

## **REPARATIONS FOR VIOLATIONS BY A STATE**

This Chapter of the Handbook collects the observations and recommendations of the UN Special Rapporteur on the reparations for victims provided by a state in the context of extrajudicial killings. This section includes case studies that illustrate the obligations of states to compensate victims who have had their human rights violated during armed conflict. The Special Rapporteur also considers the requirement of governments to compensate individuals who have had their human rights violated as a result of acts by government officials.

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## A. COMPENSATION FOR VICTIMS OF VIOLATIONS BY A STATE

*Report of the Special Rapporteur to the Human Rights Council (A/HRC/14/24, 20 May 2010, ¶¶ 56 -58, 84-89):*

56. Whenever a State is responsible for an unlawful killing, international law requires reparations in the form of compensation and/or satisfaction. This obligation is based in general customary international law, as well as duties arising from human rights and humanitarian law.<sup>1</sup> The State is also required to ensure that victims have access to remedies, including judicial remedies, for violations of their rights.

57. As a general matter, a great deal more can and must be done by States to meet their reparations obligations. Governments in many countries visited by the mandate, such as Kenya and Sri Lanka, have not met their obligations, either because they have not created reparations programmes, or because programmes are difficult for victims' families to access, or because tort remedies have undue jurisdictional impediments. Reparations should also be adequately provided for under post-conflict transitional justice mechanisms. This is often not the case (see A/HRC/14/24/Add.2).

58. Increasingly, and out of concern that paying "reparations" would be an admission of State wrongdoing, Governments involved in armed conflict have created other forms of payments. These "ex gratia" or "condolence" payments are often paid to the families of civilians killed during armed conflict. This practice, particularly by the United States in Afghanistan and Iraq, has important benefits, although problems remain in administration and distribution.<sup>2</sup> It does not, however, absolve States of their responsibility to acknowledge wrongdoing where it has occurred.

[...]

84. Human rights law, humanitarian law and the international law on State responsibility require that individuals should have an effective remedy when their rights are violated, and that the State must provide reparations for its own violations.<sup>3</sup> States must ensure that victims' families are able to enforce their right to compensation, through judicial remedies where necessary. In many cases, reparations can mean the difference between the destitution of innocents and their families, and their ability to rebuild their lives and livelihoods.

85. Yet there is a dearth of legal and factual research on the precise content of States' legal obligations and how those obligations are, or should be, implemented in practice, as

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<sup>1</sup> A/HRC/11/2/Add.4, para. 35, footnote 35.

<sup>2</sup> Ibid., paras. 35-36 and A/HRC/11/2/Add.5, paras. 67-66.

<sup>3</sup> Human Rights Committee, general comment 31 (2004), para. 16; J-M. Henckaerts & L. Doswald-Beck, *Customary International Humanitarian Law* (International Committee of the Red Cross, 2005), Rule 150; and *Official Records of the General Assembly, Fifty-Sixth Session, Supplement No. 10 (A/56/10)*, Draft articles on responsibility of States for internationally wrongful acts, para. 76.

well as on emerging State practice relating to amends for lawful harm to civilians during conflict.

86. During visits to countries experiencing armed conflict or other large-scale violence, I have found that States rarely complied with their reparations obligations,<sup>4</sup> although some States, such as the United States and the United Kingdom of Great Britain and Northern Ireland, have made commendable efforts.<sup>5</sup> Those efforts include monetary payments to the families of those killed even in lawful attacks. Such payments – unlike formal reparations – are offered without legal implication and as a gesture of condolence and respect. The Government of the United States also makes amends by providing livelihood assistance programmes to individuals (e.g. skills training to enable widows to make a living) or communities (e.g. to repair damage caused by military operations). Most countries with combat troops in Afghanistan now offer monetary payments for lawful civilian harm, but programme implementation suffers from flaws, including a lack of common funding among International Security Assistance Force (ISAF) partners, inconsistency due to an overreliance on commander discretion and different troop-contributing country rules and practices, lack of access for civilians seeking payments, lack of a formal ISAF programme, and a lack of transparency. Some other States have also announced amends programmes in different contexts. In March 2010, Yemen promised payments to civilians killed in counterterrorism operations. These examples illustrate an expanding practice which is not yet being systematically tracked or instituted by the international community.

