

## **MANDATE AND WORKING METHODS**

This Chapter of the Handbook collects the observations and recommendations of the UN Special Rapporteur on the scope of his mandate and the working methods used to carry out his mandate. This section focuses on the development of effective working methods, (mainly communications and on-site visits to countries), and points out the factors that hinder the effective implementation of these methods. In addition to describing the parameters and scope of the mandate, this section also gives particular attention to the Special Rapporteur's mandate and role in the context of armed conflicts. Finally, this chapter highlights the importance of follow-up reports that track the implementation of country recommendations as well as the methodology used to create these reports.

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## A. DEVELOPING EFFECTIVE WORKING METHODS

*Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/62/265, 16 August 2007, ¶¶ 45-51):*

45. There is one key benchmark in evaluating the working methods of the Special Rapporteur. It is the injunction by the Commission and the Council to the Special Rapporteur to “respond effectively to information that comes before him”. This injunction was first issued in 1984 and continues to be the key element in defining the procedures used by the mandate. Within that framework the Commission has given the Special Rapporteur considerable discretion to develop suitable and effective working methods.<sup>1</sup> Over the years, numerous innovations have been attempted and, depending on their effectiveness in practice, each has either earned a permanent place among the mandate’s core working methods or has been abandoned. The motivation for continual innovation may be readily perceived: No set of working methods has proven fully adequate to the task of responding effectively to allegations of extrajudicial executions.

46. The core working methods of the Special Rapporteur have been written communications (allegation letters and urgent appeals) and in situ visits to countries. The impetus for change can be seen, at one level, in the low response rate of Governments to such communications and requests to visit. The rate of response to written communications is difficult to calculate with precision;<sup>2</sup> however, the proportion of communications sent for which responses have been received in a given year provides a reasonable indication of the situation. This proportion has been reported for a number of years and has generally been roughly one half.<sup>3</sup> The situation with respect to requests to visit is even less encouraging. As the Special Rapporteur reported in his review of the mandate’s first 10 years, “The small number of countries which have invited the Special Rapporteur to undertake mission during the last decade is one of the most important limitations on the effectiveness in fulfilling his mandate. ...”<sup>4</sup> The situation has not improved.

47. The problem is, of course, even more serious than low response rates suggest: many of the countries with regard to which the Special Rapporteur has received the most troubling allegations are among the least cooperative with regard to engaging in constructive correspondence and accepting requests to visit. Unfortunately, the Special Rapporteur has relatively few means with which to address this failure of cooperation

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<sup>1</sup> E/CN.4/2006/53/Add.5, paras. 25-27.

<sup>2</sup> There are several reasons that the ratio of Government communications to Special Rapporteur communications is an imperfect indicator of the response rate. One is that allegations sent in one year may receive responses in another. Another is that some responses address only a fraction of the cases that were raised in a single communication or, less often, address cases raised in multiple allegation letters or urgent appeals. However, the information technology resources at the disposal of the special procedures are ill-suited to tracking the status of each individual case.

<sup>3</sup> Responses as a percentage of allegation letters and urgent appeals is 33 in 1983, 50 in 1984, 25 in 1985, 62 in 1987, 40 in 1988, 42 in 1989, 54 in 2005, 57 in 2006 and 55 in 2007 (E/CN.4/1989/25, para. 304; E/CN.4/2005/7, para. 21; E/CN.4/2006/53, para. 12; A/HRC/4/20, para. 9).

<sup>4</sup> E/CN.4/1992/30, para. 639.

within the framework of these core working methods. The Special Rapporteur has repeatedly raised this issue and made recommendations to the Commission and the General Assembly that, for example, “[t]he General Assembly should appeal to all States that have so far failed to respond meaningfully to the requests for visits made by the Special Rapporteur to take appropriate action”,<sup>5</sup> and these bodies have urged fuller cooperation;<sup>6</sup> however, such general exhortations have evidently had little if any effect.

48. Another level at which the Special Rapporteur has developed working methods in an effort to respond effectively to allegations is in attempting to increase the effectiveness of communications and visits in preventing extrajudicial executions and protecting victims even as response rates remain low. Several such methods merit mention. One is engaging in sustained exchanges of correspondence regarding a single case through various forms of written follow-up.<sup>7</sup> Three scenarios in which such sustained correspondence has proven especially valuable are when there has been an ill-defined disagreement regarding the application of international legal standards in need of clarification,<sup>8</sup> when the provision of specific pieces of documentation would have helped resolve an allegation,<sup>9</sup> and when an allegation’s resolution has been subject to an ongoing legal process.<sup>10</sup> Another such method is for the Special Rapporteur to provide the Council with observations on each exchange of correspondence and the consequent status of the allegations involved. This practice began in 1992<sup>11</sup> and has evolved since then; in 2005, the Special Rapporteur supplemented narrative observations with a classification of the response’s adequacy so as to permit the more rapid assessment of the status of allegations

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<sup>5</sup> A/61/311, para. 65.

<sup>6</sup> See, e.g. General Assembly resolution 61/173, para. 13 of 1 March 2007 in which the Assembly urged “all States, in particular those that have not done so, to cooperate with the Special Rapporteur so that his mandate can be carried out effectively, including by favourably and rapidly responding to requests for visits, mindful that country visits are one of the tools for the fulfilment of the mandate of the Special Rapporteur, and by responding in a timely manner to communications and other requests transmitted to them by the Special Rapporteur”; Commission on Human Rights resolution 2005/34, para. 14, in which the Commission strongly urged “all States to cooperate with and assist the Special Rapporteur so that his mandate may be carried out effectively, including, where appropriate, by issuing invitations to the Special Rapporteur when he so requests, in keeping with the usual terms of reference for mission by special rapporteurs of the Commission, and to respond to the communications transmitted to them by the Special Rapporteur”.

<sup>7</sup> The use of “follow-up letters” was introduced in 1992 (E/CN.4/1993/46, para. 28).

<sup>8</sup> An exchange of correspondence with the Government of the United States concerning legal issues surrounding the use of targeted killings served this purpose (A/HRC/4/20/Add.1, annex, pp. 342-358).

<sup>9</sup> For instance, a copy of a “birth certificate, passport or other official document confirming that she was over 18 at the time of the crime” was requested in regard to allegations that a juvenile offender had been sentenced to death in the Islamic Republic of Iran (A/HRC/4/20/Add.1, annex, p. 153).

<sup>10</sup> For instance, the Special Rapporteur sent an urgent appeal to the Government of Bangladesh concerning an attack on Sumi Khan, and the Government responded with facts concerning the incident and the information that four persons had been arrested. The Special Rapporteur characterized this as a “largely satisfactory response”; however, he sent a follow-up letter seeking “information relating to the outcome of this case” (E/CN.4/2006/53/Add.1, annex, pp. 30-31; A/HRC/4/20/Add.1, annex, p. 49). Another example would be the correspondence with the Government of Thailand that continued as official inquiries into the events at Tak Bai continued (E/CN.4/2006/53/Add.1, annex, pp. 242-246; E/CN.4/2005/7/Add.1, paras. 717-720).

<sup>11</sup> See E/CN.4/1993/46; for comments on the rationale behind providing observations, see E/CN.4/1994/7, para. 33, and E/CN.4/2006/53/Add.1, para. 21.

and the cooperation shown by Governments.<sup>12</sup> Another such method relates to transparency. For most of the mandate's history, only short summaries of the correspondence were included in the Special Rapporteur's reports. The value of such succinct accounts declined, however, as the Special Rapporteur began providing observations on the exchange of correspondence, and in 2006 the Special Rapporteur reintroduced the practice (abandoned in 1987)<sup>13</sup> of providing the full text of correspondence so as to permit a more complete understanding of the dimensions of factual and legal disagreements.<sup>14</sup> As a final example, in 2006, the Special Rapporteur initiated follow-up reports on visits that would provide an update on the extent to which the State in question had implemented the recommendations made in the Special Rapporteur's report on the visit. The first such report covered Brazil, Honduras, Jamaica, and the Sudan.<sup>15</sup>

49. In addition to these efforts to at once improve response rates and to improve the effectiveness of realized country visits and exchanges of correspondence, the Special Rapporteur has continually sought out additional working methods to complement those core methods. Some of these have been adopted in response to specific requests by the Commission and Council; others have been at the initiative of the Special Rapporteur within the general mandate. Such working methods have included:

- In the early years of the mandate, notes verbales were used to obtain information on the phenomenon of extrajudicial executions and on existing institutional and legal safeguards from Governments and from specialized agencies and non-governmental organs in consultative status with the Economic and Social Council.<sup>16</sup>
- The Special Rapporteur cooperated with the Ad Hoc Working Group on southern Africa.<sup>17</sup>
- The Special Rapporteur has participated in international standard-setting efforts, such as that resulting in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.<sup>18</sup>

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<sup>12</sup> In the Special Rapporteur's 2005 report, the categories were "substantive response", "partial response", "allegations denied", "acknowledged", "no response", and "awaiting translation" (E/CN.4/2005/7, para. 22). In 2006, these were changed to "largely satisfactory response", "cooperative but incomplete response", "allegations rejected but without adequate substantiation", "receipt acknowledged", "no response", "United Nations translation awaited", and "no response (recent communication)" (E/CN.4/2006/53/Add.1, paras. 14-20). This set of categories was also used in the following year (A/HRC/4/20/Add.1, para. 5).

<sup>13</sup> There was considerable flux in how the Special Rapporteur reported on communications in the early years of the mandate; however, this involved providing relatively complete texts in 1983 and 1986 (see E/CN.4/1983/16/Add.1 and E/CN.4/1986/21).

<sup>14</sup> See E/CN.4/2006/53/Add.1.

