

**KILLINGS BY NON-STATE ACTORS AND
AFFIRMATIVE STATE OBLIGATIONS**

This chapter of the Handbook addresses a wide variety of situations in which killings by non-state actors can nonetheless implicate the State to some degree, or invoke responsibilities on its part. The right to life includes not only a prohibition on illegal killings by State authorities, but also entails State obligation is to adequately protect this right and punish violations of it by non-state actors. In situations of widespread killings, or traditions which tend towards regular violence against a particular portion of the population, States can be held responsible for failure to adequately address systemic causes, for instance, through efforts to protect vulnerable populations, improve education, address impunity, or correct perceived inadequacies in law enforcement and the justice system which lead to vigilantism.

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A. LEGAL BASIS OF RESPONSIBILITY OF STATES FOR VIOLATIONS BY NON-STATE ACTORS

Report of the Special Rapporteur on extrajudicial executions to the Human Rights Council (A/HRC/14/24, 20 May 2010, ¶¶ 45-47):

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

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

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

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

(c) Where non-State armed groups are parties to an armed conflict, such groups have their own direct legal responsibilities for any killings they commit in violation of international humanitarian law. Where a group exercises significant territorial and population control, and has an identifiable political structure, it may also be important for the Special Rapporteur to address complaints directly to the group and to call for it to respect human rights and humanitarian law norms.¹ This has been the approach in reports on Afghanistan, Colombia, the Democratic Republic of the Congo and Sri Lanka.

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

¹ See A/62/265, paras. 37-44.

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

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

Report of the Special Rapporteur on extrajudicial executions to the Commission on Human Rights (E/CN.4/2005/7, 22 December 2004, ¶¶ 65-76):

65. One of the more complex issues arising especially under this mandate concerns killings by non-State actors. The fact that this category is not readily susceptible of a clear definition increases the complexity. Indeed, in recent years the term “non-State actors”, which was long used primarily to describe groups whose purposes are essentially benign such as non-governmental organizations, religious groups and corporations, has increasingly come to be associated with groups whose agendas include wreaking havoc and terror upon innocent civilians.²

66. Although it has not yet come, there will be a time when the international community decides that this category has outlived its usefulness and that it should instead be looking at different ways of dealing with very different actors.

67. Various non-State actors have featured in the reports of previous Special Rapporteurs. Thus, for example, in her 2004 report to the Commission (E/CN.4/2004/7) the Special Rapporteur addressed members of this group under the following three sections of the report:

(i) “deaths due to attacks or killings by security forces of the State, or by paramilitary groups, death squads or other private forces cooperating with or tolerated by the State”; (ii) “violations of the right to life of women”; and (iii) “impunity, compensation and the rights of victims”.

68. For understandable reasons, the focus on killings carried out by individuals or groups occupying no official position, and whose actions might even be condemned by the Government, has given rise to some controversy within the Commission. It thus seems desirable to seek to clarify the basis upon which such matters are dealt with in these reports.

² *A More Secure World*, for example, focuses extensively on non-State actors but exclusively in terms of the nuclear threat they pose.

69. The most important category of non-State actor within the context of this mandate are those groups which, although not government officials as such, nonetheless operate at the behest of the Government, or with its knowledge or acquiescence, and as a result are not subject to effective investigation, prosecution, or punishment. Paramilitary groups, militias, death squads, irregulars and other comparable groups are well known to the readers of the Special Rapporteur's reports. There is no legal complexity in relation to this group because insofar as the Government is directly implicated its legal responsibility is engaged.

70. A second group, which is becoming far more numerous and very much a part of the landscape in many of the situations brought to the attention of the Special Rapporteur, is private contractors or consultants who, although not government officials in any way, are nonetheless exercising functions which would otherwise have been carried out by the State. This might include prison management, law enforcement, interrogation, etc. In dealing with such cases the Human Rights Committee has made clear, in relation to torture for example, that States parties to the International Covenant on Civil and Political Rights should report on the provisions of their criminal law not only in relation to acts committed by public officials or persons acting on behalf of the State, but also by private persons.³ In final Views adopted in 2003 the Committee concluded that "the contracting out to the private commercial sector of core State activities which involve the use of force and the detention of persons does not absolve a State party of its obligations under the Covenant".⁴ While there may be some debate over what constitutes a "core State activity", it is clear that actions carried out by contractors and consultants which attract the attention of the Special Rapporteur may well engage the responsibility of the State concerned.

71. Criminal actions might also evolve into a third, and very important, category of non-State actors of relevance to this mandate. Crimes, including murder, carried out by individuals can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators as well as to address any attitudes or conditions within society which encourage or facilitate such crimes. Two sometimes contested examples include honour killings (as defined in previous reports) and killings directed at groups such as homosexuals and members of minority groups. Other examples which have drawn attention in recent times include sustained attacks on trade unionists, so-called social cleansing of "undesirable" elements, or repeated attacks on professional groups such as doctors who are subjected to extortion demands. Also included in this category would be the activities of any of the groups described in the first category above insofar as it can be shown that there is no element of governmental involvement or complicity in their activities.

72. In most situations, the isolated killing of individuals will constitute a simple crime and not give rise to any governmental responsibility. But once a pattern becomes clear in which the response of the Government is clearly inadequate, its responsibility under

³ General comment No. 20 (1992) on art. 7, para. 13.

⁴ *Cabal and Pasini Bertran v. Australia*, case No. 1020/2001, decision of 7 August 2003 (CCPR/C/78/D/1020/2001), para. 7.2.

international human rights law becomes applicable. Through its inaction the Government confers a degree of impunity upon the killers.

73. The term most frequently used in international legal instruments to characterize the State's obligations in such contexts is "due diligence". Its substance was formulated in considerable detail more than 25 years ago in a report to the General Assembly by Abdoulaye Dieye of Senegal in his capacity as an expert in relation to the situation in Chile. He examined in depth the responsibility of States for acts such as disappearances which are not committed by government officials or their agents. He observed that a State is responsible in international law for a range of acts or omissions in relation to disappearances if, inter alia, the authorities do not react promptly to reliable reports, the relevant legal remedies are ineffective or non-existent, the State does not act to clarify the situation in the face of reliable evidence, or it takes no action to establish individual responsibility within the national framework.

74. This approach was endorsed by the Inter-American Court of Human Rights in a landmark case almost a decade later,⁵ and the concept of due diligence has since been further developed in a variety of United Nations contexts, especially in relation to violence against women.

75. Thus, in taking up the types of issues noted above, the Special Rapporteur is following clearly established principles of international law, and is raising with Governments matters which engage State responsibility, as opposed to the responsibility of individual murderers or other criminals.

76. The fourth major group of non-State actors relevant to the Special Rapporteur's mandate is armed opposition groups. The traditional approach of international law is that only Governments can violate human rights and thus, such armed groups are simply committing criminal acts. And indeed this may be an accurate characterization. In reality, however, that is often not the end of the matter and in some contexts it may be desirable to address the activities of such groups within some part of the human rights equation.⁶ This could mean addressing complaints to them about executions and calling for respect of the relevant norms.⁷ This may be both appropriate and feasible where the group exercises significant control over territory and population and has an identifiable political structure (which is often not the case for classic "terrorist groups"). In cases in which such groups are willing to affirm their adherence to human rights principles and to eschew executions it may be appropriate to encourage the adoption of formal statements to that effect. And in reporting on violations committed by Governments it may be appropriate to provide details of the atrocities perpetrated by their opponents in order to

⁵ *Velásquez Rodríguez v. Honduras*, Annual Report of the Inter-American Court of Human Rights, OAS/Ser. L/V./III.19, doc. 13 (1988), 28 ILM (1989) 291.

⁶ See, e.g., the approach of the United States State Department: "[w]e have made every effort to identify those groups (for example, government forces or terrorists) that are believed ... to have committed human rights abuses". United States Department of State, *Country Reports on Human Rights Practices 2003* (2004), appendix A.

⁷ A similar result is achieved in relation to international humanitarian law through the application of common article 3 of the Geneva Conventions of 1949.

provide the Commission with an accurate and complete picture of the situation. It goes without saying that any such approaches would in no way diminish the central human rights responsibilities of Governments, nor does it seek to give legitimacy to opposition groups. The condemnation of such groups and insisting that they respect international human rights law should not be taken as equating them with States. On the other hand, in an era when non-State actors are becoming ever more important in world affairs, the Commission risks handicapping itself significantly if it does not respond in a realistic but principled manner.

Interim Report of the Special Rapporteur on extrajudicial executions to the General Assembly (A/61/311, 5 September 2006, ¶¶ 46-54):

Disappearances

46. The adoption by the Human Rights Council by its resolution 2006/1 of the International Convention for the Protection of All Persons from Enforced Disappearance (hereafter Disappearance Convention) was a key accomplishment of its first session both for its potential to protect individuals and for its contribution to the development and codification of the principle of due diligence.

47. In my first report to the Commission,⁸ I reviewed the antecedents of the principle in the context of the struggle against disappearances more than 25 years ago. The approach pioneered within the United Nations setting⁹ was adopted and further developed by the Inter-American Court of Human Rights in particular.¹⁰

48. The Disappearance Convention represents the most sophisticated effort to date in articulating the due diligence standard relating to a State's affirmative obligations to ensure human rights. It exemplifies the process by which a principle that is implicit in the international human rights regime is developed by experts and refined in the jurisprudence of human rights courts before being effectively codified in treaty law. Although the offence is defined primarily in terms of acts for which the State bears some direct responsibility,¹¹ the Convention specifically requires States to "take appropriate measures to investigate [the relevant] acts [when they have been] committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice".¹² In addition it elaborates in some detail upon the required investigative process,¹³ it makes the connection between transparency and proper record-keeping and the avoidance of disappearances,¹⁴ and it addresses not only the necessity for, but also the content of, training for those responsible for

⁸ E/CN.4/2005/7, paras. 73-74.

⁹ See A/34/583/Add.1, para. 124.

¹⁰ Velásquez Rodríguez v. Honduras, Annual Report of the Inter-American Court of Human Rights, OAS/Ser.L/V/III.19, doc. 13 (1988), in International Legal Materials, vol. 28 (1989), p. 291.

¹¹ Disappearance Convention, art. 2.

¹² Ibid., art. 3.

¹³ Ibid., art. 10.

¹⁴ Ibid., arts. 17, 18.

detainees.¹⁵ These provisions will be influential in interpreting the implications of States' due diligence obligations in other contexts.

Deaths in custody

49. The category “deaths in custody” encompasses a staggering array of abuses. With respect to this issue, my last report to the Commission on Human Rights referred to 25 communications sent to 19 countries regarding more than 185 victims.¹⁶ (Roughly one out of four of the individual cases brought to the attention of this mandate concerns a death in custody.) These communications concerned allegations of prisoners being executed with firearms and, in one case, by immolation; torture or other ill-treatment, often for the purpose of extracting a confession, beatings, and sexual abuse resulting in death; killings by guards to break up riots or demonstrations; detainees being transported or held in containers that were so overcrowded or lacking in ventilation as to lead to the deaths of large numbers of detainees; and guards standing by while persons in custody were killed by private citizens. This catalogue of abuses indicates that the specificity of custodial death as a category of violation is not due to the cause of death. Executions, the use of excessive force, and other abuses resulting in death occur against persons outside of custody as well as in custody.

50. What makes “custodial death” a useful legal category is not the character of the abuse inflicted on the victim but the implications of the custodial context for the State's human rights obligations. These implications concern the State obligations to both prevent deaths and respond to those deaths that occur. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies in State custody, there is a presumption of State responsibility. These interlocking implications produce the legal specificity of custodial death as a human rights violation.

51. With respect to the prevention of deaths in custody, States have heightened responsibilities for persons within their custody. In all circumstances, States are obligated both to refrain from committing acts that violate individual rights and to take appropriate measures to prevent human rights abuses by private persons. The general obligation assumed by each State party to the International Covenant on Civil and Political Rights (ICCPR) is, thus, “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant. ...”¹⁷ This obligation has notably far-reaching implications in the custodial context. With respect to the obligation to respect rights, the controlled character of the custodial environment permits States to exercise unusually comprehensive control over the conduct of government officials — police officers, prison guards, soldiers, etc. — in order to prevent them from committing violations. With respect to the obligation to ensure rights, the controlled character of the custodial environment also permits States to take unusually effective and comprehensive measures to prevent abuses by private persons. Moreover,

¹⁵ Ibid., art. 23.

¹⁶ E/CN.4/2006/53/Add.1. The communications concerned 185 identified individual cases of death in custody; however, some communications also dealt with larger groups of unidentified persons.

¹⁷ ICCPR, art. 2 (1).

by severely limiting inmates' freedom of movement and capacity for self-defence, the State assumes a heightened duty of protection. While the same basic standard applies in custodial and non-custodial settings — the State must exercise “due diligence” in preventing abuse¹⁸ — the level of diligence that is due is considerably higher in the custodial context.

52. States are obligated to take measures to provide mechanisms of strict legal control and full accountability and to take measures to provide safe and humane conditions of detention. Some concrete measures are required by treaty or customary international law. Of particular note are ICCPR, the Convention on the Rights of the Child, and the Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention) and to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). In addition, a number of instruments adopted by United Nations organs have formulated broadly applicable measures conducive to fulfilling general legal obligations to respect and ensure the right to life.¹⁹ In addition there are various other instruments more specifically concerned with the problem of torture, a form of abuse that leads to death in some cases. While many of the provisions contained in these instruments would be best conceptualized as guidelines, they were generally developed with the extensive involvement of both human rights and correctional experts, suggesting that many of the measures they contain will typically be necessary in practice to effectively prevent human rights violations.

53. Another legal consequence of the fact of detention is that, in cases of custodial death, there is a presumption of State responsibility. The rationale for this presumption was illustrated in the case of *Dermitt Barbato v. Uruguay*.²⁰ In that case, the Human Rights Committee found that Uruguay had violated the right to life of Hugo Dermitt while he was detained at a military barracks. The cause of death found by the autopsy conducted by the State and recorded on his death certificate was not contested: he died of “acute haemorrhage resulting from a cut of the carotid artery”.²¹ However, while the State claimed that “he had committed suicide with a razor blade”, the author of the communication claimed that he had been killed by the military through mistreatment and torture.²² The State offered no evidence in support of its explanation, and the author of the communication was unable to adduce more than circumstantial evidence — mainly, that Dermitt had been in good spirits inasmuch as he expected to be released shortly. The Human Rights Committee concluded that:

¹⁸ See E/CN.4/2005/7, paras. 71-75.

¹⁹ See, e.g., Basic Principles for the Treatment of Prisoners; Basic Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; Basic Principles on the Use of Force and Firearms; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; United Nations Standard Minimum Rules for the Administration of Juvenile Justice; Standard Minimum Rules for the Treatment of Prisoners; and United Nations Rules for the Protection of Juveniles Deprived of their Liberty. For a detailed study of these instruments, see Rodley, *op. cit.* at note 32.

²⁰ Communication No. 84/1981, *Dermitt Barbato v. Uruguay*, *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40)*, annex IX.

²¹ *Ibid.*, paras. 1.4 and 6.1.

²² *Ibid.*, para. 1.4.

“While the Committee cannot arrive at a definite conclusion as to whether Hugo Dermitt committed suicide, was driven to suicide or was killed by others while in custody; yet, the inescapable conclusion is that in all the circumstances the Uruguayan authorities either by act or by omission were responsible for not taking adequate measures to protect his life, as required by article 6 (1) of the Covenant.”²³

54. In other words, the State’s two-fold obligation to ensure and respect the right to life, together with its heightened duty and capacity to fulfil this obligation in the custodial environment, justifies a rebuttable presumption of State responsibility in cases of custodial death.²⁴ One consequence of this presumption is that the State must affirmatively provide evidence that it lacks responsibility to avoid that inference.²⁵ Another important consequence of this presumption is that, absent proof that the State is *not* responsible, the State has an obligation to make reparations to the victim’s family. This is the case even if the precise cause of death and the persons responsible cannot be identified.

²³ Ibid., para. 9.2.

²⁴ This conclusion was also reached by the first person to hold this mandate: “A death in any type of custody should be regarded as *prima facie* a summary or arbitrary execution and appropriate investigations should immediately be made to confirm or rebut the presumption” (E/CN.4/1986/21, para. 209).

²⁵ The problem of States advancing implausible and unsubstantiated accounts that could not readily be disproved has confronted this mandate since the beginning. See E/CN.4/1983/16, para. 201. Such allegations cannot be resolved without evidence from the State.

B. KILLINGS BY ARMED OPPOSITION GROUPS

Report on Mission to Colombia (A/HRC/14/24/Add.2, 31 March 2010, ¶¶ 49-58):

49. The Government has taken important steps to reduce paramilitary killings and violence. It disbanded the paramilitaries' umbrella organization, Autodefensas Unidas de Colombia (AUC)²⁶ and began a programme of demobilization, reintegration and transitional justice. Paramilitaries started to demobilize in November 2003 and the majority had demobilized by the time the Justice and Peace Law (JPL) was passed in 2005.

50. The JPL was intended by the Government to achieve justice, truth and reparations in response to the paramilitaries' decades-long record of killings and other abuses.²⁷ Under the law, candidates who meet eligibility conditions²⁸ undergo a confession and investigative process conducted by the Fiscalía's Justice and Peace Unit (JPU).²⁹ The Unit can bring charges under a JPL-established system of trial and punishment. If paramilitaries "accept" the charges, they can escape trial and receive an aggregate reduced sentence (i.e., for all charges) of up to eight years, regardless of the seriousness of the offences.³⁰

1. Truth and justice

51. The Government considers demobilization and the JPL to have been successful. In part, this is true. According to Government data, 48,616 members of illegal armed groups demobilized from August 2002 to March 2009.³¹ The JPL process has resulted in the identification of thousands of crimes, disclosure of mass graves and the recovery of 2,666 bodies. Numerous families whose loved ones were registered only as "disappeared" now at least have some solace in the recovery and burial of their remains.

52. However, the full picture of the demobilization programme and the JPL shows an alarming level of impunity for former paramilitaries.

²⁶ The AUC was formed in 1997 as an umbrella organization for what had been disparate paramilitary groups. Under the leadership of Carlos Castano, the AUC rapidly expanded, became increasingly involved in the drug trade and expelled the FARC and ELN from significant areas. By 2003, when the Government signed a peace deal with the AUC, it was estimated to have penetrated over 700 of Colombia's roughly 1,100 municipalities. The history and consequences of paramilitary conduct and killings in Colombia are well documented and do not require repetition here. However, some paramilitary characteristics contextualize current failures in accountability, and the causes and patterns of killings by IAGs; these are briefly described in appendix B.

²⁷ Appendix C gives a brief description of the JPL. The law also applies to FARC and ELN guerrillas; 116 guerrillas are taking part in the JPL process (Government response).

²⁸ See appendix C.

²⁹ Ibid.

³⁰ Ibid.

³¹ Number includes both paramilitaries and FARC and ELN guerrillas.

53. The vast majority of paramilitaries were demobilized without investigation.³² Those who had not been convicted of human rights crimes or, critically, were not then under investigation for such crimes — and most were not — were effectively granted amnesties.³³

54. The JPL has not been an effective tool for justice or truth. Although paramilitaries have confessed to over 30,000 crimes, including 20,675 homicides, only 136 cases have been referred for trial³⁴ and not a single person has been sentenced. There has been no account given of how such massive numbers of crimes came to be perpetrated, by whom or under whose command. Few paramilitaries have even been through the JPL process fully. As of June 2009, there had been 3,751 candidates for the process; of these, 1,210 candidates had withdrawn before making any disclosure statements.³⁵ According to some interlocutors, participants leave the process if they find no investigations are pending or charges likely to be brought. Many of the most senior paramilitary leaders were extradited to the United States of America for drug crime prosecutions in May 2008.³⁶ The ranks of those participating in the JPL process are unknown despite a request to the Government for the information.

55. The process as a whole has been plagued by a lack of resources, planning and clarity and by procedural problems, and the JPU lacks both resources and personnel. A staff of 295 was initially authorized, with an increase to 1,048 in 2008.³⁷ But, given the magnitude of the task, this remains inadequate. Senior members of the Fiscalía also admitted that the JPU lacks the capacity and resources to conduct the strategic and complex investigations and prosecutions necessary to prevent the structure of paramilitary groups from surviving and being replicated.

56. Before it can bring charges, the law requires the JPU to prove the truth of all confessions by each individual regardless of the relative seriousness of crimes.³⁸ Fiscales consider this standard to be impossibly burdensome. Efforts to expedite the process through indictments on only some of the possible charges have been successfully challenged. Clarity and strategic thinking about how the Government would identify and

³² The vast majority of demobilizations were conducted under a set of laws and decrees that allowed pardons for political crimes, but not for atrocities, and regulated financial and other support to demobilized personnel. They did not include an investigatory component or peace or transitional justice processes. See Law No. 418 (1997); Law No. 782 (2002); Decree No. 128 (2003); Decree No. 3360 (2003); resolution 217 (2003).

³³ See Inter-American Commission on Human Rights, report on the implementation of the justice and peace law: initial stages in the demobilization of AUC and first judicial proceedings, document OEA/Ser.L/V/II, according to which, of 28,000 people initially demobilized, approximately 90 per cent failed to offer “significant” information about crimes committed.

³⁴ Government response.

³⁵ Ibid.

³⁶ The United States prosecutions do not include human rights crimes. In an August 2009 decision, the Constitutional Court refused to allow the extradition of a paramilitary member on the grounds that it would violate victims’ JPL rights to truth, justice and reparation.

³⁷ Decree No. 1128 (2008).

³⁸ See appendix C.

recommend candidates for the JPL process and prosecution has also been lacking.³⁹ The Fiscalía's unfettered discretion in applying the principle of opportunity to paramilitaries seriously heightens impunity concerns.⁴⁰

57. Even those who eventually go through the JPL process will benefit from reduced accountability. The maximum sentence of eight years for crimes against humanity and war crimes is excessively lenient, especially when compared to the life sentences prescribed by ordinary criminal law in Colombia and the relevant sentencing requirements of the Rome Statute of the International Criminal Court.⁴¹

58. I do not underestimate the challenges of achieving justice and truth for the human rights violations committed by paramilitaries in recent decades. Nevertheless, significant substantive and procedural changes are required before the JPL satisfies the Government's obligation to provide accountability.

Report on Mission to the Democratic Republic of the Congo (A/HRC/14/24/Add.3, 1 June 2010, ¶¶ 19-22):

19. In planning and implementing Kimia II, neither the Government nor MONUC paid sufficient attention to protecting civilians from retaliation attacks by the FDLR. The latter, of course, bears direct responsibility for the killings it has committed. But both the Government and MONUC also have international legal obligations to protect civilians, and to plan military operations so as to minimize the loss of civilian life.⁴² This is particularly important when, as here, both parties were on notice of the FDLR's practice of retaliation killings.

20. The difficulties in achieving such civilian protection cannot be overstated. They include difficult terrain, sometimes inaccessible villages, severe resource constraints, and rebels bent on destruction.

21. However, the nature of FDLR attacks, together with the scale and depth of violence against civilians, indicates that much more should have been done to protect civilians. Civilians were rarely killed in the context of open FDLR-FARDC combat. Instead, in village after village, the FDLR attacked them when there was no FARDC or MONUC presence. Such opportunities for attack often resulted from poor military planning or operational deficiencies. The FDLR attacks in January and February 2009 fitted the pattern perfectly and should have sounded alarm bells. FDLR revenge attacks following subsequent Government military operations were foreseeable and perhaps even inevitable in the absence of an adequate protection presence.

³⁹ Mission to Support the Peace Process in Colombia of the Organization of American States (MAPP/OAS), Fourth Quarterly Report, document CP/doc.3989/05, 11 March 2005.

⁴⁰ The principle of opportunity allows the *Fiscalía* to suspend, interrupt or abandon any criminal investigation if "convenient", such as in return for a paramilitary's agreement to provide information about other crimes. See Law No. 906 of 2004.

⁴¹ Rome Statute, art. 77.

⁴² See above, footnotes 1-4.

22. At a minimum, in such contexts, the Government's and MONUC's civilian protection obligations required them to take into account the risk of FDLR revenge attacks in their military planning, especially with respect to troop movements and maintaining proximity to civilian areas. In particular, humanitarian law principles of discrimination, proportionality, necessity and precaution would require decisions about whether to move into new territory or to vacate villages to be taken in light of balancing any anticipated military advantage against the expected harm to civilians.

Report of the Special Rapporteur on extrajudicial executions (E/CN.4/2005/7, 22 December 2004, ¶¶ 36-40):

36. The way in which individual States and the international community as a whole deal with the most serious human rights violations of all - those involving genocide or crimes against humanity - tells us a lot about the priorities involved and about the current state of human rights protection. The overall picture is too often characterized by outright denial, refusal to address the issue, or positive undermining of initiatives designed to respond in some way to these most serious of all allegations. One continuing trend over the past year has been an excessive legalism which manifests itself in definitional arguments over whether a chronic and desperate situation has risen to the level of genocide or not. In the meantime, while some insist that the term is clearly applicable and others vigorously deny that characterization, all too little is done to put an end to the ongoing violations.⁴³ At the end of the day the international community must be judged on the basis of its action, not on its choice of terminology.

37. At the same time opposition has escalated in some quarters to the International Criminal Court, despite the fact that it is the only mechanism that has ever been established in order to determine systematically and objectively when the crime of genocide has been committed, and thus to lay down guidelines which will reduce the likelihood of legalistic arguments masking inaction in the future.

38. Nevertheless, there have been several encouraging developments in the past year. One of those was the appointment by the Secretary-General of Juan Méndez as his Special Adviser on the Prevention of Genocide. Another was the appointment of an independent International Commission of Inquiry "in order immediately to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable" (Security Council resolution 1564 (2004), para. 12). This step followed the report of a country visit undertaken by the then Special Rapporteur, whose report is currently before the Commission. One of the conclusions of her report was that there are "strong indications that the scale of violations of the right to life in Darfur could constitute crimes against humanity for which the Government of the Sudan must bear responsibility" (E/CN.4/2005/7/Add.2, para. 57). In terms of action as opposed to

⁴³ In this respect it is relevant to recall the situation of Rwanda in 1994 when United Nations officials did not use the term until one month after massive killings had begun and some Security Council members continued to resist use of the term for a considerable time thereafter.

inquiries, however, the High-level Panel on Threats, Challenges and Change commented in December 2004 on “the glacial speed at which our institutions have responded to massive human rights violations in Darfur”.⁴⁴

39. A third positive development in 2004 was the High-level Panel’s emphasis on more concerted action against genocide, which included calling upon the Security Council to authorize “military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent”.⁴⁵ The Panel also asked “the permanent members [of the Security Council], in their individual capacities, to pledge themselves to refrain from the use of the veto in cases of genocide and large-scale human rights abuses”.⁴⁶ If the latter proposal were to have a serious prospect of being adopted, there would be a role for the Commission on Human Rights in suggesting when such situations exist.

40. The Special Rapporteur has already met with the Special Adviser on the Prevention of Genocide and the two experts have agreed that they will work closely together whenever the desired outcome would be facilitated thereby.

Report on Mission to Sri Lanka (E/CN.4/2006/53/Add.5, 27 March 2006, ¶¶ 7-8, 13-19, 34-41):

7. The primary participants in the conflict have been the Government and the LTTE. The latter began fighting the Government in the late 1970s with the aim of establishing the state of Tamil Eelam in the north and east of the island.⁴⁷ Since the February 2002 ceasefire, its control of significant areas in the north and east has been acknowledged. Until December 2005 direct clashes between the Government and the LTTE had been extremely rare, and most post-ceasefire killings were of persons belonging to neither of these parties. Incidents in which LTTE cadres fired on the armed forces were generally understood by the latter as “provocations” designed to elicit a violent response rather than as serious attempts to resume hostilities.

The ceasefire and the post-ceasefire killings

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

⁴⁴ *A More Secure World: Our Shared Responsibility*, report of the Secretary-General’s High-level Panel on Threats, Challenges and Change (United Nations, 2004), para. 42.

⁴⁵ *Ibid.*, para. 203.

⁴⁶ *Ibid.*, para. 256.

⁴⁷ Sri Lanka has a population of 20 million, of whom 74% are Sinhalese, 13% Sri Lankan Tamil, 7% Sri Lankan Moor and Malay Muslims, 6% Indian Tamil, and 1% other.

have continued to advance their interests, in significant part, by committing or permitting widespread killing.

[...]

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

14. In March 2004 the LTTE commander of the Eastern Province, Colonel Karuna, split with the LTTE leadership in the Northern Province, initially taking with him perhaps one fourth of the LTTE's cadres. Terminology varies widely, but this new force may be termed the "Karuna group". While the LTTE continues to control most of the territory it did at the time of the ceasefire, the Karuna group has conducted many ambushes and killings of LTTE cadres, political representatives and supporters. This has weakened the LTTE's position in Government-controlled areas and has led the LTTE to close its offices and end most political work in those areas.⁴⁸ Since the LTTE has long stated its aim to create the state of Tamil Eelam out of most of the territory of the Northern and Eastern Provinces, there is now a crucial battle for control in the east, accounting for many of the most recent killings.⁴⁹

15. The LTTE's characterization of the Karuna group has evolved. When the split first occurred, the LTTE maintained that it was a purely internal matter. However, when I spoke with LTTE representatives, their position was that the Karuna group was a "Tamil paramilitary" within the meaning of the CFA, that it received assistance from the Government, and that it must be disarmed by the Government. As evidence, the LTTE representatives pointed to statements made by alleged defectors from the Karuna group. These persons stated that logistical support, arms, and ammunition were being provided by Sri Lankan Army Intelligence, that funding was being provided by an "external source", and that the leadership of the Karuna group was in close contact with several Government ministers.⁵⁰ Regardless of the veracity of these allegations (see below), the LTTE's position on the Karuna group is untenable. Notwithstanding any support it may be providing, it is far from clear that the Government would be capable of disarming the Karuna group, and any future attempt at a comprehensive revised agreement would have to address the realities created by the Karuna group.

⁴⁸ CFA Article 1.13 permits unarmed LTTE members freedom of movement in Government-controlled areas in the North and East for the purpose of "political work". On 18 November 2004, LTTE offices in Akkaraipattu and Arayampathy were attacked with grenades. On 21 November 2004, LTTE offices in Batticaloa and Kaluvanchikudy were attacked with claymore mines. These and subsequent attacks forced the LTTE to scale back its presence in Government-controlled areas in the East.

⁴⁹ Prior to December 2005, roughly half of all killings in 2005 took place in the Batticaloa district.

⁵⁰ "STF, SL Ministers complicit in paramilitary operations, Karuna in India", *TamilNet*, 12 Dec. 2005, available at <http://www.tamilnet.com/art.html?catid=13&artid=16531>.

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

17. The 18 November 2005 attack on a mosque in Akkairapattu exemplifies the manner in which civilians are being caught in the crossfire. During morning prayers, two people rolled grenades to the front of the mosque, where they exploded, killing 6 persons and seriously wounding 29 others.⁵¹ I visited the mosque, met with victims and community representatives, and discussed the attack with Government officials and LTTE representatives.

18. While accounts differ widely, the conflict between the LTTE and the Karuna group figure in almost all. One explanation, attributed to two defectors from the group, is that the Karuna group was responsible as part of an effort to create dissension between the Tamil and Muslim communities.⁵² Another explanation suggests that the attack was part of a cycle of retaliation. Two days earlier, the bodies of two LTTE members had been found on a road marking the unofficial boundary between the predominantly Tamil and predominantly Muslim areas of the town. Muslim community members suggested to me that the two LTTE cadres may have been killed by Muslim individuals cooperating with the Karuna group. While the Muslim community as a whole has avoided alignment with either group, many speculate that the LTTE attacked the mosque in retaliation and to deter further instances of cooperation.

19. Without an effective investigation, it is impossible to assign definitive responsibility for the attack. Sources close to the LTTE did, however, confirm to me that the LTTE

⁵¹ Eight of the injured remained in critical condition when I visited.