87. Legal and factual research on extrajudicial killings and reparations in the context of armed conflict could:

- (a) Clarify the forms and amounts that reparations currently take;
- (b) Promote best practices in the form and amounts of reparations;
- (c) Assess how best to facilitate victims' and family members' access to reparations;
- (d) Study how to promote consistency in amounts paid;
- (e) Assess what measures (such as repairing facilities or providing training) best address different kinds of losses;
- (f) Assess how States should provide reparations for losses caused by their private security contractors;
- (g) Study how States should best ensure transparency (consistent with individuals' privacy and security needs) about payments;
- (h) Clarify the relationship between reparations and amends.

88. Comparable research on amends could:

- (a) Document existing State practice, including in relation to civilian deaths, injuries and property damage through lawful acts;
- (b) Promote best practices in terms of the form and amounts of amends such as monetary payments, livelihood assistance, community aid and rebuilding, and psychosocial efforts;
- (c) Assess how best to facilitate victims' and family members' access to amends;
- (d) Study how to ensure consistency and/or appropriate cultural context in amounts paid;

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<sup>4</sup> E/CN.4/2006/53/Add.5, para. 75; A/HRC/8/3/Add.3, para. 63; and A/HRC/11/2/Add.6, paras. 81-82.

<sup>5</sup> A/HRC/11/2/Add.4, paras. 37 and A/HRC/11/2/Add.5, paras. 67-68.

(e) Assess how parties to a conflict can ensure amends for losses caused by lawful conduct of their private security contractors.

89. Outside the context of armed conflict, research is also needed on the practices of States in providing effective remedies for violations of the right to life. What obstacles do families experience when attempting to enforce their right to a remedy? What statute of limitations (if any) commonly apply where a victim has been killed? How can States best ensure that unlawful killings are fairly compensated? Where the State is responsible for killings on a large scale, what systems or programmes can best provide and distribute reparations?

***Report on Mission to Afghanistan (A/HRC/11/2/Add.4, 6 May 2009, ¶¶ Summary, 35-37, 79-81):***

*The Special Rapporteur visited Afghanistan from 4 to 15 May, 2008. He reported on the compensation provided by the Afghan government and the various international forces. These programs have to be improved to meet the international law requirement for reparations for human rights.*

### Summary

The compensation programmes of Government and international forces have resulted in many Afghans receiving compensation for their losses. These programmes can be improved, however, particularly through better coordination and more routine application. Furthermore, commanders should proactively seek out victims and families, and the design of programmes should take into account the particular obstacles women face in having access to them.

### Compensation for Victims

35. The Government provides some payments (approximately US\$1,900) to civilians killed by AGEs, but this program is uneven, and operates in a highly unsatisfactory manner. The various international forces have implemented diverse programs for compensating civilian victims of military operations. Such payments are consistent with international law requirement for reparations for human rights or IHL violations.<sup>6</sup> Governments have generally cited the rationale of “winning hearts and

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<sup>6</sup> See ICCPR, Art. 2(3); Human Rights Committee, General Comment 31, “Nature of the General Legal Obligation on States Parties to the Covenant” (2004), para. 16; Henckaerts & Doswald-Beck, *Customary International Humanitarian Law* (ICRC 2005), Rule 150. As a matter of customary international humanitarian law, “A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused.” (ICRC Study, Rule 150.) While the modalities of this obligation under IHL continue to be clarified, “There is an increasing trend in favour of enabling individual victims of violations of international humanitarian law to seek reparation directly from the responsible State.” (ICRC Study, volume 1, page 541.) This interpretation is, moreover, obligatory pursuant to the international human rights law requirement to “ensure that any person whose rights ... are violated shall have an effective remedy” (ICCPR, art. 2(3)(a); Human Rights Committee, general comment No. 31, “Nature of the legal obligation on States Parties to the Covenant” (2004), (CCPR/C/21/Rev.1/Add.13),

minds” and eschewed any notion of obligation. But the fact remains that reparations are increasingly often paid to the families of those killed, even in lawful attacks, and this goes well beyond the practice in previous conflicts. Publicly-available records are insufficient for estimating the proportion of victims who receive payments. However, informed interlocutors suggested that victims do routinely obtain payments, although doing so is not always easy, and the payments are not always fair or timely.

