectiveness in preventing killings, and police accountability. Indeed, there has been significant backward movement.

57. Rather than improving the investigative and crime prevention capacity of the police, the Government has even more completely subordinated the police to the counterinsurgency effort. Since the Special Rapporteur's visit took place, the Government has required the Inspector General of Police to report to the Minister of Defence.

58. Emergency regulations that erode the distinction between police work and military operations continue in force. The military is not required to have a police officer accompany them when they make arrests. The regulations allow for arrests without warrants or evidence of terrorist involvement and detentions without charge for up to 90 days. They also include an immunity clause for officials who commit wrongful acts in the implementation of the regulations.²³

59. Since the Special Rapporteur visited, the NPC has failed to improve police accountability in part because it has lost its independence. The constitution attempted to ensure the NPC's independence from the executive branch by requiring that its members be appointed by the Constitutional Council (CC). The CC, in turn, was to comprise persons appointed through a process that involved the President, the Prime Minister, and the parliamentary opposition. At the time of the Special Rapporteur's visit, there was an impasse that had prevented one member of the CC from being appointed. In response, the President subsequently directly appointed

²³ *Regulations made by the President under Section 5 of the Public Security Ordinance (Chapter 40)* (13 August 2005), art. 73: "No action or other legal proceeding, whether civil or criminal, shall be instituted in any court of law in respect of any matter or thing done in good faith, under any provisions of any emergency regulation or of any order or direction made or given thereunder, except by, or with the written consent of, the Attorney-General."

individuals to the NPC. The Special Rapporteur noted at the time that there is no worse means by which to ensure an oversight body's independence from the executive than for the executive to directly appoint its members.²⁴ The subversion of the NPC's independence has, however, grown increasingly indefensible. In December 2007 the impasse was broken when the minority parties agreed on a common nominee for the open position on the CC. The President has, however, refused to formally appoint the nominee, instead proposing that the constitution be amended to change the character of the CC. The President has made a clear decision to ensure that Sri Lanka has no independent police oversight body. The President's actions have also undermined the independence of the NHRC and of the Judicial Services Commission, seriously compromising the very idea that the executive branch should be subject to external oversight.

60. There is only one police-related recommendation in relation to which the Special Rapporteur is aware of any positive action. The Government has informed the Special Rapporteur that the government "engaged in a proactive programme of recruitment" and has now trained 200 new Tamil speaking police officers.

G. Dialogue with the Tamil diaspora

61. In his report, the Special Rapporteur noted that 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. He observed that 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, the Sri Lankan Tamil diaspora. The Special Rapporteur stated that the diaspora must accept the responsibility that comes with influence and insist on being a positive force for human rights. With this in mind, he recommended that 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.

62. Since that time, some of the relevant Governments have made efforts to improve dialogue with members of the Tamil diaspora. Particularly notable has been the inclusion of members of the Tamil diaspora holding a range of political views in hearings held by the Parliament of the United Kingdom and the Congress of the United States of America.

H. Compensation for families victimized by extrajudicial executions

63. The Special Rapporteur noted that arrangements for providing compensation to families of non-combatants subjected to extrajudicial execution were "uneven at best, and non-existent at worst". He recommended that the Government provide an analysis of who gets compensation and under what circumstances and to put in place a revised set of arrangements intended to ensure fair and equitable access to compensation. The Special Rapporteur has not received any information indicating that this has occurred.

²⁴ A/61/311, para. 27.

I. Rome Statute

64. The Special Rapporteur recommended that the Government should ratify the Rome Statute of the International Criminal Court without reservation or declaration and that members of the Sri Lanka Army and LTTE fighters should be made aware of the rules of individual criminal responsibility and be trained in the provisions of international criminal law. The Government has not ratified the Rome Statute.

J. 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.²⁵ 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.”²⁶ 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 moral responsibility to denounce attacks on civilians. (When the Special Rapporteur spoke with Mr. Thamichelvan, 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”.

²⁵ A/61/311, note 18.

²⁶ The Liberation Tigers of Tamil Eelam Peace Secretariat, press release of 15 June 2006.

K. Conclusion

67. The Government has almost entirely disregarded the recommendations made by the Special Rapporteur in his report on his mission to Sri Lanka. In most areas, rather than adopting reforms, the Government has taken steps that reverse past reforms. The LTTE has also comprehensively disregarded the recommendations made by the Special Rapporteur.