<sup>15</sup> See E/CN.4/2006/53/Add.2.

<sup>16</sup> E/CN.4/1983/16, paras. 9-18 and annexes II-V.

<sup>17</sup> E/CN.4/1992/30, para. 640.

<sup>18</sup> Economic and Social Council resolution 1989/65. In his 1986 report to the Commission, the Special Rapporteur argued that there was "a need to develop international standards designed to ensure that investigations are conducted into all cases of suspicious death and in particular those at the hands of the law

- The possibility of advising in technical assistance efforts was explored.<sup>19</sup>
- Consultations with government representatives “in connection with alleged summary or arbitrary executions in their country” have been conducted.
- In one instance in which a Government repeatedly delayed and obstructed a visit, the Special Rapporteur issued a report including observations and recommendations concerning that country’s situation that were based on written correspondence with the Government, the findings of other United Nations bodies, and consultations with the representatives of non-governmental organizations and other private persons.<sup>20</sup>

50. Some of these have proven valuable only in relation to a particular country situation. One such innovation that has proven to be of enduring value is issuing press releases to raise public awareness in a timely manner, and the need for better publicity has been a key issue raised at the annual meetings of the special procedures.

51. The Special Rapporteur will continue to attempt to develop working methods that will allow him to more fully achieve his mandate of responding effectively to allegations and would welcome the suggestions of Governments in this regard.

***Report of the Special Rapporteur to the Human Rights Council (A/HRC/14/24, 20 May 2010, ¶¶ 6-29, 60):***

6. One of the Special Rapporteur’s principal activities is to communicate with Governments about alleged cases of unlawful killings. These communications take the form of “allegation letters” or “urgent action” letters, which typically set out alleged

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enforcement authorities in all situations” (E/CN.4/1986/21, para. 209; see also E/CN.4/1983/16, para. 230; E/CN.4/1987/20, para. 246). The Council endorsed this recommendation and invited the Special Rapporteur “to examine the elements to be included in such standards” (resolution 1987/60, para. 8). He received a number of proposals regarding these elements, and summarized those he considered most important in his 1988 report (E/CN.4/1988/22, para. 194). He also noted that the Council had requested the Committee on Crime Prevention and Control to embark on a similar project and the cooperation thus far established (ibid., para. 191). He was consulted during that body’s drafting efforts, and the following year he reported to the Commission that all of the elements he had listed as most important were included in the instrument it drafted for the Council’s adoption (E/CN.4/1989/25, para. 298). In his 1990 report, the Special Rapporteur characterized the Council’s adoption of the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions as a “milestone” for the mandate (E/CN.4/1990/22, para. 461). He noted that these principles were tightly consistent with the approach he had previously taken to implementing the mandate, and concluded that, “Any Government’s practice that fails to reach the standards set out in the principles may be regarded as an indication of the Government’s responsibility, even if no government officials are found to be directly involved in the acts of summary or arbitrary executions” (ibid., para. 463). Since then the Special Rapporteur has routinely referred to these principles in correspondence with Governments regarding specific allegations and situations.

<sup>19</sup> E/CN.4/1989/25, para. 310.

<sup>20</sup> This episode involved a contemplated joint visit to Nigeria by the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the independence of judges and lawyers and ultimately resulted in four reports: A/51/538 and Add.1 (1996) and E/CN.4/1997/62 and Add.1 (1997).

facts, analyse the applicable international law, seek clarification from the relevant Government on the accuracy of the allegations, and call upon the Government to take particular actions to reduce killings or impunity.

7. Such communications with Governments raise international awareness of specific domestic incidents and encourage Governmental attention. They create a regular and ongoing system of monitoring State behaviour, generate a record of abuses over time, provide clarity on the circumstances of specific incidents and give States an opportunity to set the record straight. The communications can also shed light on the interpretation of applicable law, promote accountability and encourage measures to reduce future killings.

8. But, for the practice to live up to the theory, it is essential to take stock of how the system functions in reality and to identify needed reforms. While I have noted in past years that response rates from Governments were poor,<sup>21</sup> the present wrap-up report provides an opportunity to better understand general trends and patterns in communications and Government responses during the whole term of my mandate. A systematic review of communications is contained in annex II. In brief, from December 2004 to March 2009, 523 communications were sent to 87 States, concerning over 6,250 individuals. About half of these drew no response at all, while a quarter drew largely satisfactory responses.

9. Of the 15 countries that received the most communications, 7 failed to respond to more than 50 per cent of letters sent: India (no reply to 16 of 18 letters), Iraq (11 of 14 letters), the Sudan (12 of 16 letters), Saudi Arabia (16 of 22 letters), the United States of America (12 of 18 letters), Brazil (8 of 13 letters), and the Islamic Republic of Iran (37 of 63 letters).

10. It is clear that there is a need to consider how to make the procedure more effective both in engaging States in dialogue and bringing relief in individual cases. The importance of communications within the overall context of the Special Procedures system has grown immensely, but without any real planning or strategic vision. It would now be timely to consider what such a procedure should ideally look like in the twenty-first century. Six steps could usefully be taken.

11. First, there should be an examination of the effectiveness of communications.<sup>22</sup> Ideally, this would be based on a major review of allegations received, communications sent, responses provided and achievements registered as a result. It would encompass all relevant mandates. Such a review would provide an informative picture of the responsiveness of Governments to the procedures they have set up through the medium of the Council. And it would assist in identifying the strengths and weaknesses of the system as a whole, thus enabling clearer identification of the reforms needed.

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<sup>21</sup> A/HRC/11/2, para. 7; A/HRC/8/3, para. 7; A/HRC/4/20, para. 9; E/CN.4/2006/53, para. 12; and E/CN.4/2005/7, para. 21.

<sup>22</sup> Government responsiveness is only one factor. Letters never responded to could still affect the behaviour of a Government or other actor. Other intangible impacts may also be difficult to measure.

12. The second step should be to move towards a better integrated system, which would bring together the efforts made by a myriad of individual mandate holders so that they would look more like a system. At present the procedures for determining when to send communications are uneven, there is no shared vision of the optimal approach, and there is no comprehensive strategic plan to develop the system. As a result, there is a strong sense that the wealth of information that is being generated by the relatively disparate procedures is not being effectively capitalized upon.

13. A third step is to update the techniques and technology being used to send, receive and manage communications. For example, it can no longer be appropriate to send the vast majority of communications to States by fax. Apart from the labour costs, the communications charges, the time lost, the reliance on a relatively primitive technology, and the difficulty of keeping track of such correspondence, faxing generally renders the content difficult to manage electronically and thus undermines all sorts of time- and cost-saving possibilities. While a full overhaul might require a broader reform of diplomatic communications strategies, there is no reason why significant changes could not be introduced immediately. Moreover, there is a need for a web-based database accessible to all mandate holders so that information can be shared in a far more efficient manner, priorities discussed, changes introduced more flexibly, and the overall situation can be monitored with ease at any given time. In addition, the publication of unwieldy printed volumes should be discontinued and an integrated, publicly available, searchable and constantly updated database should be put online. Data management and statistical analysis experts should be consulted to design a database which is more readily able to be integrated with other directly relevant databases within and outside the United Nations system.

14. Communications should be publicly available online within a fixed period, which could be set at three months after the deadline for a Governmental response. At present, communications remain confidential until published in the annual report, a procedure which might involve a delay of as little as two months or one closer to two years, depending entirely on the fortuitous timing of the report and the communication.

15. A fourth step involves revisiting the rules that require the submission of the original complaint by those affected or those claiming to have direct or reliable knowledge of the violation. This rule is often interpreted as being the flip side of the rule that complaints may not be based entirely on media reports or even reports from non-governmental organizations, unless they are specifically submitted to the Special Rapporteur. These rules were designed for another age, well before the communications revolution of the late twentieth century. Their entirely legitimate objective is to deter false reports and to emphasize that the credibility of sources must be a key consideration. But today's reality is that those affected might have no access to the United Nations, let alone to Special Procedures, those with reliable knowledge such as national or international NGOs might not bother sending a complaint to the United Nations when their information is rapidly made available online, and the "mass media" is no longer the limited group that it once was but is now a much more diffuse and heterogeneous concept.

16. A fifth step is to pay more attention to the ways in which the information generated by the various communications systems is used. In general, most of it remains very poorly integrated into the broader United Nations human rights system. Means could easily be devised to enhance its relevance to thematic or country specific debates, to the work of the treaty bodies, to efforts to integrate human rights information into mainstreaming activities and into the universal periodic review process.

17. A sixth and final step (these steps can be taken more or less simultaneously) is to respond when countries have consistently poor levels of cooperation or meaningful engagement with a Special Rapporteur's communications process. Those that fail to respond year after year should surely be asked why this is so by the Council. To do otherwise indicates that the communications procedure, despite its significant cost, is not being taken seriously as a means of responding to alleged violations.

18. During the six years that I have held this mandate, I have visited 14 countries. Since I last reported to the Council, three visits have taken place: Colombia from 8 to 18 June 2009 (A/HRC/14/24/Add.2), the Democratic Republic of the Congo from 5 to 15 October 2009 (A/HRC/14/24/Add.3), and Albania from 15 to 23 February 2010 (A/HRC/14/24/Add.9). Countries visited in prior years were: Nigeria (June-July 2005), Sri Lanka (November-December 2005), Guatemala (August 2006), Israel and Lebanon (September 2006, joint mission), the Philippines (February 2007), Brazil (November 2007), the Central African Republic (January-February 2008), the United States of America (June 2008), Afghanistan (May 2008) and Kenya (February 2009). These countries should be commended for their openness to international scrutiny.<sup>23</sup>

19. During country missions, my aims have been to understand and explain the dynamics of unlawful killings (both in terms of particular incidents, and patterns across the country) as well as their causes (legal, historical, institutional, a matter of political will etc.), and to propose constructive and specific reforms to reduce killings and eliminate impunity. These aims are linked – if the specifics and patterns of killings and their causes are not carefully understood, the Special Rapporteur cannot provide an accurate account of the human rights situation in a country, and cannot craft appropriately specific and tailored reforms.

