

## CHAPTER VI

### KILLINGS BY NON-STATE ACTORS

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## A. OVERVIEW

In addition to investigating and reporting on violations of the right to life committed by States and their agents, the Special Rapporteurs have given considerable attention to killings attributable to non-state actors.

This chapter examines States' legal due diligence obligations in relation to violations committed by non-state actors and in what circumstances state responsibility will arise. It also analyses some of the most common forms of non-state actor killings, as well as government responses and accountability issues.

In his 2010 report to the Human Rights Council, Special Rapporteur Alston reflected on the role the mandate had played in clarifying the international legal implications of killings at the hands of non-state actors:

*Report to the Human Rights Council (A/HRC/14/24, 20 May 2010, ¶¶45-47)*

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

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

- a) The State has direct responsibility for the actions of non-State actors that operate at the behest of the Government or with its knowledge or acquiescence. Examples include private militias controlled by the Government (which may, for example, be ordered to kill political opponents) as well as paramilitary groups and deaths squads;
- b) Governments are also responsible for the actions of private contractors (including military or security contractors), corporations and consultants who engage in core State activities (such as prison management, law enforcement or interrogation);
- c) Where non-State armed groups are parties to an armed conflict, such groups have their own direct legal responsibilities for any killings they commit in violation of international humanitarian law. Where a group exercises significant territorial and population control, and has an identifiable political structure, it may also be important for the Special Rapporteur to address complaints directly to the group and to call for it to respect human rights and humanitarian law norms.<sup>1</sup> This has been the approach in reports on Afghanistan, Colombia, the Democratic Republic of the Congo and Sri Lanka.
- d) The mandate has increasingly addressed fully “private” killings, such as murders by gangs, vigilante justice, “honour killings” or domestic violence killings. In most cases, an isolated private killing is a domestic crime and does not give rise to State responsibility. However, where there is pattern of killings and the Government’s response (in terms either of prevention or of accountability) is inadequate, the responsibility of the State is engaged. Under human rights law, the State is not only prohibited from directly violating the right to life, but is also required to ensure the right to life, and must meet its due diligence obligations to take appropriate measures to deter, prevent, investigate, prosecute and punish perpetrators. In addition, in reports detailing Governmental violations in response to violence by non-State actors (including gangs or sects),

<sup>1</sup> See Report of the Special Rapporteur, Philip Alston, A/62/265, 16 August 2007, paras. 37-44.

it is important to report on non-State actor violations in order to provide a fair picture of the situation facing the Government. This is reflected in the reports on Brazil, Kenya and Nigeria.

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

## **B. DUE DILIGENCE, POSITIVE LEGAL OBLIGATIONS, AND STATE RESPONSIBILITY**

As noted in the preceding paragraphs, Special Rapporteur Alston’s 2004 report to the Commission on Human Rights identified four categories of non-state actor that may have relevance to the mandate, as well as the commensurate state responsibility. It also examined the principal legal obligation in this context—due diligence—from its genesis in efforts to address disappearances in South America in the 1980s to its contemporary application to a broad range of killings:

### *Report to the Commission on Human Rights (E/CN.4/2005/7, 22 December 2004, ¶¶65, 68-76)*

65. One of the more complex issues arising especially under this mandate concerns killings by non-State actors. The fact that this category is not readily susceptible of a clear definition increases the complexity. Indeed, in recent years the term “non-State actors”, which was long used primarily to describe groups whose purposes are essentially benign such as non-governmental organizations, religious groups and corporations, has increasingly come to be associated with groups whose agendas include wreaking havoc and terror upon innocent civilians.<sup>[1]</sup>

[...]

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

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

70. A second group, which is becoming far more numerous and very much a part of the landscape in many of the situations brought to the attention of the Special Rapporteur, is private contractors or consultants who, although not government officials in any way, are nonetheless exercising functions which would otherwise have been carried out by the State. This might include prison management, law enforcement, interrogation, etc. In dealing with such cases the Human Rights Committee has made clear, in relation to torture for example, that States parties to the International Covenant on Civil and Political Rights should report on the provisions of their criminal law not only in relation to acts committed by public officials or persons acting on behalf of the State, but also by private

persons.<sup>2</sup> In final Views adopted in 2003 the Committee concluded that “the contracting out to the private commercial sector of core State activities which involve the use of force and the detention of persons does not absolve a State party of its obligations under the Covenant”.<sup>3</sup> While there may be some debate over what constitutes a “core State activity”, it is clear that actions carried out by contractors and consultants which attract the attention of the Special Rapporteur may well engage the responsibility of the State concerned.

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

72. In most situations, the isolated killing of individuals will constitute a simple crime and not give rise to any governmental responsibility. But once a pattern becomes clear in which the response of the Government is clearly inadequate, its responsibility under international human rights law becomes applicable. Through its inaction the Government confers a degree of impunity upon the killers.

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

74. This approach was endorsed by the Inter-American Court of Human Rights in a landmark case almost a decade later,<sup>4</sup> and the concept of due diligence has since been further developed in a variety of United Nations contexts, especially in relation to violence against women.

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

76. The fourth major group of non-State actors relevant to the Special Rapporteur’s mandate is armed opposition groups. The traditional approach of international law is that only Governments

2 Human Rights Committee, General comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman, or Degrading Treatment or Punishment) (1992), para. 13.

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

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

can violate human rights and thus, such armed groups are simply committing criminal acts. And indeed this may be an accurate characterization. In reality, however, that is often not the end of the matter and in some contexts it may be desirable to address the activities of such groups within some part of the human rights equation.<sup>5</sup> This could mean addressing complaints to them about executions and calling for respect of the relevant norms.<sup>6</sup> This may be both appropriate and feasible where the group exercises significant control over territory and population and has an identifiable political structure (which is often not the case for classic “terrorist groups”). In cases in which such groups are willing to affirm their adherence to human rights principles and to eschew executions it may be appropriate to encourage the adoption of formal statements to that effect. And in reporting on violations committed by Governments it may be appropriate to provide details of the atrocities perpetrated by their opponents in order to provide the Commission with an accurate and complete picture of the situation. It goes without saying that any such approaches would in no way diminish the central human rights responsibilities of Governments, nor does it seek to give legitimacy to opposition groups. The condemnation of such groups and insisting that they respect international human rights law should not be taken as equating them with States. On the other hand, in an era when non-State actors are becoming ever more important in world affairs, the Commission risks handicapping itself significantly if it does not respond in a realistic but principled manner.