III. NIGERIA²⁷

A. Introduction

68. The Special Rapporteur visited Nigeria from 27 June to 8 July 2005, and published his findings and recommendations on 7 January 2006. After in situ visits and extensive interviews in four States and the Federal Territory, the Special Rapporteur reported in 2006 that extrajudicial executions by police were widespread, and included the killing of suspected criminals, excessive and arbitrary use of force, and deaths in custody. The police enjoyed impunity for these killings. The Nigerian criminal justice system was found to be inadequate at nearly every level. These problems facilitated “vigilante justice” by criminal organizations. The Special Rapporteur also found a number of serious problems in relation to the application of the death penalty in Nigeria, including frequent procedural irregularities and the denial of due process rights, extremely poor conditions on death row, and the imposition of the death penalty by stoning for private sexual acts.

69. The Special Rapporteur’s recommendations identified specific measures required to improve the situation in Nigeria with respect to these problems. Shortly after the 2005 visit, President Obasanjo acknowledged that extrajudicial executions by the police were widespread, and he committed to end the practice and punish those responsible. However, over two and half years since the publication of the Special Rapporteur’s report on Nigeria, very little has been achieved. The problem of violence by vigilantes and criminal organizations has significantly worsened in the wake of political support for such groups during the April 2007

²⁷ Some of the information received by the Special Rapporteur was provided in private correspondence; however, he also consulted a number of public reports. These include: Amnesty International, *Nigeria: Are Human Rights on the Political Agenda?* (May 29, 2007); Amnesty International, *Nigeria: Prisoners’ Rights Systematically Flouted* (26 February 2008); CLEEN Foundation, *Opportunity for Justice: A Report on the Justice Olasumbo Goodluck Judicial Commission of Inquiry on the Apo Six Killings by the Police in Abuja* (2006); Human Rights Watch, *Criminal Politics: Violence, “Godfathers” and Corruption in Nigeria* (October 2007); Human Rights Watch, *Politics as War: The Human Rights Impact and Causes of Post-Election Violence in Rivers State, Nigeria* (27 March 2008); International Crisis Group, *Nigeria: Failed Elections, Failing State?* (May 30, 2007); Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Nigeria (4-10 March 2007), A/HRC/7/3/Add.4; *The State of Human Rights in Nigeria 2005-2006*, Being a Report on Human Rights Violations Monitored in Nigeria by a Network of Human Rights Violations Monitors in collaboration with the National Human Rights Commission, UNDP and NORAD (2007).

election. At least 300 people were killed in election-related violence. Negative developments are also seen with respect to transparency and the application of the death penalty. Some encouraging progress has been made on police reform and relief for current death row prisoners, but for the majority of the recommendations, no improvements at all can be seen.

70. The problems identified by the Special Rapporteur in his 2006 report persist. This report evaluates Nigeria's progress in implementing the Special Rapporteur's recommendations, and identifies the measures which still need to be undertaken to decrease extrajudicial executions and to promote accountability.

B. Commissions of inquiry

71. The Special Rapporteur reported in 2006 that while Nigeria often seemed to attempt to address impunity for extrajudicial executions by creating special commissions of inquiry subsequent to allegations of killings by police, commissions were in fact often simply a whitewash. The Government rarely made commission reports public, responded to or implemented commission recommendations, or used the evidence gathered to conduct prosecutions. When commission reports are kept confidential, it is all too easy for the Government to ignore the inquiry's conclusions and recommendations. Thus, the Special Rapporteur recommended that Nigeria legislate to require that all commission of inquiry reports relevant to extrajudicial executions be made public within 6 months of their completion. He also recommended that a specific inquiry (the "Apo 6" commission on the killing of 6 civilians by police), which submitted its report to the Federal Government in August 2005, but which had not been officially made public by the time of the publication of the Special Rapporteur's report in January 2006, be made public immediately.