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

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

[...]

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para. 16.) The injury for which reparation is due includes both material and moral damage, and the reparation therefore “shall take the form of restitution, compensation and satisfaction” (Draft Articles on State Responsibility, arts. 31, 34). Because restitution - “re-establish[ing] the situation which existed before the wrongful act was committed” would be “materially impossible” in the case of an individual’s death, the requisite reparation will comprise compensation and satisfaction (Draft Articles, art. 35). The compensation “shall cover any financially assessable damage” (Draft Articles, art. 36), and the satisfaction “may consist in an acknowledgment of the breach, an expression of regret, a formal apology or another appropriate modality” (Draft Articles, art. 37). In practice, the monies and goods provided for deaths in Afghanistan typically carry elements of both compensation and satisfaction, helping to compensate for the loss of a productive member of the family and serving as an expression of regret.

## Recommendations

### Compensation for victims

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

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

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

### ***Report on Mission to the United States (A/HRC/11/2/Add.5, 28 May 2009, ¶¶ Summary, 67-70, 82):***

*The Special Rapporteur visited the United States from 16 -30 June 2008. He found that the United States has shown admirable leadership in relation to compensation payments to victims of military operations in Afghanistan.*

### Summary

Some aspects of the rule of law have been taken seriously during United States military operations. Thus, after visiting Afghanistan in May 2008, I noted no evidence that international forces in Afghanistan, including those of the United States, were committing widespread intentional killings in violation of human rights or humanitarian law. In addition, the Government has implemented compensation programmes for civilian victims of United States military operations. While these programmes should be improved, the United States has shown admirable leadership in relation to compensation payments.

[...]

### Reparations for Civilian Casualties

67. The Government has implemented a number of programs to provide compensation and restitution to civilian victims of U.S. military operations. While the motivation for these programs is often cited as “winning hearts and minds” they are also responsive to international law’s requirement of reparations for violations of human rights and

humanitarian law.<sup>7</sup> In some respects, the Government has done less than the law requires by de-linking reparation from the question of whether illegal conduct occurred. In other respects, the Government has done more, by providing reparations to the families of those killed in lawful attacks. My overall assessment is that the Government's approach has, in practice, meant far more people have received reparations for the loss of their loved ones than has often been the case in previous conflicts, but that reparation programs need to be made more consistent and comprehensive.

68. The Foreign Claims Act authorizes payment of legal claims arising from a death negligently or wrongfully caused by military personnel outside of combat.<sup>8</sup> Payment under this law can be higher than in other programs. Two other programs make death-related payments without any admission of fault or liability. In Afghanistan and Iraq, the military makes "condolence payments" using funds from the Commander's Emergency Response Program (CERP).<sup>9</sup> In Afghanistan, the military also makes "solatia payments."<sup>10</sup> The maximum payment amount provided under either program for a death is roughly \$2,500.<sup>11</sup> Other programs provide assistance to individuals and communities to help repair damage caused by military operations.<sup>12</sup>

69. In important ways, these are model programs. But they have developed in an *ad hoc* manner that permits innovation and rapid evolution, but has also resulted in a complex, overlapping and inconsistent system. This leads to unprincipled variation in compensation amounts and the unintentional exclusion of some victims. The United States is a leader in this area and should continue to build on its achievements by

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<sup>7</sup> See ICCPR, Art. 2(3); Human Rights Committee, General Comment 31, "Nature of the General Legal Obligation on States Parties to the Covenant" (2004), para. 16; Henckaerts & Doswald-Beck, *Customary International Humanitarian Law* (ICRC 2005), Rule 150; International Law Commission, *Draft Articles on State Responsibility*, A/56/10 (2001).