Special Rapporteur Alston noted in a 2006 report to the General Assembly the contribution to clarifying the nature of due diligence obligations made by the International Convention for the Protection of All Persons from Enforced Disappearance:

*Report to the General Assembly (A/61/311, 5 September 2006, ¶¶46-48)*

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

47. In my first report to the Commission,<sup>7</sup> I reviewed the antecedents of the principle [of due diligence] in the context of the struggle against disappearances more than 25 years ago. The approach pioneered within the United Nations setting<sup>8</sup> was adopted and further developed by the Inter-American Court of Human Rights in particular.<sup>9</sup>

48. The Disappearance Convention represents the most sophisticated effort to date in articulating the due diligence standard relating to a State’s affirmative obligations to ensure human rights. It exemplifies the process by which a principle that is implicit in the international human rights regime is developed by experts and refined in the jurisprudence of human rights courts before being effectively codified in treaty law. Although the offence is defined primarily in terms of acts for which the State bears some direct responsibility,<sup>10</sup> the Convention specifically requires States to “take appropriate measures to investigate [the relevant] acts [when they have been] committed

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

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

7 Report of the Special Rapporteur, Philip Alston, E/CN.4/2005/7, 22 December 2004, paras. 73-74.

8 See Report of the Expert on the Question of the Fate of the Missing and Disappeared Persons in Chile, Abdoulaye Dieye, A/34/583/Add.1, (21 November 1979), para. 124.

9 *Velásquez Rodríguez v. Honduras*, *supra* note 4, p. 291.

10 International Convention for the Protection of All Persons from Enforced Disappearance, art. 2.

by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice<sup>11</sup>. In addition it elaborates in some detail upon the required investigative process,<sup>12</sup> it makes the connection between transparency and proper record-keeping and the avoidance of disappearances,<sup>13</sup> and it addresses not only the necessity for, but also the content of, training for those responsible for detainees.<sup>14</sup> These provisions will be influential in interpreting the implications of States' due diligence obligations in other contexts.

The Special Rapporteurs have also discussed the principle of due diligence in specific country contexts.

*Report on Mission to Guatemala (A/HRC/4/20/Add.2, 19 February 2007, ¶¶9-12)*

9. In Guatemala, most murders remain mysteries: The perpetrators are not identified, much less convicted. This introduces conceptual difficulties, but the legal implications are limited. As a legal matter, the failure to establish individual responsibility under domestic criminal law does not absolve the State of responsibility under international human rights law. Under the International Covenant on Civil and Political Rights (ICCPR), the State has legal obligations to both “respect” and “ensure” the right to life. Thus, while there is no human rights violation without State involvement, this involvement may be by act or omission.

10. On the one hand, human rights law is violated when agents of the State – such as police officers or soldiers – arbitrarily deprive individuals of their lives. [...]

11. In contrast, ordinary murders by private persons will, in most situations, constitute simple crimes and not give rise to any State responsibility (E/CN.4/2005/7, paras. 65-76). The State is obligated, however, to exercise due diligence in preventing such crimes. Once a pattern becomes clear in which the response of the Government is clearly inadequate, its responsibility under international human rights law becomes applicable. To meet its legal obligations, the State must effectively investigate, prosecute, and punish perpetrators. When such efforts prove ineffective, the State must take whatever measures are necessary to make them effective, including new legislation, training programmes, equipment, or budget allocations. The State incurs responsibility under international law insofar as any branch of Government – executive, legislative, or judicial – fails to honour the obligations that it has assumed under international law.

12. The scope of the State's responsibility under international law is, thus, much broader than the scope of the criminal offence of “extrajudicial execution” under Guatemala's criminal law. That criminal offence encompasses killings by agents of the State as well as killings by private persons with the authorization or acquiescence of agents of the State, but does not include murders for which impunity is conferred by Government inaction.<sup>15</sup> The concept of “extrajudicial execution” under international law does include such murders accompanied by impunity and addresses the responsibility of the State rather than of individual perpetrators. Thus, regardless of the extent to which State agents may be involved, the evidence shows that the State has responsibility under international human rights law for the widespread killings of gang members; gay, lesbian, transgender, and transsexual persons; human rights defenders; women; and prison inmates.

In the following communication sent to Brazil in 2007, Special Rapporteur Alston discussed the preventative elements of due diligence.

11 Ibid., art. 3.

12 Ibid., art. 10.

13 Ibid., arts. 17, 18.

14 Ibid., art. 23.

15 Código Penal (Decreto 17-1973), as amended by Decreto número 48-1995, art. 132 bis. See also Humberto Henderson, “La ejecución extrajudicial o el homicidio en las legislaciones de América Latina”, *Revista IIDH*, vol. 43, pp. 281-298 (2006).



*Urgent appeal sent to the Government of Brazil (31 October 2007) (with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Representative of the Secretary-General on the situation of human rights defenders)*

We would like to draw the attention of your Government to allegations we have received concerning Tomé Guajajara, Madalena Paulino, Antonio Paulino as well as the threat of imminent violence against 50 families of the Guajajara indigenous community of Lagoa Cumprida, in the Araribóia reservation, Maranhão state.

According to the information received:

The reservation of Araribóia, one of the oldest indigenous reservations in Brazil, covers an area of 413 thousand hectares across six municipalities of Maranhão state. Since the beginning of the 1980s, the region has reportedly been subject to repeated incursions from illegal loggers, resulting in violent conflict with indigenous peoples and widespread environmental damage, including deforestation, forest fires and water drainage. According to the reports, ninety per cent of the traditional lands of the Guajajara people is said to be affected by logging, hunting and land invasions, threatening indigenous livelihoods. The Guajajara have been campaigning for the protection of the reservation's borders and the expulsion of illegal settlers.

On 15 October 2007, at about 6.00am, a group of 15 armed men – five of them masked – allegedly invaded the Lagoa Cumprida indigenous community. According to the reports, six indigenous people were grouped on a football field and threatened, with the gunmen firing in the air. After trying to defend himself against the attack, sixty-year-old Tomé Guajajara was reportedly shot six times and killed. Two other community members, Madalena Paulino, Antonio Paulino were allegedly wounded. The gunmen reportedly stated that they would return and some residents are reported to have fled to hide in the forest or nearby towns.

The attack has been interpreted as revenge against the mobilization of indigenous organizations against illegal logging in the reservation. In particular, it is alleged that the attack may be related to the seizure of a logging truck by the Guajajara in September 2007, when passing illegally through the indigenous reservation, and after a long but fruitless campaign to get the authorities to act against repeated incursions from the loggers. When the loggers offered money for the return of the vehicle, the indigenous community refused to negotiate, informing the National Indian Foundation of the situation.