20. Most country missions last 8 to 12 days. I am often asked how it is possible to write a meaningful report in such a time. The short answer is that it is not. My reports are based on months of pre-mission research and post-mission analysis. Informed reports and constructive recommendations require months of research into all available sources of published information, consultations with country experts before the mission, the preparation of detailed analyses of key issues, and a very large number of in-depth interviews with witnesses and officials. In many countries, detailed files are provided by witnesses or family members of victims on each specific incident, and NGOs often submit extensive reports. It is essential that Governments are given a full opportunity to

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<sup>23</sup> Some of these countries have also been visited multiple times by this mandate – including Afghanistan (twice), Albania (twice), Brazil (twice), Colombia (three times), the Democratic Republic of the Congo (twice), Sri Lanka (twice) and the United States (twice).

respond to allegations and to provide all relevant information. I have found it productive in this respect to prepare detailed lists of questions for officials, which can be provided before or during the mission as appropriate. After the mission, it can take some months to carefully analyse all of the information provided.

21. Country missions are thus clearly complex and resource-intensive in ways that the system does not adequately recognize. The support provided by OHCHR to the mandate is significant, and OHCHR staff make admirable efforts. But the Office has simply not been given the resources it needs to meet the many demands of the average mandate. It is not realistic to expect one or two staff members to assist adequately with the preparation in any year of hundreds of allegation letters, two or three country missions and annual reports, together with the many other administrative and liaison responsibilities they must fulfil. It is essential that Special Rapporteurs and OHCHR are provided the necessary resources and staff for these functions to be carried out at a high level.

22. In 2006 I began following up on country missions, two years after they had taken place, to assess the extent to which recommendations had been implemented. Two followup reports – on Brazil (A/HRC/14/24/Add.4) and the Central African Republic (A/HRC/14/24/Add.5) – are submitted as addenda to the present report.

23. During my term, I prepared follow-up reports on 10 countries. The formal picture that emerges from these reports is not encouraging.<sup>4</sup> While some countries had taken positive measures in response to my reports, many others had done little to implement the recommended reforms.

24. Civil society actors have been eager to provide information on follow-up reports, and have contributed substantially. However, less than half of the countries reviewed responded to my requests to provide information on their implementation of recommendations. Responses from some United Nations country presences have also been disappointing.

25. Given the disappointing results documented in the follow-up reports, it is clear that the Council should devise procedures to ensure that the recommendations are addressed by States. Otherwise, there is a risk that country visits will be treated by some Governments as a temporary inconvenience to be endured rather than as an occasion for serious stock-taking to enhance respect for human rights.

26. It should also be acknowledged, however, that the effectiveness of country missions should not be measured solely on the basis of formal responses to specific recommendations. The reality is that country missions have many important benefits, some of which are not easily quantifiable. In my own assessment, a number, but by no means all, of the country missions I undertook yielded important positive achievements in human rights terms.

#### D. Country visit requests

27. The ability of the mandate to be effective is significantly undermined by the extent to which States in which there would appear to be serious problems of extrajudicial executions can systematically ignore requests to visit, in some cases for over a decade. The information below indicates that almost 70 per cent of the 52 countries requested have either not responded at all to requests, or have failed to approve a visit. From the perspective of the individual State, the decision to respond to a mission request is a matter for its sovereign discretion. There may be a number of legitimate reasons why a visit would not be appropriate at a given time, and why different mandates might be accorded priority. But as the years pass, these reasons become less plausible. From the perspective of the Council, there comes a point when the mechanism it has established to monitor and report on extrajudicial executions is effectively disabled from doing its job properly in respect to the States concerned. This should be a matter of grave concern to the Council in view of its mandated responsibility in relation to “the prevention of human rights violations”.<sup>24</sup>

28. During my mandate, mission requests have been sent to 53 countries, in addition to a range of outstanding requests by my predecessor. Of these:

- 14 requests resulted in country missions
- 4 country missions have in principle been accepted to take place in 2010 and 2011 (Argentina, Ecuador, Mexico and Turkey)
- 35 States either did not respond at all or failed to approve a mission despite entering into correspondence<sup>6</sup>

29. As of March 2010, the following requests to visit remain outstanding: Bangladesh; Canada; Chad; China; Dominican Republic; Egypt; El Salvador; Ethiopia; Georgia; Guinea; India; Indonesia; Iran (Islamic Republic of); Israel; Kyrgyzstan; Lao People’s Democratic Republic; Mozambique; Myanmar; Nepal; Pakistan; Peru; Russian Federation; Saudi Arabia; South Africa; Thailand; Togo; Trinidad and Tobago; Turkmenistan; Uganda; United Republic of Tanzania; Uzbekistan; Venezuela (Bolivarian Republic of); Viet Nam; and Yemen.

[...]

60. I have placed particular emphasis on enhancing understanding of the scope of the mandate and of the working methods adopted. In addition to ensuring continuity with the work of my predecessors in relation to the types of violations dealt with and the mandate’s legal framework (see E/CN.4/2002/74, para. 8), I have:

- (a) Limited the overall number of communications sent in order to be able to devote more attention to detailed legal analysis within the communications;
- (b) Introduced a system of evaluating the adequacy or otherwise of responses received from Governments;<sup>25</sup>
- (c) Instituted follow-up reports on country missions;<sup>26</sup>
- (d) Provided detailed legal analysis to back up interpretations adopted by the mandate;

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<sup>24</sup> General Assembly resolution 60/251, para. 5(f).

<sup>25</sup> E/CN.4/2005/7, paras. 14-15, 22-23 and E/CN.4/2006/53, paras. 8-12.

<sup>26</sup> E/CN.4/2005/7, paras. 29-31 and E/CN.4/2006/53, para. 19.

- (e) Sought to raise the Council's awareness of the consequences of persistent non-responses to requests to undertake country visits (E/CN.4/2006/53, paras. 13-16);
- (f) Elaborated upon the terms of reference of the mandate and the types of killings it covers (E/CN.4/2005/7, para. 6).

## **B. FACTORS HINDERING THE EFFECTIVENESS OF THE MANDATE**

*Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/62/265, 16 August 2007, ¶¶ 55-59):*

55. One of the ironies of the intense discussions about reform generated by the dissolution of the Commission on Human Rights and the creation of the Human Rights Council is the extent to which many of the most active Governments have been critical of the alleged excesses of the special procedures mandate holders, while the glaring inadequacies of the existing system remain largely ignored.

56. The present report has already hinted at some of these inadequacies and this final section will examine the deep problems that exist in terms of the responsiveness of the Council, and by extension the General Assembly, to the work of the special procedures.

57. In relation to visits, the fact that 90 per cent of countries identified as warranting a country visit have failed to cooperate with the system and that the Council has done nothing in response is a major indictment of the system. It discourages cooperation by other States, rewards uncooperative States, and establishes a system of impunity in relation to the most serious concerns relating to extrajudicial executions. The 27 States that have so far failed to issue requested invitations range from Security Council members such as China, the Russian Federation and the United States to States such as El Salvador, Kenya, Thailand, Israel, Uzbekistan and the Bolivarian Republic of Venezuela.

58. In relation to communications, the Council — and before it the Commission — systematically ignores any of the issues raised in the voluminous correspondence between Governments and the Special Rapporteur. No matter how grave the issue and how blatant or compromised the conduct of the relevant Government, the Council remains entirely unmoved. The Special Rapporteur has long sought to draw attention to the violations of the right to life committed by the Government of the Islamic Republic of Iran as a result of its executions of juveniles and of persons accused of crimes which cannot be considered to be among the most serious. Such executions have recently gathered pace and the silence of the international community can only bring discredit.

59. In relation to the recommendations emerging from country visits, it is extremely rare for the Council or the General Assembly to take up any of the more serious and continuing violations that are identified. In presenting his report to the General Assembly in 2006 the Special Rapporteur warned that Sri Lanka was “on the brink of a crisis of major proportions”. Since that time the situation has indeed erupted into crisis and neither the Council nor the Assembly have seen fit to take any action to address the spate of extrajudicial executions being reported out of that country.

*Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/8/3, 2 May 2008, ¶¶ 9-11):*

Missions Requests Outstanding

9. As at March 2008, I had made requests to visit 32 countries and the Occupied Palestinian Territories. Only eight of those - Afghanistan, the Central African Republic, Guatemala, Israel, Lebanon, Peru, the Philippines and the United States of America - have actually proceeded with plans for a visit. The visit to Afghanistan is scheduled for May 2008 and the visit to the United States for June 2008. The visit to Peru was cancelled, and the Palestinian Authority issued an invitation.

10. The responses of the remaining 24 countries have ranged from complete silence through formal acknowledgement to acceptance in principle but without meaningful follow-up. In some cases, the relevant requests were first made some seven years ago.

11. States which have so far failed to respond affirmatively to requests for a visit are Algeria, Bangladesh, El Salvador, Guinea, India, Indonesia, the Islamic Republic of Iran, Israel, Kenya, the Lao People's Democratic Republic, Nepal, Pakistan, Peru, Saudi Arabia, Singapore, Thailand, Trinidad and Tobago, Togo, Uganda, the United States of America, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam and Yemen.

***Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/4/20, 29 January 2007, ¶¶ 11-14):***

Outstanding requests for visits

11. As of December 2006 I had made requests to visit 29 countries and the Occupied Palestinian Territories. Of those 29, only 5 countries - Guatemala, Israel, Lebanon, Peru and the Philippines - have actually proceeded with plans for a visit. The visit to the Philippines is scheduled for February 2007, the visit to Peru was postponed for technical reasons, and the Palestinian Authority has issued an invitation. Singapore has requested further information.

12. The responses of the remaining 23 countries have ranged from complete silence, through formal acknowledgement, to acceptance in principle but without meaningful follow-up. Particularly troubling is the fact that seven Council members have failed to issue requested invitations: Bangladesh, China, India, Indonesia, Pakistan, the Russian Federation and Saudi Arabia. In some cases the relevant requests were first made some six years ago. It is noteworthy that the General Assembly responded to this situation in December 2006 by urging "all States, in particular those that have not done so, to cooperate with the Special Rapporteur so that his mandate can be carried out effectively, including by favourably and rapidly responding to requests for visits, mindful that country visits are one of the tools for the fulfilment of the mandate ...".<sup>27</sup>

13. The remaining States that have so far failed to respond affirmatively to requests for a visit are: Brazil, Central African Republic, El Salvador, Iran (Islamic Republic of), Israel, Kenya, Lao People's Democratic Republic, Nepal, Peru, Singapore, Trinidad and

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<sup>27</sup> General Assembly Res. 61/173 (2006), para. 13.

Tobago, Thailand, Togo, Uganda, United States of America, Uzbekistan, Venezuela, Viet Nam and Yemen.

14. For a comprehensive list of the status of all outstanding requests, see annex 1.

***Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/61/311, 5 September 2006, ¶¶ 3-6):***

3. The system of on-site country visits is an indispensable component of the special procedures operating under the auspices of the Human Rights Council. Those procedures are, in turn, crucial to the credibility of the Council and of the United Nations as a whole in demonstrating a capacity to respond effectively, systematically and even-handedly to violations of human rights. It is, however, a system which is close to crisis, at least in so far as visits to investigate issues of extrajudicial executions<sup>2</sup> are concerned.

Visits requested: a system close to crisis

4. As of August 2006 I had requested visits to 22 countries and the Occupied Palestinian Territories. Of those 22, only three countries — Guatemala, Lebanon and Peru — have actually proceeded with plans for a visit. The visit to Guatemala is scheduled for August 2006, the visit to Lebanon was postponed for security reasons and the visit to Peru was postponed for technical reasons. The Palestinian Authority has issued an invitation.

5. The responses of the remaining 19 countries have ranged from complete silence, through formal acknowledgement, to acceptance in principle but without meaningful follow-up.<sup>3</sup> In light of the undertakings offered in connection with the recent elections to the Human Rights Council it is especially noteworthy that eight Council members have failed to issue requested invitations: Bangladesh, China, India, Indonesia, Pakistan, the Philippines, the Russian Federation, and Saudi Arabia. In some cases the relevant requests were first made some six years ago. Another State has issued a “standing invitation” to the special procedures — the Islamic Republic of Iran — but has repeatedly failed to respond to requests that dates for a visit be set, despite several meetings and an extensive correspondence. The remaining States with outstanding requests are: El Salvador, Israel, Kenya, the Lao People’s Democratic Republic, Nepal, Thailand, Togo, Uganda, Uzbekistan and Viet Nam. It is recommended below that the General Assembly take steps to address this deeply problematic situation.

6. The crisis in Lebanon, Israel and the Occupied Palestinian Territories has also been a major concern. A visit to the Gaza Strip and Israel was requested on 16 June 2006. The Palestinian Authority agreed on 3 July 2006, but Israel has not replied. On 19 July 2006 a further request was addressed to Lebanon and Israel. The Government of Lebanon issued an invitation on 28 July 2006 but no response has been received from Israel. On 2 August 2006, and after consultation with the President of the Human Rights Council I and three other mandate holders made a joint request to which Lebanon responded affirmatively on 3 August 2006; Israel did not respond. A joint mission to Beirut starting on 7 August was subsequently postponed due to the deterioration of the security situation in the region. In view of the scale of civilian deaths involved and the extent to which relevant rules of

human rights and humanitarian law have been invoked, a thorough and systematic evaluation of allegations concerning extrajudicial executions will be indispensable.

***Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2006/53, 8 March 2006, ¶¶ 13-16):***

The need to ensure a response to requests for visits: a challenge for the Council

13. Much of the focus in the recent discussions surrounding the creation of the Human Rights Council has been upon the obligation of all States, and especially those seeking election to the Commission or the Council, to cooperate with the special procedures. The importance of this obligation has long been a constant refrain of the Commission in its various resolutions<sup>28</sup> and some of the Governments which have refused to cooperate have drawn considerable criticism as a result. The most important aspect of this obligation concerns the provision of positive responses to a request for a visit by a Special Rapporteur or other mandate-holder.

14. It was in recognition of the importance of this component of fulfilling the Charter of the United Nations-based obligation to cooperate in promoting universal respect for human rights (Arts. 55 and 56), that the Commission established the practice of “standing invitations”, whereby an open invitation is extended by a Government to all thematic special procedures. In addition to the 53 Governments that have registered a commitment of this type, many others have systematically responded affirmatively to specific requests.

15. Nonetheless, the almost universally acknowledged loss of credibility by the Commission on Human Rights in recent years had much to do with its failure to take up cases in which particular Governments failed to invite or permit appropriate access to special procedures. Thus one of the major challenges confronting the Council will be to devise a procedure for recording the number of requests addressed to each Government, noting cases involving outright refusals or the use of delaying tactics, and taking appropriate action once a certain threshold of seriousness is reached in each instance. Any such procedure is unlikely to work if it remains ad hoc and dependent upon one or more Governments taking the initiative. Instead, the Council should mandate a procedure whereby specific cases of persistent or especially problematic non-cooperation are automatically flagged and taken up by the Council.

16. It is clear that not every Government is obligated to immediately accept every request for a visit. There might, for example, be cases in which too many requests have been made or where the proposed timing is genuinely problematic. But in general, if the Council is to build a credible system of special procedures, it has to operate on a general

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<sup>28</sup> See, e.g., Commission on Human Rights resolution 2005/34, paragraph 14: “*Strongly urges* all States to cooperate with and assist the Special Rapporteur so that his mandate may be carried out effectively, including, where appropriate, by issuing invitations to the Special Rapporteur when he so requests, in keeping with the usual terms of reference for missions by special rapporteurs of the Commission ....”

assumption that visits will be facilitated and that it will take appropriate action in cases of clear non-cooperation.

## C. THE MANDATE OF THE SPECIAL RAPPORTEUR IN ARMED CONFLICTS

*Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/4/20, 29 January 2007, ¶¶ 18-28):*

18. An earlier report examined the law applicable to violations of the right to life in armed conflict and the role of the Special Rapporteur in response thereto.<sup>29</sup> This view has, however, been consistently rejected by one State. These objections, by the United States of America, have been raised in a wide range of contexts, thus underscoring the importance of carefully examining their validity. In essence, the United States position consists of four propositions: (a) the “war on terror” constitutes an armed conflict to which international humanitarian law applies; (b) international humanitarian law operates to the exclusion of human rights law; (c) international humanitarian law falls outside the mandate of the Special Rapporteur and of the Council; and (d) States may determine for themselves whether an individual incident is governed by humanitarian law or human rights law.<sup>30</sup> If accepted, these propositions would have far-reaching consequences for the Council and for its ability to contribute in any way to many of the situations that are currently most prominent on its agenda.

### The alleged exclusivity of the two bodies of law

19. Contrary to this proposition, it is widely agreed that the two bodies of law, far from being mutually exclusive, are complementary. The International Court of Justice has observed that the test of what is an arbitrary deprivation of life in the context of hostilities “falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities”.<sup>31</sup> But it went on to clarify that “the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation ...”.<sup>32</sup> In *Congo v. Uganda*, for example, it found separate violations of international humanitarian law and human rights law, thus conclusively underscoring the fact that the former does not wholly replace the latter during an armed conflict.<sup>33</sup> This is consistent with the conclusion of the Human Rights Committee that while “more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of [certain] Covenant rights, both spheres of law are complementary, not mutually exclusive”.<sup>34</sup> Similarly, the Commission and the General Assembly have regularly reaffirmed “that international

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<sup>29</sup> E/CN.4/2005/7, paras. 41-54.

<sup>30</sup> See, e.g., Communication of 4 May 2006 from the United States.

<sup>31</sup> *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996*, para. 25.

<sup>32</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004, para. 106; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), I.C.J. Reports 2005*, para. 216.

<sup>33</sup> *Id.*, at paras. 216-20, 345(3).