72. There has been no progress to date on either of these recommendations. Nigeria has not passed any legislation requiring the publication of inquiry reports. The Apo 6 report has been leaked, but the Government has failed to release it officially to the public. The Apo 6 commission seemed promising to the Special Rapporteur at the time of his 2006 report. The commission concluded that eight police officers killed six innocent individuals in their custody, and falsely labeled the victims as armed robbers. It is positive that the inquiry has since led to the arraignment of the eight officers. But criminal trials are yet to be conducted, and two of the officers were reportedly released on bail in August 2006 for health issues could have been addressed through treatment in prison. The long delays in starting the criminal trials suggests that impunity may result. Moreover, in most similar cases, there is even less progress than there has been in that of the Apo 6. Numerous allegations of extrajudicial executions by police in Nigeria have been made before and after the commission of inquiry, without any investigation or prosecution.

C. Death penalty

In his 2006 report, the Special Rapporteur highlighted three problems in relation to the death penalty in Nigeria: frequent procedural irregularities; extremely poor death row conditions; and the imposition of the death penalty for adultery and sodomy. This follow-up report also identifies a fourth problem, not apparent at the time of the Special Rapporteur's visit, concerning transparency by the Government with respect to its application of the death penalty.

1. Procedural irregularities in capital trials and poor death row conditions

73. The Special Rapporteur found during his 2005 visit that torture was routinely used by the police to obtain confessions, and that these forced confessions played an important role in securing convictions. Many defendants on trial for capital offences did not have legal representation. In fact, many of the death row inmates who the Special Rapporteur met were tried when during Nigeria's military era when some constitutional rights were suspended. Some cases were heard by military tribunals, and due process was not observed. He found that the average period spent on death row was 20 years, and that prison conditions were horrendous. Because of the due process concerns, and the cruel and inhuman treatment caused by leaving inmates on death row for so long, the Special Rapporteur recommended that Nigeria commute to life the sentences of those prisoners currently on death row.

74. There has been some progress on the implementation of this recommendation. On 1 October 2006, Nigeria announced that 107 death row inmates would have their sentences commuted to life imprisonment. In February 2007, the Presidential Commission on Reform of the Administration of Justice recommended that inmates who have served between ten and fifteen years on death row should have their sentences commuted to life. The Commission further recommended that inmates who have spent over fifteen years on death be released from prison. Nigeria's Minister of Information in May 2007 said that Nigeria had granted amnesty to all prisoners who have been on death row for ten or more years.

75. These announcements are positive developments. However, I have received credible reports from human rights organizations which visited prisons in Nigeria after the announcements, that many of those to whom amnesty or commutation was promised are still on death row. Nigeria should clarify how many prisoners have in fact had their sentences commuted or who have been released from prison. The Government should release the names of the prisoners who have had their sentences commuted or who were granted amnesty so that the Government announcements can be verified.

2. Illegal imposition of the death penalty

Twelve northern Nigerian States permit - in violation of the Nigerian Constitution and international law - the imposition of the death penalty by stoning for sodomy and adultery. The Federal Government acknowledged that the laws of the northern States were unconstitutional. Accordingly, the Special Rapporteur recommended that the Federal Government of Nigeria reiterate that the death penalty for these offences is unconstitutional, and undertake a constitutional challenge to invalidate the State laws.

76. In response to the Special Rapporteur's recommendation, on 19 September 2006, Nigeria stated to the Human Rights Council that it disagreed with the Special Rapporteur's position on the "death penalty by stoning under Shari'a law for unnatural sexual acts".²⁸ Nigeria argued that

²⁸ Nigeria's response to the Report on extrajudicial, summary, or arbitrary executions, submitted by Philip Alston, delivered by H.E. Mr Joseph U Ayalogu, Ambassador/Permanent Representative of Nigeria. Geneva, 19 September 2006.

the issue should not have featured in the Special Rapporteur's report because there was a "long-standing moratorium on executions" in Nigeria, that no executions have taken place after the passing of death sentences by Shari'a courts, and that the practice of stoning is not pervasive. These arguments, seeking to silence criticism of the death penalty for private sexual acts by contending that it is not applied in practice, are unconvincing. First, as elaborated below in Part III(C)(3), Nigeria has not in fact had a general moratorium on executions. Second, as the Special Rapporteur explained in his 2006 report, the fact that the death penalty may not actually be carried out does not justify its existence as a penalty available on the books. As he stated, the "mere possibility" that it can be applied threatens the accused for years, and is a form of cruel, inhuman or degrading treatment or punishment. Its status as law justifies persecution by vigilante groups, and invites abuse. Third, the argument that stoning is not pervasive does not address concerns about the legality of its application in individual cases.