Even though Federal police agents visited the reservation in the aftermath of the attack on 15 October, the reports that we have received indicate that the community is in a state of fear and feels abandoned by the authorities, and some of the community members have reportedly fled to neighbouring towns or hid in the forest. It is reported that the community has still not been visited by representatives from the National Indigenous Foundation (*Fundação Nacional do Índio, FUNAI*), and that no measures have so far been taken to protect the community.

Serious concern is expressed regarding the safety of the leaders and other members of the Guajajara indigenous community of Lagoa Cumprida. It is further feared that leaders and members of the community might be targeted because of their activities in defense of their human rights.

While we do not wish to prejudge the accuracy of these reports, we would like to refer your Government to the relevant principles of international law. Article 6 of the International Covenant on Civil and Political Rights (ICCPR) provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life.

With respect to the present threats to the right to life of the Guajajara community, Article 6(1) of the ICCPR requires States to provide effective protection to those whose lives are in danger.

As expressed in Principle 4 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, this requires that individuals in danger of such executions, including those who receive death threats, be guaranteed effective protection through judicial or other means. We urge your government to immediately take all necessary steps, as required under international law, to protect the right to life of the members of the Guajajara community.

With respect to the initial attacks on the Guajajara community by armed men, the allegations received suggest that the failure of FUNAI or the federal police to act upon the repeated notifications by the Guajajara of the increasingly volatile situation on their reservation may be a breach of your Government's obligation to ensure the right to life. Your Government has an obligation under Art 2(1) of the ICCPR to "ensure to all individuals within its territory" the right to life. As explained by the Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), this positive obligation to ensure the right to life:

"will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons ... There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."

These due diligence obligations to take all appropriate measures to deter and prevent extrajudicial executions may be breached where, for example, state authorities do not react promptly to reliable reports, the relevant legal remedies are ineffective or nonexistent, authorities do not act to clarify a situation in the face of reliable evidence, or it takes no action to establish individual responsibility (See *Velásquez Rodríguez v. Honduras*, Annual Report of the Inter-American Court of Human Rights, OAS/Ser. L/V./III.19, doc. 13 (1988), 28 ILM (1989) 291; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/2005/7, paras 71-73).

With respect to the alleged extrajudicial execution of Tomé Guajajara, we would also like to bring to your attention the Government's duty to thoroughly, promptly and impartially investigate suspected cases of extrajudicial execution, and to prosecute and punish all violations of the right to life. As reiterated by the 61st Commission on Human Rights in Resolution 2005/34, all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions", "to identify and bring to justice those responsible", and to "adopt all necessary measures, including legal and judicial measures, in order to ... prevent the recurrence of such executions".

[...]

Furthermore, we would like to bring your Excellency's attention to the following provisions, and in particular to article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

In the event that your investigations support or suggest the above allegations to be correct, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and accountability of any person guilty of the alleged violations ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.



In his 2016 report to the General Assembly, Special Rapporteur Heyns highlighted the significance of a pattern of killings in elevating an act solely attributable to an individual to something for which the state may have a responsibility for failing to address:

*Report to the General Assembly (A/71/372, 2 September 2016, ¶¶87-90)*

*D. Other killings incurring State responsibility*

87. In his reports, and in engagements with States both during country visits and in communications, the Special Rapporteur has frequently taken up the issue of killings of individuals who find themselves in a situation of vulnerability either because of their work or because of events around them. The threats they face draw attention to the State's responsibility to protect as well as to respect the right to life, both through urgent preventive measures and, retrospectively, through investigation and accountability that combat a climate of impunity.

88. In most situations, the isolated killing of individuals will constitute a simple crime and not give rise to any State responsibility. Once a pattern becomes clear, however, and where the response of the State is inadequate, its responsibility under international human rights law becomes applicable (see E/CN.4/2005/7, paras. 71-75).

89. In this section, the Special Rapporteur addresses several patterns of killings that can be observed within certain societies. In addition to the general duty to protect, States moreover have a responsibility to protect from violence motivated by discriminatory prejudice, both directly and by taking steps to remedy the prejudice. It is in the sense of this separate responsibility that the State is made more proximate to killings of this nature than it is to ordinary criminal homicide.

90. Reference was made at the outset to the "protect life" principle. Under current-day international law, life may not be taken in order to protect interests other than life: suppressing free expression or political dissent, killing "witches", saving the "family honour", or imposing one's own concept of morality cannot justify the taking of life, and the perpetrators must be held accountable. A failure by the State to address systematic patterns of violence through precautionary measures (which should include education) opens it up to violations of the right to life, as does the absence of accountability measures where such violence does occur. Part of the task of the Special Rapporteur is to point out such patterns, to States and to the international community.

## **C. ANALYSIS OF SELECTED FORMS OF KILLINGS BY NON-STATE ACTORS**

This section contains the Special Rapporteurs' analysis of some of the most common forms of non-state actor killings encountered by the mandate. The Special Rapporteurs' analyses of such killings have generally been categorised along the axis of a dominant shared characteristic: typically, focus has been on the type of *perpetrator* (e.g. hired killers, mobs) or the *motivations* (e.g. vigilantism, blood feuds) and *context* (e.g. election-related killings). Many killings thus fall into multiple categories, and the various forms extracted below benefit from being read together. Non-state killings categorised according to the type of victim (e.g. alleged witches) are addressed in Chapter 7. The extracts below include detailed thematic reports on mob justice and vigilante killings, as well as country-specific reporting on blood feuds, organised crime, hired killers, banditry, "honour" killings, and social cleansing.

Killings by armed opposition groups, rebel groups, and other non-state parties to armed conflict were covered in Chapter 5. Killings by non-state actors (including a variety of death squads and militias) that are dominated by off-duty or former law enforcement officials or are otherwise closely linked to the police were covered in Chapter 3.

## 1. Private security providers

In 2016, Special Rapporteur Heyns reported on the use of force by private security providers and outlined some of the contexts in which such non-state actors operate around the world. As he noted, when they are contracted by the state to provide security services that otherwise would be undertaken by state agents, the Basic Principles on Use of Force and Firearms can be applied directly. A potential gap exists with respect to other situations, however, which voluntary industry regulations attempt to fill.