⁵² "STF, SL Ministers complicit in paramilitary operations, Karuna in India", *TamilNet*, 12 Dec. 2005, available at <http://www.tamilnet.com/art.html?catid=13&artid=16531>; "Two paramilitary cadres surrender, say Karuna group responsible for attacks against Muslims", *TamilNet*, 6 Dec. 2005, available at <http://www.tamilnet.com/art.html?catid=13&artid=16483>.

engages in retaliatory killings, and the dynamics of retaliation can serve to explain much of the killing taking place in the East. Failure to clarify responsibility in such situations fuels tensions. Thus, in the course of my visit, the mosque attack provoked further convulsions of violence in the East. The conclusion is that unless crimes of this kind are properly investigated, and those responsible held to account, they will inevitably fuel the cycle of bitterness, retaliation and violence.

[...]

34. The Government has failed to effectively investigate most political killings. This is due both to the police force's general lack of investigative ability and to other impediments. When I asked police officers why a particular killing had not been resolved, I generally received the same answer: the suspect escaped into an LTTE-controlled area. While it is true that the police are unable to enter these areas,⁵³ two observations are in order. First, in many cases the belief that the suspect was in an LTTE-controlled area was speculation inasmuch as no investigation had been carried out. Second, the police have lost much of their appetite for serious investigations of political killings. Many officers operate under the impression that investigating any crime presumed to involve the LTTE would imperil the ceasefire. These cases are simply too hot to handle. The Government should unambiguously instruct the police that, while they are obligated not to violate the CFA, they continue to be obligated to investigate crimes and apprehend suspects within the terms of the law, regardless of who those suspects might be.

35. This has interfered with criminal investigations. Government officials brought several instances to my attention. In September 2005, government police entered an LTTE-controlled area in Mannar in pursuit of a suspected paedophile. The police officers were captured by the LTTE, and three were still being held in early January 2006. In the meantime, the suspect escaped and was detained only when he turned himself in to the police in Colombo. A more prosaic incident was raised by the police in Welikanda: they had reason to believe that a man had robbed at least five cars, but he escaped into an LTTE-controlled area, ending the investigation. A representative of the "Tamil Eelam Police" provided me with another example. He related that two years ago there had been a murder in an LTTE-controlled area of Mannar. The persons suspected of having committed this murder escaped into Government-controlled territory and were subsequently captured by the government police. It was his understanding that, for lack of evidence, the suspects were released by the Government within a month. Other similar cases were brought to my attention by victims, and the lack of cooperation in policing appears to be a persistent problem that adversely affects the protection accorded the population from crime.

⁵³ The structural constraints the CFA places on police work must also be overcome. While the CFA's provisions restricting the movement of Government "armed forces" and LTTE "fighting formations" into areas controlled by the other party do not expressly address police officers, the understanding of the parties has given these provisions a prudent breadth. (CFA arts. 1.4-1.7.) It is clear that both parties have genuine security concerns regarding the movement of all armed personnel into their areas of control and understandable that police officers do not, in practice, have access to areas controlled by the opposing party.

36. The parties have a common interest in controlling crime and, as a confidence-building measure, the Government and the LTTE should initiate and regularize contact between the government police and the policing forces that operate in LTTE-controlled areas. This contact would allow access to evidence, information, and detainees. I raised this possibility with the Inspector General of Police (IGP) and the head of the “Tamil Eelam Police”, himself a former government police officer. I sensed that both had political reservations but also understood the limitations the current arrangement imposed on their work. It is my view that such contact might be quickly and helpfully initiated as a pragmatic confidence-building measure. If appropriate, the Sri Lanka Monitoring Missions (SLMM) could assist in facilitating this dialogue.

37. The police also lack sufficient linguistic ability and cultural sensitivity to interview witnesses and gather the information required to effectively investigate killings that occur within the Tamil and Muslim communities.⁵⁴ The political killings have disproportionately affected these communities, both of which speak Tamil. The police force, however, is only 1.2 per cent Tamil and 1.5 per cent Muslim, and Sinhala officers seldom speak Tamil proficiently. The only practical way for the police to acquire a larger number of fluent Tamil speakers is to recruit Tamil and Muslim officers.⁵⁵ While it was sometimes argued that the low proportion of Tamils in the police force was inevitable, given the fear that the LTTE would target Tamil officers, it was acknowledged by informed actors that if the Government made such recruitment a priority, it could be achieved with meaningful financial incentives and preferences for promotion.

38. The CFA established the Sri Lanka Monitoring Mission (SLMM) to verify compliance with the terms of the ceasefire. It has played a difficult but vital role in maintaining the confidence of the parties. However, the public does not share this confidence. In numerous meetings, members of civil society expressed frustration with the SLMM for at least three reasons:

- (a) its narrow interpretation of its verification mandate to exclude investigation;
- (b) the conflict of interest inherent in its link to the facilitator of the peace process; and
- (c) the inadequate information about violations that it makes public.

39. The SLMM draws a strong distinction between “monitoring” and “investigation”. It forwards complaints to the parties, elicits their responses, and attempts to determine whether a violation of the CFA occurred. However, as the SLMM has stated publicly, it “is not here to conduct police investigations”.⁵⁶ The SLMM explained to me that it continually presses the police to conduct effective investigations but is aware that these

⁵⁴ Note also the finding of the National Human Rights Commission that the paucity of Tamil speaking officers “remains a major grievance [that] is linked to the deteriorating security situation”. *The Human Rights Situation in the Eastern Province: Update* (April 2005), p. 24.

⁵⁵ The IGP noted that there were already financial incentives for Sinhala officers to learn Tamil and that he had introduced a program of three-months training in Tamil for new recruits. These measures have been inadequately implemented. The current financial incentives are based, not on demonstrating a high level of proficiency, but on completing a relatively short course. The language-training plan holds greater potential, but because there has been no regular recruitment since 2001, it remains a theoretical innovation.

⁵⁶ SLMM press release, 8 March 2005.

remain ineffective. The SLMM understands this limited role to reflect the parties' tacit consensus on its mandate. However, the CFA does not preclude a broader investigative role for the SLMM and it makes the Head of the SLMM "[t]he final authority regarding interpretation of this Agreement".⁵⁷ It would behove the SLMM to advance a less restrictive interpretation of its mandate, as a means of shoring up the ceasefire with more comprehensive and public monitoring and reporting.

40. The SLMM steadfastly insists that it is completely independent of the peace process's facilitator, Norway. This is not borne out by the perception of the public, the experience of the parties, or the terms of the CFA. Under the CFA, the Government of Norway appoints the head of the SLMM, who in turn reports to that Government.⁵⁸ This arrangement gives Norway a conflict of interest. On the one hand, in its relationship with the SLMM it is charged with ensuring the disinterested verification of violations; on the other hand, as facilitator of the peace process, it has an interest in preventing ceasefire implementation issues from disturbing the broader peace process. For a public that needs accountability, this conflict of interest is disturbing. For the Government of Norway which has contributed so much, it is unnecessary.

41. Since it is the general public that has borne the brunt of the ceasefire violations it is unsurprising that so many complaints to the SLMM come from private individuals. The SLMM does not, however, provide public accountability. The complaints are confidential, going only to the parties, and the SLMM communicates to the public only aggregate statistical data. Most ceasefire violations implicate human rights and an effective monitoring arrangement must provide accountability for the victims as well as for the parties. This need is felt deeply by victims, civil society organizations, and politicians across the political spectrum.

Follow-up Report on Mission to Sri Lanka (A/HRC/8/3/Add.3, 14 May 2008, ¶¶ 35-41):

35. In the Special Rapporteur's report on his visit to Sri Lanka, he recommended the establishment of an international human rights monitoring mission.⁵⁹ 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.⁶⁰ 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

⁵⁷ CFA art. 3.2.

⁵⁸ CFA arts. 3.2–3.3.

⁵⁹ See also A/61/311, paras. 18-23, 67.

⁶⁰ A/61/311, para. 21.

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"),⁶¹ and it has been demoted to "observer status" by the international body charged with monitoring compliance with these principles.⁶²

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".⁶³

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

⁶¹ GA Res. 48/134 (20 December 1993).

⁶² 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).

⁶³ Press Statement, 5 September 2006.

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 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.⁶⁴

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".⁶⁵

⁶⁴ IIGEP, Public Statement, 6 March 2008.

⁶⁵ IIGEP, Public Statement, 6 March 2008.

C. MANDATE OF THE SPECIAL RAPPORTEUR AND ADDRESSING KILLINGS BY ARMED OPPOSITION GROUPS

Interim Report of the Special Rapporteur on extrajudicial executions (A/62/265, 16 August 2007, ¶¶ 37-44):

37. When extrajudicial executions occur during an armed conflict, determining whether the State has international legal responsibility can be legally complex. The question what to do if an armed opposition group is responsible can be even more complex. The mandate's approach to such extrajudicial executions has developed considerably over the past 25 years, demonstrating how the Special Rapporteur is at once constrained by the prevailing normative framework and pushed by the needs of victims to explore its possibilities.

38. Paramilitary groups tied to Governments were referred to from the first years of the mandate.⁶⁶ The Special Rapporteur explained in his review of the first decade of activities of the mandate in 1992 that, while the inclusion of paramilitary groups had been "questioned on occasion by a few Governments, which consider that the mandate should be limited to 'those cases in which there was actual involvement of a government official'", the practice of focusing on such groups remained valid.⁶⁷ In the same year, the Working Group on Enforced or Involuntary Disappearances drew the Commission's attention to the use of what it termed "civil defence units" in internal armed conflicts, noted that they had often been implicated in human rights abuses and suggested "minimum conditions for their operations".⁶⁸

39. These interpretations of the mandates' scope were endorsed by the Commission. It adopted resolutions requesting the special procedures to "pay due attention" to the human rights implications of "civil defence forces".⁶⁹ The Special Rapporteur subsequently dealt with such groups in a broad range of countries and brought that experience to bear in crafting recommendations to prevent the involvement of such groups in extrajudicial executions. For example, in correspondence with the Government of Sri Lanka regarding extrajudicial executions by "home guards", the Special Rapporteur responded in part by "stress[ing] the need for strict control of any such auxiliary force by the security forces" but then, drawing on his by then extensive experience, went on to state that, "In view of the experience of other countries, where paramilitary groups are responsible for numerous and grave human rights violations, the Government may wish to consider as a preferable solution strengthening the regular security forces in areas with armed conflict, rather than creating a paramilitary body."⁷⁰

⁶⁶ E/CN.4/1983/16, paras. 111 and 186; E/CN.4/1984/29, paras. 91 and 132.

⁶⁷ E/CN.4/1992/30, chap. IV, paras. 611-613.

⁶⁸ E/CN.4/1992/18, paras. 378-381.

⁶⁹ Official Records of the Economic and Social Council, 1992, Supplement No. 2 (E/1992/22), chap. II, sect. A, resolution 1992/57, para. 3.

⁷⁰ E/CN.4/1995/61, para. 293.

40. It took much longer for the mandate to find a suitable means for responding to extrajudicial executions by rebels and other armed opposition groups. This was an issue of finding appropriate working methods more than an issue of substantive law. In 1992, the Special Rapporteur reported that he had received allegations concerning human rights abuses committed by a substantial number of armed groups, including the National Liberation Army and Revolutionary Armed Forces of Colombia in Colombia, the Eritrean People's Liberation Front and the Ethiopian People's Revolutionary Front in Ethiopia, the Unidad Revolucionaria Nacional Guatemateca in Guatemala, Shining Path and Tupac Amarú in Peru, and the Liberation Tigers of Tamil Eelam and Muslim Home Guards in Sri Lanka, but he concluded that: Within the United Nations human rights system, it is generally considered that addressing appeals to such entities or providing them with the opportunity to respond to allegations accusing them of human rights violations would be inappropriate, given their legal status. Consequently, existing working methods offer little opportunity for responding effectively to allegations concerning opposition groups.⁷¹

41. While the legal issues and diplomatic sensibilities were real, the consequences of unconditionally refusing to address appeals to armed groups were problematic. From the perspective of a victim's family, an extrajudicial execution is no less devastating for having been committed by rebels rather than by government forces, and addressing complaints to the Government will generally prove futile if the abuses were committed by an armed group. Moreover, Governments accused of extrajudicial executions were understandably unhappy if comparable acts perpetrated by armed groups within their countries were simply ignored in the human rights context.

42. Recognizing these consequences, as well as the Commission's abiding interest in victims, the Special Rapporteur began to address a range of non-State actors involved in complex situations. Some of these had widely recognized international legal personality: the Palestinian Authority (first addressed in the 1996 report)⁷² and United Nations peacekeeping missions (first addressed in 2006).⁷³ However, the Special Rapporteur has also addressed other non-State actors, such as the "Turkish Cypriot community" (in 1997 and 1998),⁷⁴ the "Taliban movement in Afghanistan" (1998),⁷⁵ and the Liberation Tigers of Tamil Eelam (2006 and 2007).⁷⁶ The Special Rapporteur observed that addressing complaints to armed opposition groups "may be both appropriate and feasible where the group exercises significant control over territory and population and has an identifiable political structure (which is often not the case for classic 'terrorist groups')." ⁷⁷ He explained that the Commission and its special procedures had a right to hold armed

⁷¹ E/CN.4/1992/30, para. 627; see also para. 614.

⁷² E/CN.4/1996/4, paras. 537-539.

⁷³ An allegation letter was sent to the United Nations Stabilization Mission in Haiti (E/CN.4/2006/53/Add.1, annex, pp. 322-333). The much earlier engagement with the United Nations Commissioner and Council for Namibia might also be cited in this context, although it was of a quite different character (E/CN.4/1983/16, paras. 180-188 and annexes VII-VIII).

⁷⁴ E/CN.4/1997/60/Add.1, para. 575; E/CN.4/1998/68/Add.1, paras. 446-449.

⁷⁵ E/CN.4/1998/68/Add.1, paras. 446-449.

⁷⁶ E/CN.4/2006/53/Add.1, annex, pp. 319-321; A/HRC/4/20/Add.1, annex, pp. 384-386.

⁷⁷ E/CN.4/2005/7, para. 76.

groups to account, a *droit de regard*, whatever the international legal status of a particular group might be.

43. The Special Rapporteur developed this theme in the context of a report on a country visit in which he observed: Human rights norms operate on three levels — as the rights of individuals, as obligations assumed by States, and as legitimate expectations of the international community ... [A] non-State actor ... remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights. ... The international community does have human rights expectations to which it will hold [an armed group], but it has long been reluctant to press these demands directly if doing so would be to “treat it like a State”. It is increasingly understood, however, that the human rights expectations of the international community operate to protect people, while not thereby affecting the legitimacy of the actors to whom they are addressed.⁷⁸

44. The Special Rapporteur’s efforts to hold armed groups accountable for their abuses on this realistic basis have been welcomed by the Council.

⁷⁸ E/CN.4/2006/53/Add.5, paras. 25-27.

D. DUE DILIGENCE AND INTER-COMMUNAL/ETHNIC VIOLENCE

Report on Mission to Colombia (A/HRC/14/24/Add.2, 31 March 2010, ¶¶ 80-84):

80. The *Defensoría's* Early Warning System (*Sistema de Alertas Tempranas*, SAT) monitors, analyses and reports on risks to civilians and possible violations of international law. The reports describe the local dynamics of armed conflict, the sources of threats, the individuals and populations at risk, an evaluation of the risk and recommendations to reduce or eliminate threats.⁷⁹ SAT reports are full of detailed facts and sophisticated analysis.⁸⁰ SAT is one of the best tools the Government has for preventing killings and other abuses in Colombia.

81. It is critically important that the Government provide SAT with more staff and resources. At the time of my visit, it had only 6 national analysts and 22 regional analysts, which is not enough to cover the country's geographical expanse or the complexity of its conflict dynamics. Direct access to local communities is integral to the accuracy and usefulness of the SAT monitoring and reporting function. Yet, because of its limited budget, SAT analysts are sometimes unable to travel to the areas they are responsible for covering. Analysts should be able to report on risks posed by the presence or movement of all armed actors, including State forces.

82. It is also crucial that the Government acts upon SAT reports, and that neither the SAT analysis nor the decision by the Inter-Agency Early Warning Committee (*Comité Interinstitucional de Alertas Tempranas*, CIAT) whether to issue an early warning are influenced by political pressures.

83. I was given information about several instances in which killings had occurred after the Government had failed to respond to the SAT warnings. One example is the Awa massacre discussed above.⁸¹ Another death took place in March 2008, after SAT had issued a risk report for municipalities in Caqueta where the conflict against the FARC had intensified. The FARC threatened municipal officials to intimidate them into not supporting the Government's Domestic Security Policy. CIAT determined that no early warning should be issued and a week after the SAT report, the FARC killed a local official. Killings may occur despite early warnings and the Government's best prevention

⁷⁹ SAT provides the reports to the Inter-Agency Early Warning Committee (*Comité Interinstitucional de Alertas Tempranas*, CIAT), led by the Minister of Interior and Justice and tasked with coordinating the Government's response to SAT warnings of possible rights violations. CIAT includes the vicepresident, the high counsellor for Acción Social, the defence minister and the DAS director, or their representatives. While SAT may participate in meetings, it does not have a vote.

If CIAT decides an early warning should be issued, it alerts the governor of the affected department, other regional officials, the Armed Forces, the National Police and the Acción Social agency. The early warning triggers the duty of these officials to prevent human rights and humanitarian law violations (Law No. 1106 of 2006, art. 5). If an early warning is not issued, CIAT may informally notify departmental or municipal authorities of risks and provide recommendations for preventing harm and protecting civilians.

⁸⁰ See paragraph 46.

⁸¹ In local jurisdictions, *fiscales* may also have fewer resources and investigatory personnel, resulting in slower development and prosecution of cases, which may give rise to suspicion that the *fiscal* is not proceeding for more nefarious reasons.

efforts, but the Government's failure to act after notice from one of its own agencies is a stark dereliction of its responsibilities.

84. I was told by some Government officials that political pressure may be a factor in the decision of CIAT not to issue an early warning. Military and civilian officials at the regional and departmental level may be concerned that a warning signals security failures and deters investment and development and press for a warning not to be issued or to be prematurely withdrawn. Given the importance of the SAT function, it is also foreseeable that other Government or civilian actors may try to influence its analysis or recommendations. To reduce such illegitimate pressures and to fulfil its obligation to prevent and protect, the Government must ensure that the independence of CIAT and SAT is maintained. It should make SAT reports public (subject to security needs) after an appropriate period, such as three months after the decision of CIAT.

Report on Mission to the Democratic Republic of the Congo (A/HRC/14/24/Add.3, 1 June 2010, ¶¶ 19-21, 54-57):

19. In planning and implementing Kimia II, neither the Government nor MONUC paid sufficient attention to protecting civilians from retaliation attacks by the FDLR. The latter, of course, bears direct responsibility for the killings it has committed. But both the Government and MONUC also have international legal obligations to protect civilians, and to plan military operations so as to minimize the loss of civilian life.⁸² This is particularly important when, as here, both parties were on notice of the FDLR's practice of retaliation killings.

20. The difficulties in achieving such civilian protection cannot be overstated. They include difficult terrain, sometimes inaccessible villages, severe resource constraints, and rebels bent on destruction.

21. However, the nature of FDLR attacks, together with the scale and depth of violence against civilians, indicates that much more should have been done to protect civilians. Civilians were rarely killed in the context of open FDLR-FARDC combat. Instead, in village after village, the FDLR attacked them when there was no FARDC or MONUC presence. Such opportunities for attack often resulted from poor military planning or operational deficiencies. The FDLR attacks in January and February 2009 fitted the pattern perfectly and should have sounded alarm bells. FDLR revenge attacks following subsequent Government military operations were foreseeable and perhaps even inevitable in the absence of an adequate protection presence.

22. At a minimum, in such contexts, the Government's and MONUC's civilian protection obligations required them to take into account the risk of FDLR revenge attacks in their military planning, especially with respect to troop movements and maintaining proximity to civilian areas. In particular, humanitarian law principles of discrimination, proportionality, necessity and precaution would require decisions about whether to move into new territory or to vacate villages to be taken in light of balancing any anticipated military advantage against the expected harm to civilians.

⁸² See above, footnotes 1-4.

[...]

54. The direct responsibility for killings in Province Orientale lies first and foremost with the LRA. However, as described above with respect to the Kivus, both the Government and MONUC have protection obligations towards civilians.

55. I spoke with many humanitarian actors, UN and Government officials, and military commanders in Province Orientale. There is no doubt that effectively protecting civilians from the LRA is a daunting task. Many villages are remote and sometimes inaccessible without days of travel or the use of helicopters, and state presence through the region is negligible. Communication systems are poor or non-existent, and villagers must sometimes run for days to deliver warnings of impending, or news of on-going, LRA attacks. The LRA often conduct well-planned and sudden attacks, and the Government and MONUC face resource constraints that limit their capacity to have troops on the ground where needed, or to respond rapidly to attacks.

56. Despite these very real obstacles, significantly more can and should be done to protect civilians. Given the high likelihood of LRA retaliation massacres, military attacks on the LRA should not be launched without sufficient consideration given to planning for the presence of troops near villages expected to be targeted by the LRA. The regularly reported LRA attacks through 2009 also indicate the importance of increasing the number and range of FARDC/MONUC military bases and patrols. Information provided to me strongly suggests that the LRA presence in the DRC will increase if the military presence decreases. MONUC should strongly consider increasing its troops in the province, expanding its rapid response capacity, and implementing more actively its robust civilian protection mandate.

57. MONUC and the Government should work together to establish a community-based communications network, so that warnings of attacks are more quickly received. In addition, effective communication between MONUC and the population has at times been lacking, and this has had negative protection consequences. MONUC has not always taken the necessary steps to explain its role to the population, resulting in misunderstanding, poor coordination, and sometimes hostility. MONUC should also make a stronger effort to bring tangible benefits to the province, including by restoring electricity in population centers and extending radio coverage.

Report on Mission to Nigeria (E/CN.4/2006/53/Add.4, 7 January 2006, ¶¶ 72-76):

72. In recent years large-scale violence between religious and/or ethnic groups have cost thousands of lives. For example, in Kaduna State in 2002, Christian/Muslim riots coincided with the 2002 Miss World contest, and led to the deaths of some 250 people.⁸³ In February 2004 violent clashes shook Yelwa in Plateau State. At least 78 Christians, and a number of Muslims, were killed in well-organized attacks. Smaller scale attacks

⁸³ For a description of this incident see Human Rights Watch, *The "Miss World Riots": Continued Impunity for Killings in Kaduna* (July, 2003).

occurred in nearby villages. In May 2004 an attack by Christians killed an estimated 700 Muslims.⁸⁴ A little over a week later the violence spread to Kano where Muslims retaliated against Christians, resulting in the deaths of more than 200.⁸⁵

73. The causes of inter-communal violence in Nigeria are complex. There are over 250 ethnic groups, some of which have long been in conflict over political power, land, and resources. While the government does not bear direct responsibility for killings perpetrated by individuals during these violent incidents, action and inaction by the authorities have contributed significantly.

74. Although religious events are often the trigger, these divides coincide with ethnic and political splits and religion is often exploited for populist reasons. Underlying many incidents is a legal distinction drawn between “indigenes” (individuals considered to be living in their state of “origin”) and settlers (“newcomers” who might have lived in the state for decades). The distinction often coincides with ethnic and/or religious divisions, and is used to justify according indigenes privileged access to government jobs, educational institutions and political positions.⁸⁶ The distinction itself and the ways in which it operates are, at least potentially, highly discriminatory. Unless steps are taken to significantly downplay its importance, it will sow the seeds of a great many future incidents of communal violence.

75. Another problem is a failure by the security forces to react quickly, let alone pre-emptively, to situations of inter-communal tension, thereby allowing the violence to escalate.⁸⁷ In addition, politicians have been accused of actively fuelling violence for political gain.

76. With relatively few exceptions, a consistent pattern of governmental response to inter-communal violence has emerged. Security forces respond slowly, resulting in higher casualties; they then use force indiscriminately and excessively. A few arrests and prosecutions of minor players follow. If an inquiry is held it quells popular anger but the report remains confidential, is ignored, or adopts a formalistic approach. And almost no long-term preventive measures are taken. Just as predictable as this routine is the future occurrence of more serious incidents of inter-communal violence unless Federal and State Governments take seriously the need for thorough-going reforms.

⁸⁴ For a description of this incident see Human Rights Watch, *Revenge in the Name of Religion: The Cycle of Violence in Plateau and Kano States* (May, 2005).

⁸⁵ *Id.*

⁸⁶ World Organization Against Torture and Centre for Law Enforcement Education, *Hope Betrayed? A Report on Impunity and State-Sponsored Violence in Nigeria*, 14 (2002). See also, Human Rights Watch, *Revenge in the Name of Religion*, at 8.

⁸⁷ For example, it was reported that even though special units had been set up following earlier violent attacks in Kaduna in order to respond to future such incidents, these units were not deployed when the 2002 violence first broke out. Human Rights Watch, *The Miss World Riots*, at 24. Similarly, the report of the Administrative Committee of Inquiry investigating the 2004 violence in Kano observed that, although “it was obvious that tension was building up two to three weeks before the Kano Crisis” due to the earlier violence in Plateau State, security forces failed to act pre-emptively to prevent the violence from spreading to Kano. See Kano Report, note 52 above, pp. 6-7.

E. KILLINGS BY VIGILANTES AND MOB JUSTICE

Report on Mission the Democratic Republic of the Congo (A/HRC/14/24/Add.3, 1 June 2010, ¶¶ 94-95):

94. Vigilante killings and mob justice are widespread, and on the rise.⁸⁸ In 2008, over 20 such killings were recorded in Bukavu (South Kivu) alone.⁸⁹ There are, however, no clear national statistics on the numbers of such killings. Victims are usually suspected thieves, rapists or witches.⁹⁰ Often they are beaten or killed with machetes, and then set on fire, sometimes while still alive.⁹¹ Local populations often appear to view this as a legitimate means of securing justice, in large part due to the absence of a functioning criminal justice system.

95. The response from local police and other authorities to incidents of vigilante justice is often slow or non-existent – investigation, prosecution and punishment of perpetrators is rare. At a policy level, little attention is paid to the issue.

Report on Mission to Guatemala (A/HRC/4/20/Add.2, 19 February 2007, ¶¶ 27-31):

27. The lynching of suspected criminals by private individuals has been a persistent problem since the end of the armed conflict and its one that further illuminates a failure to fully transition from the era of armed confrontation. The most reliable data are those compiled by MINUGUA from 1996 to 2001. During those years, the annual number of lynchings ranged from 35 to 105, the number resulting in death ranged from 13 to 29, and the number of persons killed ranged from 23 to 54.⁹² I have not found reliable statistics for 2002 to 2005, but, at the time of the visit, there had been 13 deaths from lynching in 2006. MINUGUA conducted an exceptionally thorough and well-reasoned study of lynching, and this continues to structure nearly all serious discussion of the phenomenon.

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

⁸⁸ See <http://www.afrika.no/Detailed/18627.html>; A/HRC/10/59, para. 59.

⁸⁹ "La justice populaire à Bukavu", *Gazette de l'Abolitionniste*, Bulletin no. 2, March 2009

⁹⁰ "La justice populaire fait encore une victime à Bukavu", *Safina*, 24 October 2009; "La justice populaire à Bukavu", *Gazette de l'Abolitionniste*, Bulletin no. 2, March 2009; *Memorandum de la Société Civile du sud Kivu au Rappporteur Spécial des Nations Unies sur les Executions Sommaires, Arbitraires et Extrajudiciaires*; <http://www.afrika.no/Detailed/18627.html>

⁹¹ <http://www.afrika.no/Detailed/18627.html>

⁹² MINUGUA, "Los Linchamientos: Un Flagelo que Persiste" (July 2002), p. 6.

property. Third, lynchings are not opportunistic attacks on the vulnerable facilitated by the absence of State institutions: the vast majority of victims are men between the ages of 18 and 40.

29. The facts found by MINUGUA demonstrated that the pattern of lynching best supported an explanation grounded in Guatemala's incomplete transition from the period of armed confrontation. During the armed confrontation, the rural areas were heavily militarized, and roughly one million civilians were incorporated into *Patrullas de Autodefensa Civil* (PACs). The imposition of this counter-insurgency apparatus displaced indigenous systems of governance and justice, and its removal - without an adequate influx and integration of police, prosecutors, and courts - left a power vacuum. Two facts found by MINUGUA strongly suggest that this power vacuum has been filled in part by the (demobilized) PACs and that lynching has been one result. First, in many cases, the persons who instigate or perform lynchings are either former members of the PACs or former soldiers. Second, the manner in which lynchings are carried out is similar, and in more than superficial aspects, to the manner in which the PACs conducted counter-insurgency operations during the armed confrontation.

30. This analysis led MINUGUA to very clear policy prescriptions that remain valid today. First, lynching can be combated by revitalizing indigenous systems of justice. Second, lynching can be combated by extending the presence of State criminal justice institutions geographically and by better adapting their working methods to the needs of rural communities. Both measures would respond to the power vacuum left by the incomplete transition from the armed confrontation.

31. This rigorous, solution-oriented analysis by MINUGUA also leads to some broader reflections. First, the analyses of many of the phenomena of violence afflicting Guatemala appear disappointingly incomplete in comparison and, thus, far less capable of suggesting policy responses. Second, despite the problem of lynching being well-understood and persuasive solutions having been precisely articulated in a well-documented report, the recommended reforms have not been adopted, and lynching remains a significant problem.

Follow-up Report on Mission to Guatemala (A/HRC/11/2/Add.7, 4 May 2009, ¶ 17):

17. The PDH reports that there were 18 individuals killed by lynching in 2008. While this represents a reduction on the average numbers (23 to 54) killed in the period 1996-2001, there has been little change since the Special Rapporteur's 2006 visit. In 2006 and 2007, there were 18 and 20 lynchings respectively. In his 2007 report, the Special Rapporteur had analysed MINUGUA's 2002 extensive study of the phenomenon and supported its reasoned recommendations.⁹³ As was the case when the Special Rapporteur visited Guatemala in 2006, the majority of lynchings continue to be carried out against individuals suspected of being responsible for robberies. However, the Special Rapporteur is aware of no measures taken to address these killings.

⁹³ MINUGUA, "Los Linchamientos: Un Flagelo que Persiste" (July 2002). See analysis of the MINUGUA study in the Special Rapporteur's report on Guatemala, A/HRC/4/20/Add.2, paras. 27-31.

Report on Mission to Nigeria (E/CN.4/2006/53/Add.4, 7 January 2006, ¶¶ 79-85):

78. With the end of military rule large businesses, including oil companies and banks, as well as the rich, turned to private security to fill the vacuum of authority. For the poor, vigilantes were seen as a way to make-up for inadequate, ineffectual and often malign policing. For politicians, armed volunteer groups offered a means of intimidating opponents and rewarding supporters. While “vigilante” groups play a major role in Nigeria, definitional issues are crucial to understanding the situation. The term covers a wide spectrum of groups ranging from community policing through problematic ethnic-based vigilantes, to state-sponsored or supported gangs. Because many of the groups have been openly or covertly supported by State officials, they cannot be considered classical non-state actors. The right of citizen arrest is often invoked to justify the groups’ activities.⁹⁴

79. Among the most violent have been those established to defend commercial interests in urban areas. While they may carry out some “policing”, they also undertake debt collection, crime protection, extortion and armed enforcement services. The Bakassi Boys for example, is a group active mainly in Abia, Anambra and Imo states that has been responsible for many extrajudicial executions, often carried out publicly. They patrol the streets in heavily armed gangs, arrest suspects, determine guilt on the spot and exact punishment, which may involve beating, “fining”, detaining, torturing or killing the victim. The Bakassi Boys are tacitly supported by state governments and one has accorded them official recognition.⁹⁵

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

81. An important religious-based group is the Hisbah who are considered to be an integral part of overall State policing in some northern States. While some strongly defend their role there are also persistent reports of attacks upon women alleged to be inappropriately dressed, of businesses selling alcohol being destroyed, of insults to Islam being punished severely, and of prostitutes being badly beaten. There is a need for much closer and more systematic scrutiny of their activities.

⁹⁴ Section 14(1) of the Nigerian Criminal Procedure Act provides that “...Any private person arresting any other person without a warrant shall without unnecessary delay make over the person so arrested to a police officer, or in absence of a police officer shall take such person to the nearest police station.” This limited power of arrest is far exceeded by many vigilante groups who have even established their own detention centers.