77. Nigeria also argued that "the notion that executions for offences such as homosexuality and lesbianism are excessive is judgemental rather than objective. What may be seen by some as disproportional penalty in such serious offences and odious conduct such may be seen by others as appropriate and just punishment".²⁹ This argument is also unconvincing. The provision by twelve Nigerian States of the death penalty for sodomy contradicts not just settled international law,³⁰ but the federal law of Nigeria itself. The Special Rapporteur's recommendation was simply that Nigeria take action to ensure the conformity of the law of its States with the Nigerian federal Constitution.

78. No action has been taken on that front. In fact, Nigeria continues to hand down death sentences for sodomy and adultery. In October 2006, the Special Rapporteur wrote an allegation letter to Nigeria concerning two individuals who were sentenced to death by stoning for sodomy in June 2006. Nigeria did not respond.

3. The death penalty and transparency

79. It was understood by the international community at the time of the Special Rapporteur's visit to Nigeria that the country had, since 2002, an unofficial moratorium on the application of the death penalty. The existence of this moratorium was restated by Nigeria in its comments to the Human Rights Council in September 2006 to justify its argument that the issue of the death penalty for private sexual acts should not have been addressed in the report of the

²⁹ Nigeria's response to the Report on extrajudicial, summary, or arbitrary executions, submitted by Philip Alston, delivered by H.E. Mr Joseph U Ayalogu, Ambassador/Permanent Representative of Nigeria. Geneva, 19 September 2006.

³⁰ Article 6 (2) of the ICCPR, which Nigeria acceded to without reservation in 1993, provides that the death penalty may only be imposed "for the most serious crimes". It is clear that "most serious crimes" only includes crimes where there was an intention to kill which resulted in the loss of life: A/HRC/4/20, para. 53.

Special Rapporteur.³¹ It was reiterated on 15 November 2007, when Nigeria stated to the UN General Assembly Third Committee during debates on a world-wide moratorium for the death penalty, that it “is thus on record that we have not carried out any capital punishment in recent years in Nigeria”.

80. However, there have been reliable reports by international and Nigerian rights organizations that at least seven executions by hanging took place in Nigeria in 2006. On 30 May 2006, Kenneth Ekhone and Auwalu Musa were executed in Kaduna Central Prison, following trials in which they did not have lawyers, or an opportunity to appeal the trial judgments. On 15 June 2006, Salisu Babuga was executed in Jos prison, and at least four men were executed in Enugu prison in the same year. It is feared that other secret executions may have taken place since 2002.

81. As the Special Rapporteur has previously made clear, “countries 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”.³² Secrecy on the use of the death penalty is not compatible with international human rights standards. Without transparency, it is very likely that fundamental due process safeguards for death row inmates will not be observed. Furthermore, misleading the international community and the Nigerian people about the application of the death penalty prevents informed debate within Nigeria about whether or not a true moratorium on the death penalty should be imposed.

82. Nigeria must publicly release the number of executions carried out since the purported moratorium began in 2002. The families of those executed should be officially informed. And the names and details of those executed, and the prisons in which they were executed, should be publicly released.

D. Executions and accountability

1. Statistics on extrajudicial executions by police

83. The Special Rapporteur documented in his 2006 report the high rates of extrajudicial killings by Nigerian police, and their use of arbitrary and unnecessary force. Precise information on the numbers of those killed by police was impossible to obtain because Nigeria does not keep systematic statistics recording extrajudicial executions by police. The Special Rapporteur thus recommended that Nigeria publish an annual register of police killings, and that strong disciplinary measures be applied to those who fail to report fully, promptly and accurately all deaths at the hands of police.

³¹ Nigeria’s response to the Report on extrajudicial, summary, or arbitrary executions, submitted by Philip Alston, delivered by H.E. Mr Joseph U Ayalogu, Ambassador/Permanent Representative of Nigeria. Geneva, 19 September 2006.

³² E/CN.4/2005/7, [59]; E/CN.4/2006/53, para. 28.