*Report to the Human Rights Council (A/HRC/32/39, 6 May 2016, ¶¶72-85, 91-93, 100-104)*

### *C. General observations on the use of force*

72. With respect to the use of force, where they provide detail, [voluntary industry regulatory] frameworks tend to defer to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials. The Basic Principles, in accordance with the definition provided in the commentary to the Code of Conduct, are designed to provide standards for use of force by all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

73. However, the Basic Principles do not apply directly to the personnel of private security companies, who do not have official law enforcement powers, unless they have, exceptionally, received such powers from the competent authorities. In particular, they do not apply to private security personnel working for private companies, since they are not carrying out State functions.<sup>16</sup>

74. The remainder of the present report, however, turns to the question of whether there are specificities relating to the use of force by private security providers in that context, and whether the same standards can be adapted for private security providers operating on behalf of another private corporation. When not in the exceptional circumstance of working directly for the State, private security personnel have the same legal rights and responsibilities as ordinary citizens, but the level of their organization, their asserted expertise, and their preparedness to use force, all suggest that their conduct, particularly whether any use of force is reasonable and not excessive, should be judged more strictly.

75. As is the case for State agents, before and during any use of force by private security personnel, all reasonable precautionary steps to protect life and prevent excessive violence must be taken, including the provision of appropriate equipment and training, the proscription of inappropriate weapons, and careful planning of individual operations. States must adopt a clear legislative framework for the use of force by law enforcement or other individuals that complies with international standards, including the principles of necessity and proportionality. The intentional lethal use of force by law enforcement officials or others must be prohibited unless it is strictly unavoidable in order to protect life, making it proportionate, and all other means are insufficient to achieve that objective, making it necessary. After any use of force there should be some form of review, with a full investigation wherever life has been lost or serious injury inflicted, and accountability mechanisms in place where such an investigation suggests the use of force may have been unlawful, including remedies for victims.

76. As noted above, where States choose to devolve some of their responsibilities for the provision of security to private entities, it is clear that those actions are attributable to the State, and that at least the same restrictions apply to private security providers operating in such a context as would

<sup>16</sup> Amnesty International, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (Amsterdam: Amnesty International, 2015), p. 14.

apply to State law enforcement personnel. In the sections that follow the Special Rapporteur turns to situations in which the standards are perhaps less authoritative, but, he argues, must remain normatively identical, if practically distinct.

*D. Duty of precaution as applied to private security providers*

77. In many cases, once a situation arises in which the use of force is considered, it is already too late to prevent force needing to be used. In order to save lives, all possible measures should be taken “upstream” to avoid situations in which force needs to be used, or to ensure that if force is required, the damage is contained as much as is possible. A failure to take proper precautions in such contexts, where life is at risk, constitutes a violation of the right to life (see A/HRC/26/36, paras. 63 and 64).

78. The precautionary principle is now well established for State law enforcement, although it has different content to the analogous principle in international humanitarian law.<sup>17</sup> In the present section, the Special Rapporteur identifies the many analogous responsibilities that private security personnel have, and by implication the responsibilities that other entities, including States, have to ensure that standards are met.

79. Those responsible for the use of force by any entity must ensure that personnel receive proper training, including in “less-lethal techniques.” The Working Group on mercenaries reported that, even when countries had regulations on training of private security personnel, they almost never included any training on human rights (see A/HRC/27/50, paras. 17 and 47). Seeking certification from a recognised body to ensure and demonstrate compliance with established standards will contribute to the adherence of private security providers to the precautionary principle.

80. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require that governments and law enforcement agencies develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. The Principles also stipulate that, for the same purpose, it should be possible for law enforcement officials to be equipped with self-defensive equipment. Not only should the equipment be used if available, as required by necessity, but such equipment should be made available in the first place. States should also ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force (see A/HRC/26/36, para. 52). The same requirements should be made of private security providers, including specialised equipment or training for the particular contexts in which their personnel may work.

81. According to the United Nations Office on Drugs and Crime (UNODC), a significant number of States worldwide allow civilian private security personnel to be armed with firearms or other potentially lethal weapons. The use and regulation of weapons in that context also varies greatly, ranging from situations where 2 per cent of private security providers are estimated to be armed in countries like Croatia, India and Sweden, to instances where 80 per cent are armed in the Dominican Republic, and 85 per cent in Colombia.<sup>18</sup> The importance of strict regulation of possession and use of firearms is self-evident. This requires registration of weapons at the level of the company, and also with respect to the individual responsible. Moreover, there should be adequate regulations in place to ensure that firearms are stored in secure places and that they are well controlled by

<sup>17</sup> See International Committee of the Red Cross, *The Use of Force in Law Enforcement Operations* (2015), available at [www.icrc.org/en/document/use-force-law-enforcement-operations](http://www.icrc.org/en/document/use-force-law-enforcement-operations).

<sup>18</sup> UNODC, *State Regulation Concerning Civilian Private Security Services and their Contribution to Crime Prevention and Community Safety* (2014), p. 43, available at [www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Ebook0.pdf](http://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Ebook0.pdf).

the company.<sup>19</sup> It is of great concern that, where private security personnel are permitted to carry firearms, their training in safe and effective use of such weapons is not standardised or, in many cases, regulated at all. Even when legal requirements exist regarding the vetting and training of private security personnel, they often merely indicate that the provider is responsible for ensuring that employees are properly trained.<sup>20</sup>

82. The potential consequence of insufficient weapons training was highlighted in December 2015 in Pakistan, when a private security guard accidentally discharged his weapon inside a multinational bank, killing one of the bank personnel and wounding another.<sup>21</sup> Moreover, the risks of allowing private security personnel to carry and potentially use weapons when off-duty were illustrated when a security guard employed by GardaWorld shot and killed two men in a fast-food restaurant in Canada during his break in January 2015.<sup>22</sup>

83. However, as noted above, fatal abuses do not occur only in situations where private security providers are armed or weapons are used. In 2004, a 15-year-old boy died in a youth prison in the United Kingdom after being restrained by private security guards.<sup>23</sup> In 2010, an Angolan deportee died of a heart attack after being restrained by three security guards.<sup>24</sup> In both cases, the detainees reportedly shouted that they could not breathe.

84. The responsibility to plan an appropriate operational response to an emerging situation applies as clearly to private security providers as it does to State law enforcement. However, in the case of private security providers there exists an additional potential precautionary step, namely to call upon the State's law enforcement personnel. In circumstances where private security providers resort to force having turned down an opportunity to defer to the State's police, their full compliance with the requirements of precaution would be called into question. In circumstances where help from authorities was forthcoming, private security providers can no longer justify the use of force under the principle of self-defence or defence of others.

85. Unless directly contracted by the State to do so, which is itself problematic, the contractual responsibility of private security providers in the context of assemblies is not to facilitate the right to freedom of peaceful assembly, but rather to protect the property or personnel of the contracting party. The protection of the rights and safety of the public more broadly remains the duty and function of the State. Private security providers should defer to properly trained and equipped specialist law enforcement units wherever possible.

[...]