⁹⁵ *The Anambra State Vigilante Service Act No. 9, 2000.*

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

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

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

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

Follow-up Report on Mission to Nigeria (A/HRC/8/3/Add.3, 14 May 2008, ¶¶ 92-98):

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.

Report of the Special Rapporteur on extrajudicial executions to the General Assembly (A/64/187, 29 July 2009, ¶¶ 15-83):

A. Introduction

15. On 2 June 2009, a Guinean Government official urged citizens to “burn alive armed bandits who are caught red-handed”.⁵ In India on 22 July 2009, a mob beat to death three suspected thieves and threw stones at the police who attempted to prevent the murders. On 12 July 2009, residents of a district in Uganda beat and burnt to death a suspected burglar. On 8 January 2009, a man in Australia charged with sexual offences against children was murdered while asleep in his home, the day before his trial was to begin.⁹⁶ Such “vigilante killings” (unlawful killings by private citizens of suspected criminals and others) are referred to by a range of euphemisms, including jungle justice, lynch law, mob justice, instant justice, lynching, *linchamientos*, violent self-help, street justice, people’s justice, *justice sommaire* and private justice. It must be emphasized that problems with vigilante killings are by no means the preserve of any one geographical region, or of developing countries. They have been reported from around the world and the problem is thus one of potential concern to all States.

16. Governments tend to wash their hands of responsibility for such killings on the grounds that private actors were responsible and there was nothing the Government could have done to prevent them. Indeed, there are clearly many instances in which individuals or mobs act entirely of their own accord and in circumstances in which Government officials are either absent or helpless. But it often also transpires that those killed were on a Government list of undesirables and that the killings are not exactly lamented by the authorities. Sometimes, Government connivance or at least passive acquiescence becomes apparent. And in the worst-case situations, Governments have in fact opted to act through the intermediary of alleged vigilantes.

17. In many, if not most, cases, such killings constitute human rights violations and engage the international legal responsibility of States. Yet they have received all too little sustained or systematic attention from the human rights community.

⁹⁶ Ronan O’Connell, “Murdered man ‘vigilante victim’”, 18 July 2009, *The West Australian*.

18. Whose rights and which rights are violated by these killings? How many such killings occur around the world? What motivates them? When and why are they supported by the public? Who are the victims and the perpetrators? What role have States played in encouraging or supporting vigilante murders? What legal obligations, if any, do States have with respect to them? And what can and should States and the international community do to reduce the killings?

19. There follows, the Special Rapporteur's preliminary analysis of these issues.

B. What are vigilante killings?

20. There has been much debate over the precise meaning and legitimacy of the term "vigilantism" in the historical, anthropological and political science literature.⁹⁷ Attempts have been made, especially in early United States literature on the subject, to justify vigilante killings as an expression of popular sovereignty: "one of the key reasons for vigilantism's taking hold in America was the belief that the rule of the people superseded all other rule. And from that followed the premise that they had the power to act in their own best interest in the absence of effective constituted authority".⁹⁸ Later writings, however, stressed the negative consequences that such killings have for the rule of law.⁹⁹

21. Until the late 1980s the phenomenon appears to have received little scholarly attention outside of the United States. Since then, edited volumes and articles have discussed vigilantism in the context of Latin America (especially Brazil), Africa (especially South Africa, Nigeria, Tanzania, Ghana) and Asia (especially the Philippines).¹⁰⁰

22. Various definitional attempts have been made. Johnston, for example, argues that vigilantism has six key elements involving: (a) planning and organization by (b) private agents (c) acting autonomously (d) using or threatening the use of force (e) in reaction to real or perceived criminal activity or deviance and (f) aiming to control crime or deviance by offering security.¹⁰¹ Burrows earlier set out a similar list of elements for defining a vigilante group: (a) a formal organization, (b) existing for varying periods of time, which (c) justifies its existence as due to the failures of the State to provide security, (d)

⁹⁷ See, for example: John Caughey, *Their Majesties the Mob*, 1960; William E Burrows, *Vigilante!* (1976); H. Jon Rosenbaum and Peter C. Sederberg (eds.), *Vigilante Politics*, 1976; Les Johnston, "What is vigilantism?" *British Journal of Criminology*, vol. 36, No. 2, 1996; Ray Abrahams, *Vigilant Citizens: Vigilantism and the State*, 1998; the various essays contained in Dermot Feenan (ed.), *Informal Criminal Justice*, 2003; Joshua Barker, "Vigilantes and the State", *Social Analysis*, vol. 50, issue 1, 2006.

⁹⁸ Burrows, note 7 above, p. 17. See pp. 8-23 for discussion of arguments for vigilantism in the nineteenth century United States context. Also see Abrahams, note 7 above, pp. 12-13.

⁹⁹ Burrows, note 7 above, p. 11.

¹⁰⁰ See, for example, Abrahams, note 7 above (arguing that vigilantism has received insufficient attention outside the United States and seeking to address this by analysing vigilantism in, for example, Tanzania, Uganda and the Philippines); Martha K. Huggins, "Introduction: vigilantism and the State — a look south and north", in Martha K. Huggins (ed.), *Vigilantism and the State in Modern Latin America: Essays on Extralegal Violence* (1991) (applying United States literature on vigilantism to the Latin American context).

¹⁰¹ Les Johnston, "What is Vigilantism?", *British Journal of Criminology*, vol. 36, No. 2, 1996.

professes to act only as a “last-resort”, (e) works to strengthen “the legal system, never for its destruction”, and (f) “represents the establishment”.¹⁰²

23. Subsequent writing has, however, challenged these definitions, noting their general accuracy in the United States context, but arguing that they are not fully appropriate for other contexts, especially where the killings are undertaken in a more spontaneous or disorganized fashion.¹⁰³

C. Survey: vigilante killings around the world

24. Vigilante killings have been an issue in many of the countries visited by the Special Rapporteur, including Brazil, Nigeria, Kenya, the Philippines, the Central African Republic and Guatemala. Further research indicates their widespread occurrence across the globe, and that they are confined neither to specific regions nor to particular phases of national socio-economic development. The examples that follow are designed to illustrate the nature and scale of the problem, but are by no means an authoritative or comprehensive list.

25. *Nigeria*. Vigilante groups grew in Nigeria during the 1990s.¹⁰⁴ During the Special Rapporteur’s mission to Nigeria in 2005,¹⁰⁵ he heard persistent reports of vigilante killings by organized groups and noted that the groups were “largely formed to fill the security vacuum caused by ineffectual policing, and in some instances are actually supported by members of the Government”.¹⁰⁶ Executions were often carried out publicly. In some cases, Government officials were reportedly responsible for recruiting vigilantes and paying them salaries in excess of those earned by junior police officers. The Special Rapporteur also heard reports of religious-based vigilante groups operating as an integral part of overall State policing, responsible for attacks on allegedly inappropriately dressed women, businesses selling alcohol, and sex workers. In his follow-up report in 2008, the Special Rapporteur reported that the problem of violence by

¹⁰² Burrows, note 7 above, pp. 13-14.

¹⁰³ Huggins, note 10 above, pp. 3-4 (questioning the requirement of “organization”).

¹⁰⁴ Daniel Jordan Smith, “The Bakassi Boys: vigilantism, violence, and political imagination in Nigeria”, *Cultural Anthropology*, August 2004, 19:3.

¹⁰⁵ See E/CN.4/2006/53/Add.4 and A/HRC/8/3/Add.3; see also, the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Nigeria (A/HRC/7/3/Add.4, para. 9); see also, the report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2006/95/Add.2, para. 84); see also, Human Rights Watch, “Rest in pieces: police torture and deaths in custody in Nigeria”, 26 July 2005, available at www.hrw.org/en/reports/2005/07/26/rest-pieces?print; Amnesty International, “Nigeria: are human rights on the political agenda?”, 29 May 2007, available at www.amnesty.org/en/library/asset/AFR44/013/2007/en/753d64ef-d38d-11dd-a329-2f46302a8cc6/afr440132007en.html; Innocent Chukwuma, “Responding to Vigilantism”, in *Human Rights Dialogue* 2.8 (Fall 2002): “Public security and human rights”.

¹⁰⁶ A/HRC/8/3/Add.3, para. 92. On the role of politicians in the financing of vigilante groups, also see Johannes Harnischfeger, “The Bakassi Boys: fighting crime in Nigeria”, *Journal of Modern African Studies*, 2003, 41:1.

vigilantes and criminal organizations had significantly worsened in the wake of political support for such groups during the April 2007 election.¹⁰⁷

26. *Guatemala*. During his mission to Guatemala, the Special Rapporteur found that lynchings were a “persistent problem” and reliable estimates of such killings were 23 to 54 per year from 1996 to 2001.¹⁰⁸ In his June 2009 follow-up report on Guatemala, he noted there were reports of 18 lynchings in 2008, that most lynchings continued to be carried out against suspected robbers and that measures were being taken to address the killings.¹⁰⁹ In addition, organized criminal groups continued to target and kill suspected criminals and gang members in an effort to “cleanse” society of undesirables, often with the support of local officials.¹¹⁰ One notable factor in Guatemala is that the United Nations Verification Mission in Guatemala (MINUGA) had carried out a detailed study into lynchings in the country. The study tracked lynchings over time, analysed where they occurred, against whom they were committed and their motivations. It found, for example, that 55 per cent of lynchings were committed in response to the theft of personal property, that they were generally committed in poor areas with inadequate State presence, and that most victims were men aged between 18 and 40.

27. *Kenya*. The lack of faith in the police to act in a professional manner and to respond appropriately to threats to security posed by criminals has encouraged vigilantes to take the law into their own hands. For example, vigilante groups have emerged to counter the Mungiki organized criminal group. The vigilante groups reportedly operate with the tacit support of the police in some areas. In April-May 2009, the killings of suspected Mungiki members by a vigilante group known as “The Hague” resulted in retaliation killings by the Mungiki of “Hague” members and their sympathizers.¹¹¹ Further Mungiki-Hague killings erupted in June 2009.¹¹² Mob killings of suspected witches, thieves and others are also often reported.¹¹³ 28. *Brazil*. Spontaneous mob-style killings of suspected criminals appear to be infrequently reported now in Brazil, but planned and organized vigilante killings have often been documented in recent years.¹¹⁴ This has included the

¹⁰⁷ A/HRC/8/3/Add.3, paras. 68-69.

¹⁰⁸ A/HRC/4/20/Add.2, para. 27. On lynchings in Guatemala, also see Jim Handy, “Chicken thieves, witches, and judges: vigilante justice and customary law in Guatemala” (2004) 36 *Journal of Latin American Studies* 533.

¹⁰⁹ A/HRC/11/2/Add.7, para. 17.

¹¹⁰ *Ibid.*, para. 14.

¹¹¹ See A/HRC/11/NI/5; see also Amnesty International, “Kenya: Government must respect and protect the rights of all”, 27 April 2009, available at www.amnesty.org/en/library/asset/AFR32/004/2009/en/02cfa669-9e7f-4098-8e40-2b6cdf7626a3/afr320042009en.html.

¹¹² “Kenya: fresh strikes by Mungiki spread fear in Kirinyaga”, 24 June 2009, *All Africa* at <http://allafrica.com/stories/200906240995.html>.

¹¹³ Odhiambo Joseph, “Horror of Kenya’s ‘witch’ lynchings”, BBC News, 26 June 2009, at <http://news.bbc.co.uk/2/hi/africa/8119201.stm>; “Lynching in Kenya: A routine crime”, *The Economist*, 18 June 2009 (describing the mob killing of three men, accused of stealing a mobile phone) at http://www.economist.com/world/mideast-africa/displaystory.cfm?story_id=13876716.

¹¹⁴ For a study of lynchings between 1979 and 1988, see José de Souza Martins, “Lynchings — life by a threat: street justice in Brazil, 1979-1988”, in Huggins (ed.), note 10 above (noting that 43.1 per cent of lynchings studied were motivated by crimes against the person (rape, assault, murder), and 32.4 per cent by crimes against property (robbery, theft); that the victims were generally male, young and poor; and that lynchings generally were committed outdoors and in public).

killing of so-called street children by armed groups, and the hiring of killers by the victims of crime.¹¹⁵

29. *Philippines*. The Special Rapporteur reported in 2007 on the situation of vigilante killings by death squads in Davao City and on the officially sanctioned character of the killings.¹¹⁶ Since 1998, the Davao Death Squad has killed over 500 people, generally executing people publicly. These death squads target suspected petty criminals, drug dealers, gang members and street children. In Davao City, officials submit names of suspected criminals for inclusion on law enforcement watch lists.¹¹⁷ There appear to have been no convictions in any of these killings and the Mayor of Davao City has made public statements which appear to support such killings.¹¹⁸ The vigilante killings by the Davao Death Squad have worsened since 2007, with some 28 killings reported in the first month of 2009.¹¹⁹ They also appear to be spreading to other cities in the Philippines. President Arroyo was recently quoted as ordering the police to “get to the bottom” of vigilante killings,¹²⁰ and the Commission on Human Rights of the Philippines launched an important investigation into the killings in May 2009.

30. *Central African Republic*. Reports of mob justice in the Central African Republic in 2008 and 2009 were widespread and are generally attributed to the very poor functioning of the police and of the criminal justice system. These incidents included the execution of people accused of witchcraft.¹²¹

31. *United States*. Vigilantism has a long history in the United States and the values and specific context that gave rise to it there have been extensively studied.¹²² Recently, former offenders included on online sex offender registries have reportedly been the targets of vigilante violence. Registrants and their families have been chased from their homes, had their homes vandalized and burned, and been assaulted by neighbours or strangers who discovered that the registrant was a convicted sex offender. At least four registrants were killed in 2005-2006.¹²³ Vigilante killings of doctors who perform

¹¹⁵ A/HRC/11/2/Add.2, para. 38.

¹¹⁶ A/HRC/8/3/Add.2, paras 39-44; see also A/HRC/8/NGO/27, a written statement submitted by the Asian Legal Resource Centre; see also Human Rights Watch, “Philippine death squads: a murderous plague”, 19 May 2009, available at www.hrw.org/en/news/2009/05/19/philippinedeath-squads-murderous-plague; Human Rights Watch, “You can die any time: death squad killings in Mindanao”, 6 April 2009, available at www.hrw.org/en/reports/2009/04/06/you-candie-any-time-0?print; Human Rights Watch, “Philippines President pledges to investigate extrajudicial killings”, 7 July 2009, available at www.hrw.org/en/news/2009/07/06/philippinespresident-pledges-investigate-extrajudicial-killings; Human Rights Watch, *World Report 2009*, chapter on the Philippines, available at www.hrw.org/en/world-report/2009/philippines.

¹¹⁷ A/HRC/11/2/Add.8, para. 19.

¹¹⁸ *Ibid.*, para. 21.

¹¹⁹ *Ibid.*, para. 8.

¹²⁰ Human Rights Watch, “Philippine death squads: a murderous plague”, 19 May 2009, available at www.hrw.org/en/news/2009/05/19/philippine-death-squads-murderous-plague.

¹²¹ S/2008/733, para. 42; S/2009/309, para. 34; A/HRC/11/2/Add.3, paras. 49-51.

¹²² See, for example, Richard Maxwell Brown, *The Strain of Violence: Historical Studies of American Violence and Vigilantism*, 1975; Burrows, note 7 above.

¹²³ Human Rights Watch, “No easy answers: sex offender laws in the US”, 11 September 2007, available at www.hrw.org/en/reports/2007/09/11/no-easy-answers-0?print.

abortions have also taken place, most recently that of Dr. George Tiller on 31 May 2009.¹²⁴

32. *Guinea*. On 2 June 2009, a senior official of the National Council for Democracy and Development Government of Guinea, Captain Moussa Tiegboro Camara, publicly stated: “I am asking you to burn alive armed bandits who are caught red-handed ... Our jails and our correctional centres can no longer take in people and the situation cannot carry on like this ... It’s better to kill all those who kill”.¹²⁵ Three days later, human rights groups reported the murder of a man by a group of residents who accused him of theft, and beat and burnt him to death.¹²⁶ Captain Tiegboro reportedly praised the population for the murder, and told them that if they did not have petrol to burn criminals with, he would provide them funds with which to purchase it.¹²⁷

33. *Indonesia*. After the end of President Suharto’s rule in 1998, reports of vigilantism grew and it became “common for citizens themselves to mete out punishments” to suspected criminals.¹²⁸ Thieves are “often beaten or even burned alive” and suspected witches are “publicly lynched by their neighbors”.¹²⁹ 34. *Mexico*. On 15 January 2009, a group of residents called “Juárez Citizens Command” released a public statement promising to kill one criminal each day until gang and cartel violence decreased in the town of Juárez, Mexico: “Our mission is to finish each 24 hours with the life of a criminal. The hour has come to stop this disorder in Juárez.”¹³⁰ The group was formed in response to the thousands of murders, kidnappings, robberies and carjackings that had occurred in previous years.

35. *South Africa*. There has been much reporting and analysis of the widespread vigilante murders in post-Apartheid South Africa. Reports “show a gruesomely mounting tally of death and injury to apparent wrongdoers by members of the public. Vigilantism and kangaroo courts are becoming a South African way of life as a hapless, outnumbered and outgunned, and reportedly demoralized, police force finds itself unable to cope with the country’s spiralling crimewave.”¹³¹ Reports record, for example, the beating to death of robbers by villagers; the shooting to death of a man accused of stealing a mobile phone; the beating and setting on fire of a “troublemaker”; and the formation of formalized vigilante groups, with paid membership and defined services.¹³² Vigilante killings of

¹²⁴ Joe Stumpe and Monica Davey, “Abortion Doctor Shot to Death in Kansas Church”, *The New York Times*, 1 June 2009.

¹²⁵ BBC News, “Fury at Guinea ‘burn thief’ idea”, 4 June 2009.

¹²⁶ Human Rights Watch, “Guinea: coup leaders undermining rights”, 8 July 2009, available at www.hrw.org/en/news/2009/07/08/guinea-coup-leaders-undermining-rights.

¹²⁷ *Ibid.*

¹²⁸ Joshua Barker, “Vigilantes and the State”, *Social Analysis*, vol. 50, issue 1, Spring 2006.

¹²⁹ *Ibid.*

¹³⁰ Dave Gibson, “Have the citizens of Juárez and El Paso finally had enough?”, *American Chronicle*, 17 January 2009.

¹³¹ Tom Nevin, “South Africa: vigilante groups out of control”, *African Business*, Feb. 2007, 328, p. 46.

¹³² *Ibid.*, pp. 46-47. Also see Rebekah Lee and Jeremy Seekings, “Vigilantism and popular justice after Apartheid”, in Dermot Feenan (ed.), *Informal Criminal Justice*, 2003; Anthony Minnaar, “The ‘new’ vigilantism in post-April 1994 South Africa: searching for explanations”, in Dermot Feenan (ed.), *Informal Criminal Justice*, 2003.

immigrants also occurred in xenophobic attacks in 2008, in which immigrants were blamed for job and housing losses and increasing levels of crime.¹³³

36. *Nepal*. During the internal armed conflict in Nepal, vigilante killings were often reported. In many rural areas, the Government created and armed vigilante groups. The Home Minister was quoted as applauding allegations of executions by vigilantes, saying that recourse to courts was irrelevant during a war.¹³⁴ These groups were reportedly poorly trained and ill-disciplined and frequently abused the populations they were allegedly protecting, beating and killing those suspected of Maoist sympathies, extorting money and violently intimidating villagers. In return, Maoists punished members of vigilante groups, abducting and killing them and their supporters.¹³⁵ In 2009, populations in some areas continued to be subjected to criminal activities by armed groups, believed to include members of former vigilante groups.¹³⁶

37. *Ghana*. Mob killings have frequently been reported in Ghana.¹³⁷ News reports from July 2009 highlight apparently rising rates of mob justice, especially in response to suspected thefts.¹³⁸ A sociological analysis of vigilante killings there found that victims were generally young, urban males accused of theft. They were generally attacked by spontaneous mobs, who used whatever weapons were available.¹³⁹ Another academic analysis of the reasons for public support for vigilantism found that “public support for

¹³³ *The New York Times*, “Constant fear and mob rule in South Africa slum”, 29 June 2009, available at www.nytimes.com/2009/06/30/world/africa/30safrica.html?scp=3&sq=vigilante&st=cse; United States Department of State, “South Africa”, in 2008 Country Reports on Human Rights Practices, 25 February 2009, available at www.state.gov/g/drl/rls/hrrpt/2008/af/119025.htm.

¹³⁴ Human Rights Watch, “Nepal human rights crisis continues”, 5 April 2005, available at www.hrw.org/en/news/2005/04/05/nepal-human-rights-crisis-continues; see also Human Rights Watch, “Nepal: civilians at risk as conflict resumes”, 27 March 2006, available at www.hrw.org/en/news/2006/03/27/nepal-civilians-risk-conflict-resumes.

¹³⁵ Human Rights Watch, “Nepal: but it’s not too late to prevent new bloodshed”, 23 March 2006, available at www.hrw.org/en/news/2006/03/23/nepal-its-not-too-late-prevent-new-bloodshed. Amnesty International also documented State support and training of vigilantes: “Nepal: military assistance contributing to grave human rights violations”, 14 June 2005, available at

www.amnesty.org/en/library/asset/ASA31/047/2005/en/a866bcb9-d4e4-11dd-8a23-d58a49c0d652/asa310472005en.html. See also: Amnesty International, “Nepal: vigilante groups worsen human rights situation”, 2 August 2005, available at www.amnesty.org/en/library/asset/ASA31/066/2005/en/0186ac77-d4c2-11dd-8a23-d58a49c0d652/asa310662005en.html; E/CN.4/2006/71/Add.2, paras. 17-18; E/CN.4/2006/107, paras 59-60; Amnesty International, “Nepal: human rights abuses escalate under the state of emergency”, 19 April 2005, available at

www.amnesty.org/en/library/asset/ASA31/036/2005/en/d4c20dc3-d4fb-11dd-8a23-d58a49c0d652/asa310362005en.html.

¹³⁶ S/2009/1, para. 42.

¹³⁷ See, for example, The Commission on Human Rights and Administrative Justice (Ghana), “Mob Justice”, 17 May 2008, at www.chrajghana.org/section-details.asp?ARTID=81.

¹³⁸ Kwaku Baah-Acheamfour, “Ghana: mob justice hits cape coast”, 20 July 2009, at <http://allafrica.com/stories/200907201455.html>.

¹³⁹ Mensah Adinkrah, “Vigilante homicides in contemporary Ghana”, *Journal of Criminal Justice*, vol. 33, issue 5, September-October 2005, pp. 413-427.

vigilante self-help was fundamentally linked to people's judgments about the trustworthiness of the police".¹⁴⁰

38. *Haiti*. In February 2006, the United Nations noted that "mob violence, including lynchings and the destruction of property, remained a widespread problem and was frequently not curbed effectively by law enforcement and judicial authorities".¹⁴¹ The United Nations Stabilization Mission in Haiti also documented cases of killings by vigilante groups with connection to police elements, and killings by mobs, with police involvement, in Port-au-Prince. The report noted that "no action was taken" by the Government in response to the allegations.¹⁴²

39. *Albania*. Vigilante killings, in the form of *gjakmarra* or "blood feuds" (killings of alleged killers), have been reported in Albania.¹⁴³ Blood feuds have existed for centuries in Albania, but resurged after the collapse of communism. To address the issue, Parliament specifically criminalized blood feuds in 2007 (in addition to the already existing criminalization of premeditated murder). The Government has also sponsored civil society organizations devoted to promoting reconciliation between families.

40. *Burundi*. The independent expert on the situation of human rights in Burundi reported in 2008 that mob justice was "prevalent" and primarily caused by the weak justice system. The expert found that 23 cases of mob justice had been reported between January and June 2008. Victims reportedly included people suspected of a range of offences, and also included those accused of witchcraft.¹⁴⁴ The expert stated: "lack of confidence in the police and the judiciary are a major explanation for this trend".¹⁴⁵

41. *Benin*. The issue of mob justice was raised during the second periodic review of Benin before the Committee against Torture. The Government noted that the problem had first emerged in the 1990s and had recently worsened for several reasons: "The time taken to come to trial and the decisions handed down following trial, in accordance with the law, do not always please people. Some see justice as too slow, others as too lenient, and it is then that they may decide to take the law into their own hands ... Mob justice thus becomes a form of summary justice. Those suspected of wrongdoing are seized at the scene of the crime by individuals who see themselves as upholders of the law though they have no mandate or power."¹⁴⁶ The Government stated that it was doing what it

¹⁴⁰ Justice Tankebe, "Self-help, policing, and procedural justice: Ghanaian vigilantism and the rule of law", (2009) 43 *Law and Society Review* 245, pp. 259-260.

¹⁴¹ Report of the Secretary-General on the United Nations Stabilization Mission in Haiti (S/2006/60), para. 43.

¹⁴² *Ibid.*, para. 44.

¹⁴³ See US Department of State, 2008 Country Reports on Human Rights Practices, Albania; US Department of State, 2007 Country Reports on Human Rights Practices, Albania.

¹⁴⁴ A/HRC/9/14, para. 68. See also earlier reports: A/62/213, para. 41; A/HRC/4/SR.20, para. 51; A/HRC/4/5, para. 39; A/61/360, para. 93.

¹⁴⁵ A/HRC/9/14, para. 68.

¹⁴⁶ CAT/C/BEN/Q/2/Add.1, paras. 114-115. For examples of mob justice in Benin, see Annie Barbara Chikwanha, "Benin crime and criminal justice issue paper 2007", Africa Human Security Initiative, p. 5.

could to stop the killings and that where perpetrators were found, they were prosecuted. Further, education measures were taken with respect to the general population.¹⁴⁷

42. *Uganda*. In 2007 the United Nations reported various instances of mob justice, including lynchings of suspected witches, a mob breaking into a police station to kill suspects and the killing of juvenile suspects being escorted to a police station.¹⁴⁸ It was also observed that the virtual absence of the justice system in northern Uganda had resulted in the proliferation of “mob justice”.¹⁴⁹ The following year the United Nations noted that mob justice was “compounded by the lack of access to formal justice where populations take the law in their own hands”, especially in response to theft, killings, sexual offences and witchcraft. There were also allegations that police and judicial officials colluded with criminals.¹⁵⁰ The report concluded that mob justice “remains an issue to be further studied”.¹⁵¹

43. *Hungary*. In October 2006, a mob reportedly beat to death a man who two days earlier had been responsible for a hit and run motor vehicle accident involving an 11-year-old Romani girl.¹⁵²

44. *Cambodia*. Vigilante killings in Cambodia are often attributed to high levels of corruption and low levels of confidence in the police and judiciary.¹⁵³ In 2005, vigilantes, sometimes acting in large groups of up to 100 persons, were responsible for an estimated 22 deaths of suspected thieves or alleged witches.¹⁵⁴ In one case, a teenage boy was beaten to death by a mob on suspicion that he had attempted to steal a ladder.¹⁵⁵ Prosecutions of the killers were reportedly rare.

45. *Tanzania*. A medical study of autopsy reports found that 1,249 people were killed by “mob justice” in Dar es Salaam between 2000 and 2004.¹⁵⁶ Most of those killed were stoned or burnt to death, and over 95 per cent of the killings were committed in response to suspected robbery.

46. *Liberia*. Incidents of vigilante justice resulted in at least 10 deaths in 2008, and mob attacks have reportedly taken place at police stations and courthouses to attack suspects.¹⁵⁷ The 2007 report of the United Nations Mission in Liberia documented

¹⁴⁷ CAT/C/BEN/Q/2/Add.1, paras. 117-118.

¹⁴⁸ A/HRC/4/49/Add.2, paras. 38-40.

¹⁴⁹ *Ibid.*, para. 38.

¹⁵⁰ A/HRC/7/38/Add.2, para. 6.

¹⁵¹ *Ibid.*

¹⁵² US Department of State, *2006 Country Reports on Human Rights Practices*, Hungary; European Roma Rights Centre, “Anti-Romani hatred promoted by Hungarian media: ERRC concerned at inflammatory responses to mob crime”, 17 October 2006.

¹⁵³ US State Department, *2005 Country Reports on Human Rights Practices*, Cambodia.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ Paul M Ng’walali and James N Kitinya, “Mob justice in Tanzania: a medico-social problem”, 2006, *African Health Science*, vol. 6 (1).

¹⁵⁷ Human Rights Watch, p. 36, *World Report 2009*, chapter on Liberia”, available at www.hrw.org/en/world-report/2009/liberia; see also Human Rights Watch, “Letter to the UN Security

various cases of mob justice, including against a suspected juvenile thief and “witches”, and also documented the failures of the State to act to protect victims and prosecute the perpetrators.¹⁵⁸ A report of the Panel of Experts on Liberia submitted to the Security Council quoted the Minister of Justice as calling upon “community dwellers, in the face of the police inability to decisively deal with the upsurge in criminal activities in the city, to organize themselves into community watch teams or vigilante groups in helping to protect themselves against these murders that are bent on disrupting our hard earned peace”. The Panel noted that the President had subsequently stated that the Government was advocating community watch teams and not mob justice. The Panel commented that the dramatic increase in vigilante violence likely reflects “people’s desperation with the impunity resulting from a dysfunctional justice system” and “an intolerable increase in serious crime”.¹⁵⁹

47. *Papua New Guinea*. In February 2009, in Ban village, local men shot and burned a man and burned his son alive on the basis that they had caused the death of a prominent member of the community by sorcery. A woman was stripped naked, gagged and burned alive at Mount Hagen after being suspected of practicing witchcraft.¹⁶⁰

48. *Democratic Republic of the Congo*. In a 2009 combined report of seven thematic special procedures, note was taken of a reported growth in lynching and other illegal acts of vigilante justice, which “further undermines the rule of law”.¹⁶¹

D. Preliminary analysis and issues of concern

49. This indicative survey of recent vigilante killings provides a basis upon which to analyse the human rights and international legal implications of such killings, to highlight specific issues of concern and to generate some preliminary conclusions to guide further work in this complex area.

1. Definitions of vigilantism

50. The survey indicates that the nature of acts treated as “vigilante killings” can vary widely. This underscores the fact that strict definitions based on the experiences of a limited number of countries should be avoided as they fail to grasp the scope and variety of such killings across the world.

51. At their core, vigilante killings are those undertaken by individuals or groups who “take the law into their own hands”.¹⁶² They are killings carried out in violation of the

Council in advance of Africa trip”, 11 May 2009 available at www.hrw.org/en/news/2009/05/11/letter-un-security-council-advance-africa-trip.

¹⁵⁸ United Nations Mission in Liberia, *Report on the Human Rights Situation in Liberia: May-October 2007*, Human Rights and Protection Section, paras. 17-18.

¹⁵⁹ S/2006/976, paras. 9-10; see also S/2005/560, para. 21.

¹⁶⁰ A/HRC/11/2/Add.1, pp. 312-313; Amnesty International, “Increasing sorcery-related killings in Papua New Guinea”, 11 February 2009, available at www.amnesty.org/en/news-and-updates/news/increasing-sorcery-related-killings-papua-newguinea-20090211.

¹⁶¹ A/HRC/10/59, para. 59.

law by private individuals with the purported aim of crime control, or the control of perceived deviant or immoral behaviour. Specific incidents of vigilante killings can most usefully be categorized along various axes — such as spontaneity, organization and level of State involvement — and can be considered in relation to various characteristics — including the precise motivation for the killing, the identity of the victim and the identity of perpetrators.¹⁶³ At one end of a spontaneityplanning continuum, for example, would be a set of killings carefully planned and orchestrated by a group which formed itself for the purpose of killing, for example, the listed leaders of a known criminal gang in a particular town. At the other end would be a group of people unknown to each other who responded to a person’s cry to catch a thief in the street and who came together at that point to murder the suspect in an instant of “mob justice”. It is the illegality and motive which brings these killings together as instances of vigilantism.