<sup>34</sup> Human Rights Committee, General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant (art. 2), CCPR/C/21/Rev.1/Add.13 (2004), para. 11.

human rights law and international humanitarian law are complementary and not mutually exclusive”.<sup>35</sup>

#### Humanitarian law in the Commission’s mandate

20. The Commission on Human Rights, with the consistent endorsement of the Economic and Social Council, regularly treated international humanitarian law as falling within its terms of reference. Examples of this practice abound,<sup>36</sup> and it suffices to cite three examples. First, in relation to the former Yugoslavia, the Commission, in 1992, “call[ed] upon all parties ... to ensure full respect for ... humanitarian law”<sup>37</sup> and “[r]emind[ed] all parties that they are bound to comply with their obligations under international humanitarian law ...”.<sup>38</sup> This resolution was subsequently endorsed by the Economic and Social Council.<sup>39</sup>

21. Two years later, in relation to the same situation, the Commission “[c]ondemn[ed] categorically all violations of human rights and international humanitarian law by all sides”.<sup>40</sup> It then applied international humanitarian law to the situation and “denounce[d] continued deliberate and unlawful attacks and uses of military force against civilians and other protected persons ... non-combatants, ... [and] ... relief operations”.<sup>41</sup>

22. Third, in relation to Rwanda, the Commission “[c]ondemn[ed] in the strongest terms all breaches of international humanitarian law ... and call[ed] upon all the parties involved to cease immediately these breaches”.<sup>42</sup> It also “[c]all[ed] upon the Government of Rwanda to ... take measures to put an end to all violations of ... international humanitarian law by all persons within its jurisdiction or under its control”.<sup>43</sup>

23. As these examples make clear, both the Commission and the Council clearly and repeatedly accepted that international humanitarian law formed part of the Commission’s terms of reference. In replacing the Commission by the Council, the General Assembly in no way undertook to narrow its competence in this respect.<sup>44</sup>

#### The Special Rapporteur’s mandate

24. The Special Rapporteur’s mandate is “to examine ... questions related to summary or arbitrary executions”. No reference is made to a limiting legal framework which would

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<sup>35</sup> CHR Res. 2005/34 and GA Res. 61/173.

<sup>36</sup> A lengthier list of examples is provided in the communication sent to the United States on 30 November 2006. See also Daniel O’Donnell, *Trends in the Application of International Humanitarian Law by United Nations Human Rights Mechanisms*, 324 *Int.l Rev. Red Cross* 481 (1998).

<sup>37</sup> CHR Res. 1992/S-1/1, para. 1.

<sup>38</sup> *Id.* at para. 9.

<sup>39</sup> ECOSOC Decision 1992/305.

<sup>40</sup> CHR Res. 1994/72, para. 4.

<sup>41</sup> *Id.* at para. 7. Taking note of this resolution, the ECOSOC “approved ... [t]he Commission’s ... request that the Special Rapporteur ... continue to submit periodic reports ... on the implementation of Commission resolution 1994/72”, ECOSOC Res. 1994/262.

<sup>42</sup> CHR Res. S-3/1, para. 1.

<sup>43</sup> *Id.* This resolution was explicitly endorsed by ECOSOC Decision 1994/223.

<sup>44</sup> GA Res. 60/251 (2006).

exclude certain such executions.<sup>45</sup> Instead, the mandate has been defined in terms of the phenomenon of executions, in whatever context they might occur. In contrast, the United States position is that “while the Special Rapporteur may have reported on cases outside of his mandate, this does not give [him] the competence to address such issues”. It is certainly correct that the Special Rapporteur’s practice does not, on its own, establish competence. But when based on the terms of the relevant resolutions, and reinforced by the actions and votes of Governments in the Commission, the Economic and Social Council and the General Assembly, the Special Rapporteur is clearly not acting unilaterally. Of the many possible illustrations of this process,<sup>46</sup> the following are indicative.

25. First, in 1983, in the very first report under the mandate, my distinguished predecessor, Mr. Amos Wako, included a substantive section on “Killings in war, armed conflict and states of emergency” under the heading of international legal standards.<sup>47</sup> In that section, he noted that “[t]he Geneva Conventions of 12 August 1949 are also relevant ... Each of the Geneva Conventions clearly prohibits murder and other acts of violence against protected persons. They explicitly provide that ‘wilful killings’ are to be considered ‘grave breaches’ of the Geneva Conventions, that is, war crimes subject to universality of jurisdiction.”<sup>48</sup> His report was endorsed by the Commission.<sup>49</sup>

26. Second, in January 1992 Mr. Wako annexed to his annual report a “List of Instruments and other Standards which Constitute the Legal Framework of the Mandate of the Special Rapporteur”.<sup>50</sup> The Geneva Conventions appear as item 3 in a 14-point list. This report was also endorsed by the Commission which explicitly “welcome[d] his recommendations ...”,<sup>51</sup> some of which had focused explicitly on extrajudicial executions during armed conflict.<sup>52</sup>

### Determining compliance

27. The position put forward by the United States would give every State the power unilaterally, and without external scrutiny, to determine whether or not a specific incident is covered by the mandate of the Special Rapporteur. The implication is that the Special Rapporteur should automatically accept a State’s own determination that a particular individual was an “enemy combatant” attacked in “appropriate circumstances”. On this basis, a Government can target and kill any individual who it deems to be an enemy combatant, and it would not be accountable in that regard to the international community, let alone to the Council.

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<sup>45</sup> CHR Res. 1982/29, para. 2; ECOSOC Res. 1982/35, para. 2.

<sup>46</sup> See communication sent to the United States on 30 Nov. 2006.

<sup>47</sup> E/CN.4/1983/16, paras. 29-39.

<sup>48</sup> *Id.* at paras. 33-34.

<sup>49</sup> CHR Res. 1983/36, para. 3.

<sup>50</sup> E/CN.4/1992/30, p. 176.

<sup>51</sup> CHR Res. 1992/72, para. 3.

<sup>52</sup> E/CN.4/1992/30, para. 649(f) and para. 651(b).

28. In effect, this position would place all actions taken in the so-called “global war on terror” in a public accountability void, in which no international monitoring body would exercise public oversight.<sup>53</sup> Creating such a vacuum would set back the development of the international human rights regime by several decades. In order to avoid such an unacceptable outcome, the Special Rapporteur would need to receive a detailed explanation of such incidents, so that he may determine independently whether they fall within the scope of the mandate provided by the Council.

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<sup>53</sup> The International Committee on the Red Cross (ICRC), although exercising valuable humanitarian oversight in such matters, does not act in a manner which satisfies the need for public accountability.

## **D. SCOPE OF MANDATE**

### ***Report on Mission to the United States (A/HRC/11/2/Add.5, 28 May 2009, ¶¶ 3):***

*The Special Rapporteur visited the United States from 16 -30 June 2008 and clarified in his report the scope of his mandate.*

3. Although the title of my mandate may seem complex, it should be simply understood as including any killing that violates international human rights or humanitarian law. This may include unlawful killings by the police, deaths in military or civilian custody, killings of civilians in armed conflict in violation of humanitarian law, and patterns of killings by private individuals which are not adequately investigated and prosecuted by the authorities. My mandate is not abolitionist, but the death penalty falls within it with regard to due process guarantees, the death penalty's limitation to the most serious crimes and its prohibition for juvenile offenders and the mentally ill.

### ***Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/11/2, 27 May 2009, ¶¶ 3):***

3. An overview of the mandate, a list of the specific types of violations of the right to life upon which action is taken, and a description of the legal framework and methods of work used in implementing this mandate can be found in the first report of the current mandate holder (E/CN.4/2005/7, paras. 5-12).

### ***Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2006/53, 8 March 2006, ¶¶ 6):***

6. An overview of the Special Rapporteur's terms of reference, a list of the specific types of violations of the right to life upon which the Special Rapporteur takes action, and a description of the legal framework and methods of work used in implementing this mandate can be found in his report E/CN.4/2005/7, paragraphs 5-12.

### ***Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2005/7, 22 December 2004, ¶¶ 5-12):***

#### Terms of Reference

5. The principal activities foreseen under the Special Rapporteur's mandate are to collect information from all concerned, to respond effectively to reliable information, to undertake country visits, to follow up on communications and country visits, to seek the views and comments of Governments, and to reflect each of those factors in his overall report.

6. The terms of reference of this mandate are not best understood through efforts to define individually the terms "extrajudicial", "summary" or "arbitrary", or to seek to categorize any given incident accordingly. These terms had important roles to play in the

historical evolution of the mandate but today they tell us relatively little about the real nature of the issues. The broad coverage of the mandate as it now exists reflects the very real needs perceived over time by the Commission to be able to respond to a range of contexts in which killings have taken place in circumstances which contravene international law and which the Commission has determined require a response. Thus, the most productive focus is on the mandate itself, as it has evolved over the years through the various resolutions of the General Assembly and the Commission.

7. On the basis of the agreed legal framework of the mandate, as reflected in the relevant resolutions of the Commission on Human Rights and the General Assembly, the Special Rapporteur's terms of reference include the following:

(a) To examine situations of extrajudicial, summary or arbitrary executions and to submit findings, together with conclusions and recommendations, to the Commission;

(b) To respond effectively to information, including situations when an extrajudicial, summary or arbitrary execution is imminent or seriously threatened, or has occurred;

(c) To engage in a constructive dialogue with Governments, and to follow up on recommendations made after country visits;

(d) To pay special attention to extrajudicial, summary or arbitrary executions of women and to ensure that a gender perspective is reflected in the work under the mandate;

(e) To pay special attention to extrajudicial, summary or arbitrary executions of children, and of persons belonging to minorities;

(f) To pay special attention to extrajudicial, summary or arbitrary executions where the victims are individuals carrying out peaceful activities in defence of human rights, including those participating in demonstrations and other peaceful public manifestations;

(g) To monitor the implementation of international standards, including safeguards and restrictions, relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto.

#### Violations of the right to life upon which the Special Rapporteur takes action

8. The Special Rapporteur follows the guidelines developed by his predecessors, which were restated most recently in the report to the Commission in 2002 (E/CN.4/2002/74, para. 8).

#### Legal framework and methods of work

9. In addition to, and in conformity with, the relevant resolutions of the Commission and of the General Assembly, the work of the Special Rapporteur reflects the provisions of

the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (especially articles 6, 14 and 15), and the Convention on the Rights of the Child (especially article 37), as well as other treaties, resolutions, conventions and declarations adopted by United Nations bodies relating to violations of the right to life.