84. No progress has been made on this recommendation. When numbers of killings are released, they fail to adequately record relevant information. For instance, in November 2007, the National Chief of Police stated that 785 suspected armed robbers died in encounters with police in the three months prior to the announcement. It is not known how many other people died in custody, or how many were killed in legitimate self-defence or after the proportionate and necessary use of force, or how many were simply murdered by the police. As it stands, the released statistics on police killings simply seek to justify any such killings as legitimate acts against “armed robbers”.

2. Establishment of effective forensic laboratories

85. There is only one police laboratory and only one ballisticsian in all of Nigeria, and no fingerprint database. Because forensic investigations are grossly inadequate, police must rely almost entirely on confessions to build cases. This reality has too often led police to force confessions by torturing prisoners.³³ The Special Rapporteur recommended that the Nigerian police increase its forensic capabilities by establishing properly equipped and staffed forensic laboratories in key centres throughout Nigeria. The Apo 6 commission of inquiry made similar recommendations, calling for enhanced police “intelligence gathering mechanisms”, including “a police science forensic laboratory” and the “immediate training of more ballisticsians”. But there have not been any improvements in this regard. As the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment observed during his March 2007 visit to Nigeria that, “[f]orensic medical examinations which could sustain complaints are non-existent even in cases of death in police custody.”

3. Armed robbery as a capital offence and the rules on use of force by police

86. The Special Rapporteur found that the classification of armed robbery as a capital offense, together with rules authorising the police to use lethal force against a suspected armed robber seeking to escape custody, encouraged the police to label individuals as armed robbers as a pretext to justify extrajudicial executions. The Special Rapporteur recommended that Nigeria eliminate armed robbery as a capital offense and amend Police Order 237 to prohibit a shoot-to-kill response against alleged armed robbers and persons escaping police custody. These recommendations have not been implemented, and the problem continues.

87. The August 2006 killings of twelve alleged armed robbers in Abia state is emblematic. In September 2006, the Special Rapporteur wrote a letter of allegation to Nigeria with respect to the police killings of twelve alleged armed robbers. The Special Rapporteur had received credible allegations that the twelve were shown alive to journalists and others on 10 August, and that the next day their bodies were dumped outside a morgue at a government hospital, reportedly by the police. Nigeria responded to the Special Rapporteur in November 2006 by explaining that three armed robbers were killed in a shoot-out with police and the other nine subsequently died from

³³ See also: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Nigeria (4-10 March 2007), A/HRC/7/3/Add.4.

injuries they sustained during the shoot-out. This explanation is unsatisfactory given the eyewitness accounts that twelve alleged armed robbers were paraded in police custody on August 10, strongly suggesting that they were thereafter extrajudicially executed.

88. At least 785 suspected armed robbers were killed by police in just a three month period in 2007. This level of lethal force is simply unacceptable. As the Special Rapporteur recommended in 2006, the rules regarding the use of firearms by police officers need to be amended immediately to bring them into conformity with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

E. Police reform

89. The Special Rapporteur reported in 2006 that police kill with near complete impunity. Corruption was also found to be widespread, with police regularly using road checkpoints to extort money from motorists. There was no functioning police accountability system to investigate, prosecute and punish police for these offences. The Special Rapporteur recommended that an independent review be conducted with a view to establishing an effective system of accountability. He also recommended that police pay be greatly improved to reduce the temptation for police to engage in corruption, and that police checkpoints be abolished immediately.

90. Promisingly, subsequent to the Special Rapporteur's report, Nigeria established several committees to address this issue. They made comprehensive findings and recommendations concerning the urgent need for police reform. In addition, in November 2007, Nigeria announced a partnership with the British government to reorganize the Nigerian Police Force, with an emphasis on preventing misuse and abuse of authority by police officers. Nigeria also announced, in December 2007, that the salary rates for the least paid police would be increased from N10,000 to N26,000 in 2008.

91. Unfortunately, the checkpoints that symbolize rampant corruption in Nigeria are still widespread, despite official proclamations to eliminate them. These checkpoints are largely used for extortion purposes alone, without any attempt to search vehicles or prevent crime. Improved salaries for police is one part of the systemic reform required to address police corruption and a culture of impunity. These developments are welcome, but Nigeria needs to ensure that the recommendations issued by the committees on police reform are carefully considered, that checkpoints are in fact abolished, and that structural reforms to the system of police accountability are introduced.

