

Check against delivery



**Statement by Philip Alston**

**SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY  
EXECUTIONS**

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Mr. Chairman, distinguished delegates,

### **Introduction**

If there is a single leitmotif in relation to the struggle against extrajudicial executions it is the fight against impunity. When killings occur it is essential that governments do all within their power to investigate, prosecute and punish the perpetrators. In my report this year, I focus on two neglected but vital dimensions of that struggle: the importance of witness protection and of ensuring that military justice systems are compatible with human rights standards.

### **Effective witness protection arrangements**

Prosecuting those responsible for extrajudicial executions is generally very difficult in the absence of witnesses. The lesson for the killers is simple: make sure there are no witnesses and you will go free. Usually, it is not necessary to kill them; all that is required is to intimidate them and threaten their families. If a witness protection program is not in place prosecutions become difficult or impossible. I have encountered this problem first-hand in a number of country visits. But the vital importance of such programs has been largely overlooked by the international community. This is short-sighted and self-defeating.

The General Assembly needs to underline the importance of these programs and UN and other agencies need to assist States to design, establish and support effective programs. My report highlights examples of global best practice.

The starting point for country programs is the recognition that witness protection should not be seen as a *favour* to witnesses. Witnesses are in fact making immense personal sacrifices on behalf of society's interest in breaking the cycle of impunity and abuse.

A diverse range of approaches to witness protection have been tried around the world. Some are very innovative, such as relying on trusted NGOs as implementing partners or cooperating with other Governments to relocate witnesses to another country. There is no single model that will work everywhere, but there is much room for countries to learn from each other's experiences.

The international community should capitalize on this wealth of comparative experience and provide the financial, technical, and political support needed to develop effective programs at the national level in situations where action is urgently needed. Among other measures, the Office of the United Nations High Commissioner for Human Rights should develop policy tools to encourage and facilitate greater attention to witness protection in national level programmes to combat impunity, and the Human Rights Committee should scrutinize this issue more carefully

### **Ensuring that military justice systems are compatible with human rights standards**

Military justice systems are frequently incompatible with human rights obligations. When extrajudicial executions are committed by military personnel it is usually the national military justice system which is tasked with investigating, prosecuting and punishing the perpetrator.

Historically, however, their track record has been weak and serious concerns remain today in relation to many countries. Those who commit terrible human rights abuses far too often receive only minor punishments, or are not punished at all.

The good news is that a growing number of countries have recently adopted far-reaching reforms designed to ensure that military justice systems are consistent with international human rights standards and that the regular criminal justice is used whenever appropriate. My report reviews some of the major reforms that are both necessary and feasible. It is time to bring military justice systems in from the twilight zone and to treat them as a component part of the broader system for ensuring full respect for human rights and for eliminating impunity. Governments should periodically review their military justice systems in light of human rights norms and trends in state practice. The General Assembly should call upon all States to report on the extent to which their existing arrangements comply with human rights standards.

### **Commissions of Inquiry**

Earlier this year I drew the attention of the Human Rights Council to both the potential importance and the possible shortcomings of commissions of inquiry as a national-level response to extrajudicial killings. Last year, in my report to the General Assembly I noted that earlier in the year it was widely reported that at least 130 people were killed and over 1,500 wounded when state security forces in Guinea fired on unarmed protesters. Subsequently the National Assembly adopted a law providing for an independent commission. Over a year my understanding is that nothing has happened. The Commission has not met, its funding is not assured, there has been no outreach to potential witnesses and no effective witness protection program. This situation has all the hallmarks of a commission being used solely to distract attention and to promote impunity.

A vastly more positive development, however, has occurred in Kenya. One week ago the Commission of Inquiry into Post-Election Violence, chaired by Justice Waki, presented its report to the President of Kenya and the chairperson of the Panel of Eminent African Personalities. I have studied the report closely, and it is one of the most comprehensive and thorough commission of inquiry reports on extrajudicial executions that I have encountered. The report found that 1,113 people were killed in the post-election violence, and that some 35% of those were killed by police. In some areas, police were responsible for killing nearly 80% of those who died.

The Commission has proposed a detailed set of recommendations. Key among these is the establishment of a Special Tribunal to investigate, prosecute and punish those persons bearing the greatest responsibility for crimes, especially crimes against humanity. In the past, the recommendations proposed by comparable commissions have been ignored by successive Governments in Kenya. It is essential that this does not happen again and that the Government of Kenya continues down the path of combating impunity. Justice Waki and his fellow commissioners are to be commended for doing an excellent job.