<sup>8</sup> Army Regulation 27-20, para. 10-3; 10 U.S.C. § 2734. The exclusion of combat-related deaths has often been construed narrowly, to permit, for example, compensation for deaths at checkpoints. See the documentation on decisions by foreign claims commissions in Afghanistan and Iraq obtained by the American Civil Liberties Union at <http://www.aclu.org/natsec/foia/log.html>.

<sup>9</sup> Lt. Col. Mark Martins, *No Small Change of Soldiering: The Commander's Emergency Response Program in Iraq and Afghanistan*, *The Army Lawyer* (Feb. 2004).

<sup>10</sup> Like CERP, the solatia program was designed by the military rather than by Congress; its funding is pursuant to a fairly general Congressional authorization to "use appropriated funds for certain investigations and security services" (10 U.S.C. 2242). These solatia payments were also made in Iraq up until January 2005.

<sup>11</sup> Thus, in fiscal year 2006, in Afghanistan, 1% of CERP funds were used for condolence payments, and, in Iraq, 5% of CERP funds were used for condolence payments. CERP funds are also used for a range of other activities, including supporting agricultural programs, repairing civic and cultural facilities, water and sanitation, and "other urgent humanitarian and reconstruction projects". Similarly, funds for solatia payments come out of general "Unit Operations and Maintenance Funds". Government Accountability Office, *Military Operations: The Department of Defense's Use of Solatia and Condolence Payments in Iraq and Afghanistan* (May 2007), pp. 13, 19, 20.

<sup>12</sup> Thus, in Afghanistan, a woman whose husband was killed during an aerial bombardment might receive training in making clothes and a sewing machine to help her earn a livelihood. In Afghanistan, such assistance is provided through the Afghan Civilian Assistance Program (ACAP); in Iraq, it is provided through the Marla Ruzsicka Iraqi War Victims Fund. Government Accountability Office, *Military Operations: The Department of Defense's Use of Solatia and Condolence Payments in Iraq and Afghanistan* (May 2007), p. 53.

increasing funding, proactively seeking out victims and their families, and regularizing and better coordinating existing programs.

70. The lack of systematic compensation for civilian casualties caused by private contractors is acute. While some have offered compensation on their own account, this does not appear to be an approach that could be systematized. One interlocutor suggested the best approach would be for the Government to provide reparations for casualties caused by its contractors and then deduct the amount of this compensation from payments made under the contract.

[...]

### Recommendations

#### 82. Enhancing reparations programs

Existing reparation programs should be combined or replaced by a comprehensive and adequately-funded compensation program for the families of those killed in U.S. operations, including by military and intelligence personnel and private contractors. In missions involving a range of international forces, such as those in Afghanistan and Iraq, the Government should urge allies to implement similar programs and should promote coordination to ensure that all casualties are compensated.

***Report on Mission to Sri Lanka (E/CN.4/2006/53/Add.5, 27 March 2006, ¶¶ Summary, 75)***

*The Special Rapporteur visited Sri Lanka from 28 November to 6 December 2005. The government is requested to provide make arrangements to compensate families of all non-combatants killed in the conflict between the government and the LTTE.*

### Summary

The report concludes by arguing that human rights must be made central both to the peace process and the general system of governance. At present they do not receive the attention they warrant from any of the parties concerned. It suggests that the struggle for hearts and minds in Sri Lanka will be won by those who demonstrate that their actions as well as their vision for the future are solidly grounded in human rights. The principal recommendations include: (a) the need for a wide-ranging human rights agreement, including an effective international human rights monitoring mechanism; (b) the importance of all parties respecting common article 3 of the Geneva Conventions; (c) renewed Government renunciation of collaboration with the Karuna group; (d) arrangements to compensate the families of all non-combatants killed in the conflict; (e) the effective police investigation of all extrajudicial killings; (f) a programme to train all police reservists in criminal detection and investigation; (g) a programme to recruit Tamil and Tamil-speaking police officers, especially to work in the North and East; (h) the immediate appointment of the members of the National Police Commission, and confirmation of its key role in promoting and disciplining police officers; (i) ratification

of the Rome Statute of the ICC; (j) the need for the LTTE to adopt concrete steps to demonstrate that it is serious about human rights, including issuing unequivocal denunciations of killings attributed to it but for which it denies responsibility; (k) a commitment by the LTTE to refrain from human rights violations and to eschew collaboration with armed civilian proxies; (l) an enhancement of the SLMM's human rights work, pending a more comprehensive human rights monitoring initiative; and (m) a human rights-based dialogue with the Tamil diaspora to be initiated by the Governments of all United Nations Member States in which there is a significant diaspora.