F. Vigilantes and community policing

92. The Special Rapporteur recommended that Nigeria address the problem of violence caused by vigilante groups. These groups are largely formed to fill the security vacuum caused by ineffectual policing, and in some instances are actually supported by members of the Government. Some of these vigilante groups have evolved into highly armed criminal gangs that are sponsored by politicians. Members in these gangs give an oath of allegiance, and they function as organized criminal enterprises, despite portraying themselves as vigilante groups

performing a necessary public service in the face of inadequate State policing. The “Niger Delta Vigilante” is one such notorious criminal gang. Unlike the vigilante groups who are, in theory, accountable to the community, these thugs-for-hire are solely responsible to their patrons. Once the gangs break with their political sponsor, they have no unaccountability whatsoever.

93. This problem became manifest with disastrous consequences during the April 2007 elections. The estimated 300 deaths associated with the election period have been attributed to gangs hired by politicians to ensure their election. These gangs were reportedly paid, armed and promised favors by political sponsors in exchange for intimidating voters and opposition supporters. The gangs have continued their violence after the election because they became empowered by their sponsorship and, in some circumstances, believe their promised political favors have not been forthcoming. The police were largely unwilling to investigate killings by the criminal organizations, and no one has been held to account for the extrajudicial executions associated with Nigeria’s 2007 elections.

94. The oil-rich Niger Delta is a center of political violence in Nigeria. Although the political sponsorship of gangs occurs throughout Nigeria, it is especially well-organized in the Niger Delta, where gangs are reported to undertake criminal activities beyond political violence, including the illegal sale of guns and petroleum. In the Rivers State capital of Port Harcourt, dozens were killed in August 2007 as a result of clashes between rival gangs. These gangs were empowered and armed by politicians in connection with the April 2007 election and are fighting each other for supremacy.

95. The gang violence in Port Harcourt prompted Nigeria to undertake a military intervention in August 2007. As many as 40 people died in a single day as the Nigerian military reportedly shot at gang members from helicopters. Measures have not been taken to address the root cause of the gang violence; the politicians who sponsored these gangs have not been held accountable. Gangs continue to wreak havoc in the Niger Delta by killing each other, bystanders, and those who confront them. In September 2007, two local chiefs in the Niger Delta community of Ogbogoro were reportedly executed by the gangs whose authority they challenged.

96. The Special Rapporteur specifically recommended that Nigeria greatly expand the pilot Community Policing Programme. This initiative, when implemented properly, can play an important role in reducing police corruption, improving police behaviour and public-police relations, and in filling the vacuum that enables the growth of vigilante groups. The Special Rapporteur also recommended that the Government compile and publish an inventory of all vigilante groups, and that illegal vigilante activities be investigated and prosecuted.

97. At the time of the Special Rapporteur’s visit, only the Enugu State had a community policing programme. Nigeria has since expanded the programme to six Nigerian States, and each has a vigilante support officer who is working with, and maintaining an inventory of, vigilante groups in the State. These are welcome developments. However, these programs have reportedly not realized their potential of achieving on-the-ground cooperation between the police and the community. The police continue to consider their role as that of intimidating, rather than serving, their communities.

98. Little overall progress has thus been made on addressing vigilante groups. And as demonstrated by the April 2007 election violence, the unchecked vigilante problem has led to extreme violence caused by gangs sponsored by politicians. Nigeria appears to follow a disturbing pattern of escalating election-related violence. The number of extrajudicial executions increased from the election in 1999 to the 2003 election, with the April 2007 election being the most violent to date. There remains a strong need for Nigeria to address the root causes of vigilante and gang violence in Nigeria, with the objective of breaking the cycle of violence caused by politicians' support of powerful non-state actors before the next election.

G. Conclusion

99. The Government has enacted some reforms in partial fulfillment of the Special Rapporteur's recommendations in his January 2006 report on his mission to Nigeria. But for the majority of the recommendations made, Nigeria has failed to make sufficient progress, or any progress at all. And on some issues, the situation appears to be worse than it was at the time of the Special Rapporteur's visit in June and July 2005. The high level of extrajudicial executions reported by the Special Rapporteur in 2006 continues. The causes today are the same as they were when the Special Rapporteur visited in 2005. However, the positive initiatives implemented by the Government over the last two and a half years are encouraging, and Nigeria should continue to promote their effective follow-through. With respect to the many measures recommended by the Special Rapporteur upon which there has been no progress, the Government of Nigeria should take action to ensure their implementation.