91. In some jurisdictions, such as the United States, every citizen, including private security personnel, has the right to make an arrest in certain circumstances. However, importantly, a

19 Hans Born, Marina Caparini and Eden Cole, *Regulating Private Security in Europe: Status and Prospects* (2007), p. 27.

20 Florquin, *supra* note 180, pp. 123-124.

21 See M. Raja, 'No Weapons Training: Bank Staffer Dies After Guard's Gun Goes off "Accidentally"', *Express Tribune*, 18 December 2015, available at <http://tribune.com.pk/story/1011999/no-weapons-training-bank-staffer-dies-after-guards-gun-goes-off-accidentally/>.

22 See J. Edmiston, 'Toronto Police Won't Charge Security Guard Who Shot and Killed Two Men at Danforth McDonald's', *National Post*, 15 July 2015, available at <http://news.nationalpost.com/news/toronto-police-wont-charge-security-guard-who-shot-and-killed-two-men-at-danforth-mcdonalds>.

23 See C. Sambrook, 'G4S Guard Fatally Restrains 15 Year Old – Gets Promoted', *Open Democracy*, 22 July 2013, available at [www.opendemocracy.net/ourkingdom/clare-sambrook/g4s-guard-fatally-restrains-15-year-old-gets-promoted](http://www.opendemocracy.net/ourkingdom/clare-sambrook/g4s-guard-fatally-restrains-15-year-old-gets-promoted). See also BBC News, 'Criticism Over Youth Jail Death', 28 June 2007, available at <http://news.bbc.co.uk/1/hi/england/6250406.stm>.

24 See 'Jimmy Mubenga: Deportee Shouted "You're Killing Me"', *BBC News*, 4 November 2014, available at [www.bbc.com/news/uk-england-london-29902375](http://www.bbc.com/news/uk-england-london-29902375).

citizen's arrest must always be made at the arrester's own risk: if the arrest proves unlawful, the arrester is subject to criminal or civil liability. In all circumstances, the amount of force that can lawfully be used in making an arrest largely depends on the type of offence, but the general rule is that force cannot exceed the extent of resistance offered.

92. On account of their organised character, and the training that, as a matter of regulation, they must have received, those using force as part of a private security provider should be subjected to stricter scrutiny than other members of the public as to whether they have met the legal standards. In that context, the Special Rapporteur is concerned that the existence of Stand Your Ground laws can give licence for private security providers and other essentially private entities to seek out confrontation where safe retreat is a viable option, and as such are not in accordance with the precautionary principle (see, for example, CCPR/C/USA/CO/4, para. 10).

93. That organizational characteristic implies that those high up a chain of command or authority, including those not present at the event in question, can potentially be held accountable for use of force by private security personnel.

[...]

## *2. Impact on the State's duty to provide security*

100. In its study of regulatory frameworks for private security providers (A/HRC/27/50), the Working Group on the use of mercenaries noted that in some cases legislation explicitly prevents private security providers from performing policing functions. For example, in the Democratic Republic of the Congo, private security providers are permitted to provide protection to persons and property insofar as they do not replace the police, but they are prohibited from patrolling, arresting, carrying and using firearms, special devices and any other material normally reserved for the military and the police. Similar provisions are contained in the laws of Morocco and Tunisia.

101. However, there also appear to be instances, as the Special Rapporteur observed in Papua New Guinea, in which private security personnel significantly outnumber the police, and as a result, in some circumstances, start de facto to take on some of the core responsibilities of the police with respect to protection (see A/HRC/29/37/Add.1). Such a situation could become particularly problematic where, as noted above, there are differing accountability frameworks for the two groups.

102. To the extent that the provision of security by private security providers supplements that provided by the State, it ought to increase overall levels of security, and therefore protection of the right to life. However, States should guard against reinforcing any trend towards discriminatory security, to which private security providers may contribute.

## *3. Private use of private security providers*

103. There are several contexts in the corporate sector where the overlap between private and public can be problematic, such as mass labour protests or disputes, or other mass gatherings taking place on or around private property, where the corporation involved may choose to employ a private security provider for security provision. As noted above in the context of assemblies, or other activities that take place on the border of public and private, either physically or conceptually, it is important to bear in mind that private security providers have a very different mandate and set of priorities to the police. As such, the police should be called in whenever uncertainties exist with regard to private and public interests, especially concerning the use of force in such contexts.

104. A further level of complexity is added when a private corporation employs security guards, sometimes using a recognised private security provider to recruit the personnel, but the private

corporation itself is a company of a different type, such as an extractive industry. It is important to underline that the standards described above with respect to training, equipment, or the use of force apply to all security personnel, regardless of the main function of the company employing them. In circumstances in which a recognised private security provider has been used to recruit staff, there can also be confusion about the chain of command and decision-making, the clarity of which is an important element of precaution. The use of certified security providers can contribute to greater precaution in that regard.

The Special Rapporteurs also addressed the proliferation of private security providers during several country missions:

*Follow-up report on mission to the United States of America (A/HRC/20/22/Add.3, 30 March 2012, ¶¶54-55)*

*Private contractors*

54. The Government relies heavily on private military and security companies (PMSCs)<sup>25</sup> within the framework of its international operations. As of March 2011, there were reportedly 28,000 private contractors employed by DoD [the Department of Defence] in Afghanistan and Iraq,<sup>26</sup> amounting to 18 per cent of DoD's workforce. In total, over 200,000 PMSCs have worked for the Government. Since the release of the mission report in 2009, there have been instances of killings by PMSCs.<sup>27</sup>

55. It is worth noting, however, that deaths caused by PMSCs in Iraq have greatly decreased due to legal and other restrictions on the activities of PMSCs.<sup>28</sup> On 10 February 2010, the Ministry of Interior reportedly ordered the PMSC Blackwater (now known as Xe Services) to leave the country within one week. In over a year, only one incident involving private security officers and resulting in the death of a civilian had been reported.<sup>29</sup> Likewise, only one incident was reported in 2009.<sup>30</sup> The decrease is reportedly attributed to several factors, including the decrease in military activities in Iraq, stricter regulation by Iraqi authorities, and efforts by the United States to tighten oversight of contractors.<sup>31</sup> Following the Nissour Square shooting in 2007, the Government has reviewed and improved reporting procedures and oversight mechanisms for PMSCs working for the United States in Iraq. For instance, video-recording systems must be installed in all vehicles used by PMSCs, who must also submit information on their movements to USF-I.<sup>32</sup> Irrespective of

25 Commission on Wartime Contracting in Iraq and Afghanistan, *At what risk? Correcting over-reliance on contractors in contingency operations*, Second Interim Report to Congress, 24 February 2011, p. 1; see also *Transforming Wartime Contracting, Controlling Costs, Reducing Risks*, Final Report to Congress, August 2011, pp. 18-20.