52. Although the lines can sometimes become blurred, vigilante killings should be conceptually separated from a range of other types or forms of killings which may definitionally overlap in certain respects, but which are in fact distinct. For example, although vigilante killings are sometimes justified by individual perpetrators as “necessary” or as “self-defence”, they are distinct from killings lawfully committed in self-defence, because they are not actually carried out in response to an immediate threat or use of lethal force. Killings by vigilantes are also distinct from those that may be committed by mercenaries, in that the actions of the latter are carried out by persons motivated primarily by personal gain.¹⁶⁴ Vigilantes are also distinct from insurgents, guerrillas and rebel groups because vigilantes are not against the State as such; nor do they seek fundamental changes in the structure of the State, or separatism. Vigilantism is “conservative violence ... designed to create, maintain, or recreate an established socio-political order”.¹⁶⁵ In addition, vigilante killings should be analytically separated from the broad category of killings carried out by armed groups or forces during international or non-international armed conflict, although vigilante killings can of course be committed within the general context of an armed conflict.

2. The role of the State and the State’s obligations to respect and ensure the right to life

53. Very often, conceptions of vigilantes paint them as individuals or groups acting privately to provide justice where the State fails to do so. States also commonly deny any official involvement in vigilante killings. However, the survey indicates that a more accurate accounting of vigilante killings must take cognizance of not only fully private vigilante acts, but also a spectrum of State involvement. An important conclusion to be drawn from the examples above is that covert or overt official involvement in or encouragement of vigilante killings is actually quite common, and perhaps more common

¹⁶² Richard Maxwell Brown, *Strain of Violence: Historical Studies of American Violence and Vigilantism*, 1975, p. 96.

¹⁶³ For discussion of some of these variables, see Huggins, note 10 above, pp. 8-10.

¹⁶⁴ Article 47 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1).

¹⁶⁵ Rosenbaum and Sederberg, note 7 above, p. 4.

than might otherwise be assumed given that the justification generally given for vigilantism is that it is necessary in lieu of effective State power.¹⁶⁶

54. The State's role can exist on a continuum from being non-existent; to failing effectively to prevent the killings and prosecute perpetrators; to implied approval or tacit support for killings; to active encouragement, including official verbal support for killings; and overt direct State involvement, including official assistance in the formation of vigilante groups and their activities, and official participation or collusion in vigilante activities. Often, one or more of these levels of involvement can co-exist.

55. Recognition of the various roles that States have played in vigilante killings has important implications for considering States' international legal obligations. States are obliged both to respect and to ensure the right to life.¹⁶⁷ This means that they are required to refrain from violating the right to life and also that they must adopt the necessary legislative, judicial, administrative, educative and other measures to guarantee that the right to life is respected within their territory or areas under their control.¹⁶⁸ In other words, just as States are prohibited from using otherwise private actors to carry out vigilante killings, they are required to protect people from violent vigilantism carried out by privately formed groups.

56. With respect to the relationship between vigilantism and the obligation to respect the right to life, some types or cases of vigilante killings appear to have such a level of State involvement on the facts that the killings could reasonably be judged as attributable to the State. The conduct of private individuals is attributable to a State where, for example, those actors are acting on the instructions of, or under the direction or control of, the State.¹⁶⁹ Whether any particular vigilante killing is attributable to the State needs to be determined on a case-by-case basis. An example that would likely satisfy the attribution test would be where State officials fund the formation of a vigilante group and instructs it to kill certain named individuals or to patrol a certain area and kill suspected criminals. Where attribution exists on the facts, the State is internationally responsible for the killing itself. The provision of compensation or rewards for such killings would likely satisfy the criteria for attribution.

57. Outside of such cases of direct liability, the State can also be internationally responsible for failing to meet its due diligence obligations to ensure that rights are

¹⁶⁶ State involvement in vigilantism is not a new development. See e.g. Burrows, note 9 above, pp. 20-21 (describing senior official involvement in or support for vigilantism in the nineteenth century United States context).

¹⁶⁷ International Covenant on Civil and Political Rights, articles 2 and 6.1.

¹⁶⁸ Human Rights Committee, General Comment No. 31, "Nature of the legal obligation on States parties to the Covenant", 2004 (CCPR/C/21/Rev.1/Add.13); Commission on Human Rights resolution 2004/37, paras. 6-7.

¹⁶⁹ See the International Law Commission's articles on responsibility of States for internationally wrongful acts (2001), art. 8 (and commentary set out therein); see also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, ICJ Reports, 1986, paras. 109-115; compare *Prosecutor v. Duško Tadić*, International Tribunal for the Former Yugoslavia, Case IT-94-1-A, ILM, vol. 38 (1999), No. 6, November 1999, para. 117.

respected.¹⁷⁰ The State's obligations to protect victims from vigilante violence and to investigate and prosecute perpetrators are especially relevant. All too often, the actions of officials encourage or permit vigilante killings in such a way that they entail a failure to meet the State's due diligence obligations. A State's obligation to "ensure" the right to life is not breached simply because a vigilante kills a suspected criminal. Generally, isolated killings of individuals will constitute a crime in violation of the State's domestic laws, but not give rise to any international governmental responsibility. However, a State will violate its obligation to "ensure" the right to life when it fails to take appropriate measures to prevent, punish, investigate or redress the harm caused by vigilantes.¹⁷¹ The police, for example, fail in their duty to prevent when they refuse to respond to calls of ongoing mob justice, or to take victims for medical treatment.¹⁷² States also fail in their obligations when they permit the perpetrators of vigilante killings to escape prosecution, as so often happens.¹⁷³ Where vigilante killings are known to be a significant phenomenon, the State should take specific and focused action to investigate and stop them. The State may need to create a specialized law enforcement task force to dismantle vigilante groups and arrest and prosecute perpetrators,¹⁷⁴ or investigations by a State's national human rights institution may be appropriate (as is currently occurring in the Philippines). The international community can usefully assist States in such efforts through the provision of technical advice and resources.

3. *The victims and perpetrators of vigilante killings*

58. The survey indicates that the most common victims of vigilante violence are suspected criminals, generally young males and especially those suspected of having committed theft. Country-specific studies confirm the latter group as the primary victims: studies in Brazil show that the "majority of lynch victims were poor people accused of thievery",¹⁷⁵ research in Guatemala found that 55 per cent of victims were suspected thieves,¹⁷⁶ analysis from Ghana found that most victims were young males accused of theft¹⁷⁷ and a study from Tanzania found that 95 per cent of victims were suspected robbers.¹⁷⁸

¹⁷⁰ E/CN.4/2005/7, para. 73; *Velasquez Rodriguez v. Honduras*, Annual Report of the Inter-American Court of Human Rights, OAS/Ser.L/V/III/19, doc. 13 (1988), 28 ILM (1989) 291.

¹⁷¹ Human Rights Committee, General Comment No. 31, "Nature of the legal obligation on States parties to the Covenant", 2004 (CCPR/C/21/Rev.1/Add.13); Commission on Human Rights, Resolution 2004/37, para. 9.

¹⁷² Examples of such police failure are discussed in: Amanda Dissel and Kindiza Ngubeni, *A Lonely Way to Die: An Examination of Deaths in Police Custody*, July 1999, Center for the Study of Violence and Reconciliation; David Bruce and Joe Komane, "Taxis, cops, and vigilantes: police attitudes towards street justice", *Crime and Conflict*, No. 17, Spring 1999, p. 39.

¹⁷³ For example, in one study of 82 cases, "Police inquests had not closed even one case": Maria- Victoria Benevides and Rosa-Maria Fischer Ferreira, "Popular responses and urban violence: lynching in Brazil", in Huggins (ed.), note 10 above, p. 38.

¹⁷⁴ See for example Makubetse Sekhonyane and Antoinette Louw, *Violent Justice: Vigilantism and the State's Response*, Monograph 72 (March 2002), chap. 3 (noting that the targeted prosecution of Mapogo members in South Africa had "decreased the group's activities").

¹⁷⁵ Benevides and Ferreira, note 83 above, p. 37.

¹⁷⁶ A/HRC/11/2/Add.7, para. 14.

¹⁷⁷ Adinkrah, note 49 above, pp. 413-427.

¹⁷⁸ Ng'walali and Kitinya, note 66 above, p. 36.

59. Other frequent targets of vigilante violence are suspected murderers, perpetrators of assault, gang or cartel members and suspected or convicted sex offenders, including rapists and child sex offenders. Suspected “witches”, a victim group upon which the Special Rapporteur reported in his latest report to the Human Rights Council, are also commonly targeted in mob attacks.¹⁷⁹ Likewise, so-called “street children” have often been killed by vigilantes wanting to “cleanse” society of undesirables. Victims are also often those who are considered to have violated an individual’s or group’s moral or religious codes, such as abortion doctors, sex workers or those judged inappropriately dressed.

60. It should also be emphasized, however, that there are inevitably important instances in which the wrong individuals are identified, or persons are deliberately accused of crimes of which they are not guilty in order to punish them for some other reason, or to eliminate an enemy or rival.

61. The perpetrators of vigilante killings can vary widely from one context to another. In some cases, the perpetrators are unknown to each other: a suspected thief will be identified in the street, calls will be made to catch him and passers-by will join in chasing, beating and killing the suspect.¹⁸⁰ In others, a group of perpetrators who know each other (often neighbours, or residents of a small community) will join together to hunt down a suspect. Both types of killings are often referred to as “mob justice” and are frequently carried out in public. They tend to be committed in a particularly gruesome manner, with the victim often being severely beaten before death, murdered in a slow and painful fashion (e.g., dismembered or burned to death) and the corpse is often further disfigured after death.

62. More formal and less spontaneously formed groups of vigilantes are also found throughout the world. The Davao City Death Squad in the Philippines is well known, as are the Bakassi Boys in Nigeria; and groups like People Against Gangsterism and Drugs (PAGAD) or Mapogo a Mathamaga in South Africa. These groups are distinguishable from criminal gangs or terrorists only by their professed motives. Some take payments from community members to “patrol” for criminals, or to find and kill named suspected criminals. Some have formal codes of conduct and membership fees. They afford their victims varying degrees of “due process”, with some groups carrying out their own “investigations” and mini-“trials” of suspects.

63. Perpetrators can also include individuals who hire or request others to carry out vigilante killings on their behalf (e.g., *justiceiros* in Brazil).

64. Knowledge of the predominant identities of victims and perpetrators in a particular country or area should guide the response of States and the international community to the killings. Very differently tailored responses will be necessary to combat mob killings of “witches” than would be necessary to stop formally organized group murders of

¹⁷⁹ A/HRC/11/2, paras. 43-59.

¹⁸⁰ Benevides and Ferreira, note 83 above, pp. 39-40, refer to such killings as “anonymous lynch action”, in comparison to “communal lynchings”.

named criminals. The importance of careful research-based responses to vigilante killings, and the response implications in various circumstances, are addressed in section 5 below.

4. Human rights and security implications

65. Those who argue in favour of vigilante killings stress, as the rationale for their actions, the injustice suffered by the victim or victims of crime and insecurity. Vigilantes are right in arguing that victims of crime deserve justice and that perpetrators of crime should be held to account. Moreover, States have the clear obligation to promote security for their residents. To this end, criminals should be investigated, prosecuted and punished.

66. It is a basic tenet of human rights law, however, that suspected criminals should not be sentenced and punished until they have been through a trial respecting fair trial guarantees, and the punishment of death should be reserved strictly for only the “most serious crimes” (intentional murder).¹⁸¹ However nobly stated the aims of any vigilante killing may be, by their very nature, they are murders and grave violations of the right to life and of the right to be fairly tried by a court of law. Victims are simply summarily executed, often in a particularly brutal manner, thus introducing an element of torture or cruel, inhuman and degrading treatment. Sometimes, there will be a pretence of a “trial”, but generally the person is presumed guilty, found, detained and killed by the same individual or group that acts as victim, police, prosecutor, judge, jury and executioner. This presents a great risk that innocent people will be killed. The punishment is also generally entirely disproportionate to the crime allegedly committed. Very often, individuals are murdered for minor offences, especially petty theft, and for imputed beliefs, practices or identities which are not and should not be criminal offences at all (such as witchcraft). In one study of 82 lynching incidents in Brazil between 1979 and 1982, many killings were in response to thefts of items of low value, including “a cheap radio or a small amount of food”.¹⁸²

67. Less obviously, vigilante killings can also violate the rights of the victims of the crimes that the vigilante killing purports to address. Victims of crime have a right to a remedy, including a judicial remedy.¹⁸³ The murder of a suspect denies the possibility of a trial and of the victim being heard, and seeking and arriving at the truth. Further, the arbitrary killing of a suspected but never convicted wrong-doer may lead to the actual criminal escaping investigation and prosecution.

68. While vigilantes often profess to be acting to uphold community security, their actions are counter-productive. Not only do vigilante killings violate individual rights, but they are inimical to security for the citizenry as a whole, even in the short-term. In

¹⁸¹ International Covenant on Civil and Political Rights, art. 6.2; A/HRC/4/20/Add.2, para. 28.

¹⁸² Benevides and Ferreira, note 83 above, p. 37.

¹⁸³ Universal Declaration on Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2.3 (a); African Charter on Human and Peoples’ Rights, art. 7; American Convention on Human Rights, art. 25; European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 13; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex).

bypassing the police and the criminal justice system, they further erode respect for the rule of law and undermine efforts to develop responsible policing and effective justice systems. Some vigilantism not only bypasses the police, but also actively targets them. Assaults on police officers who intervene to stop vigilante killings, or at police stations where suspects are held, are not uncommon. In many cases, the initial “justice” violence of vigilante groups metamorphoses into regular thuggery and organized criminal violence. The South African vigilante group PAGAD, for example, started as a group targeting suspected drug dealers, but quickly became increasingly militant and attacked and bombed the police themselves.¹⁸⁴ The initially contained and targeted violence of such groups has the clear potential to spiral out of control, as occurred with the Bakassi Boys in Nigeria. Where vigilante killings in one city or town of a country continue unchecked, they can stand as an example for others and readily spread to other cities. Vigilante killings can also result in increased violence through revenge attacks and the formation of counter-groups (for example, in Nepal and Kenya). Given their often public nature, vigilante killings can further increase the fear and insecurity felt by citizens who are forced to watch a fellow citizen murdered on the street and who are then unable to speak out for fear of retribution.¹⁸⁵

5. Context and motives for vigilante killings and the need for context-specific in-depth research

69. The most commonly stated or theorized reasons — whether presented in news reports, academic writing, human rights reporting or by the perpetrators themselves — for the occurrence of vigilante killings are actual or perceived high crime rates and general insecurity, ineffective policing, widespread corruption and a lack of faith that the criminal justice system will in fact provide justice because it is too slow, too lenient, too corrupt, too expensive or too inaccessible. In some countries, the breakdown of traditional justice (due, for example, to protracted armed conflict) has also been an important factor in the growth of alternative methods of “justice”. Times of transition, especially from military or authoritarian governments to democracy, or from armed conflict to peace, can often be accompanied by vigilantism.¹⁸⁶

70. As the survey suggests, in many countries, these general factors are likely to be important or essential factors in, as well as predictors of, vigilante killings. However, efforts to reduce vigilante killings must involve more than general calls for improved police and court systems. It is vital, in seeking to understand and reduce this violence, that careful and detailed context-specific analysis is undertaken and that such work guides reform efforts. This is all too infrequently the case.

71. A report on lynchings by the United Nations Verification Mission in Guatemala (MINUGUA) provides a notable exception.¹⁸⁷ As the Special Representative discussed in

¹⁸⁴ See Minnaar, note 42 above, pp. 124-128.

¹⁸⁵ See, for example, *ibid.*, p. 120.

¹⁸⁶ As, for example, in Nigeria. See Innocent Chukwuma, “Responding to vigilantism”, in *Human Rights Dialogue* Series 2, No. 8, Fall 2002: “Public security and human rights”.

¹⁸⁷ MINUGUA, “Los Linchamientos: un flagelo que persiste”, July 2002.

his report on his 2005 fact-finding mission to Guatemala, the MINUGUA report found that lynchings were predominantly due to the “incomplete transition from the period of armed confrontation”, in which the counter-insurgency movement had disrupted indigenous justice systems. When the war formally ended, the criminal justice system was not sufficiently developed and this left a “power vacuum”.¹⁸⁸ The detailed analysis of causes positioned MINUGUA to be able to propose context-specific reforms targeted at reducing vigilante killings, which included developing indigenous justice and adapting criminal justice to rural communities’ needs.¹⁸⁹ The tailored nature of the recommendations, based upon serious and thorough analysis of the context for the killings, provides an important example of the first step that should be taken by those seeking to address vigilantism: reforms should be built upon context-specific analysis.

72. Similarly, academic analysis of the determinants of support for vigilante killings in Ghana provided important insights for developing reform measures in that country. Tankebe’s in-depth study found that “public support for vigilante selfhelp was fundamentally linked to people’s judgments about the trustworthiness of the police; people who perceived that the police were not trustworthy were more likely to support vigilantism”.¹⁹⁰ Perceptions about how well the police leadership was addressing corruption in the force was also a factor.¹⁹¹ Importantly, Tankebe also found that “contrary to many current understandings of vigilantism, neither experience of police corruption nor perceptions of police (in)effectiveness were significant predictors of support for vigilantism”.¹⁹² His study also found that those with higher levels of education were less likely to support vigilantism and that, although much vigilantism was carried out by younger people, support was strongest amongst older people.¹⁹³ These findings provide important information to assist with the design and targeting of education programmes directed at reducing vigilantism. For instance, not only do they suggest that likely perpetrator groups should be included in education efforts, but they also support the inclusion of other demographic groups who might otherwise not be the subject of focus (such as older people, revealed by the study to be those supporting the perpetrators). Crucially, the study also indicates that, in reducing support for vigilantism, particular attention should be paid to measures taken to increase public confidence in the police and positive attitudes towards the police, rather than indicators of police effectiveness alone.

73. Research undertaken in South Africa by Sekhonyane and Louw has also stressed the importance of looking beyond justice system effectiveness, to include public perceptions of effectiveness in the context of vigilantism.¹⁹⁴ The authors argued that the public was provided with insufficient information about the criminal justice process, especially the purpose, function and effect of bail for suspects, and that that was a notable factor in

¹⁸⁸ A/HRC/4/20/Add.2, para. 29.

¹⁸⁹ *Ibid.*, para. 30.

¹⁹⁰ Justice Tankebe, “Self-help, policing, and procedural justice: Ghanaian vigilantism and the rule of law”, *Law & Society Review* vol. 43, No. 2, 2009, 245, pp. 259-260.

¹⁹¹ *Ibid.*, p. 258

¹⁹² *Ibid.*, p. 260.

¹⁹³ *Ibid.*, pp. 257, 261-262.

¹⁹⁴ Sekhonyane and Louw, note 84 above, chap. 4.

support for vigilantism.¹⁹⁵ Such a conclusion suggests that, in addressing vigilante killings as part of law and order reform, emphasis should be placed on ensuring that there is appropriate communication to the public about the workings and outcomes of the criminal justice system. In practice then, while educational measures to reduce vigilante killings are important, those measures which would simply convey the unlawful nature of vigilante killings will likely be ineffective; education should include a focus on criminal justice and be tailored to address the concerns of specific communities.

74. The complex underlying causes and motives of vigilante killings indicate that there is no “quick fix”. They will generally need to be addressed within the wider context of policing and criminal justice reform. But the examples cited above also indicate that vigilante killings need not be treated as so complex that their reduction is conceived to be only a hoped for by-product of substantial law and order reform. With context-specific research into the identities of victims and perpetrators, the types and locations of vigilantism, the relationship between vigilantism and the State, and the reasons for vigilante killings, States can formulate and undertake concrete measures to reduce killings.

6. Community policing, neighbourhood watch groups and vigilante killings

75. Community policing initiatives are important and can play a much-needed role in filling gaps in law enforcement by the police. The underlying motives for vigilantism may be usefully channelled into lawful community policing or watch activities. Research from South Africa has suggested that, where appropriately designed, community policing programmes can help reduce vigilantism.¹⁹⁶

76. However, where the State promotes community self-policing groups or neighbourhood watch groups, it must take careful steps to ensure that such groups operate within the bounds of the law and that they do not turn into criminal organizations carrying out unlawful killings in the name of “justice”. It may, for example, be necessary for such groups to be locally registered and monitored.¹⁹⁷ Community group members will need to be educated about the relevant laws, and instructed on what actions they are permitted and not permitted to take, so that their self-policing stays within lawful bounds. There should also be a clear system of liaison between such groups and the police, so that the efforts are complementary.

E. Conclusions and recommendations

77. Vigilante killings are a significant phenomenon in many countries around the world, but they receive far too little attention from a human rights perspective.

78. States should make comprehensive efforts to ensure that they are not supporting or encouraging vigilante killings in any way, either directly or indirectly.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

¹⁹⁷ E/CN.4/2006/53/Add.4, para. 107.

79. Where the relevant senior officials do not publicly denounce any instances of vigilante killings, there is a reasonable presumption that they have failed to take the measures required of them under international human rights law.

80. Where vigilante killings persist over a considerable period of time, and the relevant police or municipal authorities have failed to take measures to reduce or eliminate them, national Governments should introduce a system of penalties designed to ensure that the appropriate measures are taken.

81. To reduce vigilante killings, the prompt investigation, prosecution and punishment of perpetrators are crucial.

82. As part of broader law and order reforms designed to reduce crime and promote accountability, Governments and international donors should directly address the problems of vigilantism within the relevant communities.

83. In countries with significant numbers of vigilante killings, Governments should undertake or fund systematic studies of the phenomenon, with a view to obtaining detailed information on how and where they occur, who commits them and in what circumstances, who the victims are, the involvement of police and other officials in the killings, and the motivations and causes of the killings. Given the extent to which vigilantism undermines other efforts, international development organizations should be prepared to fund such studies, as well as follow-up activities, where appropriate.

F. KILLINGS OF “WITCHES”

Report of the Special Rapporteur on extrajudicial executions to the Human Rights Council (A/HRC/11/2, 27 May 2009, ¶¶ 43-59):

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

44. While there has been a steady trickle of reports from civil society groups alleging the persecution and killing of persons accused of being witches, the problem has never been addressed systematically in the context of human rights. There is little systematic information available on the numbers of persons so accused, persecuted or killed, nor is there any detailed analysis of the dynamics and patterns of such killings, or of how the killings can be prevented. The lack of attention paid to the issue is especially true of the various United Nations human rights bodies that might have been expected to have engaged in in-depth examination. A prominent exception is the Office of the United Nations High Commissioner for Refugees (UNHCR), which acknowledges in its guidelines that women are still identified as witches in some communities and burned or stoned to death. These practices may be culturally condoned in the claimant’s community of origin but still amount to persecution.¹⁹⁸

45. Defining witches and witchcraft is not an easy task. “Witchcraft” has denoted many different practices or beliefs at different times and in diverse cultures. In some cultures, belief in witchcraft is rare; in others, people see it as “everyday and ordinary, forming as it does an integral part of their daily lives”.¹⁹⁹ Such beliefs are not confined to any particular strata of society, whether in terms of education, income or occupation. Both the concept and the terminology also vary from one scholarly discipline to another. In Western Europe and the United States, witchcraft and the persecution of so-called witches are often associated with the witch-hunts and trials that took place there through the fifteenth and seventeenth centuries. Today, in the social sciences, and especially in the disciplines of religious studies, anthropology and ethnology, a wide range of

¹⁹⁸ Guidelines on Religion-Based Refugee Claims (HCR/GIP/04/06), para. 24. See also Jill Schnoebelen (UNHCR), “Witchcraft allegations, refugee protection and human rights: a review of the evidence”, January 2009, available at www.unhcr.org/research/RESEARCH/4981ca712.pdf.

¹⁹⁹ See Henrietta Moore and Todd Sanders (eds), *Magical Interpretations, Material Reality: Modernity, Witchcraft and the Occult in Postcolonial Africa*, 2002.

contemporary beliefs and practices termed “witchcraft” or “sorcery” are studied around the world.

46. In the popular imagination, witchcraft is often associated with the infliction of harm on people or property through the purported exercise of supernatural powers. In sociological and anthropological terms, it can be described as a phenomenon that is invoked to explain misfortune by attributing it to the evil influence of someone, either from within or outside the community. Thus witchcraft has historically been employed to bring about “the death of some obnoxious person, or to awaken the passion of love in those who are the objects of desire, or to call up the dead, or to bring calamity or impotence upon enemies, rivals and fancied oppressors”.²⁰⁰

47. Alternatively, witchcraft may refer to or be associated with, for example, neo-paganism, shamanism or traditional healers. Some have emphasized its close links to moral and broader belief systems and portrayed it more benignly as providing a framework of moral agency that enables believers to make sense of otherwise seemingly inexplicable coincidences or happenings.²⁰¹ It is also associated with positive connotations such as healing or cleansing,²⁰² and as a means for articulating and coping with psychological problems.²⁰³ In some regions, traditional communities had elders who acted as mediums in communicating with spirits from the other world and who were widely respected.²⁰⁴

48. Older scholarship tended to emphasize the pitfalls of taking the meaning and significance attached to the term “witchcraft” in any given context and seeking to transpose it to other settings.²⁰⁵ More recently, however, comparative studies have become much more common.²⁰⁶ Ronald Hutton, for example, has identified five characteristics generally shared by those who believe in witches and witchcraft across different cultures and time periods: (a) witches use non-physical means to cause misfortune or injury to others; (b) harm is usually caused to neighbours or kin rather than strangers; (c) strong social disapproval follows, in part because of the element of secrecy and in part because their motives are not wealth or prestige but malice and spite; (d) witches work within long-standing traditions, rather than in one-time only contexts; and

²⁰⁰ See “Witchcraft”, in *New Advent: Catholic Encyclopedia*, available at www.newadvent.org/cathen/15674a.htm.

²⁰¹ See E. Evans-Pritchard, *Witchcraft Oracles and Magic among the Azande*, 1937.

²⁰² See, for example, James Howard Smith, *Bewitching Development: Witchcraft and the Reinvention of Development in Neoliberal Kenya*, 2008.

²⁰³ See Roy Allen, “Anger, Anxiety and Sorcery”, in C.W. Watson and R. Ellen (eds.), *Understanding Witchcraft and Sorcery in Southeast Asia*, 1993.

²⁰⁴ See Peter Geschiere, *Sorcellerie et politique en Afrique: La viande des autres*, 1995.

²⁰⁵ Malcolm Crick, *Explorations in Language and Meaning: Toward a Semantic Anthropology* (1976).

²⁰⁶ Ashforth has argued that, while witchcraft is not indicative of any single belief system, there may be a broadly applicable witchcraft paradigm. Adam Ashforth, “AIDS, Witchcraft and the Problem of Power in Post-Apartheid South Africa”, Institute for Advanced Study, paper No. 10, May 2001, available at www.sss.ias.edu/publications/papers/paperten.pdf.

(e) other humans can resist witches through persuasion, non-physical means (counter-magic), or deterrence including through corporal punishment, exile, fines or execution.²⁰⁷

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

(a) The killing of accused witches was reported as a significant phenomenon in the Central African Republic. Articles 162 and 162 bis of the country's criminal code indicate that a person convicted of "witchcraft" (*charalatinisme* and *sorcellerie*) can face capital punishment, a prison sentence or fine. While the death penalty does not appear to have been used recently for this purpose, there were many reports of individuals being killed by private citizens or sometimes by the army after having been accused of witchcraft;²⁰⁸

(b) In the context of the universal periodic review, issues have arisen about the fight against traditional practices such as sorcery and infanticide of the so-called "witch children" in Gabon,²⁰⁹ and about the psychological trauma, physical harm, social exclusion and impoverishment suffered by alleged witches in Burkina Faso;²¹⁰

(c) The Committee on the Elimination of All Forms of Discrimination against Women considered problems relating to the persecution of witches on a number of occasions. With regard to India, in 2007, the Committee noted its concern about the practice of witch-hunting, which it characterized as an extreme form of violence against women (CEDAW/C/IND/CO/3). It recommended that the State party adopt appropriate measures to eliminate the practice, to prosecute and punish those involved, and provide for rehabilitation of, and compensation to, victimized women. It also linked the issue to the struggle for control over land by recommending that the necessary measures be identified on the basis of an analysis of such causes. In 2002, the Special Rapporteur on violence against women, its causes and consequences, also drew attention to these problems in India, Nepal and South Africa;²¹¹

(d) In examining the report on Ghana, the Committee received information alleging that some 2,000 witches and their dependents were confined in five different camps.²¹² A member of the State party delegation acknowledged the existence of the camps, but said that their character had changed over the years. She called for community sensitization, especially of the chiefs, before laws could be enacted and warned that the persecution of

²⁰⁷ Ronald Hutton, "Anthropological and historical approaches to witchcraft: potential for a new collaboration?", *Historical Journal* (2004), 413.

²⁰⁸ See A/HRC/11/2/Add.3.

²⁰⁹ See www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights7May2008am.aspx.

²¹⁰ A/HRC/WG.6/3/BFA/3, para. 12.

²¹¹ E/CN.4/2002/83, paras. 45-48.

²¹² CEDAW/C/SR.741 (B), para. 19. Other estimates are closer to 5,000.

witches could [otherwise] turn into an underground practice.²¹³ The Committee subsequently expressed its concern about the persistence of the belief in witchcraft and the subjection of women in witch camps to violence. It called for the elimination of these practices through legislative action and education and awareness-raising campaigns.²¹⁴ After a visit to Ghana, the Special Rapporteur on violence against women called upon the Government to demystify the beliefs around witchcraft and sorcery and criminalize acts of undue accusations of persons of causing harm through the use of supernatural powers;²¹⁵

(e) The Committee has received estimates of up to 1,000 witches being killed annually in the United Republic of Tanzania;²¹⁶

(f) In 1998, the Committee recommended further research into the prevalence of witch burning in South Africa, and called for the prohibition and eradication of such practices.²¹⁷ The South African Truth and Reconciliation Commission granted amnesty to 33 individuals accused of killing alleged witches.²¹⁸ In relation to Mozambique, the Committee expressed concern about the situation of older women, who were subject to accusations of witchcraft, and urged the State party to challenge such traditional views;²¹⁹

(g) With regard to Angola, in 2004, the Committee on the Rights of the Child called for immediate action to eliminate the mistreatment of children accused of witchcraft, including by prosecuting the perpetrators of this mistreatment and intensive education campaigns that involve local leaders.²²⁰ The same issue was taken up in almost identical terms four years later by the Committee on Economic, Social and Cultural Rights;²²¹

(h) The role of witch doctors has also been raised. In Mali, the traditional practice of giving a girl in marriage to a witch doctor for religious reasons still persists;²²² in the United Republic of Tanzania, concern has been raised about the practice of hunting down and murdering albinos so that their body parts can be used by witch doctors;²²³

(i) In Papua New Guinea, provincial police commanders in two highlands provinces, Eastern Highlands and Chimbu, reportedly told journalists that there had been more than 50 sorcery-related killings in their provinces in 2008. Other independent sources estimate

²¹³ Ibid., para. 23.

²¹⁴ A/61/38 (2006), paras. 232-33.

²¹⁵ A/HRC/7/6/Add.3, para. 93.

²¹⁶ www2.ohchr.org/english/bodies/cedaw/docs/ngos/HAITanzania41.pdf, p. 7.

²¹⁷ *Official Records of the General Assembly, Fifty-third Session, Supplement No. 38 (A/53/38/Rev.1)*, para. 134. This was probably a response to the report of the Commission of Inquiry into Witchcraft Violence and Ritual Murder in the Northern Province (1995), chaired by Professor N.V. Ralushai.

²¹⁸ <http://www.info.gov.za/speeches/2000/000615110p1005.htm>.

²¹⁹ CEDAW/C/MOZ/CO/2, paras. 42-43.

²²⁰ CRC/C/15/Add.246, paras. 30-31.

²²¹ E/C.12/AGO/CO/3, para. 25.

²²² CEDAW/C/MLI/2-5.