10. The legal framework includes principles and guidelines specified in:

(a) The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions;

(b) The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

(c) The Rome Statute of the International Criminal Court;

(d) The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

11. The Special Rapporteur's principal methods of work are: (i) sending "urgent appeals" requesting action by Governments in response to emergency cases; (ii) responding to individual complaints by communicating the details to Governments, with a summary of the facts and a request for clarification (methods (i) and (ii) are pursued only where sufficient information is available and has been provided by a well-known or credible source); (iii) issuing press statements where appropriate to the circumstances; (iv) undertaking country visits designed to ascertain the facts on a first-hand basis, to situate issues within a broader perspective, and to work in a spirit of cooperation with Governments; and (v) undertaking general promotional activities to advance the objectives identified by the Commission on Human Rights and the General Assembly.

12. The Special Rapporteur has been greatly assisted in the conduct of his work by the staff of the Office of the High Commissioner for Human Rights whose expertise and professionalism are greatly appreciated.

## E. COUNTRY FOLLOW-UP REPORTS

### *Follow-Up Report to Country Recommendations – Guatemala (A/HRC/11/2/Add.7, 4 May 2009, ¶¶ 1-5):*

1. This report analyses the progress made by Guatemala in implementing recommendations made by the Special Rapporteur on extrajudicial, summary or arbitrary executions following his visit to Guatemala from 21-25 August 2006 (A/HRC/4/20/Add.2).

2. In accordance with past practice,<sup>54</sup> the follow-up report was compiled based on information provided by the Government, as well as through consultation with domestic and international civil society, and by reference to publicly available reports and materials.<sup>55</sup> The Special Rapporteur requested from the Government and from civil society actors information on what steps had been taken to implement the recommendations of the Special Rapporteur. Information on the non-implementation of recommendations was also sought. In addition, information was sought on the current state of the phenomenon of extrajudicial executions in the country, and particularly on whether and how the situation had improved, deteriorated or remained static since the Special Rapporteur's visit.

3. This follow-up report and the follow-up report on the Philippines (A/HRC/11/2/Add.8) constitute an important component to one of the principal working methods of the Special Rapporteur - conducting country visits to investigate allegations of violations of the right to life. Country visits provide an opportunity for the Special Rapporteur to ascertain the facts on a first-hand basis, to analyse in detail the forms and causes of unlawful killings, and to engage in constructive dialogue with the country concerned. Following the visit, the Special Rapporteur prepares a detailed report on his findings, including recommendations directed at reducing unlawful killings and promoting accountability. Country visits can only achieve their full potential if Governments give real consideration to these recommendations. Accordingly, the Commission on Human Rights requested States to carefully examine recommendations and to report to the Special Rapporteur on actions taken on the recommendations (res. 2004/37).

4. In order to assess the extent to which States had implemented recommendations, in 2006, the Special Rapporteur initiated follow-up reports on visits conducted. The first

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<sup>54</sup> E/CN.4/2005/7, para. 30; E/CN.4/2006/53/Add.2, para. 4; A/HRC/8/3/Add.3, para. 5.

<sup>55</sup> Some of the information received by the Special Rapporteur with regard to Guatemala was provided on a confidential basis, but much of it is reflected in various public reports including: *International Commission against Impunity in Guatemala - CICIG - "One Year Later"* (September 2008); Washington Office on Latin America, *The Captive State: Organized Crime and Human Rights in Latin America* (October 2007); Washington Office on Latin America, *Activistas Contra La Impunidad: Un estudio de caso sobre la motivación por los derechos humanos en Guatemala* (December 2008); Procurador de los Derechos Humanos, *Informe Anual Circunstanciado: Resumen ejecutivo del Informe Anual Circunstanciado al Congreso de la República de las actividades y de la situación de los derechos humanos en Guatemala durante el año 2008* (January 2009); Report of the Working Group on the Universal Periodic Review, Guatemala, A/HRC/8/38 (29 May 2008).

follow-up report (E/CN.4/2006/53/Add.2) concerned the recommendations made by his predecessor, Ms. Asma Jahangir, on her visits to Brazil, Honduras, Jamaica, and Sudan. In 2008, a follow-up report (A/HRC/8/3/Add.3) was issued on the first two missions conducted by Special Rapporteur Philip Alston - Sri Lanka and Nigeria.

5. The Special Rapporteur is grateful to officials of the Office of the High Commissioner for Human Rights, and to Sarah Knuckey, Joanna Edwards, and Wade McMullen from New York University School of Law, for their assistance in the preparation of these reports.

### Introduction

6. The Special Rapporteur visited Guatemala from 21-25 August 2006 and published his final report on 19 February 2007. In his report, the Special Rapporteur examined the severe security crisis in Guatemala, a country with one of the highest murder rates in the world, and where the perpetrators of grave crimes rarely face justice. He noted that Guatemala bears responsibility for this crisis, both *directly* - through killings by State actors - and *indirectly* - through the State's failure to protect its citizens and prosecute perpetrators.

7. The report emphasized that Guatemala stood at a crossroads: it could either establish a working system of criminal justice based on human rights and the rule of law, or it could fall back on the *mano dura* (hard-handed) tactics of the past by broadening police discretion and reducing civil liberties in pursuit of "security". The Special Rapporteur attributed the existence of the crisis to a lack of political will within the State, which had failed to enact important legislation required by the Peace Accords and to allocate sufficient funds to enable its criminal justice system to function properly.<sup>56</sup> He recommended that Guatemala undertake stronger efforts to end impunity, including by: reforming and expanding the criminal justice system to effectively investigate and prosecute murders; adopting the legislation required to implement the International Commission Against Impunity in Guatemala and the package of security related legislation necessary to realize the Peace Accords; establishing a witness protection programme; and increasing the funds allocated to the institutions of the criminal justice system.

8. This follow-up report documents the continued deterioration of the security situation in Guatemala since the Special Rapporteur's 2006 mission. The types and quantities of killings have increased. Social cleansing, the murder of women, lynchings, attacks on human rights defenders, and prison violence continue to be significant problems. The

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<sup>56</sup> The Peace Accords, which were signed in 1996, provided a comprehensive plan for transforming Guatemala from a country that relied on brutal counter-insurgency tactics to one that maintained order while fully respecting the civil, political, economic, social and cultural rights of all of its citizens. The Accords consisted of a series of agreements dealing with human rights, the establishment of a truth commission, the rights of indigenous peoples, the agrarian situation, the role of the armed forces, the terms of a ceasefire, the constitutional and electoral regime, the integration of guerrilla forces, and mechanisms for verifying compliance with the agreements.

year 2008 also saw the rise of a new category of violence: attacks on conductors of public transit.

9. Guatemala has inadequately responded to these unlawful killings, and the country continues to suffer from a high rate of impunity. The main causes for this continue to be deficiencies in the police, prosecutorial, and justice systems, and the refusal of witnesses to testify due to the danger of reprisals. Guatemala has not succeeded in addressing any of these factors. As a result, approximately 98 per cent of crimes continue to go unpunished.

10. However, and despite this sobering picture, various steps taken over the last year by President Alvaro Colom suggest that there are reasons to be optimistic that Guatemala has begun moving towards reform. Colom's administration, which took power in January 2008, has made efforts to vet the police force and the Office of the Public Prosecutor, and remove those found not to be acting in the public interest. Some steps have been taken to address the problems of witness protection and national security. Importantly, Guatemala established the International Commission Against Impunity in Guatemala (CICIG), which is tasked with investigating and prosecuting clandestine security groups. CICIG has already begun investigations in several cases, and has been working with the Government to reform the justice system.

***Follow-Up Report to Country Recommendations – The Philippines (A/HRC/11/2/Add.8, 29 April 2009, ¶¶ 1-11):***

Methodology

1. This report analyses the progress made by the Philippines in implementing recommendations made by the Special Rapporteur on extrajudicial, summary or arbitrary executions following his visit to the Philippines from 12-21 February 2007 (A/HRC/8/3/Add.2).

2. In accordance with past practice,<sup>57</sup> the follow-up report was compiled based on information provided by the Government concerned, as well as through consultation with domestic and international civil society, and by reference to publicly available reports and materials.<sup>58</sup> The Special Rapporteur requested from the Government and from civil society actors information on what steps had been taken to implement the

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<sup>57</sup> E/CN.4/2005/7, para. 30; E/CN.4/2006/53/Add.2, para.4; A/HRC/8/3/Add.3, para 5.

<sup>58</sup> Some of the information received by the Special Rapporteur was provided in private correspondence; however, he also consulted a number of public reports, including: Amnesty International, *Philippines: Witnessing Justice - Breaking the Chain of Impunity*, (29 August 2008); Asian Human Rights Commission, *The State of Human Rights in the Philippines - 2008*, (10 December 2008); Human Rights Now, *Report on Extrajudicial Killings and Enforced Disappearances in the Philippines - Fact Finding Mission of Human Rights Now to Philippines* (April 2008); Human Rights Watch, *World Report: 2009* (14 January 2009); Human Rights Watch, *Scared Silent: Impunity for Extrajudicial Killings in the Philippines* (27 June 2007); Human Rights Watch, *You Can Die at Any Time: Death Squad Killings in Mindanao*, (April 2009); Lawyers for Lawyers Foundation, *Initial Findings of the International Verification and Fact Finding Mission 2008*, (12 November 2008).

recommendations of the Special Rapporteur. Information on the non-implementation of recommendations was also sought. In addition, information was sought on the current state of the phenomenon of extrajudicial executions in the country, and particularly on whether and how the situation had improved, deteriorated or remained static since the Special Rapporteur's visit.