26 Schwartz Moshe, *The Department of Defense's Use of Private Security Contractors in Afghanistan and Iraq: Background, Analysis, and Options for Congress*, Congressional Research Service, 13 May 2011, p. 6. Other sources report higher numbers. See for example, Human Rights First, *State of Affairs: Three Years After Nisoor Square – Accountability and Oversight of U.S. Private Security and Other Contractors*, September 2010.

27 In June 2009, the provincial police chief of Kandahar, Noor Khan, was killed. See "Afghan minister calls for disbanding of private security forces after killing of police chief," Associated Press, June 30, 2009.

28 UNAMI Human Rights Office, *2010 Report on Human Rights in Iraq*, January 2011, p. 11; see also Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination – Mission to Iraq, A/HRC/18/32/Add.4, 12 August 2011, para. 76.

29 UNAMI Human Rights Office, *2010 Report on Human Rights in Iraq*, January 2011, p. 11.

30 UNAMI, *Human Rights Report: 1 January-30 June 2009*, para. 24; and *Human Rights Report: 1 July-31 December 2009*, para. 20.

31 A/HRC/18/32/Add.4, *supra* note 28, para. 54.

32 *Ibid.*, para. 58.



the number of deaths caused by PMSCs in the context of international operations, the Government should track and publicly disclose all civilian casualties caused by private contractors.

*Report on Mission to Honduras (A/HRC/35/23/Add.1, 11 April 2017, ¶¶28-32)*

*E. Private security companies*

28. In a report, the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination indicated that there were 706 private security companies registered in Honduras, as well as 60,000 private guards, many of whom were illegal and unregistered. Given that there were 14,000 police officers in Honduras, the ratio of private security personnel to police was almost 5 to 1.<sup>33</sup>

29. The provision of private security services is subject to the Organic Law of the National Police and the Regulations for the Control of Private Security Services. The law entrusts the Ministry of Security to authorise, regulate and supervise private security companies and creates a control unit for private security services to control and monitor these companies. However, the authorities do not implement that mandate effectively. There are insufficient vetting processes for the licensing of such companies and their agents, inadequate supervision of their operations and a lack of control of the weapons used and the training provided to private security agents. Many companies are reportedly owned by or constituted of agents who are former military or police officers, including officers suspected of past human rights violations. In addition, while the existing framework regulates the types of weapons that companies may use, it does not set the conditions for the use of arms and force. Moreover, violations of the Law and the Regulations do not seem to result in the revocation of licences or sanctions.

30. It is clear that in many cases private security providers play a positive role, for which the police is currently not equipped. At the same time, they can and in some cases do form part of the problem of excessive violence in society. The legal framework within which they operate appears to be insufficient. The sector needs to be better regulated and controlled. According to information from the Government received subsequent to the visit, the Congress is considering a draft law on private security services aiming at reinforcing regulations and forbidding certain public officials to hold ownership of private security companies. Other sources indicated that the law had been pending approval for two years and didn't preclude anyone with a criminal or disciplinary record from being a member of such companies.

31. Private security staff have been linked to numerous attacks and killings, for example, in areas of high social conflict. However, in a study, it was found that during investigations police and prosecutors in Bajo Aguán routinely failed to take adequate steps to ascertain the possible involvement of private security agents in serious crimes, including by requisitioning work records of staff on duty at a given time or by making weapons inventories of private security companies.<sup>34</sup>

32. The State has the primary responsibility to protect individuals from the deprivation of life by non-State actors and to bring perpetrators to justice. While private security agents are not public officials, they are still bound by domestic regulations and are obliged to respect the rights of citizens.

33 See Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination – Mission to Honduras, A/HRC/24/45/Add.1, 5 August 2013, para. 14.

34 See Human Rights Watch “‘There are no investigations here’: Impunity for Killings and Other Abuses in Bajo Aguán, Honduras”, 12 February 2014, available at: [www.hrw.org/report/2014/02/12/there-are-no-investigations-here/impunity-killings-and-other-abuses-bajo-aguan](http://www.hrw.org/report/2014/02/12/there-are-no-investigations-here/impunity-killings-and-other-abuses-bajo-aguan).

## 2. “Private justice” killings: “honour” killings, mob violence, vigilantes, blood feuds, and social cleansing

“Private justice” killings are unlawful killings by private actors carried out for the ostensible purpose of punishing another private actor for an alleged crime or a perceived wrongdoing. In most domestic legal systems, they constitute murder. The term covers a wide range of killings including “honour” killings, mob violence, vigilante killings, blood feuds, and some instances of “social cleansing.”

Special Rapporteur Alston’s predecessor in the mandate, Ms Asma Jahangir, had addressed in a number of important thematic reports so-called “honour killings,” in which a person, usually a woman, is killed by a family member, often because she has married outside her religion or because of suspected sexual “impropriety.”<sup>35</sup> In 2009, Special Rapporteur Alston took up Ms Jahangir’s efforts and investigated “honour” killings during his mission to Afghanistan.

### *Report on Mission to Afghanistan (A/HRC/11/2/Add.4, 6 May 2009, ¶¶63-64, 87)*

63. “Honour killings”<sup>36</sup> occur with impunity in parts of Afghanistan. In the eastern region, for example, one source had documented 40 honor killings between January 2007 and December 2008. The actual number is certainly far higher due to fear of reporting such cases. The victims are predominantly women, although men are also killed. Rarely are perpetrators investigated and prosecuted.

64. In Jalalabad, Nangarhar province, I spoke with a family member of a boy and girl (cousins) who allegedly had sexual relations outside of marriage. They were invited to a “dinner” by their uncles and, when sleeping, were shot and killed. The boy’s body was sent to his father. The girl’s was buried without any funeral prayers. No family members complained to the police. The police knew about the deaths, but did not investigate, claiming that they could not do so without a complaint from the family.<sup>37</sup> In Kandahar, a female colleague spoke with many women who told her that honor killings occur in their neighborhoods, but are rarely reported or investigated. One young woman, found to be pregnant, was strangled by her father and brother. No investigation or prosecution ensued. Other women were killed for attempting to flee their homes, often because of domestic violence. Women in the family of the deceased victim of an “honour killing” are typically too afraid of their own families to make a complaint to police. And they know that the police are unlikely to carry out an investigation, or that if they do, bribery will ensure impunity for the perpetrators. I received reports of a number of cases in which police did attempt to carry out investigations, but senior Government officials interfered with or prevented the investigations. Like any other murders, international law requires that these killings be investigated, prosecuted, and punished.<sup>38</sup>

35 See Report of the Special Rapporteur, Asma Jahangir, E/CN.4/2000/3, 25 January 2000, paras. 78-84; Report of the Special Rapporteur, Asma Jahangir, A/57/138, 2 July 2002, para. 35; Report of the Special Rapporteur, Asma Jahangir, E/CN.4/2004/7, 22 December 2003, paras. 66-69; Interim Report of the Special Rapporteur, Asma Jahangir, A/59/319, 1 September 2004, paras. 45-55.