²²³ www.un.org/durbanreview2009/story22.shtml.

that there have been up to 500 attacks against women accused of practising witchcraft that have resulted in torture and murder;²²⁴

(j) In the Democratic Republic of the Congo, civil society reports suggest that most of the 25,000 to 50,000 children living on the streets of Kinshasa are there because they have been accused of witchcraft and rejected by their families. In 2009, the Committee on the Rights of the Child expressed concern that a large number of children are labelled as witches and consequently suffer serious stigmatization. It observed that violence against children accused of witchcraft was increasing, and that children were being kept as prisoners in religious buildings where they were exposed to torture and ill-treatment or even killed under the pretext of exorcism. The Committee called for effective measures to prevent children from being accused of witchcraft, including through continuing and strengthening public awareness-raising activities, particularly directed at parents and religious leaders and by addressing the root causes, inter alia, poverty. It also recommended legislative and other measures to criminalize making accusations against children of witchcraft, efforts to prosecute those responsible for violence and ill-treatment against alleged child witches, and programmes to promote the recovery and reintegration of child victims;²²⁵

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

(l) In Nepal, various groups have also reported the persistence of traditional beliefs about witchcraft that largely concern elderly women and widows in rural areas. Exorcism ceremonies involve the public beating and abuse of suspected witches by shamans or village elders. It has been reported that the existing law is inadequate to prevent these abuses and that no system is in place to provide compensation for those persecuted;²²⁶

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

(n) In Saudi Arabia, in 2006, a woman was sentenced to death for witchcraft, recourse to supernatural beings (*jinn*) and the slaughter of animals. The conviction is said to have been based solely on statements by individuals claiming to have been bewitched.²²⁷

²²⁴ Amnesty International, "Increasing sorcery-related killings in Papua New Guinea", 11 February 2009.

²²⁵ CRC/C/COD/CO/2, paras. 78-79.

²²⁶ United States Department of State, "Nepal", in 2008 Country Reports on Human Rights Practices (2009), available at www.state.gov/g/drl/rls/hrrpt/2008/sca/119138.htm.

²²⁷ Human Rights Watch, "Saudi Arabia: halt woman's execution for 'Witchcraft'", 14 February 2008, available at: www.unhcr.org/refworld/docid/47b5aa1a1a.html.

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

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

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

53. At the national level, legal approaches vary greatly. A significant number of States have legislation providing for the punishment of witchcraft. Few appear to make regular use of such laws routinely. In some States, such as the Central African Republic, witchcraft is a capital offence. In the Islamic Republic of Iran, a pending draft bill to amend the Islamic Penal Code of 1991 prescribes the death penalty for any Muslim who is involved with witchcraft and promotes it in the society as a profession or sect, but not for non-Muslims. Where the formal legal system is silent, traditional or customary law will often be used. Customary approaches vary from a heavy emphasis on mediation to severe and even deadly punishments.²²⁸

54. In 1998, in South Africa, a national conference on witchcraft violence called for the repeal of the Witchcraft Suppression Act of 1957, in part because it could in fact be fuelling witchcraft violence. It called for new legislation to adopt a pragmatic approach acknowledging the belief in witchcraft and the possibility that some forms are benign. It called for clear definitions of “witch”, “wizard” and “witchcraft”, and an emphasis on conciliation and mediation.²²⁹ Other studies, however, have highlighted the inherent contradictions between a judicial approach that “objectifies *sorcellerie* as always evil and hence to be completely eradicated” and local discourse on witchcraft, which views it more positively “as a special force that can be used for various ends”.²³⁰

55. Commentators are sceptical of the value of judicial approaches in many settings: “Where cases of witchcraft have entered the formal judicial system in Africa, the results have generally not been salutary for the health of that system or the cause of justice.”²³¹ The available evidence from human rights sources also counsels against the criminalization of witchcraft. The first reason relates to the difficulty of defining with any accuracy the conduct being proscribed. The second is the difficulty of ensuring respect for other rights, including cultural rights and freedom of speech and religion in such

²²⁸ Herman Slaats and Karen Portier, “Sorcery and the law in modern Indonesia”, in C.W. Watson and Roy Ellen (eds.), *Understanding Witchcraft and Sorcery in Southeast Asia*, 1993.

²²⁹ Commission on Gender Equality, “Thohoyandou Declaration on ending witchcraft violence”, available at www.cge.org.za/backup/userfiles/documents/national_conf_witchcraft1998.pdf, p. vii.

²³⁰ Peter Geschiere, *The Modernity of Witchcraft: Politics and the Occult in Postcolonial Africa*, 1997, p. 171.

²³¹ Adam Ashforth, *Witchcraft, Violence and Democracy in South Africa*, 2005.

contexts. In the vast majority of cases examined, the offence has been defined in a vague and open-ended manner, which lends itself almost unavoidably to abuse. The vaguely defined elements of the “crime” can easily operate to permit those with a personal grudge or enmity to accuse others of having practised witchcraft. A third reason is empirical evidence, which shows that, in most instances, the criminalization of witchcraft is interpreted as legitimizing the punishment of accused witches in vigilante-like fashion, with no regard for the specific details of the alleged conduct, no due process protections being accorded to the accused, and no evidentiary burdens being met. Instead, there is usually a flagrantly discriminatory approach that results in the singling out of those who are simply “different”, feared or disliked. The accused witches are then often killed by vigilantes or mobs.

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

57. For present purposes, the most important point is to ensure that all killings of alleged witches are treated as murder and investigated, prosecuted and punished accordingly. In most of the cited problem situations, the Governments concerned have not been accused of playing an active part in the persecution or killings of witches. There are, however, questions as to whether they have met their due diligence obligations to prevent such killings. These require Governments to take all available measures to prevent such crimes and prosecute and punish perpetrators, including private actors.²³² Indeed, there is an interesting historical parallel with anti-lynching statutes in the United States, which were proposed in response to the almost 5,000 lynchings reported between 1882 and 1968. They were explicitly designed to go beyond the simple criminalization of the murder involved, and provided severe penalties for State or municipal officials who failed to take reasonable steps to prevent a lynching. In addition, any county in which a lynching occurred would have to compensate the victim’s family.²³³

58. It is also important for the problems surrounding the persecution and killing of witches to be reflected in the guidelines and operational programmes of development

²³² This would include religious groups that designate children as witches, leading to stigmatization and persecution.

²³³ See George C. Rable, “The South and the politics of anti-lynching legislation, 1920-1940”, 51 *Journal of Southern History*, 1985.

agencies working in countries in which there is a significant level of belief in witchcraft. In addition to providing education and practical programmes to address the situation, protection should be arranged for individuals accused of witchcraft and who are at risk of retribution or even death outside the framework of the law.

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

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

88. Significant numbers of children and women are accused of being witches in the DRC, and are subjected to torture, harsh beatings and other cruelty as a result.²⁹ Some have been killed, or have died following cruel treatment. This violence is one outcome of a widespread social phenomenon in which vulnerable members of the community are blamed for misfortunes, such as the loss of a job or illness. According to international and local NGOs, tens of thousands of children abandoned on the streets of Kinshasa and other major cities are especially vulnerable to witchcraft accusations. Unsurprisingly, this phenomenon is most prevalent in poverty-stricken communities which lack access to education and social services, and the victims are often individuals with physical or mental disabilities who are perceived to have “brought defects” into a family or community.

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

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

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

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

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

50. The Special Rapporteur received credible reports of numerous cases of such killings by the local population. Reliable interlocutors have reported that members of the APRD, sometimes acting together with the local population, have also killed “witches”. In one case, the head of the town of Badama was accused of being a sorcerer and detained by the APRD in August 2007. Shortly thereafter, he was taken to Bélé and killed. Informed interlocutors described such cases as examples of the larger phenomenon of the APRD seeking to fill in the law-and-order vacuum left by the Government authorities in the north-west. In areas under Government control, Government forces have been responsible for killings, sometimes upon the request of the local population. In Paoua, the Special Rapporteur received reports of six cases of “witches” killed by the FACA. In some of these cases, Government forces carried out the killings in return for payment.

51. Under the Criminal Code, a person convicted of “witchcraft” (*charlatanisme* and *sorcellerie*) can face capital punishment, a prison sentence or fine.²³⁴ While imposing the death penalty for this “offence” would violate international law - which permits death penalty only for the crime of intentional murder - no recent instances in which the death penalty had been applied were reported. But it is common for accused persons to be arrested, tried, convicted and imprisoned on the basis of spurious evidence. These problems must be taken seriously. The criminalization of “witchcraft” by the State reinforces the social stigmatization of those accused of witchcraft. Indeed, the proscription of “witchcraft” tends to lead vigilantes, soldiers and rebels alike to view the killing of suspected “witches” as legitimate. It is, moreover, a “crime” that lends itself ideally to the persecution and victimization of women and children in particular. A clear and immediate message should be sent by amending the Criminal Code so as to abolish the crime of witchcraft. Further, there is an educational challenge to ensure that those who fear witches act within the law and on the basis of a criminal code which fully respects human rights when taking measures against those whom they believe to be engaging in harmful acts. In such circumstances, it is wholly unacceptable to invoke the amorphous, subjective and highly manipulable accusation of engaging in “witchcraft” as the basis for either arbitrary private acts of violence or for Government-sponsored or tolerated acts of violence. The killing of “witches” should be prosecuted like any other murder, and other violent acts against such individuals should also be prosecuted.

²³⁴ Criminal Code of the Central African Republic, arts. 162 and 162 bis.

Follow-up report on Mission to Central African Republic (A/HRC/14/24/Add.5, 19 May 2010, ¶¶ 33-37):

33. The Special Rapporteur reported after his 2008 visit that he had received credible reports of numerous cases of killings of persons accused of witchcraft by private persons, Government security forces or rebel groups.

34. According to interlocutors, accusations of witchcraft and associated violence have been on the rise since the visit of the Special Rapporteur. Accusations continue to be levied against the most vulnerable elements of society, including women, children, older persons and disabled persons.

35. The problem has become so grave that many of the prisoners incarcerated in Central African Republic prisons are women accused of witchcraft. Suspected witches are frequently the victims of mob violence. In many cases, they are killed with impunity in the presence of Government and rebel forces. In one town in a single month in January 2009, 22 people were accused of witchcraft. The majority were brutally killed, whipped, stoned, or beaten to death by their fellow villagers. A few of the accused survived, but were disabled for life from their injuries. On 10 January 2010, an elderly male was accused of witchcraft, arrested by the police and, under the orders of a State prosecutor, was handed over to a neighborhood chief and the village's self-defence forces and then beaten to death.

36. At the time of the Special Rapporteur's visit, the Criminal Code criminalized witchcraft and provided for penalties of capital punishment, a prison sentence or a fine. The Special Rapporteur recommended that "witchcraft" be decriminalized, because it reinforced social stigmatization, led people to view the killing of alleged witches as legitimate, and lent itself to the persecution of women and children. The revised Code of 6 January 2010 has replaced the death penalty with life in prison, a welcome, though insufficient, change – the Code still contains provisions criminalizing witchcraft.²³⁵ The continued criminalization of witchcraft perpetuates and legitimizes the widespread targeting of alleged witches and provides a convenient carte blanche for the killing of disfavoured individuals in many settings.

37. Workshops and trainings to address witchcraft issues are being held throughout the country at all levels. For example, there was a symposium on "Witchcraft and Justice" on 1 and 2 August 2008 sponsored by the University of Bangui, the European Union, the French Cooperation, the United Nations Children's Fund (UNICEF) and the United Nations Peacebuilding Office in the Central African Republic (BONUCA). The Office of the United Nations High Commissioner for Refugees also put on a workshop on witchcraft that brought together prosecutors and judges from across the country to discuss the challenges and potential solutions. Despite this positive engagement on the issue, other stakeholders criticized the lack of follow-up to training sessions, pointing out that they tend to be conducted as one-off events, reducing their efficacy.

²³⁵ Witchcraft is punishable with a range of penalties, such as 5 to 10 years' imprisonment, a fine or forced labour. Criminal Code of the Central African Republic, arts. 149 and 150.

Communications to the Government of Papua New Guinea (A/HRC/11/2/Add.1 pp. 312-314):

Allegation letter dated 11 February 2009, sent with the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning recent reports of sorcery-related killings of women in the highlands provinces of Papua New Guinea.

According to the information received: A woman was stripped naked, gagged, tightly strapped and burned alive by a group of men at Kerebug Dump in Mount Hagen on 6 January 2009. As of 27 January 2009, the identity of the victim was still unknown, and the Provincial police authorities were still investigating. The body was reportedly too badly burnt for identification purposes. In addition, at least four similar cases in the highlands area (two resulting in deaths of women, one in which a female victim was tortured but survived, and the killing and burning of a father and son in Ban village on 8 February 2009) were reported to us after the killing in Mount Hagen on 6 January 2009. Provincial police commanders in two highlands provinces, Eastern Highlands and Chimbu, reportedly told journalists that there were more than 50 sorcery-related killings in their provinces in 2008. Other independent sources estimate that there have been up to 500 of attacks against women accused of practicing witchcraft that have resulted in torture and murder. The police are often unable to enforce the law and stop mob killings. In the case of the killing and burning of a father and son suspected of sorcery in Ban village on 8 February 2009, the police were able to visit the crime scene and confirm their deaths, but heavily armed locals prevented them from removing the bodies to hospital for autopsies.

While we do not wish to prejudge the accuracy of these allegations, there would be ground for serious concerns if they were correct. We recall that, to the extent that mob killings of persons suspected of sorcery are not effectively prevented, investigated and met with stringent punishments, the State does not live up to its due diligence obligations in this respect. Under international law, Papua New Guinea has the legal obligation to ensure the right to physical and mental integrity and the right to life by effectively punishing those who commit murder, torture or cruel, inhuman and degrading treatment or punishment. Article 6(1) of the International Covenant on Civil and Political Rights, to which Papua New Guinea is a Party, recognizes that every human being has the right not to be arbitrarily deprived of his or her life. Article 2(1) requires the State to ensure to all individuals within its territory the rights recognized in ICCPR, without distinction as to sex. Article 2(2) elaborates that each State Party must undertake all necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the ICCPR. As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, "crimes,

including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators.”

The same principle was set forth by the Human Rights Committee with regard to torture: “It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7 [of the Covenant, i.e. torture and other cruel, inhuman and degrading treatment or punishment], whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.” (paragraph 2 of General Comment 20, adopted at the 44th session of the Human Rights Committee, 1992). While it would appear that some of the persons killed on suspicions of sorcery were men, these mob killings appear to target primarily women. In this respect, we would like to draw the attention of Your Excellency’s Government to Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of states to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. Article 4 further calls on States not to invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. As the Special Rapporteur on Torture recommended in a report to the Human Rights Council, “... torture and ill-treatment [should] be understood in a gender-inclusive way and that States [should] extend their prevention efforts to fully include torture and ill-treatment of women, even if it occurs in the “private” sphere”

It is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation which may have been carried out in relation to killings related to charges of sorcery. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Have penal sanctions been imposed on the alleged perpetrators?
4. Does your Excellency’s Government keep any statistics of the number of sorcery-related killings and torture cases that occurred in Papua New Guinea in the last few years? Even if no official statistics are kept, please provide an estimate of the numbers involved.
5. Please indicate the measures your Excellency’s Government has been taking to combat this pattern of violence, including relevant legislation, strict investigations and law

enforcement, as well as awareness raising campaigns to combat this type of violence and related myths (e.g. link between HIV and sorcery, etc).

G. DEATH SQUADS AND MILITIAS AND VIGILANTE GROUPS

Report on Mission to the Philippines (A/HRC/8/3/Add.2, 16 April 2008, ¶¶ 6-7, 39-44):

6. Human rights abuses are taking place in a context in which the Government faces not only normal law and order challenges but also multiple armed conflicts that have persisted for decades.

7. The Communist Party of the Philippines (CPP) seeks to revolutionize what it characterizes as the Philippines' "semifeudal" society. The CPP controls an armed group, the New People's Army (NPA), and a civil society group, the National Democratic Front (NDF).²³⁶

Founded in 1968, the CPP grew in strength and popularity during the years of martial law (1972– 1981), but the return to democracy in 1986 produced internal divisions culminating in a split between "reaffirmist" and "rejectionist" factions in the early 1990s, with the former left in control of the CPP/NPA/NDF and the latter fragmenting into smaller armed and unarmed groups. Due to its sophisticated political organization, some 7,160 fighters, and an archipelago wide presence, Government officials consider the CPP/NPA/NDF the "most potent threat" to national security.²³⁷ While the peace process has resulted in several agreements, it is largely inactive today.

²³⁶ In most contexts, this report will follow the common practice of referring to the CPP/NPA/NDF.

However, at least as a formal matter, the CPP, the NDF, and the NPA are distinct organizations with the CPP playing a leadership role.

According to its constitution, the NDF "upholds the program of uniting the democratic classes and special sectors of society for the revolutionary struggle against US imperialism, feudalism and bureaucrat capitalism" (art. IV) and considers that the "Philippine revolution is a nationaldemocratic revolution . . . under the class leadership of the proletariat through the Communist Party of the Philippines (MLMZT)" (art. II). ("Constitution of the Democratic Front of the Philippines" adopted by the NDF National Conference of Representatives, July 1994 (Annex A- 2 of *Declaration of Undertaking to Apply the Geneva Conventions of 1949 and Protocol I of 1977 (NDFP-Nominated Section of the Joint Secretariat of the GRP-NDFP Joint Monitoring Committee (no date)) [Declaration of Undertaking].*) In accordance with the "Basic Rules of the New People's Army" (Annex C of *Declaration of Undertaking*), "The New People's Army shall always adhere to the leadership of the Communist Part of the Philippines and thus, it must abide with all decisions orders and directives of the National Congress, Central Committee, Political Bureau and the Military Commission of the Party." (Principle I, Point 1). *The Military Commission is an organ of the Central Committee, and is the CPP's primary point of contact with the NPA. (Principle I, Point 2). However, "All non-regular fighting units like the guerrilla, militia, self-defense and armed city partisans are directly under the local Party committee. Nevertheless, they shall receive direct orders from the Military Commission or from the military command to link them with the regular mobile forces."* (Principle I, Point 9). *The "Basic Rules of the New People's Army" were issued by the Meeting of the Red Commanders and Fighters (29 March 1969) and approved by the Central Committee of the CPP (13 May 1969). (Note also that article V, section 4 of the "Constitution of the Democratic Front of the Philippines" adopted by the NDF National Conference of Representatives, July 1994 provides that, "The multilateral relations within the NDF respect existing bilateral relations of the allied organizations. The New People's Army is under the absolute leadership of the Communist Party of the Philippines."* (Annex A-2 of *Declaration of Undertaking*.)

²³⁷ The number of NPA fighters given is an estimate provided by the Government. The CPP/NPA/NDF was described as the "most potent threat" in a briefing given by the Executive Secretary and other senior officials. According to Government records, since 2000, military and law enforcement personnel have been killed by the NPA in every region except the Autonomous Region of Muslim Mindanao (ARMM). However, despite the archipelago-wide reach of the NPA insurgency, major fighting has been far more

[...]

39. It is a commonplace that a death squad known as the “Davao Death Squad” (DDS) operates in Davao City. However, it has become a polite euphemism to refer vaguely to “vigilante groups” when accounting for the shocking predictability with which criminals, gang members, and street children are extrajudicially executed. One fact points very strongly to the officially-sanctioned character of these killings: No one involved covers his face. The men who warn mothers that their children will be the next to die unless they make themselves scarce turn up on doorsteps undisguised. The men who gun down or, and this is becoming more common, knife children in the streets almost never cover their faces. In fact, for these killers to wear “bonnets” is so nearly unheard of that the witnesses I interviewed did not think to mention the fact until I asked.²³⁸ None of those with whom I spoke had witnessed such persons covering their faces, and one knowledgeable advocate informed me that they do so in no more than two cases out of one hundred.

40. The mayor is an authoritarian populist who has held office, aside from a brief stint as a congressman, since 1988. His program is simple: to reach a local peace with the CPP/NPA/NDF and to “strike hard” at criminals. When we spoke, he insisted that he controls the army and the police, saying, “The buck stops here.” But, he added, more than once, “I accept no criminal liability.” While repeatedly acknowledging that it was his “full responsibility” that hundreds of murders committed on his watch remained unsolved, he would perfunctorily deny the existence of a death squad and return to the theme that there are no drug laboratories in Davao. The mayor freely acknowledged that he had publicly stated that he would make Davao “dangerous” and “not a very safe place” for criminals, but he insisted that these statements were for public consumption and would have no effect on police conduct: “Police know the law. Police get their training.” The mayor’s positioning is frankly untenable: He dominates the city so thoroughly as to stamp out whole genres of crime, yet he remains powerless in the face of hundreds of murders committed by men without masks in view of witnesses.

41. It is a reality that when the mayor was first elected, the NPA routinely killed policemen. It is also a reality that Davao has a problem with youth gangs. These are primarily *ad hoc* social groups for street children aged 10-25, but use of drugs and involvement in petty crime is common, and violent gang wars do take place. By all accounts, the mayor has managed to largely insulate his city from the armed conflict and to limit the presence of some kinds of criminal activity. These accomplishments appear to have bought acquiescence in the measures he takes, and the public remains relatively ignorant of the human cost of death squad “justice”.

concentrated, and just 6 of the country’s 17 regions account for over 80% of the casualties: Bicol, CALABARZON, Caraga, Central Luzon, Davao, and Eastern Visayas. (“Reference Materials on Unexplained Killings (January 2007)”.)

²³⁸ In the Philippines, what is often referred to elsewhere as a “ski mask” is called a “bonnet”.

42. The human cost is very high. Since 1998, when civil society organizations began keeping careful records, over 500 people have been killed by the death squad.²³⁹ Up until 2006, these victims were generally shot; since then, stabbings have become more common. I spoke with witnesses and family members of 8 victims and 1 survivor, and I reviewed the case files of an additional 6 victims and 3 survivors. These interviews gave some insights into how these killings take place and the enormous emotional damage they inflict on family and friends.²⁴⁰ The executions generally respond to suspicions of petty crimes, are preceded by warnings or notifications that clarify their significance, and are carried out publicly and with methodical indifference.

43. How does the death squad operate? The inquiries I made do not provide a complete picture, but they do indicate two starting points for investigation and reform. First, it would appear that the “assets” who identify targeted individuals for the death squad are often suspected criminals who are recruited after being arrested, with an early release as inducement.²⁴¹ Second, it would appear that barangay officials are sometimes involved in selecting targets for the death squad, a practice perhaps originating in the role barangay officials have played in naming suspected drug dealers for inclusion in PNP watch lists.²⁴² Insofar as prison officials and barangay councils help the death squad function, they can be reformed.²⁴³ The intelligence-gathering role played by barangay officials can be limited, and the processing of inmates can be more tightly restricted. To shut the death squad down will, however, ultimately require following the evidence upward to the handlers who task “assets” to provide the location of persons on watch lists and who direct hit men to kill them. If it were not for the fact that the local office of the CHRP denies the existence of a death squad, it should be capable of conducting an effective investigation. There are many witnesses who would provide information anonymously or who would testify were they to receive a credible protection arrangement.²⁴⁴

²³⁹ Civil society organizations have compiled detailed statistics on extrajudicial executions probably committed by the DDS. These data are gathered primarily by analysing newspaper articles on murders. See Table within original report.

²⁴⁰ A table analyzing some key elements of seven of these cases is included in Appendix A, para. 27.

²⁴¹ One person with whom I spoke said that the police asked her son to become an asset after he was arrested. Others had friends or acquaintances who had acted as assets. They appear to invariably be gang members or petty criminals, who are in a position to report the locations of other gang members and criminals. Generally assets appear to provide information to their handlers using cell phone text messages.

²⁴² In accord with DILG Memorandum Circular No. 98-227 (2 December 1998), some barangays have established Barangay Anti-Drug Abuse Councils (BADACs) for this purpose. According to PNP officials with whom I spoke, the watch lists these groups provide are validated by PNP intelligence officers and the Philippine Drug Enforcement Agency and are then used in buy-bust and other anti-drug operations.

²⁴³ The mayor told me unequivocally that he would welcome investigators to come to his jails, talk with the inmates, and ensure that nothing remiss takes place. The CHRP should fully exercise its pre-existing right to do so (Constitution of the Republic of the Philippines (1987), art. XIII, section 18(4)), and civil society organizations should consider whether to take the mayor up on his offer.

²⁴⁴ I spoke with a number of witnesses about why they and others have been so reticent. One recounted that the police came and asked various neighbors whether they had seen the killing. Although the killing had happened in public in the morning and many had seen the perpetrators and their actions, everyone told the police that they had not. The reason was that someone in the neighborhood had described the killer in a previous incident; that night some had come and killed her. In another incident involving a child of the same witness, the police did not even ask for witnesses to come forward. They just gathered up the bullets and left. Another witness with whom I spoke said that the family of one victim did not pursue the case at

44. Defending the rights of street children may be unpopular, but no one deserves to be stabbed to death for petty crimes. There are already preliminary indications that these practices are being replicated in other parts of Mindanao and in Cebu, and this trend needs to be halted immediately.

Follow-up Report on Mission to the Philippines (A/HRC/11/2/Add.8, 29 April 2009, ¶¶ 18-23):

18. Perhaps the most troubling development over the past two years has been the rise in death squad killings in Davao City. Reliable information indicates that, in 2008, such killings were almost a daily occurrence in Davao City, jumping from a reported 116 in 2007 to 269 in 2008. The killings have clear patterns - similarly described perpetrators, victims and methods - and are rarely the subject of successful police investigations.

19. The practice of barangay officials submitting names of suspected criminals for inclusion on law enforcement watch lists has yet to be abolished. Persons included on the list are first warned to stop suspected activities or to leave Davao City, and if they do not, then they are abducted or killed on sight. According to credible information provided to the Special Rapporteur, while barangay officials may deny the existence of such lists, this practice is an “open secret” in the local area, and such lists are maintained to this day.

20. The Special Rapporteur is not aware of a single conviction for a death squad killing in Davao. As a result, death squad members operate with complete impunity. Killing for hire is on the rise as death squad members become bold enough to sell their services, and some reports indicate that a killing only costs about 5,000 pesos (about US\$ 100). Impunity also means that although killings take place in broad daylight, witnesses are not prepared to testify against the perpetrators.

21. The Mayor of Davao City has done nothing to prevent these killings, and his public comments suggest that he is, in fact, supportive. Mayor Duterte responded to the reported arrest and subsequent release of a notorious drug lord in Manila by saying: “Here in Davao, you can’t go out alive. You can go out, but inside a coffin. Is that what you call extra-judicial killing? Then I will just bring a drug lord to a judge and kill him there, that will no longer be extra-judicial.”²⁴⁵ One positive development, however, has been that Mayor Duterte relinquished his post at the National Police Commission (NAPOLCOM) and his control over the local police Task Force Davao on 31 March 2009, amidst the CHR investigations into the death squad.

all, because they knew that the perpetrator was connected to powerful people. He said that even in other cases that he was aware of, no one would testify, both from fear and because the media always reports that the victim was a criminal, and who wants to witness for a criminal? A well-informed individual told me that in Davao City the witnesses that do come forward are nearly invariably from a victim’s family; no one else is willing to take the risk.

²⁴⁵ *Police Told: Solve Drug Problem or Be Fired*, Sun.Star Network, Davao, at: <http://www.sunstar.com.ph/davao/police-told-solve-drug-problem-or-be-fired>.

22. The most encouraging development was the launch of independent investigations by the CHRP in March 2009. The CHRP should be supported in its investigations of the death squad, and encouraged to do so without reliance upon its own regional representatives, since the latter appear to share the same fear of death squad retaliation as other local residents.

23. Impunity has also encouraged death squad killings to sprout up in other cities beyond Davao. Since 2007, numerous patterns of death squad killings have been reported by media and civil society organizations in other cities in the region such as General Santos City, Digos City, and Tagum City, and even in Cebu, the Philippines' second largest city.

Report on Mission to Brazil (A/HRC/11/2/Add.2, 23 March 2009, ¶¶ 30-39):

30. In addition to killings by on-duty police, there are a significant number of groups throughout Brazil, composed largely of off-duty government agents who engage in a range of criminal activities, including extrajudicial executions. Some of these groups (militias or para-policing operations) are similar to gangs in that they seek to control entire favelas through extortion and the use of force. Others (death squads, extermination groups) act as vigilantes, using executions as an off-duty “crime control” technique, or act as hired killers to supplement their low salaries.

31. Participation in organized criminal groups should be seen as the most extreme end of a continuum of illegal police actions that begins with corruption and the holding of second jobs. It is openly acknowledged by senior Government officials, police, and police commanders that the prohibited practice of police working second jobs²⁴⁶ - primarily as security guards - is widespread.

32. While efforts are being made in Pernambuco, in São Paulo and Rio de Janeiro, it was clear to me that nothing at all was being done to address this problem.²⁴⁷ In fact, the head of a military battalion in Rio de Janeiro frankly admitted to me that he not only knew that his officers were taking illegal second jobs, but that he encouraged them to do so.²⁴⁸ The motivation for working second jobs is straightforward: police are very poorly paid.²⁴⁹ Working a second job is also facilitated by the policing shift structure in which police may work for 12 to 24 hours, and then take 24 hours to several days off. Unregulated

²⁴⁶ The relevant regulations are state-specific. In Rio de Janeiro, it is a disciplinary infraction for a member of the Military Police to have other paid employment. *Regulamento Disciplinar da Polícia Militar do Estado do Rio De Janeiro*, Decreto No. 6.579 (5 March 1983), Art. 14(1); Annex I, para. 120.

²⁴⁷ In Pernambuco, the Governor told me that when he took office in January 2007, he discovered that the police were overly entangled with private interests and that there were even written contracts between police and shopping centers and stores to provide security. His Government was taking steps to break these contracts.

²⁴⁸ In Rio de Janeiro, the numbers of police disciplined for holding second jobs is virtually nil: 2005 - 1 corporal arrested; 2006 - 3 corporals, 4 privates, and 1 sergeant reprimanded; 2007 - 1 inspector of police suspended.

²⁴⁹ Rio de Janeiro Military Police have the lowest rate of police pay in the country. In 2006, entry-level Military Police in Rio de Janeiro received just \$ 718 Reais per month (approximately \$ 450 USD). The Federal Government has in part attempted to address low remuneration by offering training scholarships (Bolsa Formação) to qualifying police earning under \$ 1,400 Reais per month.

private security jobs, especially in the context of high rates of organized crime and violence, means that working as a security guard can easily involve police using force in their second job, or being hired to “collect” money for an employer, or to protect an illegal gambling or trafficking racket. A telling statistic is that, in Rio de Janeiro in 2007, nearly four times as many police were killed while off-duty as while on-duty.²⁵⁰ The evidence I saw pointed not to the explanation proffered by some security officials to the effect that police are targeted because of their on-duty activities, but rather to the conclusion that they are killed because of the dangerous and often illegal nature of their second jobs.

33. Many police are also engaged in corruption and extortion to varying degrees.²⁵¹ Corruption and second jobs cause harm in themselves, but high-level tolerance of them also contributes to a culture of impunity in which police know they can operate outside the law. Importantly, it also creates a context in which police can choose to collaborate or compete with organized crime groups, thereby increasing the likelihood that police will become involved in militia and death squad activity.

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

35. Militias operate throughout Brazil but have become a particular problem in Rio de Janeiro over the last 3 years, where it is estimated that approximately 92 of the 500 Rio de Janeiro city favelas are now controlled by such groups. In particular, I received detailed information on the militia activities in the Kelson’s community, a neighborhood of 6,000. My sources included long-term residents, local NGOs, Civil Police responsible for investigating the Kelson’s militia, and the head of the Military Police battalion from

²⁵⁰ According to official statistics, in the state of Rio de Janeiro, in 2007, 119 members of the police were killed while off-duty while 32 were killed while on-duty. (In 2006, the numbers were 93 off-duty and 29 on-duty.) See: Rio de Janeiro, Public Security Institute (Instituto de Segurança Pública), 19 March 2008.

²⁵¹ In Pernambuco, I was given detailed information about the relationship between police and gangs in a number of communities. In one favela, every weekend police would come to the community to collect money from the traffickers. The leader of each gang generally has a number of “directors” in charge of the different types of trafficked drugs. The police would come to negotiate with “directors” (who in turn negotiate with their leader) on payments. Refusals to pay the police are met with death threats and murder. The weapons and drugs confiscated by police are regularly fed back into the trafficking system. Police “arrest” traffickers for the purposes of making money - demanding a bribe in return for the criminal’s freedom. When the gangs do not have sufficient funds to pay for one of their members, the gangs collect small sums from each resident to pay the police fee.

which 4 police militia members had been arrested. For many years prior to 2006, the area was dominated by the drug traffickers from the Red Command gang (*Comando Vermelho*). In November 2006, a militia involving men from the 14th, 16th and 22nd Military Police battalions invaded Kelson's using police vehicles and equipment, and expelled the gang. The militia "policed" the area 24 hours a day, and extorted local businesses, restricted the ability of independent local shops to sell gasoline (only militia-run shops could do so), and required bus owners to pay the militia 600 Reais per week.