Annex I

Sri Lanka - Summary of follow-up to each recommendation

Strengthening the ceasefire and respect for human rights and humanitarian law

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:

(a) The Government and LTTE should complement the CFA with a wide-ranging human rights agreement, as discussed during their earlier rounds of talks in 2003. An effective international human rights monitoring mechanism should be established with powers to document and investigate abuses, to report to the relevant authorities, and to work closely with other agencies involved in human rights at all levels.

This recommendation has not been implemented.

(b) The Government needs to take the various steps outlined below immediately in order to comply with its existing human rights obligations.

This recommendation has not been implemented.

(c) The LTTE, in compliance with its professed commitment to human rights, and in response to the international community's requirement that all non-State actors respect the Universal Declaration of Human Rights, must take a range of concrete steps to demonstrate that it is serious about human rights. These are outlined below.

This recommendation has not been implemented.

(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.

In any revision of the CFA, the monitoring role of the SLMM should be de-linked from the role of facilitating the peace process. As a more immediate measure, steps should be taken to strengthen the SLMM's work, including:

This recommendation was implemented in part.

(a) *More sustained follow-up to killings with a view to identifying the party and persons responsible.*

This recommendation was implemented.

(b) *The prompt and accessible publication, within necessary limits, of complaints received and of the results of investigations.*

This recommendation was implemented.

(c) *The establishment of a protocol to better protect witness identities.*

This recommendation was not implemented.

(d) *The designation of a senior human rights officer in each SLMM field office and a senior focal point in headquarters.*

This recommendation was not implemented.

The Government should invite the Office of the High Commissioner for Human Rights to expand its field presence in Sri Lanka to enable it to provide technical support and assistance to the Human Rights Commission, SLMM and other United Nations agencies, pending the creation of a broader monitoring mechanism.

This recommendation has been implemented in part.

The Government

The Government should publicly reiterate its renunciation of any form of collaboration with the Karuna group, and should demonstrably take action to discipline military officers who breach this rule.

This recommendation has not been implemented.

The Government is requested to provide an analysis of who gets compensation and under what circumstances and to put in place a revised set of arrangements intended to ensure fair and equitable access to compensation for the families of non-combatants subjected to extrajudicial execution. Existing arrangements are uneven at best, and non-existent at worst.

This recommendation has not been implemented.

Police

The CFA must not be used as a pretext for failures to investigate killings. The Government should unambiguously instruct the police to investigate all killings vigorously and, wherever possible, to apprehend suspects.

This recommendation has been superseded with the termination of the CFA.

A programme is urgently needed to provide essential training in criminal detection and investigation to all police reservists.

This recommendation has not been implemented.

A police force which can only communicate very poorly in the Tamil language will be hard pressed to win the confidence and trust of the general public. The Government should adopt a programme of financial and other incentives to recruit Tamil and Tamil-speaking police officers, especially to work in the north and east.

There has been partial progress on this recommendation.

The Government and the LTTE should initiate and regularize contact between the government police and the policing forces that operate in LTTE-controlled areas with a view to minimizing the CFA's adverse effects on crime control.

This recommendation has not been implemented.

National Police Commission

The members of the National Police Commission should be promptly appointed.

This recommendation has not been implemented. (The appointments made undermined the NPC's independence.)

The Government should publicly confirm that it will insist upon respect for the Constitution's allocation of powers between the NPC and the IGP. Accordingly, the IGP should play only a consultative role in the NPC's exercise of its "powers of promotion, transfer, disciplinary control and dismissal".

This recommendation has not been implemented.

The Government should provide the NPC with the resources required to enable it to effectively exercise its investigative and disciplinary powers.

This recommendation has not been implemented.

The ICC Statute

The Government should ratify the Rome Statute of the ICC without reservation or declaration. Members of the Sri Lanka Army and LTTE fighters should be made aware of the rules of individual criminal responsibility and be trained in the provisions of international criminal law.

This recommendation has not been implemented.