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

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

38 In most situations, the isolated killing of individuals will constitute a simple crime and not give rise to any governmental responsibility. But once a pattern becomes clear in which the response of the Government is clearly inadequate, its responsibility under international human rights law becomes applicable. (See E/CN.4/2005/7, *supra* note 7, paras. 71-75.) This is because human rights law obligates governments to investigate, prosecute, and punish crimes that impinge upon the rights of its people. (ICCPR, art. 2(1).) When doing so is obstructed by existing laws or practices, governments are obligated to change these. (ICCPR, art. 2(2).) As the Special Rapporteur has repeatedly

[...]

87. So-called “honour killings”, which occur in very large numbers, must be treated as the murders that they so clearly are. Police should investigate such cases whether or not the family has made a specific complaint to the police.

Special Rapporteur Alston had previously interacted with the Governments of Syria and Pakistan on the same subject:

*Urgent appeal letter sent to the Government of the Syrian Arab Republic (22 August 2006)*

I am writing in relation to information that I have received about a continuing pattern of honour killings in the Syrian Arab Republic in which women are killed by a family member, usually because she has married outside her religion or because of suspicions of sexual impropriety. Most recently, I have received information regarding Huda Abu Assaly, who was stabbed and shot to death by her brother in late August for having married a Christian man.

While I do not wish to prejudge the accuracy of these allegations, there would be ground for serious concerns if they were correct. To the extent that honour killings are not met with stringent punishments, the State acquiesces in the practice. As a State Party to the International Covenant on Civil and Political Rights, the Syrian Arab Republic has assumed the legal obligation to ensure the right to life by effectively punishing those who commit murder. Article 6(1) recognises that every human being has the right not to be arbitrarily deprived of his or her life. Article 2(1) requires the State to ensure to all individuals within its territory the rights recognised in ICCPR, without distinction as to sex. Article 2(2) elaborates that each State Party must undertake all necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the ICCPR. These obligations are not mere formalities: The punishments imposed may not be so lenient as to invite future violations. As I noted in my report to the Commission on Human Rights, “Crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators...” (E/CN.4/2005/7, para. 71.)

*Response from the Government of the Syrian Arab Republic (13 February 2007)*

The Syrian Code was issued by Legislative Decree No. 148 of 1949 and many of its articles are based on the French Criminal Code, while some are based on the Polish Criminal Code and the Italian Criminal Code. According to this Code and the other criminal laws in force in Syria, no one residing in the territory of the State may commit an offence without being prosecuted for it in accordance with due process, regardless of whether the offence is an honour crime or any other kind of offence. The legislature devotes section 2, chapter 11, of the Code to offences against liberty and honour, prescribing the appropriate penalties for each such offence.

If there are cases where the motive of honour may constitute an extenuating circumstance, this does not apply to men alone. The provision is a general one, insofar as it benefits men and women equally. Penalties are based on purely general rules which the courts apply in an objective manner to anyone found guilty of a material, moral and legally designated offence. The courts remain the only authority authorised to determine how far an offence correlates to a legal provision and

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observed, governments that fail to punish murders because they are “honor killings” are violating international human rights law. (See E/CN.4/2000/3, *supra* note 35, paras. 78-84; see also Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Visit to Afghanistan, E/CN.4/2006/61/Add.5, 15 February 2006).

to render appropriate judgements in each case of which they are seized, based on the evidence presented to them

*Allegation letter sent to the Government of Pakistan (8 September 2008) (with the Special Rapporteur on violence against women, its causes and consequences)*

We would like to bring to your Government's attention information we have received concerning a continuing pattern of honour killings in Pakistan in which women are killed, usually by a family member because of suspicions of sexual impropriety or because they have married outside their religion. On 4 July 2008, the Special Rapporteur on violence against women, its causes and consequences drew your Government's attention to ten reported cases of honour killings, all alleged to have occurred during the month of April 2008. Today, in addition to the present communication, we are bringing to your Government's attention by separate communication another case of so-called "honour killing" of five women in Balochistan province. We would also like to raise concerns about a report we have received of a tribal Jirga imposing the death sentence.

Recently, we have received information regarding the killing of Ms. Husna, late wife of Mr. Kaloo Jamali, and their daughter Saima, all residents of Khaipur Nathan Shah.

According to the information received:

On 28 January 2008, Kaloo Jamali beat his wife Husna, as he allegedly often did, accusing her of a relationship with another man. During the quarrel, Kaloo Jamali ordered his son, Mujeeb Ur Rehman Jamali, to kill Husna. Kaloo Jamali's cousin, Hanif, loaded the rifle and gave it to Mujeeb, telling him that his mother was "kari" (a black character). Mujeeb fired at his mother and killed her. Husna's daughter Saima rushed into the room and Mujeeb shot her as well. Kaloo Jamali told his neighbors that his wife was "kari," that Saima had been supporting her, and that mother and daughter were killed in order to protect the honour and dignity of the Jamali family.

On 30 January 2008, Kaloo Jamali went to Karimdad Lund Police Station, Khaipur Nathan, and reported the matter to the police. Mubeen Jamali, another son of Kaloo Jamali, lodged a First Investigation Report (FIR) against his brother Mujeeb for the murder of his mother and sister. The police arrested Mujeeb Jamali and Hanif, but not Kaloo Jamali. Hanif was subsequently released on bail, while Mujeeb remains in detention.

[...]

While we do not wish to prejudge the accuracy of these allegations, there would be ground for serious concerns if they were correct. To the extent that honour killings are not met with stringent punishments, the State acquiesces in the practice. Under international law, Pakistan has the legal obligation to ensure the right to life by effectively punishing those who commit murder. Article 6(1) of the International Covenant on Civil and Political Rights, which Pakistan signed on 17 April 2008, recognises that every human being has the right not to be arbitrarily deprived of his or her life. Article 2(1) requires the State to ensure to all individuals within its territory the rights recognised in ICCPR, without distinction as to sex. Article 2(2) elaborates that each State Party must undertake all necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the ICCPR. These obligations are not mere formalities: The punishments imposed may not be so lenient as to invite future violations. As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in his report to the Commission on Human Rights, "crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators." (E/CN.4/2005/7, para. 71.)