36. Jorge da Silva Siqueira Neto, who residents and police informed me had been installed as President of the Kelson's Residents' Association with militia cooperation, subsequently fell out with the militia and was expelled from the area. He then made public denunciations against the militia, which were covered by the press on 29 August 2007. The next day, police arrested certain police who Jorge had accused of belonging to the militia. They were released from administrative detention within several days. On 1 September 2007, with the militia's control undermined, the gang attempted to retake control of the area, but was kept out by police after heavy fighting. Jorge was kidnapped and murdered on 7 September 2007. Civil Police investigating the militia informed me that 6 members of the Military Police had been arrested for militia involvement, and a further 13 arrest warrants had been issued for non-police militia members. They stated that their investigations were ongoing but near completion. The head of the Military Police battalion told me that they were re-establishing control of the area, that police corruption and militia involvement by police in his battalion had already been investigated, and that the guilty officers had been arrested. However, I received credible accounts from residents and NGOs working in Kelson's that on 8 October 2007, some members of the Military Police received payments from the Red Command gang, allowing them to re-enter the community and that, at the time of my mission, the gang continued to operate in Kelson's.

37. Each time the control of the community changes hands, residents' lives are endangered. Those residents aligned with the group that was previously in control live in fear of retaliation from the new group, or are forced to leave.²⁵² The constant shifting of control makes it nearly impossible for residents to act in a way that will keep them safe in the present as well as when control changes hands in the future.

38. Death squads, extermination groups, and vigilante groups are groups formed by police and others whose purpose is to kill, primarily for profit.²⁵³ Such groups sometimes also justify their actions as an extralegal "crime-fighting" tool. In circumstances where the groups are hired for profit, those who hire them are sometimes members of other criminal organizations, traffickers, or corrupt politicians, seeking to control a perceived threat, gain an advantage over a rival group, or exact revenge. Killers are also hired by those who believe that the police and the criminal justice system are unable to effectively combat crime, and so "vigilante justice" is necessary when they, or a family member, have been the victim of a crime.

²⁵² I was informed that since the militia first took control, approximately 35 families (200-250 people) have been forced to abandon their homes and leave the area.

²⁵³ In Pernambuco, hired killers earn \$ 1,000 to \$ 5,000 Reais per killing.

39. The public prosecution service in Pernambuco estimated that approximately 70% of the homicides in Pernambuco are committed by death squads. A federal parliamentary commission of inquiry found that extermination groups are mostly composed of Government agents (police and prison guards), and that 80% of the crimes caused by extermination groups involve police or ex-police.²⁵⁴ The Governor of Pernambuco also told me that his Government is aware that members of the Military Police are involved in most death squads. As the commission of inquiry report notes, it is police who have the power, information, resources, weapons, and training to most effectively run such groups.²⁵⁵ The Pernambuco Government, which took office in 2007, appears committed to ending this phenomenon and has undertaken a number of promising initiatives.²⁵⁶

40. Extermination groups are also responsible for the murders of landless workers and indigenous persons in rural areas, generally in the context of disputes over land. While the numbers of landless workers or indigenous persons executed each year does not form a large proportion of Brazil's total homicides, the killings that take place serve to reinforce a broader system of repression by demonstrating the lethal consequences of defying powerful actors. The Pastoral Land Commission reports on average approximately 40 murders per year of landless workers.²⁵⁷ In the state of Pará alone, over 770 landless workers and other human rights defenders have been killed since 1971.²⁵⁸

²⁵⁴ *Relatório Final da Comissão Parlamentar de Inquérito do Extermínio no Nordeste*. Criada por meio do Requerimento nº 019/2003 - destinada a "Investigar a ação criminosa das milícias privadas e dos grupos de extermínio em toda a região nordeste" - (CPI - extermínio no nordeste), p. 25.

²⁵⁵ As the commission of inquiry's report explains: "The extermination groups are composed mostly of government agents - civil and military police, penitentiary agents, in short, by personnel that are very powerful and possess the information, arms and circumstances to act. However, their composition varies: ex-police expelled from the corps owing to their participation in illegal activities; police on active-duty who use these groups as a means to augment their salaries; individuals contracted as private security; groups that participate in criminal organizations linked to drug-trafficking and other illegal activities; and groups that do not maintain specific relationships with organized crime but that exercise control over particular areas with the excuse of guaranteeing the 'security' of its residents - this type is very common in the outlying neighborhoods in the big cities. There are also organizations that contract with cowboys." *Relatório Final da Comissão Parlamentar de Inquérito do Extermínio no Nordeste*. Criada por meio do Requerimento nº 019/2003 - destinada a "Investigar a ação criminosa das milícias privadas e dos grupos de extermínio em toda a região nordeste" - (CPI - extermínio no nordeste), pp. 25-26.

²⁵⁶ Working with Federal Police and drawing on information gathered by a new integrated intelligence unit within the Public Security Secretariat, police arrested 197 people for death squad involvement during 2007. (During my visit, 34 people (police, lawyers, businessmen) were arrested and charged with participating in death squads, killing 35 people during the previous 5 month period, and suspected of killing several hundred victims over the years. One of the death squad groups was led by a former member of the Military Police. In April 2007, members of another death squad were arrested in Pernambuco, and charged with killing 200 people.) In addition, many police were suspended from duties during 2007, and charges were also laid against senior members of the Civil Police. (In 2007, 600 Military Police were expelled, and 16 Civil Police expelled.) Police now receive a bonus for every weapon they confiscate, and over 6,000 were confiscated in 2007. Pay rates, and health and education services for police have also been increased, and training for intelligence techniques has been provided. These efforts in Pernambuco need to continue, and other states should pursue similar initiatives.

²⁵⁷ See Comissão Pastoral da Terra, "Assassinatos" at www.cptnac.com.br. In 2007, the most recent year for which there are homicide statistics, the number of homicides (28) was lower than the previous years' averages. (However, in 2007, the number of states in which murders took place increased from 8 to 14).

²⁵⁸ Comissão Pastoral da Terra, Justiça Global, Terra de Direitos, "Violação dos direitos Humanos na Amazônia: Conflito e Violência na Fronteira Paraense" (November 2005), p. 33.

These killings generally occur in retribution for the activism of landless workers or during violent evictions from land settled by landless workers.²⁵⁹ The *Conselho Indigenista Missionário* (CIMI) informed me that they estimate that about 10 summary executions of indigenous persons occur each year.²⁶⁰ While individual killings are a result of structural land conflict issues, complex and long-term land use and ownership issues should not be used as an excuse for failing to take immediate action to prevent, prosecute and punish extrajudicial executions in this context. Land conflicts form the context in which these murders take place. But it is not the case that executions inevitably follow from conflicts over land. Executions occur because those who order and carry out the murders know that they will get away with it. Brazil must ensure that reported death threats are investigated and the perpetrators punished.

Follow-up report on Mission to Brazil (A/HRC/14/24/Add.4, 28 May 2010, ¶¶ 25-39):

25. As noted in the Special Rapporteur's previous report on Brazil, militias are groups composed of military and civil police, ex-police, firefighters, prison guards, and private citizens who attempt to "take over" geographical areas, and engage in extra-state "policing".²⁶¹ These groups are responsible for extrajudicial executions and other violent crimes including torture and kidnapping. As with criminal gangs, their violence is largely compelled by efforts to exercise geographic control in order to make a profit by extorting "protection money" from communities and the provision of services such as illegal cable television, household gas and transportation.

26. Since the Rapporteur's visit, militias in Rio de Janeiro have been the subject of significant and much-needed attention. At the time of his visit in 2007, it was generally believed that militias were in control of roughly 92 favelas in Rio de Janeiro city. Following public outrage over the kidnapping and torture of three undercover journalists by a militia in May 2008,²⁶² two militia members were arrested and the state Government set up a Parliamentary Commission of Inquiry to investigate militias in Rio de Janeiro.

²⁵⁹ For example, I received reports that on 21 October 2007, a few weeks prior to my visit, an armed militia group shot and killed Valmir Mota de Oliveira (42 years old), a leader of the *Movimento dos Trabalhadores Rurais Sem Terra* (MST), at the Via Campesina encampment at the GMO field of Syngenta Seeds, Santa Tereza do Oeste, Paraná. Five other farmers were also shot and seriously wounded. The MST leaders had been threatened for the previous 6 months by the militia, who were believed to have been employed by Syngenta.

²⁶⁰ These killings either occur in the context of disputes over land that has already been demarcated to indigenous groups pursuant to the requirements of Article 231 of the 1988 Constitution, but on which others trespass for the purposes of resource exploitation, or the killings occur over land which is not yet demarcated but which an indigenous group chooses to begin to reclaim. The National Foundation for Indians (*Fundação Nacional do Índio*, FUNAI) has responsibility for indigenous policies, and policing of indigenous areas is largely the responsibility of the Federal Police. I was told by NGOs and indigenous representatives that Federal Police presence was often non-existent or minimal. In indigenous areas known to have serious land conflicts, Federal Police presence should be increased, and police who work in and near indigenous areas should receive specialist training to sensitize them to the land issues and indigenous culture.

²⁶¹ A/HRC/11/2/Add.2, para. 34.

²⁶² "Milícias: política do terror," O Dia Online, 31 May 2008; Human Rights Watch, *World Report 2009 – Brazil* (January 2009)

27. Led by state deputy Marcelo Freixo, the Commission published a lengthy report in November 2008.²⁶³ It concluded that 171 areas in Rio de Janeiro were dominated by militias, nearly double the number previously thought to exist, and it was able to discover the identities of militia members, the communities under militia rule and the nature of profits engendered by militia activities. The Commission uncovered extensive evidence of official state involvement in militias, including election-related corruption, official membership in militias, and militias benefiting from the use of public resources (such as weapons and cars).

28. In response, the Government took a number of important steps. Two hundred suspected militia members were arrested, including a state deputy²⁶⁴ Certain militias, such as the Liga da Justiça (“Justice League”) were particularly hard hit. The Government also created a task force within the police to specifically investigate militias. According to information provided by interlocutors, this task force has kept up sustained pressure on key militias.

29. Given the extent of militia activity and control, these actions are important, but they constitute just the beginning. Militias continue to seek control of territory and of state politics, and remain a major threat to security in Rio de Janeiro. Many militias remain untouched, and recent examples of militia violence abound. In August 2009, seven residents of the Barbante favela were shot dead by members of a militia, and one victim was killed for refusing to pay the militia’s security “tax”.²⁶⁵ In the same month, a member of Governor Cabral’s personal security detail was arrested on charges of alleged participation in a militia that had recently murdered four people.²⁶⁶ In a raid on the Rio das Pedras militia, Brazilian authorities discovered the militia’s plans to assassinate state deputy Marcelo Freixo.²⁶⁷

2. Death squads

30. Death squads, extermination groups, and vigilante groups are often formed by police along with others whose goal is to kill, generally for profit. These groups are also known to justify their actions as an extralegal “crime-fighting” tool.²⁶⁸

31. The Special Rapporteur’s report focused largely on death squads in Pernambuco. During his 2007 mission, he was provided with evidence that 70 per cent of homicides in Pernambuco were committed by death squads. Pernambuco has taken significant steps to

²⁶³ Assembleia legislativa do Estado do Rio de Janeiro (ALERJ), *Relatório Final da Comissão Parlamentar de Inquérito destinada a investigar a ação de Milícias no âmbito do estado do Rio de Janeiro* (November 2008).

²⁶⁴ Amnesty International, *Report 2009: State of the World’s Human Rights* (Brazil) (May 2009).

²⁶⁵ Idem.

²⁶⁶ Blog da Segurança, “PM acusado de chacina cuidava de filho de Cabral,” O Dia Online, 25 August 2009; Human Rights Watch, *Lethal Force*, p. 50.

²⁶⁷ “Grupo tramou assassinato de deputado,” O Dia Online, May 29, 2009 http://www2.amnesty.se/uaonnet.nsf/senastezope/495C62E518E8BEB2C12575CA00346135?opendo_cument; Human Rights Watch, *supra* note 10 at p.51.

²⁶⁸

address this problem. On 29 January 2009, the state Government announced that about 30 police operations carried out since late 2007 had resulted in some 400 people being imprisoned for their participation in death squads.²⁶⁹ The scope of death squad activity is so expansive, however, that intensive investigations and arrests will need to continue for many years if it is to succeed.

32. Efforts to combat death squads have been met with violent resistance. Human rights activist and former city councilor Manoel Mattos had been active in denouncing death squads in Pernambuco and Paraíba for many years, and, following repeated threats on his life, was shot to death in his home on 24 January 2009.²⁷⁰

33. For this report, the Special Rapporteur was also presented with evidence of significant death squad activity in São Paulo. According to the São Paulo Police Ombudsman, in 2008 there were 97 cases of suspected death squad killings, and 61 cases in 2009.²⁷¹ In January 2008, Colonel Jose Herminio Rodrigues was shot to death on the street after he began an investigation into death squads in northern São Paulo which appeared to involve over 50 military police.²⁷² In a positive step, 14 members of the military police were arrested in 2009 for links to 12 murders committed by the “Highlanders”, a death squad infamous for decapitating its victims.²⁷³

34. In another positive move, the Government of Paraíba recently launched an investigation into a death squad allegedly responsible for some 300 murders over the last decade.²⁷⁴ The group involved 30-40 active and retired police officers, from regular officers to a colonel and including corrections officers, who were operating on behalf of the jailed members of a drug trafficking gang. At the time of writing, none of the police officers has been arrested, although the investigation is ongoing.

3. Police salaries

35. In his report, the Special Rapporteur explained that police participation in organized criminal activity was at the extreme end of a spectrum of police activity that began with extortion and the taking of prohibited second jobs, generally in the security sector. Much of this activity was motivated by the poor pay that police received. It was also easy for police to take second jobs because of their shift structure, and the reluctance of commanders to discipline police for doing so. Consistent with this analysis, Rio de

²⁶⁹ A/HRC/11/2/Add.2, para. 38.

²⁷⁰ Pernambuco: Pacto Pela Vida, “Combate aos grupos de extermínio será intensificado em Pernambuco,” available on the Government of Pernambuco “Pacto Pela Vida” website, <http://www.pactopela vida.pe.gov.br>.

²⁷¹ Amnesty International, “Human Rights Activist Assassinated in Brazil,” 27 January 2009.

²⁷² Police Ombudsman of São Paulo, “Relatório Anual 2009,” available at: <http://www.ouvidoriapolicia.sp.gov.br/pages/RelatAnual2009.htm>.

²⁷³ U.S. Department of State, *2008 Human Rights Report: Brazil*; See also Human Rights Watch, *Lethal Force*, p. 44.

²⁷⁴ Amnesty International, *Report 2009: State of the World’s Human Rights: Brazil* (May 2009); see also Human Rights Watch, *Lethal Force*, p. 45.

Janeiro's Commission into militias specifically identified inadequate police salaries as a cause for police participation in militias.²⁷⁵

36. Since the Special Rapporteur's visit, the Brazilian Federal Government has taken some important steps to increase police salaries. In November 2009, President Lula stated that adequate pay was the key way to prevent officers from accepting bribes and engaging in other unlawful activity, and he announced a new career plan for the Federal District whereby the Government would hire 3,000 new officers and would promote 12,000 current officers.²⁷⁶ In anticipation of the World Cup in 2014 and the Olympic Games in 2016, President Lula also announced an increase in police salaries by providing for a Bolsa Copa (World Cup Grant) and a Bolsa Olímpica (Olympic Grant). For the Bolsa Copa, which will be paid to both firefighters and police in the lead up to the World Cup, the increase begins in 2010 with 550 reais, increasing in 2011 to 665 reais, in 2012 to 760 reais, in 2013 to 865 reais and finally to an extra 1,000 reais for 2014.²⁷⁷ The Bolsa Olímpica will be fixed at 1,200 reais for all civil and military police. In order for any police officer to receive the grant, the officer must attend one training course per year.

37. However, the negative consequences of low police salaries also exist outside of Rio de Janeiro, independently of the upcoming sporting events. Brazilian police staged strikes in early 2010 in order to protest unequal salary differentials between Federal District police and military police nationwide.²⁷⁸ In February 2010, the police demanded a national minimum wage to ensure that police officers across the country receive pay increases.

38. As part of a strategy to improve the police forces through salary increases, professional police tactics and human rights training must also be on the agenda. The Olympic and World Cup Grants described above link increased salaries and advanced training to a minor extent. However, the training must be serious and of high quality in order to rectify the systematic use of excessive force. Interlocutors provided information to the effect that in Pernambuco, for example, training courses for military police officers in 2009 were deficient in a number of respects. The four-month course decreased from 1,246 hours in 2004 to only 800 hours in 2009. Classes were crowded, there was insufficient training on self-defence techniques and expert training with firearms, just three hours of training on the preservation of evidence at a crime scene, and no training on dealing with vulnerable groups in society.

39. The Special Rapporteur is not aware of any changes having been made to the policing shift structure.

²⁷⁵ "Brazil Death Squad Suspected of 300 Murders," Latin American Herald Tribune, 7 January 2010.

²⁷⁶ ALERJ, *supra* note 16, p. 40.

²⁷⁷ "Brazilian president: Paying good salaries to police is guarantee of tranquillity to society," Xinhua News, 7 November 2009.

²⁷⁸ Marianna Jungmann, "Rio Olympics: Lula Creates New Bolsa (Allowance) to Raise Police Salaries," BrazilMag, 22 January 2010.

H. “HONOUR” KILLINGS

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

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

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

80. The right to life is the most fundamental of all rights and must be guaranteed to every individual without discrimination. Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women makes it obligatory for States parties to “condemn discrimination against women in all its forms, agree to pursue by all

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

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

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

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

84. A comprehensive policy has to be drawn up to abolish practices which impinge upon the life of any person purely because of sexual distinction. The Special Rapporteur intends to continue to follow individual cases to assess the level of impunity extended to such crimes. In this connection, she would also like to acknowledge the efforts made by some Governments and judges in bringing the perpetrators of such violations to justice.

Their endeavours to counter these gross violations of human rights must be supported by the international community. In this regard, the Special Rapporteur was particularly encouraged to follow the work undertaken by some leading international non-governmental organizations. Their campaigns, along with increased media exposure, have attracted much-needed international attention to the practice of “honour killings”.

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

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

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

66. In the period under review, the Special Rapporteur has continued to receive reports of so-called “honour killings” of women. In this regard, the Special Rapporteur wishes to recall that she is monitoring incidents of “honour killings” where the State either approves of and supports these acts, or extends a form of impunity to the perpetrators by inaction. In this connection, she transmitted to the Government of Pakistan a communication relating to the murder of some 200 victims. It is worth mentioning that, although women and girls are the main targets of these brutal killings, men and boys - either relatives, alleged partners or considered as “accomplice” of the female victim - can sometimes be targeted by such killings. The perpetrators of these crimes are always male family members or persons acting at their behest. The rationale for killing is to preserve a misconceived notion of “family honour” allegedly put in jeopardy by the victim herself. In the great majority of cases sent by the Special Rapporteur to the Government of Pakistan, the information received indicates that the murderers remain unpunished either because no complaint was ever filed by relatives of the victims, or because the police investigation is allegedly ongoing without any concrete result. In some cases, it is

reported that the police refused to file a complaint claiming that the victims' relatives should forgive the perpetrator who is considered to have acted in all fairness. According to the information received, there are some cases where murderers reportedly surrender themselves to the police with the murder weapon. Nevertheless, no action was ever taken against them.

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

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

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

Interim Report of the Special Rapporteur on extrajudicial executions to the General Assembly (A/59/319, 1 September 2004, ¶¶ 45-55):

54. During the period under review, the Special Rapporteur continued to receive reports of gender-based crimes, which thrive on impunity. In this regard, the Special Rapporteur received many reports of so-called "honour killings" where the State either approves of or supports these acts, or permits de facto impunity for the perpetrators by inaction. In

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

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

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

63. “Honor killings”²⁷⁹ occur with impunity in parts of Afghanistan. In the eastern region, for example, one source had documented 40 honor killings between January 2007 and December 2008. The actual number is certainly far higher due to fear of reporting such cases. The victims are predominantly women, although men are also killed. Rarely are perpetrators investigated and prosecuted.

64. In Jalalabad, Nangarhar province, I spoke with a family member of a boy and girl (cousins) who allegedly had sexual relations outside of marriage. They were invited to a “dinner” by their uncles and, when sleeping, were shot and killed. The boy’s body was sent to his father. The girl’s was buried without any funeral prayers. No family members complained to the police. The police knew about the deaths, but did not investigate, claiming that they could not do so without a complaint from the family.²⁸⁰ In Kandahar, a female colleague spoke with many women who told her that honor killings occur in their neighborhoods, but are rarely reported or investigated. One young woman, found to be pregnant, was strangled by her father and brother. No investigation or prosecution ensued. Other women were killed for attempting to flee their homes, often because of domestic violence. Women in the family of the deceased victim of an “honor killing” are typically too afraid of their own families to make a complaint to police. And they know that the police are unlikely to carry out an investigation, or that if they do, bribery will ensure impunity for the perpetrators. I received reports of a number of cases in which police did attempt to carry out investigations, but senior Government officials interfered with or prevented the investigations. Like any other murders, international law requires that these killings be investigated, prosecuted, and punished.²⁸¹

²⁷⁹ The killing of a family member on suspicion of engagement in any actions deemed dishonorable, ranging from mere association with the opposite sex to sexual relations or running away from home.

²⁸⁰ Article 476(1) of the *Penal Code of 1976* provides that in certain crimes against the person committed by a family member, an action may only be brought based on a complaint by the victim. Following a highly questionable interpretation of this provision, there have been cases in which the fact that the (dead) victim has not “chosen” to bring a complaint against the perpetrator has served as a basis for refusing to prosecute.

²⁸¹ In most situations, the isolated killing of individuals will constitute a simple crime and not give rise to any governmental responsibility. But once a pattern becomes clear in which the response of the Government is clearly inadequate, its responsibility under international human rights law becomes applicable. (*See* E/CN.4/2005/7, paras. 71-75.) This is because human rights law obligates governments to investigate, prosecute, and punish crimes that impinge upon the rights of its people. (ICCPR, art. 2(1).) When doing so is obstructed by existing laws or practices, governments are obligated to change these. (ICCPR, art. 2(2).) As the Special Rapporteur has repeatedly observed, governments that fail to punish murders because they are “honor killings” are violating international human rights law. (*See* E/CN.4/2000/3, paras. 78-84; *see also* the report of the Special Rapporteur on violence against women, its causes and consequences on her visit to Afghanistan in 2005, E/CN.4/2006/61/Add.5.)

I. KILLINGS BY BANDITS

Report on Mission to the Central African Republic (A/HRC/11/2/Add.3, 27 May 2009, ¶¶ 36-43):

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

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

38. Many bandits are from neighbouring countries, including Cameroon, Chad and Niger, although there are also bandits from the Central African Republic. Those from Chad either participated in Chad's civil war or fought for President Bozizé in 2001-2003 but were not subsequently integrated into the security forces. The bandits often wear military uniforms, though there is little information on which countries these uniforms are from. The bandits often have AK-47s and are better armed than the APRD. While individual groups of bandits are sometimes well organized, there is no evidence that the bandits collectively have any kind of organizational unity.

39. In general terms, it appears that the bandits are often fighters from earlier conflicts in the Central African Republic and neighbouring countries who turned to crime rather than demobilizing, using their military weapons and training to exploit the security vacuum in the north.

Government response to banditry

40. Government forces have made only limited efforts to respond to banditry. In both Ouham and Ouham-Pendé, local officials acknowledged that they seldom arrest or engage with bandits. One prosecutor who asserted that there had been successful prosecutions of bandits could not, however, cite any specific case. Military and gendarmerie commanders in both prefectures stated that their forces were unable to pursue bandits because they lack sufficient vehicles and are relatively evenly matched in firepower. In a rare instance of which officials could provide a detailed account,

Government forces engaged with the bandits, but the operation failed, leaving two dead hostages and no captured bandits.

41. Given the failure of law enforcement efforts, alternative approaches have been discussed. The most oft-mentioned is to use financial incentives to demobilize the bandits and repatriate those of foreign nationality. But, as noted by several interlocutors, this proposal seems both unrealistic and undesirable. No neighbouring country would be interested in accepting large numbers of criminals. Moreover, it is unlikely that many of the criminals, especially those who have also been involved in armed conflict in neighbouring countries, would be willing to be repatriated. Making “demobilization” payments to bandits would also tend to make that vocation even more attractive. While demobilization programmes for armed opposition groups are often a useful component of plans to transition from conflict to peace, there is no reason to think that such programmes would facilitate a transition from criminality to law and order.

42. The APRD has provided effective protection against bandits in areas that it controls. Interlocutors, including Government officials, cited specific instances in which rebels have fought off bandits. In this respect, the obvious difference between Government and APRD forces is that the latter are continuously present and active in rural areas of the north-west, whereas the former are based in Bangui or major towns.

43. There are several factors that were widely believed to have limited the urgency with which the Government has responded to the principal human security problem in the north-west today. One is that banditry principally affects poor, rural residents - people with little political clout. Indeed, merchants can pay for gendarmes to travel on top of their trucks, which has generally proven sufficient to deter bandit attacks. One interlocutor noted that insofar as some bandits are *ex-libérateurs*, moving strongly against bandits risks provoking diplomatic incidents with the Government of Chad. Some interlocutors suggested that there may also be an ethnic dimension to the Government’s inaction. The victims are disproportionately Peulh, a predominantly Muslim ethnic group. Peulh traditionally herd cattle, making them wealthier than most other rural residents. Moreover, cattle are a relatively mobile and “liquid” form of wealth that may be stolen by bandits or sold by the herders to pay ransoms to bandits. There is also tension between the Peulh and other citizens of the Central African Republic. First, as the Special Rapporteur observed in interviews, there is a tendency to lump Peulh in with Muslims from other countries and not consider them “true” citizens of the Central African Republic. Second, the Peulh’s comparative wealth creates tensions grounded in resentment. Third, as has been observed in other areas, there is often tension between the interests of sedentary agriculturalists and pastoral nomads.

Follow-up report on Mission to Central African Republic (A/HRC/14/24, Add.5, 19 May 2010, ¶¶ 22-27):

22. Banditry has become the major source of insecurity for civilians in the Central African Republic. In his initial report, the Special Rapporteur described the bandits’ general method of operation as ambushing vehicles, looting their contents and taking

hostages for ransom. Many of the bandits are from neighboring countries including Cameroon, Chad and Niger. They tend to operate in loosely organized groups and are well armed.

23. Since the visit of the Special Rapporteur, armed groups of bandits have proliferated throughout the northern part of the country, becoming both better organized and more violent. Bandits assault and kill villagers and others on the roads, loot property and burn villages. They are increasingly kidnapping people for ransom, demanding upwards of 100,000 CFA, and killing hostages whose families cannot pay. Because of their attacks, they are a significant cause of internal displacement.

24. Violations by the State have also been reported in addressing banditry. For example, the Special Rapporteur received credible information that members of the Office Central de Répression du Banditisme, a police unit set up to address banditry, unlawfully killed 15 individuals in their custody.

25. In some areas of the northwest and the north center, APRD has stepped in to provide protection from banditry for the local population. But both APRD and Abdoulaye Miskine's Front Démocratique pour le Peuple Centrafricain, operating in the north centre, have set up roadblocks and often exact illegal taxes from civilians, ostensibly in return for ensuring security in the region.

26. To protect themselves from banditry and from rebel groups, and in the absence of any real State protection, villagers in the north are increasingly organizing themselves into ad hoc self-defence groups. Some of these groups have joined the continued skirmishes between the Government and the rebel troops, with dire consequences for civilians. In June 2009, for example, over 1,000 civilians were displaced from Loura following fighting between self-defence groups and APRD. In March 2009 in Bézéré, seven were killed in APRD self-defence-group violence. In the Ouham-Pendé prefecture, the self-defence groups' support for the FACA forces has provoked a series of reprisal attacks against villages.

27. International efforts have insufficiently addressed the security threats posed by banditry and rebel groups. The United Nations Mission in the Central African Republic and Chad (MINURCAT) replaced European Union-led peacekeeping force troops on 15 March 2009, but interlocutors reported that it patrols infrequently and inadequately.

J. “SOCIAL CLEANSING” KILLINGS

Report on Mission to Colombia (A/HRC/14/24/Add.2, 31 March 2010, ¶ 42):

42. The police have killed civilians, although there appears to be little information on, let alone scrutiny of, the legality of these killings.³⁵ The Ministry of Defence stated that it had “no information ... in relation to unlawful killings by Police”.³⁶ However, I did receive some complaints of killings by police during my mission, and given that a number of the alleged extrajudicial killings reported since Soacha were carried out by members of the police, it is essential that the Government prioritize the investigation and prosecution of such killings. Civil society should also devote more attention to such killings.

Report on Mission to Brazil (A/HRC/11/2/Add.2, 23 March 2009, ¶¶ 38-40):

38. Death squads, extermination groups, and vigilante groups are groups formed by police and others whose purpose is to kill, primarily for profit.²⁸² Such groups sometimes also justify their actions as an extralegal “crime-fighting” tool. In circumstances where the groups are hired for profit, those who hire them are sometimes members of other criminal organizations, traffickers, or corrupt politicians, seeking to control a perceived threat, gain an advantage over a rival group, or exact revenge. Killers are also hired by those who believe that the police and the criminal justice system are unable to effectively combat crime, and so “vigilante justice” is necessary when they, or a family member, have been the victim of a crime.

39. The public prosecution service in Pernambuco estimated that approximately 70% of the homicides in Pernambuco are committed by death squads. A federal parliamentary commission of inquiry found that extermination groups are mostly composed of Government agents (police and prison guards), and that 80% of the crimes caused by extermination groups involve police or ex-police.²⁸³ The Governor of Pernambuco also told me that his Government is aware that members of the Military Police are involved in most death squads. As the commission of inquiry report notes, it is police who have the power, information, resources, weapons, and training to most effectively run such groups.²⁸⁴ The Pernambuco Government, which took office in 2007, appears committed to ending this phenomenon and has undertaken a number of promising initiatives.²⁸⁵

²⁸² In Pernambuco, hired killers earn \$ 1,000 to \$ 5,000 Reais per killing.

²⁸³ *Relatório Final da Comissão Parlamentar de Inquérito do Extermínio no Nordeste*. Criada por meio do Requerimento nº 019/2003 - destinada a “Investigar a ação criminosa das milícias privadas e dos grupos de extermínio em toda a região nordeste” - (CPI - extermínio no nordeste), p. 25.

²⁸⁴ As the commission of inquiry’s report explains: “The extermination groups are composed mostly of government agents - civil and military police, penitentiary agents, in short, by personnel that are very powerful and possess the information, arms and circumstances to act. However, their composition varies: ex-police expelled from the corps owing to their participation in illegal activities; police on active-duty who use these groups as a means to augment their salaries; individuals contracted as private security; groups that participate in criminal organizations linked to drug-trafficking and other illegal activities; and groups that do not maintain specific relationships with organized crime but that exercise control over particular areas

40. Extermination groups are also responsible for the murders of landless workers and indigenous persons in rural areas, generally in the context of disputes over land. While the numbers of landless workers or indigenous persons executed each year does not form a large proportion of Brazil's total homicides, the killings that take place serve to reinforce a broader system of repression by demonstrating the lethal consequences of defying powerful actors. The Pastoral Land Commission reports on average approximately 40 murders per year of landless workers.²⁸⁶ In the state of Pará alone, over 770 landless workers and other human rights defenders have been killed since 1971.²⁸⁷ These killings generally occur in retribution for the activism of landless workers or during violent evictions from land settled by landless workers.²⁸⁸ The *Conselho Indigenista Missionário* (CIMI) informed me that they estimate that about 10 summary executions of indigenous persons occur each year.²⁸⁹ While individual killings are a result of structural land conflict issues, complex and long-term land use and ownership issues should not be used as an excuse for failing to take immediate action to prevent,

with the excuse of guaranteeing the 'security' of its residents - this type is very common in the outlying neighborhoods in the big cities. There are also organizations that contract with cowboys." *Relatório Final da Comissão Parlamentar de Inquérito do Extermínio no Nordeste*. Criada por meio do Requerimento nº 019/2003 - destinada a "Investigar a ação criminosa das milícias privadas e dos grupos de extermínio em toda a região nordeste" - (CPI - extermínio no nordeste), pp. 25-26.