3. This follow-up report and the follow-up report on Guatemala (A/HRC/11/2/Add.7) constitute an important component to one of the principal working methods of the Special Rapporteur - conducting country visits to investigate allegations of violations of the right to life. Country visits provide an opportunity for the Special Rapporteur to ascertain the facts on a first-hand basis, to analyse in detail the forms and causes of unlawful killings, and to engage in constructive dialogue with the country concerned. Following the visit, the Special Rapporteur prepares a detailed report on his findings, including recommendations directed at reducing unlawful killings and promoting accountability. Country visits can only achieve their full potential if Governments give real consideration to these recommendations. Accordingly, the Commission on Human Rights requested States to carefully examine recommendations and to report to the Special Rapporteur on actions taken on the recommendations (res. 2004/37).

4. In order to assess the extent to which States had implemented recommendations, in 2006, the Special Rapporteur initiated follow-up reports on visits conducted. The first follow-up report (E/CN.4/2006/53/Add.2) concerned the recommendations made by his predecessor, Ms. Asma Jahangir, on her visits to Brazil, Honduras, Jamaica, and Sudan. In 2008, a follow-up report (A/HRC/8/3/Add.3) was issued on the first two missions conducted by Special Rapporteur Philip Alston to Sri Lanka and Nigeria.

5. The Special Rapporteur is grateful to officials of the Office of the High Commissioner for Human Rights, and to Sarah Knuckey, Joanna Edwards, and Wade McMullen from New York University School of Law, for their assistance in the preparation of these reports.

### Introduction

6. The Special Rapporteur visited the Philippines from 12 to 21 February 2007, and published his findings and recommendations on 16 April 2008. After conducting extensive interviews in Manila, Baguio, and Davao, he reported that extrajudicial executions were widespread, and included government sanctioned killings of members of civil society groups, and vigilante killings of suspected criminals by a death squad in Davao. He also reported on killings of those found guilty by the "people's courts" of the New People's Army (NPA), an armed group controlled by the Communist Party of the Philippines (CPP), which also controls the National Democratic Front (NDF) civil society organization.

7. The Special Rapporteur's recommendations identified specific measures required to improve the situation in the Philippines with respect to these problems. Many of the findings and recommendations were challenged by the Government of the Philippines.

Nevertheless, the number of killings of leftist activists decreased dramatically shortly after the Special Rapporteur's visit. The highest documented numbers of executions of leftist activists were 94 in 2007 and 64 in 2008, compared with 220 in 2006. While current levels are significantly lower than before, they still remain a cause for great alarm, and reflect the failure to make the recommended structural reforms.

8. Davao City continues to be a hotbed of extrajudicial killings, and the vigilante-style death squad killings in Davao have significantly worsened since 2007. Both federal and local government continue to vehemently deny the existence of the death squad, despite reliable reports of up to 28 such killings within the first month of 2009 alone.

9. While an important informal message was clearly sent to the military, most of the Government's formal actions in response to the Special Rapporteur's recommendations have been symbolic, and lack the substantive and preventive dimensions necessary to end the culture of impunity.

10. Since 2007, the Government has successfully prosecuted just one perpetrator of an extrajudicial execution. And not a single member of the armed forces has been convicted for killing leftist activists. In its own defence the Government says it needs to take its time and not "force quick convictions simply for the sake of announcing achievements". However, the Government simultaneously notes its ability to progress quickly and effectively on other prosecutions, citing cases involving the killings of journalists.

11. The lack of prosecutions and convictions can be attributed to many factors. Information received by the Special Rapporteur for the purposes of this follow-up report indicates that Congressional measures to strengthen the witness protection programme have stalled, Presidential orders have lacked substance, the Commission for Human Rights (CHRP) has only recently begun to play a more substantial role (under new leadership), and crucial reforms of relevant government agencies have yet to take place. Additionally, neither the Armed Forces of the Philippines (AFP) nor the Philippine National Police (PNP) have significantly stepped up their investigations of the killings of leftist activists. Impunity for past killings, combined with a green light for future killings, will prevail unless there is a sharp change in course in efforts to implement the Special Rapporteur's recommendations.

***Follow-Up Report to Country Recommendations – Sri Lanka and Nigeria (A/HRC/8/3/Add.3, 14 May 2008, ¶¶ 1-14, 68-70):***

1. This report tracks the implementation of recommendations made by the Special Rapporteur on extrajudicial, summary or arbitrary executions following visits to Sri Lanka (28 November to 6 December 2005) (E/CN.4/2006/53/Add.5) and Nigeria (27 June to 8 July 2006) (E/CN.4/2006/53/Add.4).

2. The primary role of the Special Rapporteur is to examine and respond effectively to credible allegations of extrajudicial executions. One of the principal working methods undertaken to fulfill this purpose is to conduct country visits to investigate allegations of violations of the right to life. Country visits are designed to ascertain the facts on a first

hand basis, to analyse the forms and causes of extrajudicial executions in a particular country, and to engage in constructive dialogue with the Government. They are followed by a detailed report and recommendations to the Government on how it can reduce the occurrence of extrajudicial executions, and promote accountability when they do occur.

3. Country visits can only achieve their full potential if Governments give serious consideration to the recommendations made. In recognition of this fact, the Commission on Human Rights requested States to carefully examine recommendations and to report to the Special Rapporteur on the actions taken on the recommendations (resolution 2004/37). At the seminar on “Enhancing and Strengthening the Effectiveness of the Special Procedures of the Commission on Human Rights” (2005), “[i]t was commonly agreed [by the participating Governments] that it was crucial that the findings of special procedures following a country visit were not merely consigned to a report, but formed the basis of negotiation and constructive open dialogue with States, with a view to working together on overcoming obstacles. It was stressed by many participants that States should cooperate fully with special procedures and that this encompassed incorporating their findings into national policies. Where States did not implement recommendations, they should provide information on why.”<sup>59</sup>

4. In order to assess the extent to which States had implemented the recommendations, in 2006, the Special Rapporteur initiated follow-up reports on visits. The first follow-up report (E/CN.4/2006/53/Add.2) concerned the recommendations made by his predecessor, Ms Asma Jahangir, on her visits to Brazil, Honduras, Jamaica, and Sudan. This follow-up report assesses the progress made on the implementation of the recommendations of the first two missions - to Sri Lanka and Nigeria - conducted by Special Rapporteur Philip Alston.

5. In keeping with past practice,<sup>60</sup> this follow-up report was compiled based on information received from a variety of sources. The Special Rapporteur requested the observations of each Government on the steps taken with a view to implementing the recommendations made, including information regarding recommendations that were not followed. The Special Rapporteur also sought information regarding follow-up measures to each of the recommendations from non-State sources, including non-governmental organizations and civil society groups. (A summary of this information was sent to each Government for its comments prior to this report’s submission to the Council.)

6. By way of overview, the recommendations made in the Special Rapporteur’s report on Sri Lanka have not been implemented. Recommendations directed to the Government have been all but completely disregarded, and in most areas there has been significant backward movement. The same is true of recommendations directed to the Liberation Tigers of Tamil Eelam (LTTE). The ceasefire monitoring mechanism did make significant efforts to implement the recommendations directed to it, but its mandate has

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<sup>59</sup> Report of the Seminar on Enhancing and Strengthening the Effectiveness of the Special Procedures of the Commission on Human Rights (E/CN.4/2006/116), para. 49, available at <[http://portal.ohchr.org/pls/portal/docs/PAGE/SP\\_MH/E-CN4-2006-116.PDF](http://portal.ohchr.org/pls/portal/docs/PAGE/SP_MH/E-CN4-2006-116.PDF)>.

<sup>60</sup> E/CN.4/2005/7, para. 30; E/CN.4/2006/53/Add.2, para. 4.

since been terminated. This failure to adopt measures necessary to ensure respect for human rights cannot be attributed simply to the outbreak of large-scale hostilities. Wars may be fought while respecting the provisions of international human rights and humanitarian law. The Government and the LTTE have, however, chosen to conduct this conflict in a manner that treats human rights and human rights defenders as obstacles to effective tactics. It is imperative that the Human Rights Council address this crisis.

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

#### Sri Lanka – Introduction

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

9. According to information received by the Special Rapporteur, extrajudicial executions have increased dramatically since he visited Sri Lanka at the end of 2005. This increase in extrajudicial executions has been accompanied by efforts to dismantle existing

mechanisms to ensure the accountability of security forces for human rights violations. It is tempting to ascribe these trends to the failure of the ceasefire and the outbreak of hostilities. But this is, at best, only a partial explanation.

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

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

12. The Government of Sri Lanka and the LTTE, however, appear to believe that the only effective insurgency and counterinsurgency tactics are ones that involve extrajudicial executions and other human rights violations. This view has led them to commit widespread abuses. The Government and the LTTE have both engaged in the targeted killing of individuals suspected of collaborating with the other party. The Government and the LTTE have engaged in shelling (and the Government also in aerial bombardment) that has killed a substantial number of civilians in circumstances that sometimes suggest a failure to respect rules on proportionality and precautions in attack. The LTTE has also stepped up its indiscriminate attacks on civilians for the apparent purpose of terrorizing the population.

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

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

[...]

Nigeria – Introduction

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

69. The Special Rapporteur’s recommendations identified specific measures required to improve the situation in Nigeria with respect to these problems. Shortly after the 2005 visit, President Obasanjo acknowledged that extrajudicial executions by the police were widespread, and he committed to end the practice and punish those responsible. However, over two and half years since the publication of the Special Rapporteur’s report on Nigeria, very little has been achieved. The problem of violence by vigilantes and criminal organizations has significantly worsened in the wake of political support for such groups during the April 2007 election. At least 300 people were killed in election related violence. Negative developments are also seen with respect to transparency and the application of the death penalty. Some encouraging progress has been made on police reform and relief for current death row prisoners, but for the majority of the recommendations, no improvements at all can be seen.