### **Juvenile death penalty**

In previous reports, I have called upon the General Assembly to take steps to uphold one of the clearest and most important of international human rights standards: the prohibition

against executing juvenile offenders (those who were under the age of 18 at the time of committing the relevant crime). The Assembly has done nothing and executions have continued apace. This is an avoidable tragedy.

This year alone, I have sent 20 communications to the Government of the Islamic Republic of Iran in relation to such cases. Reliable reports suggest that there are at least 130 juvenile offenders on death row in Iran and a number have already been executed. The Government has informed me that measures have been taken to decrease the number of such death sentences to a level "close to a stop". Leaving aside the absence of any evidence that such measures have had any effect, the standard suggested is an unacceptable one. The prohibition of juvenile executions is unequivocal. By ignoring this fact Iran is in flagrant violation of its obligations under both the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

The actions required of Iran are clear: All laws that permit executions of juvenile offenders must be promptly repealed by the parliament, and the judiciary must immediately end the practice of sentencing juvenile offenders to death. Iran has issued a standing invitation to all special procedures. I requested a visit more than four years ago, and the Government indicated acceptance in principle. Since that time all of my efforts to schedule a visit have been rebuffed. I leave it to the members of this Committee to draw the appropriate conclusions.

### **Country visits undertaken**

Since my last report to the General Assembly, I have carried out four country visits:

#### *Brazil*

I visited Brazil in November 2007. Brazil's police are responsible for a significant proportion of the very high number of homicides that occur every year. Shockingly, in some areas, such as Rio de Janeiro, on-duty police are responsible for up to 18% of the murders that occur. Off-duty police also kill in large numbers, as members of vigilante groups, militias and death squads. Many state politicians lack the necessary will to address killings by police, and impunity prevails. This must change. The state and federal governments of Brazil must act to reduce the numbers of killings by police: reform the ineffective and deadly large-scale "mega" police operations in *favelas*; investigate and prosecute off-duty police involvement in criminal activities; improve internal and external police oversight mechanisms; and increase convictions of perpetrators through reforms to the criminal justice system.

#### *Central African Republic*

My January-February 2008 visit to the Central African Republic (CAR) focused on extrajudicial executions committed in the context of an internal armed conflict in the northwest of the country. I found that Government forces had, up until mid-2007, carried out scorched earth tactics in the north, and killed hundreds of civilians. Killings by police during law enforcement operations or for personal or corrupt ends, deaths in detention and killings of so-called "witches" are also commonplace. Security forces are so ill-trained and under-resourced that they have been unable and unwilling to protect CAR citizens from the growing

threat of bandits in the north. Rarely are serious human rights abuses investigated or prosecuted.

Since my visit, there have been slow but encouraging steps towards peace and towards much needed security sector reform. The Government has taken measures demonstrating it has the will to reform. If the Government's willingness is met with targeted support from the international community to increase CAR's capability to implement reforms, the country can begin to break its decades old pattern of serious human rights abuses and impunity.

### *Afghanistan*

I visited Afghanistan in May 2008. This year we have seen conditions in Afghanistan significantly deteriorate. Although the country is engulfed in an armed conflict, this does not mean that large numbers of civilian deaths must be tolerated. Civilians are assailed from all sides: beheaded or blown up in Taliban suicide attacks; killed in airstrikes by international forces; shot by military convoys or during raids on their homes; and extorted and killed by Afghan police. The level of complacency in response to these killings is staggeringly high.

The international military forces need to get serious about measures to promote accountability and transparency in response to alleged killing of civilians. NATO should take the lead and adopt a new policy that demonstrates genuine concern and commitment to reduce civilian casualties. Urgent reform is also needed to prevent police killings and honor killings. A moratorium on the death penalty should apply until the criminal justice system is reliable.

### *United States of America*

I visited the USA in June 2008. Significant reforms are urgently needed to the criminal justice system to prevent the execution of innocent people. Measures are needed to enhance judicial independence, ensure adequate defence counsel, and review capital cases on the merits at the appellate level. Fundamental reforms are needed to the *Military Commissions Act* so that trials of "alien unlawful enemy combatants" comply with basic due process rights. Urgent measures are also required to prevent the execution of Mexican and other foreign nationals who were not accorded their consular assistance rights, until their cases are reviewed on the merits in accordance with the International Court of Justice's *Avena* decision.

There is also a need to significantly increase transparency in the military justice system, ensure accountability for private security contractors, and build on efforts to provide reparations to victims and their families in armed conflict. In addition, reforms are needed to reduce deaths in immigration detention facilities, and conduct full and open investigations into all deaths of detainees at Guantánamo Bay.