[...]

## Recommendations

### *The government*

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

### ***Follow-Up Report on Mission to Sri Lanka (A/HRC/8/3/Add.3, 14 May 2008, ¶¶ 63, Annex I)***

*The Special Rapporteur visited Sri Lanka from 28 November to 6 December 2005. In May 2008, he reported on the progress of the implementation of the recommendations he had made following his trip. The compensation program recommendation has not been implemented.*

### Compensation for families victimized by extrajudicial executions

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

[...]

### Annex I - Sri Lanka - Summary of follow-up to each recommendation

*The Government is requested to provide an analysis of who gets compensation and under what circumstances and to put in place a revised set of arrangements intended to ensure fair and equitable access to compensation for the families of non-combatants subjected to*

*extrajudicial execution. Existing arrangements are uneven at best, and non-existent at worst.*

This recommendation has not been implemented.

## B. COMPENSATION IN OTHER SITUATIONS

*Report on Mission to Colombia (A/HRC/14/24/Add.2, 31 March 2010, ¶¶ 59):*

59. Victims have also been denied the right to restitution and reparation. Approximately 70 former paramilitaries have turned over about US\$ 13 million in assets,<sup>13</sup> far less than the fruits of illegal conduct accrued by many more paramilitaries over decades. In April 2008, the Government created a programme (under Decree No. 1290) for victims of abuses by illegal armed groups to receive monetary reparations from the State. As of April 2009, approximately US\$ 247 million had been allocated for payment.<sup>14</sup> While this is a noteworthy development, it should not be seen as a replacement for restitution from former paramilitaries of illegally-acquired land and other assets. The programme also fails to include reparations for victims of rights violations by security forces and State agents.<sup>15</sup> Indeed, in 2009, the Government had the opportunity to adopt a law providing reparations for all victims of Colombia's conflict.<sup>16</sup> That law could have rectified the failures of the JPL and Decree No. 1290, but it failed to pass because of Government opposition. As a matter of urgency, the Government should ensure passage of such a law.

*Report on Mission to Colombia, by Special Rapporteurs Nigel Rodley and Bacre Waly Ndiaye (E/CN.4/1995/111, 16 January 1995, ¶¶ 75, 78, 107, 115):*

*The Special Rapporteurs visited Colombia from 17 to 26 October 1994. They reported on the system of compensation for loss or injury suffered by individuals as a result of acts of government officials.*

### The right to due process of law

75. Under the Colombian legal system, the administration of justice in cases of human rights violations is primarily the responsibility of:

(...)

(c) The administrative courts, headed by the Council of State, in cases of compensation for loss or injury suffered by individuals as a result of acts of government officials.

[...]

### Problems relating to the functioning of institutions with jurisdiction to impose penalties

78. There are, nevertheless, differences in levels of impunity between the various institutions. It was pointed out that the highest levels are in the system of criminal justice,

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<sup>13</sup> See Government response.

<sup>14</sup> Ibid.

<sup>15</sup> The JPU has 136 cases in which demobilizing paramilitaries have implicated members of the State forces in killings (Government response).

<sup>16</sup> The Colombian Senate approved the Victims Rights Act in 2008.

both ordinary and military, while the Procuraduría General de la Nación, in relation to its disciplinary functions, and the administrative courts seem to be functioning fairly satisfactorily. With regard to the latter, it was stated that, in 1993, there had been approximately 400 rulings declaring the responsibility of the State for misbehaviour of its agents and involving some 60 million dollars in compensation. Paradoxically, however, acts in connection with which a ruling is made against the State by the administrative courts often go unpunished by the criminal courts.

[...]