²⁸⁵ Working with Federal Police and drawing on information gathered by a new integrated intelligence unit within the Public Security Secretariat, police arrested 197 people for death squad involvement during 2007. (During my visit, 34 people (police, lawyers, businessmen) were arrested and charged with participating in death squads, killing 35 people during the previous 5 month period, and suspected of killing several hundred victims over the years. One of the death squad groups was led by a former member of the Military Police. In April 2007, members of another death squad were arrested in Pernambuco, and charged with killing 200 people.) In addition, many police were suspended from duties during 2007, and charges were also laid against senior members of the Civil Police. (In 2007, 600 Military Police were expelled, and 16 Civil Police expelled.) Police now receive a bonus for every weapon they confiscate, and over 6,000 were confiscated in 2007. Pay rates, and health and education services for police have also been increased, and training for intelligence techniques has been provided. These efforts in Pernambuco need to continue, and other states should pursue similar initiatives.

²⁸⁶ See Comissão Pastoral da Terra, "Assassinatos" at www.cptnac.com.br. In 2007, the most recent year for which there are homicide statistics, the number of homicides (28) was lower than the previous years' averages. (However, in 2007, the number of states in which murders took place increased from 8 to 14).

²⁸⁷ Comissão Pastoral da Terra, Justiça Global, Terra de Direitos, "Violação dos direitos Humanos na Amazônia: Conflito e Violência na Fronteira Paraense" (November 2005), p. 33.

²⁸⁸ For example, I received reports that on 21 October 2007, a few weeks prior to my visit, an armed militia group shot and killed Valmir Mota de Oliveira (42 years old), a leader of the *Movimento dos Trabalhadores Rurais Sem Terra* (MST), at the Via Campesina encampment at the GMO field of Syngenta Seeds, Santa Tereza do Oeste, Paraná. Five other farmers were also shot and seriously wounded. The MST leaders had been threatened for the previous 6 months by the militia, who were believed to have been employed by Syngenta.

²⁸⁹ These killings either occur in the context of disputes over land that has already been demarcated to indigenous groups pursuant to the requirements of Article 231 of the 1988 Constitution, but on which others trespass for the purposes of resource exploitation, or the killings occur over land which is not yet demarcated but which an indigenous group chooses to begin to reclaim. The National Foundation for Indians (*Fundação Nacional do Índio*, FUNAI) has responsibility for indigenous policies, and policing of indigenous areas is largely the responsibility of the Federal Police. I was told by NGOs and indigenous representatives that Federal Police presence was often non-existent or minimal. In indigenous areas known to have serious land conflicts, Federal Police presence should be increased, and police who work in and near indigenous areas should receive specialist training to sensitize them to the land issues and indigenous culture.

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

Report on Mission to Guatemala (A/HRC/4/20/Add.2, 19 February 2007, ¶¶ Introduction, 15-21, 42-62):

Guatemala ended its armed confrontation when the Peace Accords were adopted in 1996. This was a major success, but Guatemala has failed to complete the transition to a society in which the right to life is secure.

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

There are 5,000 or more killings per year, and the responsibility for this must rest with the State. Guatemala is not a failed State and is not an especially poor State. The reason that extrajudicial executions are widespread is a distinct lack of political will. Important legislation is not enacted. Necessary budget allocations are not made.

[...]

15. Guatemala is experiencing a high and rising murder rate. In 2001, there were 3,230 homicides; in 2002, 3,631; in 2003, 4,236; in 2004, 4,507; in 2005, 5,308; and by mid-August 2006, there had been 2,905.²⁹⁰ In other words, the homicide rate increased an alarming 64 per cent over five years.²⁹¹ (By comparison, the population increased by 8 per cent.²⁹²) In this context, it is natural that few believe that the criminal justice system is functioning properly. One response has been the emergence - or re-emergence - of social cleansing as a desperate and lawless means of confronting gang violence. Today, a significant number of youth are summarily executed for their presumed participation in crime or membership in gangs.

²⁹⁰ These data are based on PNC figures and were provided to the SR by the PDH.

²⁹¹ The homicide rate includes acts of social cleansing. Based on the PDH’s count of likely social cleansing victims over the years studied, roughly nine percentage points of this increase may be due to acts of social cleansing.

²⁹² United States Census Bureau, International Data Base, Table 001 for Guatemala, *available at* <http://www.census.gov/ipc/www/idbprint.html>

16. The principal gangs active in Guatemala are Mara 18 and Mara Salvatrucha, which also operate in other Central American countries and parts of the United States. Estimates as to the overall membership of youth gangs vary widely, from 165,000 to 200,000 according to the Ministry of Interior to no more than 35,000 according to the non-governmental Coordinadora Juventud por Guatemala.²⁹³ There are no reliable statistics on how many murders involve gang members as perpetrators or victims. One report I received draws on data from the National Civil Police (Policía Nacional Civil, PNC) and attributes 40 per cent of the violent deaths in Guatemala to “fights between gangs”. Civil society organizations express strong doubts, however, with regard to the attribution by the authorities of the majority of the killings to “fights between gangs” as discounting the contributions of organized crime and of the security forces themselves.²⁹⁴

17. Incidents of social cleansing are not effectively investigated, so official data provide no insight into their prevalence. However, a detailed study by the Procuradía de los Derechos Humanos (PDH) provides a rough picture.²⁹⁵ The PDH systematically reviewed newspaper stories concerning violent deaths and tabulated the characteristics of each reported death. It found that in 2005, 63 murder victims had been dispatched with a final kill shot (*tiro de gracia*) and that the corpses of 305 murder victims showed signs of torture.²⁹⁶ Between January and June 2006, the numbers were 151 (kill shots) and 435 (torture). In 2005, the bodies of 12 per cent of all murder victims - 648 of 5,338 - were found in a location other than where they died. Information about the victims does not provide sure information about the perpetrators. However, as the PDH noted, gangs typically kill quickly and flee quickly to avoid being captured or killed, suggesting that other, less vulnerable groups engaged in execution for purposes of intimidation are responsible for these murders. 18. Many of my interlocutors suggested that most instances of social cleansing are carried out or at least initiated by private individuals. A paradigmatic example often given is that of the shopkeeper being extorted by gang members and opting to contract with either private hit men or off-duty police officers to execute the gang members. One particularly disturbing expression of the problem of social cleansing by private individuals is that there is a Guatemalan website that permits users to anonymously denounce individuals as gang members and makes publicly

²⁹³ *Informe al Señor Philip Alston* (Agosto 2006) [Informe], p. 38. (This report was drafted by Casa Alianza, Centro para la Acción Legal por los Derechos Humanos (CALDH), Centro Internacional para Investigaciones en Derechos Humanos (CIIDH), Coordinadora Nacional de Organizaciones Campesinas (CNOG), Grupo de Apoyo Mutuo (GAM), Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG), Movimiento Nacional por los Derechos Humanos (MNDH), Oficina de Derechos Humanos del Arzobispado de Guatemala (ODHAG), Organización de Apoyo a una Sexualidad Integral frente al SIDA (OASIS), and Plataforma Agraria.)

²⁹⁴ The relationships between the gangs, organized crime, and deviant elements of the security forces are widely commented upon but difficult to disentangle. One interlocutor who had investigated this matter was of the opinion that there is some cooperation between the gangs and small-scale organized crime, with gang members being hired as informants, lookouts, or hit men. In contrast, he suggested, the large-scale organized crime of international drug traffickers cooperates closely with deviant elements in the police and military but views gangs as a nuisance or unwelcome competition.

²⁹⁵ PDH, *Las Características de las Muertes Violentas en el País* (Febrero 2006) provides data for 2004-2005; a PDH report prepared for the SR provides some updates for January to June 2006.

²⁹⁶ Note that a *tiro de gracia* is also counted as a sign of torture.

available their names and street addresses.²⁹⁷ Most such interlocutors also believed that police officers are involved in a more official capacity but tended to see this as a less common phenomenon. The inquiries that I made were not such as to be able to gauge the relative frequency of official versus non-official social cleansing; however, those that I met who shared first-hand knowledge of social cleansing located the responsibility with the police, and it is this kind of social cleansing that I will discuss in greater depth here.

19. Based on my interviews with victims and others, I must conclude that allegations that personnel working for the División de Investigación Criminal (DINC) of the PNC are engaged in social cleansing are highly credible. The pattern is that the police will recruit an informant by agreeing to overlook the informant's past or present criminal activities in exchange for cooperation and will then demand information regarding the identities and locations of gang members, suspected criminals, and other targets. Police will then drive to the location provided, typically without uniforms and in an unmarked vehicle, apprehend the person identified by the informant, and kill him or her at another location, sometimes following torture.²⁹⁸

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

²⁹⁷ See www.unidoscontralasmamas.com last viewed 30 October 2006. When I last viewed the site, there were details on 113 purported gang members. The exhortations to engage in social cleansing in the site's discussion forums illustrate the dangers inherent in this kind of anonymous, public denunciation.

²⁹⁸ The conclusions I reached based on interviews align with those reached by the PDH based on the much larger number of complaints that it has received of forced disappearances and extrajudicial executions by the PNC. With respect to forced disappearances by the PNC, the PDH received 9 complaints in 2004 and 23 in the first half of 2005. With respect to extrajudicial executions by the PNC, the PDH received 21 complaints in 2004 and 28 in the first half of 2005. PDH, *Las Características de las Muertes Violentas en el País* (Febrero 2006). Based on these complaints, the PDH identified four elements characterizing the conduct of the PNC alleged by victims and their family members: "1. Las víctimas de desaparición fueron detenidas de forma arbitraria, previamente. 2. La última vez que se les vio fue cuando agentes de la PNC les capturaban. 3. Utilización de vehículos sin placas e incluso patrullas con la identificación de la dependencia policial a la que pertenecen. 4. Ausencia de resultados de las investigaciones que permitan identificar a los responsables de los hechos." PDH, *Las Características de las Muertes Violentas en el País* (Febrero 2006).

21. The evidence shows that social cleansing is more than the actions of a few rogue officers. This does not mean that it has risen to the level of officially-sanctioned policy, but the frequency and regularity of social cleansing does indicate that it presents an issue of institutional responsibility. Neither can the well-documented involvement of the police in social cleansing prior to the Peace Accords be overlooked. The practice of social cleansing today appears to represent the reintroduction of practices of selective killing and social cleansing that emerged in the later phases of the armed confrontation.²⁹⁹ During the armed confrontation, intelligence services of the police and military were often involved both in gathering information on possible threats to the State and in eliminating them - without recourse to any judicial process. Today, not only is the modus operandi similar but some of the same intelligence institutions appear to be involved. In particular, the Cuerpo de Detectives of the Policía Nacional, a predecessor of the PNC's DINC, was named by Project for the Recovery of Historical Memory (Recuperación de la Memoria Histórica, REMHI) as having been involved in social cleansing operations during the armed confrontation.³⁰⁰ While efforts to clean up the PNC have been made, resulting in the expulsion of over 100 policemen in 2005 and an even higher number in the first eight months of 2006, groups engaged in social cleansing evidently continue to operate.³⁰¹

How the State has fostered impunity for murder

42. Guatemala has a single-digit conviction rate for murder.³⁰² The implication is obvious and disturbing: Guatemala is a good place to commit a murder, because you will almost certainly get away with it.

²⁹⁹ The study by the PDH shows a dramatic increase in murders that carry the indications of social cleansing in 2005 and 2006 as compared to 2004. This too provides some evidence that the practice reflects a shift in institutional practice rather than the capricious brutality of individual officers. However, the significant shift in the percentage of murders that went unreported in the press suggests the need for further research before drawing strong conclusions about trends. In 2004, 33 per cent of murders recorded by the PNC were covered by the media; in 2005, 66 per cent of murders recorded by the PNC were covered by the media. PDH, *Las Características de las Muertes Violentas en el País* (Febrero 2006).

³⁰⁰ *Guatemala: Nunca Más* (REMHI), vol. 2, Ch. 3.

³⁰¹ REMHI, vol. 2, Ch. 1.

³⁰² Dividing the number of crimes recorded by the number of convictions achieved in a particular year does not provide an accurate calculation of the conviction rate, inasmuch as some convictions will be for earlier years, and some unresolved cases will result in convictions in later years. To accurately calculate the (current) conviction rate for a given year requires dividing the number of crimes recorded in that year by the number of convictions that have been achieved *for those crimes* today. This calculation cannot be performed in Guatemala, because the databases of the various institutions of justice are not integrated, making it impossible to trace individual cases as they move from a complaint to a final disposition. While this should be remedied, in the meantime a study tracing a random sample of murders through the system would be invaluable in clarifying both the extent of impunity and in more precisely identifying the bottlenecks in the system.

Some general insight may, nevertheless, be gleaned from the data that the Ministerio Público was able to provide. The Ministerio Público recorded 8,003 crimes against life (*delitos contra la vida*) in 2005. In that year, the Ministerio Público filed charges in 480 cases of crimes against life. In 97 cases involving 111 victims, the defendant was found guilty (*sentencia condenatoria*), and in 34 cases involving 34 victims the defendant was found not guilty (*sentencia absolutoria*). In an additional 55 cases involving 90 victims, a judgement was pending (*pendiente de dictarse sentencia*), and in 294 cases involving 349 victims, the charges remained in process (*acusaciones en trámite*). Thus, convictions were reached for 1.4 per cent of

43. To understand the causes of this low conviction rate, I spoke with officials of the principal organs of Guatemala's criminal justice system, including the Policía Nacional Civil (PNC), the Ministerio de Gobernación (which oversees the PNC), the Ministerio Público (which prosecutes criminal cases), and the Supreme Court of Justice. These institutions are responsible for the various phases of the criminal justice process, from crime detection and prevention, to investigation and prosecution, to the adjudication of individual criminal responsibility.

44. The PNC is responsible for crime detection and prevention, but with rising crime rates the public has little confidence in its efforts.³⁰³ In our discussion, the Ministro de Gobernación argued that the principal failings of the PNC were due to a lack of resources. Guatemala has 19,000 police officers, 5,000 of which participate in specialized units - largely devoted to protecting government buildings, foreign embassies, and individuals - rather than in general crime prevention. Of the remaining 14,000, approximately 7,000 are serving each day, and 3,500 during a given shift. A number of my interlocutors suggested that, for Guatemala to be in line with the policing levels achieved in El Salvador, it would require between 35,000 and 38,000 police - a doubling of the force. The Government has supplemented the number of police by instituting joint patrols between the PNC and the military. Several thousand soldiers are participating in these joint patrols, and a typical patrol will consist of 10 soldiers and 2 police officers. Notwithstanding the need to end the use of social cleansing by elements with the police, as discussed in chapter III (A), there is no question but that Guatemala needs a far larger police force, but enlargement would need to be accompanied by thoroughgoing reform of existing arrangements. It is, however, far from clear that the use of large patrols comprising primarily persons untrained in policing techniques is beneficial even as a short-term measure; moreover, this remilitarization of policing marks a significant step back from the aspirations expressed in the Peace Accords.

45. The challenges of investigation and prosecution confront three key obstacles: a problematic division of responsibility, severely limited resources, and endemic corruption.

46. Responsibility for investigating crimes is shared by the PNC and the Ministerio Público, and the latter then prosecutes suspected perpetrators. The majority of investigative personnel are employed by the PNC. However, by law the PNC investigators must comply with the direction of those from the Ministerio Público in investigating crime scenes. This arrangement requires close cooperation between the

the victims of crimes against life. If all pending judgements and outstanding charges should result in convictions, the conviction rate would still rise to only 6.9 per cent. It would seem quite unlikely that any reasonable measure of the conviction rate for crimes against life - or for that subset constituting homicides - would exceed a single digit.

³⁰³ In a survey conducted in the municipality of Antigua in August 2006 of a representative sample of 410 residents, only 10 per cent believed the actions of the PNC against crime to be "adecuada" or "muy adecuada". *Informe de un Estudio Cuantitativo de Victimización en el Municipio de Antigua Guatemala*, designed and executed by Aragón & Asociados a solicitud de l'Asociación para la Prevención del Delito (APREDE).

investigators of the PNC and of the Ministerio Público. Despite an inter-institutional accord on improving criminal investigations reached by the two bodies in 2004, by all accounts the level of coordination and cooperation is often unsatisfactory, making many investigations inefficient and often unproductive in terms of successfully pursuing prosecution. While disappointing, the failure of a system in which a single function is divided between institutions with inevitably competing interests is unsurprising and deeper reforms should be considered. One possible model, from which much might be learned, is the approach taken by Chile in establishing a system of investigative prosecutors.

47. Limited resources are another cause of inefficient investigations that often produce insufficient evidence for effective prosecution. I was informed that there are roughly 350 investigators working for the PNC and roughly 100 working for the Ministerio Público. The latter receives 250,000 complaints each year, and while not all require the attention of an investigator, the gap between resources and requirements is enormous. It is understandable that government officials believe that at least 700 additional investigators are needed.

48. Another problem caused by a lack of resources, along with inadequate training, is that investigations rely overwhelmingly on testimonial rather than physical evidence. The provision of better forensic resources is vital, because, not only is testimonial evidence generally of less probative value than physical evidence, but reliance on the former produces the expected incentives for the police to coerce confessions and for criminals to intimidate witnesses. Congress has passed a bill to establish a National Forensics Institute, there is no guarantee that that institute will have adequate resources to make a difference. As one government official noted, Guatemala needs more laboratories, not more legislation.

49. That many investigations and prosecutions have been impeded by officials corrupted either by intimidation or financial inducement is widely acknowledged in and out of Government. In Guatemala, as in many countries, there are networks of personal connections, trust, and loyalty that lead government officials to do favours for their friends and associates in private life. There have also been indications, however, that some corruption is less personal and more organized, with “illegal groups” and “clandestine apparatuses” associated with organized crime and elements of the military infiltrating criminal justice institutions to ensure impunity for their actions, including murders of rivals as well as of those who seek to expose their crimes. In my discussions with the Minister of Defence, I was disturbed by the apparent evasion of responsibility for ensuring that military personnel were not involved in organized crime. I was informed first that the Ministerio Público could not take action without a referral from the Department of Military Justice, then that the Department of Military Justice took no proactive steps to identify criminal activity but would only initiate investigations upon receiving a complaint, and finally that the problem could not be too bad because the Ministerio Público was not investigating any cases against drug traffickers in the military. This circular reasoning does little to dispel the widespread belief that military personnel are involved with drug traffickers, organized crime, and clandestine groups. Whatever the

precise contours of the problem, the fact of corruption is undisputed and must be addressed. It is both a cause and a consequence of impunity.

50. In December 2006, the Government reached an agreement with the United Nations to establish the International Commission against Impunity in Guatemala (Comisión Internacional Contra la Impunidad en Guatemala, CICIG). A similar agreement had been reached in 2004 whereby a similar body would act as an independent prosecutor for cases involving human rights violations, organized crime, drug trafficking, and corruption, but this agreement was rejected by the Congress and the Corte Constitucional as an affront to Guatemala's sovereignty. CICIG is to have a less expansive mandate, acting not as an independent prosecutor but as a *querellante adhesivo* or, that is, as a "third-party prosecutor" intervening in a prosecution on behalf of the victim. Traditionally, such third-party prosecutors have played a key role in pushing cases through the system, and this arrangement has the potential to make a difference. The establishment of CICIG, while important, is not a panacea. To end widespread impunity will continue to require major reforms to the PNC and the Ministerio Público.

51. Another reform that must be introduced to overcome impunity in cases involving powerful perpetrators is the introduction of an effective witness protection programme for these kinds of cases. It is difficult for the PNC to gather evidence or for the Ministerio Público to sustain prosecutions when witnesses may be intimidated from providing testimony. There are currently multiple systems of witness protection in Guatemala. One is administered by the Ministerio Público. While this system should be preserved and strengthened, its association with a body widely believed to be corrupted by clandestine groups makes it inherently unsuitable for protecting witnesses involved in some cases. Another system provides witness protection when orders for precautionary measures are received from the Inter-American Commission for Human Rights. These are received and processed by the presidential human rights body the Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos (COPREDEH), which in turn arranges for officers from the PNC to watch over the witness. This system is also highly problematic when witnesses are involved in cases concerning clandestine groups or the police. One possibility for reform would be to establish a witness protection programme under the PDH. At a minimum, the current requirement that the PDH pass on complaints to the implicated Government agencies must be changed to avoid endangering complainants.

52. If Guatemala is to stop being a good place to commit murder, its criminal justice system institutions must be reformed so that more crimes are effectively investigated, more suspects are successfully apprehended, and more cases effectively prosecuted. This will require major budget increases, the implementation of long overdue reforms, a relentless campaign against corruption, and serious inter-institutional cooperation. More simply, it will require a society-wide focus on the bottom line: The State must meet its obligation to apprehend and convict criminals.

The options for maintaining order and controlling crime

53. As I noted at the beginning of this report, Guatemala faces a choice: Realize the vision of the Peace Accords or employ the brutal tactics of the *mano dura* and never fully escape the armed confrontation of the past. This chapter briefly outlines the character and implications of those options and seeks to clarify that the only obstacle to completing the transition from the brutality of an earlier era to a criminal justice system based on the rule of law is the distinct lack of political will.

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

55. However, not only does the summary execution of criminal suspects and other "undesirables" violate international law, but Guatemala's own recent history demonstrates the concrete danger of this approach to crime control. To the outside observer, the rhetoric of *mano dura* bears an uncanny resemblance to that of the "national security" doctrine that was implemented in many Latin American States in the 1970s and early 1980s and brought unqualified disaster. In concrete terms, moreover, the methods are difficult to distinguish from the tactics of counter-insurgency. The "selective killing" that swept Guatemala throughout the 1980s and early 1990s is notably similar to the "social cleansing" plaguing Guatemala today. Similarly, the lynchings taking place throughout the country today are strongly reminiscent of the counter-insurgency practices of the PACs during the armed confrontation. To the outside observer, it is difficult to understand why the continuing use of these practices is not a matter of universal concern. Unfortunately, however, it appears that even for many who suffered greatly during the armed confrontation, the methods of counter-insurgency remain the most obvious means of maintaining "order". It would be prudent for all Guatemalans to carefully consider whether they want Guatemala to move fully beyond its legacy of armed confrontation or for it to, instead, remain in a permanent state of low-intensity lawless violence.

56. The other approach to crime control that Guatemala might choose is that pursued by other countries in the region to good effect and reflected in the Peace Accords and international human rights law: Guatemala can develop a working criminal justice system aimed at ensuring the rule of law. Almost all of the formal rhetoric of the political parties endorses this approach. The tragic reality, however, is that almost every component of the current system is radically under-funded, dysfunctional, or both. Congress bears an enormous responsibility for this state of affairs, but those in Government, civil society, and the private sector could also do far more.

57. Many in Government are genuinely committed to a system of criminal justice based on prevention, prosecution, and rehabilitation. Partly due to Congress's failure to provide

adequate resources and to enact necessary legislation, this commitment does not always bear fruit. In the domain in which government officials would appear to have the most potential to create change - the reform of institutional structures, policies, and working methods - their efforts often appear tangential to the root problems. There are many institutions, round tables, and commissions developing plans, policies, studies, and frameworks, but too often these remain just words. Many of the concrete steps taken, such as establishing specialized units to deal with particular high-profile problems, are too often small projects that do more to assuage criticism than create results. In Government and in civil society there is a worrying tendency to avoid confronting vested interests that would impede the reform of existing institutions by conjuring up new institutions that are not (yet) occupied by vested interests. Those who reject the counterproductive brutality of the *mano dura* and believe in the rule of law must think more strategically and build the coalitions necessary to make that vision a reality.

58. There is, however, little political will to end impunity and implement a working justice system capable of ensuring the rule of law. There is diffidence among the elite and in Congress regarding the commitments made in the Peace Accords related to security and the criminal justice system. For the wealthy, effective policing and criminal justice is a low priority in part due to their reliance on private security guards. (There are roughly 100,000 private security guards in Guatemala, more than five times the number of police.) The lack of political will to establish a functioning criminal justice system in part reflects a sense that the State has very limited responsibilities to society, and that it is wholly appropriate for even security and justice to be private rather than public goods. There is a sense that the State has fulfilled its responsibilities so long as it protects the borders and refrains from killing innocent people. This understanding of State responsibility is incompatible with the content of that concept under international law (see chapter II).

59. The Congress has demonstrated little political will to establish a functioning criminal justice system, often allowing key legislation to linger for years. In addition, the inadequacy of the resources allocated to the institutions constituting the criminal justice is a justified complaint of nearly every interlocutor in and out of Government. This complaint is widely articulated by comparing the resources available in Guatemala to those available in other countries, especially El Salvador, a neighbouring country that also emerged from a devastating civil war in the recent past. As discussed above, Guatemala has, even after accounting for the difference in population, far fewer police officers, criminal investigators, prosecutors and judges than El Salvador. When government officials complain about a lack of resources, it serves in part as a convenient excuse: Yes, people get away with murder, but you cannot expect more when I have so few employees, such poor equipment, etc. As an excuse, it is indeed somewhat self-serving: one would imagine that Guatemala could do better than a single-digit conviction rate for murder without spending an additional dollar. Nevertheless, the resources provided to the PNC, the Ministerio Público, and the courts are woefully inadequate and place a harsh upper limit on how effective the criminal justice system will be.

60. It is important to emphasize that, while limited resources may provide some excuse for particular Government agencies, it provides no excuse at all for the State as a whole. Guatemala is not an exceptionally poor country, and it could readily afford a criminal justice system on par with that provided in other Central American countries. While Guatemala's per capita gross domestic product is significantly less than those of Belize, Costa Rica, and Panama, it is roughly equal to that of El Salvador, twice that of Honduras, and nearly three times that of Nicaragua.³⁰⁴

61. The reason the executive branch of the Guatemalan State has so little money to spend on the criminal justice system is that the legislative branch, the Congress, imposes exceptionally low taxes. Again, to put this in perspective, as a percentage of GDP, Guatemala's total tax revenue has hovered on the high side of 10 per cent of the gross domestic product (GDP),³⁰⁵ and according to the latest estimates, tax revenue amounted to 9.6 per cent of GDP in 2005.³⁰⁶ In regional comparison, its tax revenue is a lower percentage of GDP than that of Belize, Costa Rica, El Salvador, Honduras, or Nicaragua, and radically lower than that of the countries of South America.³⁰⁷ Neither would higher taxation need to impose any greater burden on the poorer segments of the population given that Guatemala has higher income inequality than every other country in the region, including Costa Rica, El Salvador, Honduras, Nicaragua and Panama.³⁰⁸

62. It is precisely because Guatemala could so readily afford a far better criminal justice system that it is impossible to fully distinguish the issue of resources from the issue of political will. The lack of resources is due to a lack of political will: rather than funding a high-quality criminal justice system, Congress has decided to impose very low levels of taxation and, thus, to starve the criminal justice system and other parts of Government. Insofar as impunity is due to a lack of resources, it is also due to a lack of political will.

Follow-up Report on Mission to Guatemala (A/HRC/11/2/Add.7, 4 May 2009, ¶¶ 14-16, 28-32):

14. The phenomenon of social cleansing persists, with detailed studies by NGOs suggesting that approximately 8-10 per cent of killings are carried out with the aim of "weeding out" suspected gang members and other criminals. While social cleansing is

³⁰⁴ UNDP, *Human Development Report 2005*, table 14: GDP per capita expressed in US dollars: Costa Rica, 4,352; Panama, 4,319; Belize, 3,612; El Salvador, 2,277; Guatemala, 2,009; Honduras, 1,001; Nicaragua, 745.

³⁰⁵ IMF, *Guatemala: Statistical Annex*, Country Report No. 05/361 (October 2005), table 19 at <<http://www.imf.org/external/pubs/ft/scr/2005/cr05361.pdf>>

³⁰⁶ Estimated tax revenue and gross domestic product figures are from the Banco de Guatemala, at <<http://www.banguat.gob.gt/inc/main.asp?id=646&aud=1&lang=1>>. The estimated GDP for 2006 was not available at the time of writing.

³⁰⁷ Economic Commission for Latin America and the Caribbean (CEPAL), *Datos del Estudio Económico De América Latina y el Caribe*, at <<http://www.cepal.org/cgi-bin/getprod.asp?xml=/de/noticias/paginas/6/26726/P26726.xml>>

³⁰⁸ UNDP, *Human Development Report 2005*, table 15 (no data for Belize). It is notable as well that the International Monetary Fund has reached the same conclusion. See the statement of Rodrigo de Rato, Managing Director of the IMF, made at the end of his visit to Guatemala in February 2006 at <<http://www.imf.org/external/np/sec/pr/2006/pr0640.htm>>

often carried out by organized criminal groups, often with the support of local authorities and private security agencies, investigations by the Procuraduría de los Derechos Humanos (PDH) and NGOs found continued involvement in at least some of these cases by police forces, both directly and indirectly.³⁰⁹

15. In his 2006 report, the Special Rapporteur found credible evidence of the involvement by the División de Investigación Criminal (DINC) of the Policía Nacional Civil (PNC) in social cleansing. He found that while the killings were more than just the actions of a few rogue officers, they had not “risen to the level of officially-sanctioned policy”.³¹⁰ After the PNC was implicated in the murder of three Salvadorian Parliamentarians in March 2007, the Minister of the Interior was removed from office, along with over 1,900 police officers. Some civil society interlocutors have noted that this signalled a positive shift in the culture of the police leadership.

16. Nonetheless, the State has not given the absolute and categorical rejection to these forms of extrajudicial executions that the Special Rapporteur recommended in his report.³¹¹

[...]

28. In his February 2007 report, the Special Rapporteur supported the establishment of the International Commission Against Impunity in Guatemala (CICIG). While not a panacea for addressing impunity, it had the potential to play an important role in pushing cases through the criminal justice system. The CICIG was subsequently established, and began its work in January 2008.³¹² The CICIG’s mandate is to investigate and dismantle violent criminal networks.³¹³ It is not a replacement for Guatemala’s criminal justice institutions; rather, it may carry out investigations and act as a complimentary prosecutor, helping to bring representative cases to trial in national courts. The stated goal of the CICIG is not just to prosecute these cases but also to strengthen the national criminal justice system and demonstrate that it can be made to work.³¹⁴

³⁰⁹ See PDH Report, p. 210 (“En [la ‘limpieza social’] no se puede descartar la participación de agents del Estado, como lo ha documentado la PDH en casos que la han sido denunciados.”).

³¹⁰ See A/HRC/4/20/Add.2, p. 10.

³¹¹ For example, two police officers accused of having assassinated a group of alleged delinquents in September 2007 are currently being prosecuted. However, there has been no investigation or prosecution of the leadership structures within the National Police or the Interior Ministry from the prior administration, who are suspected to have been involved in these tactics.

³¹² The Secretary-General appointed a Public Prosecutor of the Supreme Court of Spain, Carlos Castresana Fernández, as Commissioner. Currently the staff is made up of a diverse, mostly international staff, with the hope that the number of Guatemalan staff will be increased in the future. See CICIG report, “One Year Later”.

³¹³ CICIG’s functions include “determining the existence of illegal security groups and clandestine security structures, collaborating with the State in dismantling of such groups and structures, promoting the investigation, criminal prosecution and punishment of crimes committed by their members, and recommending to the State the adoption of public policies for eradicating such groups and structures and preventing their re-emergence”. CICIG report, “One Year Later”.

³¹⁴ CICIG report, “One Year Later”.

29. To date, there are important reasons to be optimistic about CICIG's work. It has signed cooperation agreements with the Office of the Public Prosecutor and the Ministry of the Interior. These have allowed the CICIG to create a Special Prosecution Unit which is able to bring cases. The Minister of the Interior assigned 30 members of the National Civil Police (PNC) to CICIG, to create a joint PNC-CICIG police force. The existence of this joint police force is designed to facilitate the investigation of the cases CICIG chooses to pursue. Together with the United Nations Office of the High Commissioner for Human Rights, CICIG provided these officers with training on how to investigate extrajudicial executions, the use of firearms, and the function of the police in respecting human rights.