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

***Follow-Up Report to Country Recommendations – Honduras, Jamaica, Brazil and the Sudan (E/CN.4/2006/53/Add.2, 27 March 2006, ¶¶ 1-7, 12-13, 45, 77-79, 118-119):***

#### The Importance of Follow-Up Reports

1. The present report of the Special Rapporteur on extrajudicial, summary or arbitrary executions discusses the follow-up given to the recommendations made by the former Special Rapporteur in her reports on four country visits: Honduras (E/CN.4/2003/3/Add.2), Jamaica (E/CN.4/2004/7/Add.2 and Corr.1), Brazil (E/CN.4/2004/7/Add.3) and the Sudan (E/CN.4/2005/7/Add.2).

2. In the main report to the sixty-second Commission on Human Rights I have highlighted the importance of the obligation on Governments to give expeditious positive responses to special procedures of the Commission requesting an invitation for a country

visit.<sup>61</sup> While such country visits play a crucial fact-finding role for the Commission, and will do so in the future for the Human Rights Council, they can only achieve their full potential if Governments give serious consideration to the recommendations made by special procedures as a result of their visits. In recognition of the indispensable role that follow-up plays in ensuring that the resources invested by the United Nations are well spent, the Commission asked States that have been visited “to examine carefully the recommendations made ... [and] to report to the Special Rapporteur [on extrajudicial, summary or arbitrary executions] on the actions taken on those recommendations” (Commission resolution 2004/37, para. 15).

3. In the same resolution, the Commission requested the Special Rapporteur “to follow up on communications and country visits” (para. 13). More recently, at the seminar on “Enhancing and strengthening the effectiveness of the special procedures of the Commission on Human Rights”, held in Geneva on 12 and 13 October 2005, “[i]t was commonly agreed [by the participating Governments] that it was crucial that the findings of special procedures following a country visit were not merely consigned to a report, but formed the basis of negotiation and constructive open dialogue with States, with a view to working together on overcoming obstacles. It was stressed by many participants that States should cooperate fully with special procedures and that this encompassed incorporating their findings into national policies. Where States did not implement recommendations, they should provide information on why.”<sup>62</sup>

4. As indicated in the report to the Commission at its sixty-first session (E/CN.4/2005/7, para. 30), I sought information as to the ways in which the Governments concerned had, or had not, followed up on the former Special Rapporteur’s recommendations from appropriate sources, including intergovernmental organizations, non-governmental organizations (NGOs) and civil society groups. From 1 to 30 September 2005, I addressed the four Governments and requested their observations on efforts made to consider and implement the recommendations, as well as on the constraints relating thereto.<sup>63</sup> The letter to the Governments included summaries of the information received from the various sources mentioned above. Initially, I requested that Governments submit their observations by 1 November 2005. Upon request, this deadline was extended to 15 December 2005, and in one case to 10 January 2006.

5. In view of the “common agreement” on the “crucial role” of follow-up to recommendations by special procedures, it is disappointing that none of the four Governments submitted any observations. Despite the value of the information obtained from other sources, the present report would certainly have benefited from the unique knowledge Governments have with regard to initiatives undertaken and obstacles

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<sup>61</sup> E/CN.4/2006/53, para. 13.

<sup>62</sup> Report of the Seminar on enhancing and strengthening the effectiveness of the special procedures of the Commission on Human Rights (E/CN.4/2006/116, para. 49), available at <[http://portal.ohchr.org/pls/portal/docs/PAGE/SP\\_MH/E-CN4-2006-116.PDF](http://portal.ohchr.org/pls/portal/docs/PAGE/SP_MH/E-CN4-2006-116.PDF)>.

<sup>63</sup> Letters were sent to Honduras on 1 September 2005, Jamaica on 19 September 2005, the Sudan on 21 September 2005, and Brazil on 30 September 2005.

encountered.<sup>64</sup> Information provided by NGOs and civil society groups is no substitute for the views of Governments since those groups will, appropriately, generally see their role as one of providing critical stimulus to action by Governments, rather than acting as a substitute for them.

6. The order of the four country reports is determined by the chronological order of the visits (Honduras, Jamaica, Brazil, and the Sudan). Due to restrictions on the overall length of this document and in order to focus on the most relevant issues, I have decided not to discuss the follow-up to all recommendations made by the former Special Rapporteur. The report relating to Honduras is in Spanish, the three others are in English.

7. The four individual follow-up reports reflect measures adopted by the relevant Governments relating to the recommendations made by the former Special Rapporteur. The overall picture that emerges is far from encouraging. Some minimal follow-up has occurred but in general the recommendations appear to have made little impact. If the former Special Rapporteur's recommendations have such a limited impact, questions must arise as to the role of the country visits by special procedures which play such an important part in the overall process. Questions also arise as to the reforms which should be considered as part of efforts to ensure that the new Human Rights Council will enjoy the credibility which the Commission is widely considered to have forfeited in recent years.

[...]

#### Honduras

12. La Relatora Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias estuvo en misión en Honduras del 5 al 15 de agosto de 2001. La visita estuvo motivada principalmente por las alegaciones de ejecuciones extrajudiciales de muchas personas menores de 18 años ocurridas al parecer sobre todo en el período de 1998 a 2000. Las recomendaciones incluidas en su informe (E/CN.4/2003/3/Add.2) se concentran sobre la prevención de dichas ejecuciones.

13. El 15 abril de 2003, el Gobierno mandó a la Comisión de Derechos Humanos un informe de la Comisión Permanente para la Protección de la Integridad Física y Moral de la Niñez, creada en mayo de 2002 por el Presidente de la República, detallando las primeras medidas de la Comisión Permanente para contrarrestar dichas ejecuciones.

[...]

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<sup>64</sup> The Special Rapporteur has however taken into account follow-up information submitted by Governments to the Commission on Human Rights in the wake of the visits. On 15 April 2003, the Government of Honduras submitted to the Commission on Human Rights an *Informe de la Comisión Permanente para la protección de la integridad física y moral de la niñez*, which had been established in May 2002 (E/CN.4/2003/G/78). On 16 April 2004, the Government of Jamaica submitted to the Commission on Human Rights a letter addressing the report (E/CN.4/2004/G/51).

## Jamaica

45. The former Special Rapporteur on extrajudicial, summary or arbitrary executions visited Jamaica from 17 to 27 February 2003 and published her report on the visit on 26 September 2003. The focus of the former Special Rapporteur's visit and, accordingly, her recommendations (E/CN.4/2004/7/Add.2, paras. 83-95) was on shootings of criminal suspects by the police. She also considered the question of the application of the death penalty in Jamaica. This follow-up report is structured as follows: section A summarizes general information regarding developments in the use of lethal force by security forces in Jamaica; section B sets forth the information received with regard to measures taken to improve accountability for the use of lethal force by the security forces; section C describes the information received with regard to the death penalty.

[...]

## Brazil

77. The former Special Rapporteur visited Brazil from 16 September to 8 October 2003. She submitted her report on the visit on 8 January 2004 (E/CN.4/2004/7/Add.3).

78. The report and the recommendations (*ibid.*, paras. 77-94) focused on extrajudicial executions by the police and "death squads" with ties to the security services, as well as on the impunity the perpetrators of such killings enjoy.

79. Brazil's second periodic report under the International Covenant on Civil and Political Rights (CCPR/C/BRA/2004/2) was reviewed by the Human Rights Committee in October 2005. The Committee's concluding observations (CCPR/C/BRA/CO/2) provide a useful source of information about the extent to which the Government has followed up on the recommendations made by the former Special Rapporteur two years earlier. The conclusion that emerges from the Committee's views is a largely negative one in the sense that it reiterated concerns expressed and recommendations made by the former Special Rapporteur (*ibid.*, paras. 5, 7, 9, 12, 13, 17 and 18). The Committee also asked the Government of Brazil to "give utmost consideration to the recommendations of the United Nations Special Rapporteur ... on extrajudicial, summary or arbitrary executions" (*ibid.*, para. 12 (d)).

[...]

## The Sudan

118. The former Special Rapporteur on extrajudicial, summary or arbitrary executions visited the Sudan from 1 to 13 June 2004 and published her report on the visit on 6 August 2004 (E/CN.4/2005/7/Add.2). The focus of her visit and report were on the violations of the right to life in the context of the conflict in the Darfur region. The present follow-up report deals in section I with the recommendation to put an end to attacks on civilians in Darfur, followed in section II by developments related to

accountability for extrajudicial executions in Darfur, and in section III recommendations related to the death penalty.

119. Since the former Special Rapporteur's visit several highly authoritative reports have described the developments in the Sudan within the area of competence of the mandate, among others the Report of the International Commission of Inquiry on Darfur to the Secretary-General, dated 25 January 2005 (S/2005/60), the Report of the High Commissioner for Human Rights on Access to Justice for Victims of Sexual Violence of 29 July 2005, the report of the Special Rapporteur on the situation of human rights in the Sudan to the Commission at its sixty-second session (E/CN.4/2006/111), dated 11 January 2006, the Second periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan, also published in January 2006, as well as the Secretary-General's monthly reports on the situation in the Darfur region.<sup>65</sup> As already mentioned, the Government has not replied to my request to submit information on the steps it has taken to follow up on the former Special Rapporteur's recommendations. The reports mentioned above, however, include substantial information on the matter, and I have reflected it in the present report.

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<sup>65</sup> Second periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan, Office of the United Nations High Commissioner for Human Rights in cooperation with the United Nations Mission in the Sudan, 27 January 2006; available at <<http://www.ohchr.org/english/countries/docs/sudanjanuary06 En.pdf>>.