### Conclusions

107. Yet, the impunity enjoyed by human rights violators in Colombia is almost total. The military judiciary claims, and generally obtains, competence to deal with cases involving security forces personnel accused of human rights violations. The military justice system can be tough and effective in prosecuting and punishing disciplinary offences involving manifest disobedience of orders. But it has proved itself equally effective in guaranteeing impunity for violations of the ordinary criminal law in respect of acts (murder, torture, kidnapping) committed in the line of duty. Thus, Colombia clearly fails to fulfil its obligation under international law to carry out exhaustive and impartial investigations with a view to identifying those responsible, bringing them to justice and punishing them.<sup>17</sup> Although in a number of cases, administrative tribunals have granted compensation to victims or their families for damages suffered at the hands of state agents, the tribunals conducting criminal proceedings against the same agents do not find grounds for their conviction. This strongly suggests the lack of institutional willingness to hold the authors of human rights violations responsible.

[...]

### Recommendations

115. While initiatives to raise awareness of human rights among members of the security forces and the population in general through educational and other measures are to be welcomed as a necessary step, the Special Rapporteurs wish to emphasize that respect for, and thus enjoyment of, human rights, can only be improved if impunity is effectively fought. The Special Rapporteurs call on the Government to fulfil its obligation under

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<sup>17</sup> With regard to extrajudicial, summary or arbitrary executions and torture, this obligation is contained in, inter alia, the Universal Declaration of Human Rights (art. 8); the International Covenant on Civil and Political Rights (art. 2.3); the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, (Economic and Social Council resolution 1989/65 of 24 May 1989); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, (General Assembly resolution 43/173 of 9 December 1988 (Principle 7)); the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Havana from 27 August to 7 September 1990 (arts. 7 and 22-26); the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, (General Assembly resolution 40/34 of 29 November 1985).

international law to conduct exhaustive and impartial investigations into all allegations of extrajudicial, summary or arbitrary executions and torture, to identify, prosecute and punish those responsible, grant adequate compensation to the victims or their families and take all appropriate measures to prevent the recurrence of such acts.

***Report on Mission to Kenya (A/HRC/11/2/Add.6, 26 May 2009, ¶¶ 81-82, 107-108, Appendix II):***

*The Special Rapporteur visited Kenya from 16 to 25 February 2009. During his mission he focused on the types and causes of unlawful killings and investigated whether those responsible for such killings were held to account. He also reported on claims and redress actions families of victims have against government officials.*

81. The families of victims unlawfully killed have little redress. Throughout the country, I met children and widows whose parents or husbands had been murdered. The family members have been left with few avenues to obtain sufficient funds to meet even basic necessities such as housing, food, and school fees. The Government should ensure that compensation is paid to the families of victims.

82. There is a one-year statute of limitations period for claims in tort against government officials. Given the factual complexity of many cases, the difficulties in accessing lawyers for many Kenyans, and the widespread displacement that the post-election violence caused, the limitation period has prevented many families of victims of the PEV from bringing civil suits against police or other officials. The DPP acknowledged that this was a problem. For unlawful killings and other serious abuses, the one-year limitation period should be removed.

[...]

Recommendations

Compensation and civil redress

107. The Government should ensure that compensation is provided to the families of those victims unlawfully killed by the police or other security forces.

108. For unlawful killings and other serious human rights abuses, the one-year statutory limitation period on suits in tort against public officials should be removed.

[...]

Appendix II- Selected Cases

Case 12: The female witness went to a police station to report that her male relative had been shot in the leg by a stray bullet fired by police. She was seeking compensation for the medical treatment. When she reported the matter, the police were aggressive and denied that the event had taken place.

[...]

Case 37: The witness, from Nyanza, was shot by police just in front of his home in January 2008, while with his mother and his children. At the time of the shooting, he was sitting and talking with his mother. Medical reports and x-rays showed that he was shot in the lower abdomen. He now has difficulty walking, and his urinary tract functioning has been impaired. The witness believed that he was simply shot recklessly or indiscriminately. He reported the shooting to the police. They took no action, so the witness retained lawyers in mid-2008 to seek compensation.