30. In his August 2006 report, the Special Rapporteur noted the dysfunctional relationship between the police and the Office of the Public Prosecutor. In a step towards combating this, the CICIG has encouraged the creation of joint investigative teams, with the hope that, as the CICIG international staff are gradually replaced, these police officers and prosecutors will be able to take over an increasing amount of the work of the CICIG.

31. CICIG is currently investigating approximately 20 open cases and is prosecuting 4 cases together with local officials. The cases focus on targeting the clandestine networks within Guatemala; they include a gunfight between narco-trafficking groups which led to at least 11 deaths and several injuries in Zacapa province, which is being brought in conjunction with the Special Prosecutor for Drug Activities. Because the CICIG's mandate is to assist with the investigation and prosecutions, each of these cases also helps train the local police and investigators working on the case. In addition, the pursuit of each case functions to build capacity and trust in Guatemala's justice system.

32. While CICIG should continue to receive strong support, neither Guatemala nor the international community should fall into the trap of seeing CICIG as "the" solution to Guatemala's failing criminal justice system. While its international staff and independent funding have guaranteed a certain level of independence, it still faces obstruction from police and government officials. CICIG has the power to file criminal and/or administrative complaints against civil servants who contribute to impunity by interfering with their investigations. While progress is being made in this area, corruption extends through all sectors of society in Guatemala, including the legislative and executive branches. Since CICIG's power only extends to civil servants, its efficacy as a method for eradicating corruption outside of the PNC and the judiciary is limited. More importantly, CICIG must be seen as one component of a package of necessary reforms to the criminal justice sector. CICIG's mandate is limited to organized crime syndicates, and so it cannot address other sources of crime. While it is positioned to contribute to the training of police and prosecutors, the numbers are small, and do not represent the form of change necessary to effect structural reform. CICIG's term will expire in September 2009. While Guatemala should extend its mandate for a second two-year term, this should serve as a reminder that CICIG is a temporary solution to a lasting problem.

K. KILLINGS BY CORPORATIONS

Report on Mission to Nigeria (E/CN.4/2006/53/Add.4, 7 January 2006, ¶¶ 86-87):

86. Oil companies have long been accused of complicity in actions involving human rights violations including extrajudicial executions. In Ojobo in November 2004, up to 21 people were wounded and one or more deaths were alleged. Shell vigorously denies that charge and claims an independent report vindicated its position. The Special Rapporteur's request for that report was unsuccessful and community activists apparently contest the author's independence. The February 2005 Odioma incident³¹⁵ was not blamed on Shell but one report has argued that because it occurred "within its sphere of influence and area of operations" the company should have been more vigilant in relation to the human rights issues involved.³¹⁶ In Escravos in February 2005 protesters against Chevron were fired upon and one person was shot and later died. Eight months later it was reported that neither Chevron nor the Nigerian Government had undertaken a full inquiry into the incident.³¹⁷

87. In the present context it must suffice to emphasize that the oil companies must do all in their power to ensure that security companies and others to whom they contract or sub-contract work respect human rights standards. State Governments must also acknowledge their own responsibility.³¹⁸

Communication to the Government of Papua New Guinea (A/HRC/8/3/Add.1, pp. 308-310):

I am writing concerning information I have received that at least eight Porgera residents have been killed since 1993 by private security forces at the Porgera Joint Venture (PJV) gold mine in Porgera, Enga province, Papua New Guinea.

According to information received:

The number of killings at the mine ranges from 8 to 29. Allegations received state that Placer Dome, the former majority owner of the PJV mine admitted that 8 persons had been shot by PJV security. Allegations received also state that other sources indicate higher numbers of deaths. One source alleges that the following 14 persons were shot by PJV security: Henry Tendeke; Taitia Maliapa; Paul Pindi; John Wangla; Pyakani Tombe; Yandari Pyari; Jerry Yope; Jackson Yalo; Joe Opotaro; Aglio Wija; Mina Mulako;

³¹⁵ See notes 58-60 in full report.

³¹⁶ Amnesty International, *Nigeria, Ten years on: Injustice and Violence Haunt the Oil Delta*, AI Index: AFR 44/022/2005, 3 Nov. 2005, p. 14.

³¹⁷ *Ibid.*, p. 3.

³¹⁸ When asked about such issues the Governor of Bayelsa State argued that the oil companies had "come to divide and rule the people" and had wreaked environmental havoc. In relation to the corruption flowing from the practice of oil bunkering (estimated to be worth up to \$4 billion per year) he implied the connivance of the Federal police. Several months after this discussion the Governor was charged in London with money-laundering, and subsequently absconded from bail in the United Kingdom.

Alonge Laswi; Minata Pita; and Pyakane Eremi. The allegations received indicate that other sources put the number of killings at 29.

Further, according to information received, there has been a failure by your Government to effectively investigate, prosecute and punish the perpetrators of each of these killings. Allegations received indicate that very few of the killings have been adequately investigated. A Government Commission of Inquiry was established in 2006 to report on the causes of deaths at the PJV mine. Following the apparent failure of the regular investigative procedures, I commend your Government for instituting a special inquiry. However, according to the reports received, the findings of this Commission of Inquiry have not been made public, despite repeated requests from PNG citizens.

Without in any way implying any conclusions as to the facts or the accuracy of the information which I have received, I would like to refer your Government to the applicable principles of international human rights law. Article 3 of the Universal Declaration of Human Rights (UDHR), and Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provide that every person has the right to life. I would like to recall that, as stated in Commission on Human Rights Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions”, all states have the obligation to “conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible ... and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions.” This obligation, affirmed in the jurisprudence of the Human Rights Committee (see *Arhuacos v Colombia*, Communication no. 612/1995, para. 88), is part of the obligation to respect and protect the right to life enshrined in the UDHR and the ICCPR.

In light of the apparent lack of publication of the findings of the Commission of Inquiry report, I would like to clarify that for such inquiries to be acceptable, the results must be made public, and include details of the findings, and any prosecutions subsequently undertaken (see Report of the Special Rapporteur on extrajudicial, arbitrary or summary executions, E/CN.4/2006/53 (8 March 2006).

L. “BLOOD FEUD” KILLINGS

Press Statement on Mission to Albania, February 2010:

A major objective of my mission has been to clarify the situation relating to blood feuds. Policies and programs can only work if based on an accurate and well-rounded understanding of the problem. Unfortunately, the statistics on those killed and families isolated vary wildly from one source to another. Various factors have combined to create considerable confusion and misunderstanding. They include: terminological imprecision, sensationalist media coverage especially by the international press, international donor fascination with an exotic remnant from a feudal era, civil society incentives to be overly inclusive in their counting, and Government hyper-sensitivity and an understandable concern to play down the issue.

In a nutshell, the numbers of blood feud killings in Albania has decreased steadily over the past five years, but the phenomenon has not been entirely eliminated. Moreover, its broader implications continue to have a corrosive effect on society. The most important problems are significant self-isolation by families fearing a revenge killing, and a continued belief in the legitimacy of the collective punishment of a wrongdoer’s family members, even when they are completely innocent in the matter. By the same token, exaggeration of the magnitude of the problem can significantly hinder reform endeavours.

What is a blood feud?

A blood feud generally begins with an argument, usually between two men whose families are neighbours or friends. The argument could have any cause – an accident, a perceived insult, a property ownership disagreement, a conflict over access to electricity, water or fuel, and so on. The argument escalates into a physical fight, and one man kills the other. The victim’s family then feels that it is “owed blood” by the killer’s family. This debt and the related loss of honour, can only be satisfied by taking the life of a member of the killer’s family.

The situation is governed by culturally understood rules, generally derived from the *kanun*, as codified by Lekë Dukagjinit in the fifteenth century and updated in the first half of the twentieth century by S. Gjeçov. Despite the importance of these codification efforts, the *kanun* is largely a set of orally transmitted customary rules, the content of which differs from region to region, and over time. The shared understanding is that the killer’s family is implicated by his act, thus entitling the victim’s family to take revenge against them. Generally, it is not permitted to kill a family member in his own home, or to kill women or children. Thus, when a killing occurs, the male members of the killer’s family immediately “self-isolate”, and do not leave their home. This self-isolation is maintained even where there are no specific threats or assault attempts by the other family. The isolated family presumes that an attack is possible, unless the other family offers them a *besa* (an often limited or temporary reprieve from the threat of revenge).

They often also feel that, in the absence of a *besa*, honour requires them to remain isolated, even where there has been no concrete threat.

The blood feud continues until the lost blood is avenged, or until the family of the deceased man forgives the killer's family. When it occurs, forgiveness generally follows lengthy mediation, and is formalized in a reconciliation ceremony.

The disputed extent of blood feuds

As noted above, there are deep discrepancies in the statistics concerning blood feuds and related killings. At one extreme, media reports have referred to hundreds of blood feud killings per year and thousands of children living in isolation. At the other extreme, according to Government statistics, such killings fell steadily from 45 in 1998, to one in 2009, while the number of isolated children ranges from 36-57 country-wide, of which 29-45 are in Shkodra. The variation depended on whether the sources were police, education, or ministry officials. Families in isolation were estimated to be 124-133 country-wide.

The figures used by civil society groups also vary widely. One organization with extensive field operations notes that there have been significant reductions over the last five years and that there are currently only a few blood feud killings per year. They estimate not more than 350 families and 80-100 children to be in isolation nationally. However, another prominent organization estimates some 9,800 blood feud killings since 1991, dropping to a figure still in excess of 30 in 2009. By their calculations, there are 1,450 families and 800 children in isolation.

My own carefully considered view is that the correct numbers are much closer to those provided by the Government, especially in relation to killings. The figures for isolation seem more likely to be an under-estimation, but again, not by a large margin. This is not to say that the Government statistics are definitive. Their accuracy is qualified by inadequate data-gathering and recording techniques, and insufficient coordination. These problems were underscored by the inconsistency of various official figures provided to me. I am also not aware of any sustained Government effort to reconcile the competing statistics.

[...]

Commentators attribute the revival of the blood feud to various causes, including the post-communist era breakdown of the state, failings in the criminal justice system, unresolved property disputes, and educational failings.

The criminal justice system: The blood feud phenomenon re-emerged at the end of the communist era and increased significantly with the 1997 breakdown in law and order. The absence of effective official responses to criminality encouraged the citizenry to revert to traditional mechanisms to obtain justice. But suggestions that the criminal justice system is still so inefficient and corrupt as to necessitate continuing resort to blood

feuds to achieve justice appear misplaced. While the justice system does suffer from serious weaknesses and considerable corruption, there is no evidence that a perceived law and order vacuum explains a continuing attachment to the practice of blood feuds. While some cases, particularly older ones, remain unresolved, and some accused killers have gone into hiding or fled the country and not been extradited, in most of the cases I examined, the killer had either surrendered or been quickly arrested, and was prosecuted and sentenced. Moreover, the reduction in recent years in the overall homicide rate has also brought with it a reduction in blood feuds, thus attesting to the impact of more effective policing, among other factors.

A much more salient problem is that many families involved in blood feuds do not see the state's criminal justice system as being *capable* of addressing their concerns, which center around the loss of blood and honour caused by the initial killing. Sentencing a killer to prison fails to go to the essence of their conception of justice, which requires restoration of the lost blood, either through a revenge killing or a voluntary formal reconciliation between the families. The actions of the state vis-à-vis the perpetrator are thus irrelevant in the families' evaluation of whether there has been a "just" response to the original killing.

On the other hand, the role of the state in relation to the family in isolation varies. For many such families, it is limited at best. Some believe that, in practical terms, there is little the state *could* do to protect them. Others think the state *should* do little because matters of honour and respect must be resolved privately, rather than by the police. Moreover, many isolated families never receive a specific threat to which police could respond – they just believe that the lack of *besa* means they could be targeted at any time.

There are, however, cases in which the state could play a more active protection role for the isolated family. Offers to monitor are sometimes made, but it is not clear how seriously they are followed up. Internal relocation has occurred, but a more systematic program could be developed. Threats could be tracked more effectively and prosecuted far more often than has been the case to date.

Property: Property disputes are widely acknowledged to be a major cause of blood feuds. This was amply confirmed by my investigations, yet neither the Government nor civil society have attempted to collect or analyze data on the issue. That Albania's property and land reform system has been at best confusing and at worst chaotic will come as little surprise, given the magnitude and complexity of the challenges. Progress lags on each of the three major reform prongs that would clarify and guarantee citizens' title to their property: registration, legalization, and restitution and compensation. Diverse problems at each level contribute to the insecurity of title for what is the principal asset or source of livelihood for most citizens. That insecurity, combined with chronic delays in resolving disputes, enhances the likelihood of resort by some to alternative, extra-legal means of dispute resolution, which may in turn give rise to blood feuds.

Education: Low educational levels, especially in the areas most affected by blood feuds, are also an important contributing factor to the decision to respond to killings by employing traditional means, rather than by using the justice system.

Government efforts to address blood feuds

Important steps have been taken in the past five years to address blood feuds. The Criminal Code has been amended in important respects (minimum sentences and specific criminalization of blood feuds and blood feud killings), specialized police units have been created, a high-level Coordination Committee on blood feuds was established in 2005, and the “Second Chance” program provides home schooling for isolated children. But much more could and should be done.

Many interlocutors suggested to me that there is relatively little that the Government can do beyond its existing efforts to eliminate blood feuds and that community groups must do the rest themselves. I disagree. I believe that the Government has important additional work to do in research, community education, and outreach.

In research terms, the deeper cultural underpinnings of the system require better understanding which can be promoted through sustained inter-disciplinary research. Two examples illustrate some insights based on my research. First, it is important to recognize that there are significantly different levels of self-isolation. Some people are virtually confined full time, while others go out occasionally, and still others might leave the house quite often. All would consider themselves to be in isolation, however, because the families concerned have not yet reconciled. Second, some organizations claimed that blood feud killings are increasingly targeting women and children. But, in fact, few have actually been killed, and two women who were appear to have been accidentally hit. I also did not find significant evidence that women self-isolated for fear of being the subject of a revenge attack. A large number of girls did self-isolate, though this tended to be out of respect for the other family, or fear that the girls would be assaulted or trafficked. In other words, more research will provide a more accurate picture of the challenges that need to be addressed.

Community education is important. In part, this needs to be done through schooling and training, but the role of broader community outreach is equally important. The latter task includes not just educating citizens about the formal justice system but also confronting the lingering notions that collective punishment is acceptable. Such notions are utterly incompatible with the assumptions upon which Albanian society now operates, and the Government should place a greater educational emphasis on the human rights of all individuals. An additional reason for greater state involvement is to educate families who, lacking knowledge of kanun, might turn for advice only to those civil society interlocutors who rely excessively upon the norms of the code in what the interlocutors characterize as a blood feud. While the resulting perpetuation of the kanun mentality is not deliberate, it may be an unintended consequence of the approach sometimes adopted.

Finally, the Government could play a stronger role in outreach, especially in facilitating efforts to achieve family reconciliation, which thus far has been almost completely left to families themselves and civil society. A number of interlocutors informed me that they had approached the Government for assistance to end their self-isolation through reconciliation, but the State did little in response.

M. KILLINGS BY PARAMILITARY GROUPS

Report on Mission to Sri Lanka (E/CN.4/2006/53/Add.5, 27 March 2006, ¶¶ 11-19):

11. 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. CFA article 1.8 provides that “Tamil paramilitary groups” shall be disarmed by the Government and that those of their members integrated into the armed forces be transferred away from the Northern and Eastern Province.³¹⁹ Representatives of these groups - notably, EPDP, EPRLF, and PLOTE - informed me that they had been disarmed and now function solely as political parties. Compliance has not been perfect, however. One example, confirmed by a government official, is the continuing operation of armed EPDP cadres in the islands off the Jaffna peninsula. Various Government officials suggested to me that the CFA required only a one-time disarming of these groups by the Government with no obligation to prevent them from rearming.

12. While that position is untenable, there is little evidence that most members of these groups do other than non-military, political work. Thus, reflexive references to “paramilitaries” rather than “political parties” dangerously distort the facts. As long as these groups continue to be targeted, they will require protection from the military, which is facilitated by locating their residences and political offices near military posts. This protection unavoidably results in the appearance of cooperation with the military, but this cannot be generally assumed. Nor can particular allegations of cooperation be too readily discounted.

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

14. In March 2004 the LTTE commander of the Eastern Province, Colonel Karuna, split with the LTTE leadership in the Northern Province, initially taking with him perhaps one fourth of the LTTE’s cadres. Terminology varies widely, but this new force may be termed the “Karuna group”. While the LTTE continues to control most of the territory it did at the time of the ceasefire, the Karuna group has conducted many ambushes and killings of LTTE cadres, political representatives and supporters. This has weakened the LTTE’s position in Government-controlled areas and has led the LTTE to close its offices and end most political work in those areas.³²⁰7 Since the LTTE has long stated its

³¹⁹ CFA, Art. 1.8.

³²⁰ CFA Article 1.13 permits unarmed LTTE members freedom of movement in Government-controlled areas in the North and East for the purpose of “political work”. On 18 November 2004, LTTE offices in

aim to create the state of Tamil Eelam out of most of the territory of the Northern and Eastern Provinces, there is now a crucial battle for control in the east, accounting for many of the most recent killings.³²¹

15. The LTTE's characterization of the Karuna group has evolved. When the split first occurred, the LTTE maintained that it was a purely internal matter. However, when I spoke with LTTE representatives, their position was that the Karuna group was a "Tamil paramilitary" within the meaning of the CFA, that it received assistance from the Government, and that it must be disarmed by the Government. As evidence, the LTTE representatives pointed to statements made by alleged defectors from the Karuna group. These persons stated that logistical support, arms, and ammunition were being provided by Sri Lankan Army Intelligence, that funding was being provided by an "external source", and that the leadership of the Karuna group was in close contact with several Government ministers.³²² Regardless of the veracity of these allegations (see below), the LTTE's position on the Karuna group is untenable. Notwithstanding any support it may be providing, it is far from clear that the Government would be capable of disarming the Karuna group, and any future attempt at a comprehensive revised agreement would have to address the realities created by the Karuna group.

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

17. The 18 November 2005 attack on a mosque in Akkairapattu exemplifies the manner in which civilians are being caught in the crossfire. During morning prayers, two people

Akkairapattu and Arayampathy were attacked with grenades. On 21 November 2004, LTTE offices in Batticaloa and Kaluvanchikudy were attacked with claymore mines. These and subsequent attacks forced the LTTE to scale back its presence in Government-controlled areas in the East.

³²¹ Prior to December 2005, roughly half of all killings in 2005 took place in the Batticaloa district.

³²² "STF, SL Ministers complicit in paramilitary operations, Karuna in India", *TamilNet*, 12 Dec. 2005, available at <http://www.tamilnet.com/art.html?catid=13&artid=16531>.

rolled grenades to the front of the mosque, where they exploded, killing 6 persons and seriously wounding 29 others.³²³ I visited the mosque, met with victims and community representatives, and discussed the attack with Government officials and LTTE representatives.

18. While accounts differ widely, the conflict between the LTTE and the Karuna group figure in almost all. One explanation, attributed to two defectors from the group, is that the Karuna group was responsible as part of an effort to create dissension between the Tamil and Muslim communities.³²⁴ Another explanation suggests that the attack was part of a cycle of retaliation. Two days earlier, the bodies of two LTTE members had been found on a road marking the unofficial boundary between the predominantly Tamil and predominantly Muslim areas of the town. Muslim community members suggested to me that the two LTTE cadres may have been killed by Muslim individuals cooperating with the Karuna group. While the Muslim community as a whole has avoided alignment with either group, many speculate that the LTTE attacked the mosque in retaliation and to deter further instances of cooperation.

19. Without an effective investigation, it is impossible to assign definitive responsibility for the attack. Sources close to the LTTE did, however, confirm to me that the LTTE engages in retaliatory killings, and the dynamics of retaliation can serve to explain much of the killing taking place in the East. Failure to clarify responsibility in such situations fuels tensions. Thus, in the course of my visit, the mosque attack provoked further convulsions of violence in the East. The conclusion is that unless crimes of this kind are properly investigated, and those responsible held to account, they will inevitably fuel the cycle of bitterness, retaliation and violence.

Follow-up Report on Mission to Sri Lanka (A/HRC/8/3/Add.3, 14 May 2008, ¶¶ 48-52):

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

³²³ Eight of the injured remained in critical condition when I visited.

³²⁴ “STF, SL Ministers complicit in paramilitary operations, Karuna in India”, *TamilNet*, 12 Dec. 2005, available at <http://www.tamilnet.com/art.html?catid=13&artid=16531>; “Two paramilitary cadres surrender, say Karuna group responsible for attacks against Muslims”, *TamilNet*, 6 Dec. 2005, available at <http://www.tamilnet.com/art.html?catid=13&artid=16483>.

circumstantial evidence of (at least) informal cooperation between Government forces and members of the Karuna group”.³²⁵ 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 party, the TMVP - broke into factions headed by Karuna and Pillaiyan (the commonly used alias of Sivanesathurai 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.³²⁶ 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.

³²⁵ E/CN.4/2006/53/Add.5, para. 16.

³²⁶ E/CN.4/2005/7, para. 69.

Report on Mission to Colombia (A/HRC/14/24/Add.2, 31 March 2010, ¶¶ 61-73, 80-84, 99-101):

61. The seriousness of the flaws in the demobilization and JPL processes is demonstrated by the rise in killings by new illegal armed groups (IAGs). Based on information from the Government, civil society and witnesses, these are composed of: paramilitaries, especially mid-level members, who did not demobilize; formerly demobilized paramilitaries who have returned to criminal conduct; and common criminals who have organized to fight for a share of the drug trade.³²⁷ Information from the Colombian Commission of Jurists indicates that between December 2002 (when AUC declared a ceasefire) and June 2008, 4,261 people, including 350 women and 181 children, were killed by paramilitaries or former paramilitaries.

62. There is much debate about whether these new groups are the next generation of paramilitaries or whether they are criminal gangs (*bandas criminales* or *BACRIM*): however they are categorized, they share certain characteristics.

63. Unlike the original paramilitaries, they generally lack a common ideology. Some wear uniforms of sorts (e.g., camouflage), or other identifying insignia and have informal (and sometimes formal) command structures. Witnesses from some areas (including Cordoba and Meta) described armed patrols carried out openly by what appear to be subunits of IAGs. These groups may have spread across Colombia³²⁸ and, in the aggregate, their members may number in the thousands.³²⁹ Most individual groups' membership is in the low hundreds. Weapons seized in police operations against the IAGs show they have access to a range of weapons: from January to May 2009, the Government "seized 326 long-range weapons, 543 side arms and 18 support weapons, including machine guns and mortar tubes".³³⁰

64. The relationship between the new IAGs and other armed groups differs substantially across the country. In some areas, guerrillas and IAGs cooperate closely, in others they are in violent conflict. Violence among the IAGs seems to a large extent to be competitive – relating to "turf wars". Most IAGs engage in and are financially sustained

³²⁷ Rearmed groups of formerly demobilized paramilitaries emerged soon after demobilization. See MAPP/OAS, Sixth Quarterly Report, document CP/doc.4075/06, 16 February 2006. According to the Government, of 959 IAG members arrested as of 6 June 2009, 181 were formerly demobilized paramilitary. MAPP/OAS, Thirteenth Quarterly Report, 21 October 2009. The economic and command and control structures of paramilitaries (especially at the mid-level ranks) do not appear to have been effectively dismantled. See appendix D; see also MAPP/OAS, Tenth Report, document CP/doc.4249/07, 31 October 2007 (raising concern about continued existence of chains of command within demobilized groups).

³²⁸ As of February 2009, 14 per cent of total municipalities in Colombia were "negatively impacted" by the presence of IAGs. MAPP/OAS, Twelfth Quarterly Report, document CP/doc.4365/09 corr. 1, 27 February 2009.

³²⁹ Some civil society sources estimate that the number may be as high as 11,000. See also, *¿El declive de la Seguridad Democrática? Among the more powerful groups: Organización Nueva Generación (Cauca and Narino); Águilas Negras (Antioquia, Magdalena and Norte de Santander; affiliated groups may operate in up to 24 departments); Ejército Revolucionario Anticomunista de Colombia (Meta, Guaviare and Vichada); Autodefensas Gaitanistas de Colombia (Uraba region; Antioquia and Atlantic coast).*

³³⁰ MAPP/OAS, Thirteenth Quarterly Report, 21 October 2009, footnote 11.

by drug trafficking; many also engage in extortion from local businesses and landowners, kidnapping, money-laundering and other criminal behaviour. When local populations resist corruption or participation in illegal conduct, they are threatened with death and, all too often, killed.³³¹

65. IAG killings and violence towards civilians follow some of the patterns of paramilitaries.

66. First, IAGs have targeted human rights defenders, leaders and members of indigenous and Afro-Colombian communities and of victims' groups, and local government officials who speak out against IAG activities.³³² In Meta, a local community leader who had criticized the IAGs in his region, including for three killings of community members, told me that he had received anonymous death threats. He had to cease community work and stay home for fear of being killed. Also worrisome are threats against and killings of those seeking to assert their rights under the JPL, or demobilized paramilitaries who refuse to join IAGs.

67. Second, the IAGs have killed or threatened civilians as a means of terrorizing local populations in order to exert control over areas important for the growth, production or transport of drugs or for other criminal purposes. In Meta, I met family members whose loved ones had been killed in order to intimidate local communities. In a deeply troubling development, an Organization of American States monitoring mission has noted "the reappearance of massacres" as an intimidation tool, especially in rural areas including in Narino, Cauca and Cordoba.³³³

68. Third, IAGs have threatened and sometimes killed alleged prostitutes, drug addicts and small-time criminals, as "social cleansing".³³⁴

69. The widespread fear in the regions in which the IAGs operate may be exacerbated by corrupt and cooperative local authorities, the absence or ineffectiveness of the National Police and the scarcity of victim support organizations.

Prosecution challenges

70. Investigations of IAGs are largely conducted by the local office of the National Police, with prosecutions conducted by the local *Fiscalía*. While many do commendable work under difficult circumstances, senior *Fiscalía* officials expressed scepticism about the likelihood of successful prosecution in some parts of Colombia because, in the words of one, IAGs "are very economically powerful and they have infiltrated the military and political establishment who help them by providing cover" for their activities and "a lot of money changes hands to prevent justice".

³³¹ See, e.g., appendix D.

³³² Ibid.

³³³ MAPP/OAS, Thirteenth Quarterly Report, 21 October 2009.

³³⁴ Ibid. (massacres taking place in the city of Bogota, northern Cauca, southern Bolivar and southern Huila, increasing "the climate of violence").

71. Institutional barriers also compromise the Government's ability to shut down IAGs or prosecute their leaders. The *fiscales* are separate from the police, who do the investigation and arrest and both are separate from the National Reparation Fund, which manages seized assets. *Fiscales* indicated that this often results in failures to cooperate and coordinate.

72. Another institutional weakness is that local *fiscales* generally approach the prosecution of each defendant as an individual case. They may not have the sophistication or resources to oversee the kind of complex investigation and multiple prosecutions necessary to target the leadership of an IAG and economic structure and the sources of its support among local elites.

73. To address these problems the *Fiscal General* should create a national unit dedicated to complex prosecutions that would seek to shut down all the major actors in and sources of support for particular IAGs (which could be prioritized by the extent of their organization and illegal activity). Teams of prosecutors from the unit could be assigned to cover different parts of the country, thus avoiding the pressures to which local *fiscales* can be subjected. Donor country agencies with experience in such complex litigation could provide training and support. In addition, the Government should consider seconding police, investigators, and asset confiscation and management experts to such a unit so that all investigation and prosecution activities are strategically coordinated.

80. The *Defensoría's* Early Warning System (*Sistema de Alertas Tempranas*, SAT) monitors, analyses and reports on risks to civilians and possible violations of international law. The reports describe the local dynamics of armed conflict, the sources of threats, the individuals and populations at risk, an evaluation of the risk and recommendations to reduce or eliminate threats.³³⁵ SAT reports are full of detailed facts and sophisticated analysis.³³⁶ SAT is one of the best tools the Government has for preventing killings and other abuses in Colombia.

81. It is critically important that the Government provide SAT with more staff and resources. At the time of my visit, it had only 6 national analysts and 22 regional analysts, which is not enough to cover the country's geographical expanse or the complexity of its conflict dynamics. Direct access to local communities is integral to the accuracy and usefulness of the SAT monitoring and reporting function. Yet, because of

³³⁵ SAT provides the reports to the Inter-Agency Early Warning Committee (*Comité Interinstitucional de Alertas Tempranas*, CIAT), led by the Minister of Interior and Justice and tasked with coordinating the Government's response to SAT warnings of possible rights violations. CIAT includes the vicepresident, the high counsellor for Acción Social, the defence minister and the DAS director, or their representatives. While SAT may participate in meetings, it does not have a vote.

If CIAT decides an early warning should be issued, it alerts the governor of the affected department, other regional officials, the Armed Forces, the National Police and the Acción Social agency. The early warning triggers the duty of these officials to prevent human rights and humanitarian law violations (Law No. 1106 of 2006, art. 5). If an early warning is not issued, CIAT may informally notify departmental or municipal authorities of risks and provide recommendations for preventing harm and protecting civilians.

³³⁶ See paragraph 46.

its limited budget, SAT analysts are sometimes unable to travel to the areas they are responsible for covering. Analysts should be able to report on risks posed by the presence or movement of all armed actors, including State forces.

82. It is also crucial that the Government acts upon SAT reports, and that neither the SAT analysis nor the decision by the Inter-Agency Early Warning Committee (*Comité Interinstitucional de Alertas Tempranas*, CIAT) whether to issue an early warning are influenced by political pressures.

83. I was given information about several instances in which killings had occurred after the Government had failed to respond to the SAT warnings. One example is the Awa massacre discussed above.³³⁷ Another death took place in March 2008, after SAT had issued a risk report for municipalities in Caqueta where the conflict against the FARC had intensified. The FARC threatened municipal officials to intimidate them into not supporting the Government's Domestic Security Policy. CIAT determined that no early warning should be issued and a week after the SAT report, the FARC killed a local official. Killings may occur despite early warnings and the Government's best prevention efforts, but the Government's failure to act after notice from one of its own agencies is a stark dereliction of its responsibilities.

84. I was told by some Government officials that political pressure may be a factor in the decision of CIAT not to issue an early warning. Military and civilian officials at the regional and departmental level may be concerned that a warning signals security failures and deters investment and development and press for a warning not to be issued or to be prematurely withdrawn. Given the importance of the SAT function, it is also foreseeable that other Government or civilian actors may try to influence its analysis or recommendations. To reduce such illegitimate pressures and to fulfil its obligation to prevent and protect, the Government must ensure that the independence of CIAT and SAT is maintained. It should make SAT reports public (subject to security needs) after an appropriate period, such as three months after the decision of CIAT.

[...]

99. The Government should ensure that perpetrators of human rights violations do not benefit from any legal measures exempting them from criminal prosecution or conviction. The judicial authorities must fully investigate alleged human rights.

100. The Government should reform the Justice and Peace Law (JPL) to:

- Provide for the expeditious transfer to the ordinary justice system of candidates who do not cooperate with or fulfil the criteria of the JPL
- Ensure that the "principle of opportunity" is not applied in ways that reinforce impunity
- Allow for cases to proceed without the requirement that the *Fiscalía* investigates and verifies all relevant crimes

³³⁷ In local jurisdictions, *fiscales* may also have fewer resources and investigatory personnel, resulting in slower development and prosecution of cases, which may give rise to suspicion that the *fiscal* is not proceeding for more nefarious reasons.

- Expedite, in cooperation with other State institutions, the handover to victims of all assets (legal and illegal) from those demobilized under the JPL
- Adopt measures to ensure that demobilized combatants are not “recycled” into the conflict

101. The *Fiscal General* should consider creating a national unit of *fiscales* dedicated to complex prosecutions that would seek to shut down all the major actors in and sources of support for IAGs. The Government should consider seconding police, investigators and asset confiscation and management experts to such a unit so that all investigation and prosecution activities are strategically coordinated.