Liberation Tigers of Tamil Eelam

The LTTE should unequivocally denounce and condemn any killing attributed to it for which it denies responsibility. Mere denials are neither adequate nor convincing.

This recommendation has not been implemented.

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.

This recommendation has not been implemented.

The LTTE should refrain from providing arms, training and encouragement to groups such as the “People’s Army” civilian proxies and self-defence organizations.

This recommendation has not been implemented.

The international community

The human rights capacity of the United Nations Country Team should be expanded immediately, pending the creation of a broader monitoring mechanism.

This recommendation has not been implemented.

Concerned Member States, particularly the Donor Co-Chairs and contributing countries to SLMM, should provide political, human and financial resources for expanded human rights monitoring by SLMM or another international mechanism.

This recommendation has not been implemented.

The Governments of all United Nations Member States in which there is a significant Tamil diaspora should enter into serious dialogue with those communities in light of the findings in this report. The diaspora has a responsibility to use its considerable political and financial influence and funding to promote and to insist upon respect for human rights.

There has been partial progress on this recommendation.

Annex II

Nigeria - Summary of follow-up to each recommendation

Commissions of inquiry

(a) *The only slightly delayed publication of the report of the Apo 6 inquiry is exemplary and this should become standard practice. To that end the Federal Government should legislate to require the publication within six months of all commission of inquiry reports relevant to extrajudicial executions. In cases of non-publication a specific national security exemption should need to be invoked, and justified.*

This recommendation has not been implemented.

(b) *The full report of the Apo 6 inquiry should be made public immediately.*

This recommendation has not been implemented.

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.*

This recommendation has not been implemented.

(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.*

There has been partial progress on this recommendation.

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

This recommendation has not been implemented.

(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.*

This recommendation has not been implemented.

Executions and accountability

(a) There are no systematic police statistics recording extrajudicial executions. An annual register should be published and strong disciplinary measures applied to those who fail to report fully, promptly and accurately all deaths at the hands of police.

This recommendation has not been implemented.

(b) Professionally staffed and well equipped forensic laboratories should be established in key regional centres without delay.

This recommendation has not been implemented.

(c) Armed robbery per se should be removed as a capital offence which warrants a shoot-to-kill response. Its current classification has pernicious effects far beyond any benefits that result. The rules regarding the use of firearms by police officers (Police Order No. 237) should be amended immediately as recommended above.

This recommendation has not been implemented.

Police reform

(a) There should be an independent external review of the Police Service Commission, taking account of recent South African reforms, designed to establish an effective police accountability system. The Commission needs (i) commissioners committed to achieving results; (ii) the capacity to collect and disseminate information on police misconduct; (iii) independence from the Nigeria Police, including its own investigative capacity; (iv) assured funding; and (v) an obligation to publish its results.

This recommendation has been implemented in part through the establishment of a number of commissions on the police service.

(b) Petty, everyday, police corruption is a constant reminder to the populace that justice can be bought, that the police cannot be relied upon for protection, and that police and criminals are all too often involved in the same enterprise. "Nipping points" symbolize the rampant corruption. Initiatives to eliminate them have been loudly proclaimed but pathetically under-implemented. Routine checkpoints should be abolished immediately and senior officers demoted when their forces are caught "rogering".

This recommendation has not been implemented.

(c) The Nigeria Police should issue an order that no medical professional will be prejudiced as a result of providing urgent life-saving treatment to a wounded person without first obtaining police authorization.

This recommendation has not been implemented.

(d) Linked to these reforms, police pay and conditions, especially for the lowest ranks, should be greatly improved. Existing salary levels invite corruption.

This recommendation appears to have been implemented.

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 “supernumerary” 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.

This recommendation has been partially implemented.

(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.

This recommendation has not been implemented.

Development assistance

Support for these recommendations must also come from the international community. Rule of law programmes have been too narrowly defined, and the taming of high-level corruption, as vital as it is, seems to represent the total picture for some agencies.

This recommendation has been partially implemented.

The armed forces

The Nigerian Armed Forces are essentially unaccountable except to the President and he will rarely call them to account. Legislation should be enacted making it an offence for police and military officers to fail to cooperate with official inquiries into alleged extrajudicial executions.

This recommendation has not been implemented.