We urge your Government to take all necessary measures to prevent and punish honour killings. In this context, we would like to recall the Concluding Observations of the Committee on the

Rights of the Child on Pakistan's report of 27 October 2003 (CRC/C/15/Add.217, paras 34 and 35), in which the Committee expressed its concerns "about the widespread and increasing problem of so-called honour killings" and recommended that Pakistan "take all necessary measures to ensure that there is no discriminatory treatment for crimes of honour, and that they are promptly, fairly and thoroughly investigated and prosecuted".

We would also like to bring to Your Excellency's attention Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence.

We would further like to bring to Your Excellency's attention Article 4 of the United Nations Declaration on the Elimination of Violence against Women which underlines the responsibility of States to condemn violence against women and which calls on States not to invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. We would also like to refer Your Excellency's Government to the Convention on the Elimination of Discrimination against Women according to which States Parties agree to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (Article 5 (a)).

[...]

[...] As with regard to honour killings, international law as reflected in Article 2(2) of the ICCPR requires the State to undertake all necessary steps to adopt such laws or other measures as may be necessary to give effect to the rights recognised in the ICCPR, and to deter, prevent and punish those breaking such laws.

In his 2013 report to the Council, Special Rapporteur Heyns commented on his investigation of "honour" killings in Turkey:

*Report on Mission to Turkey (A/HRC/23/47/Add.2, 18 March 2013, ¶¶39-40, 42, 46)*

*B. Deaths resulting from violence against women*

39. Deaths and threats to the lives of women in Turkey were raised as a serious concern during the visit. The Special Rapporteur received information of deaths of women resulting from domestic violence and, in particular, from so-called honour killings. A non-governmental organization reported that in 2011, over 100 women were killed due to domestic violence. This is in line with data provided during the visit by the Ministry of Interior, which indicate that 107 individuals were killed in domestic intentional homicides within the first nine months of 2012. Of these, 35 were registered as honour killings.

40. Several interlocutors in Turkey stated that a distinction should be made between honour killings and other types of killing of women. According to them, in the case of honour killings, in which the perpetrator evokes honour as the motive for killing, the family assumes the role of the judge and organises and executes the killing. According to information received, recent trends consist of having a younger member of the family perform the execution, because if punished, the minor would receive a lighter sentence due to age, or of forcing the victim to commit suicide so that there is no identifiable perpetrator.

[...]

42. From a prevention point of view, the Special Rapporteur welcomes the ratification by Turkey of the new Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), and its publication in the Official Gazette on 8 March 2012. He commends the adoption of Law No. 6284 on Protection of the Family and Prevention of Violence Against Women which entered into force on 20 March 2012, as well as the efforts to establish a National Action Plan on the fight against domestic violence. He notes the significant number of training and awareness-raising programmes on violence against women undertaken throughout the country.

[...]

46. Proper accountability mechanisms, in particular in terms of serious and dissuasive punishment for violence against women, constitute another dimension that the authorities should address, in particular in cases of honour killing. The 2005 Penal Code provides for a significant measure in this regard by abolishing the de facto reductions of sentences for perpetrators involved in honour killings with the aim of ensuring that they receive the highest sentences. However, in present practice, honour killings may still receive lighter sentences. In this respect, article 82 of the Penal Code, which regulates crimes punishable by aggravated life imprisonment, refers, in paragraph (k), to “custom killing” (under the term “töre”) rather than “honour killing” (under the term “namus”). This has led to uneven legal interpretation of this article, where some courts have found that honour killing does not fall under “custom killing” and therefore is not covered by the provisions of article 82, paragraph (k). The Special Rapporteur notes that this concern has been expressed by various United Nations committees, most recently by the Human Rights Committee.<sup>39</sup> He calls upon the Turkish authorities to take firm steps to ensure that honour killings are consistently interpreted as crimes falling under article 82, paragraph (k), of the Penal Code. He further stresses the importance of taking parallel measures such that all suspected honour killings receive prompt, impartial and effective investigation, as well as appropriately severe sanctions against perpetrators.

*Follow-up report on mission to Turkey (A/HRC/29/37/Add.4, 6 May 2015, ¶39)*

39. Although the 2005 Penal Code abolished de facto reduction of sentences for perpetrators of honour killings, uneven legal interpretation of article 82 of the Penal Code has resulting in perpetrators of honour killings receiving lighter sentences. Article 82 of the Code regulates crimes punishable by aggravated life imprisonment and refers to “custom killing” rather than “honour killing”; some courts have determined that honour killings do not fall within the scope of article 82. The Special Rapporteur recommended that article 82 be understood as including honour killings under “custom” and that there should be a uniform legal interpretation of that article in order to ensure that the highest penalty is always applied in cases of honour killings (ibid., para. 108). In its response, the Government indicated that Turkey was bound by the Istanbul Convention, which became effective on 1 August 2014 and provides for measures to be adopted to ensure that motives, such as honour, are not considered as an excuse for acts of violence.

In his 2009 report to the General Assembly, Special Rapporteur Alston surveyed mob justice and vigilante killings around the world, and analysed the forms of such killings, the applicable international law, and steps that states can take to reduce their occurrence:

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39 See CCPR/C/TUR/CO/1 (2012).



*Report to the General Assembly (A/64/187, 29 July 2009, ¶¶15-17, 20-24, 50-76)*

**A. Introduction**

15. On 2 June 2009, a Guinean Government official urged citizens to “burn alive armed bandits who are caught red-handed”. In India on 22 July 2009, a mob beat to death three suspected thieves and threw stones at the police who attempted to prevent the murders. On 12 July 2009, residents of a district in Uganda beat and burnt to death a suspected burglar. On 8 January 2009, a man in Australia charged with sexual offences against children was murdered while asleep in his home, the day before his trial was to begin.<sup>40</sup> Such “vigilante killings” (unlawful killings by private citizens of suspected criminals and others) are referred to by a range of euphemisms, including jungle justice, lynch law, mob justice, instant justice, lynching, *linchamientos*, violent self-help, street justice, people’s justice, *justice sommaire* and private justice. It must be emphasised that problems with vigilante killings are by no means the preserve of any one geographical region, or of developing countries. They have been reported from around the world and the problem is thus one of potential concern to all States.

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

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

[...]

**B. What are vigilante killings?**

20. There has been much debate over the precise meaning and legitimacy of the term “vigilantism” in the historical, anthropological and political science literature.<sup>41</sup> Attempts have been made, especially in early United States literature on the subject, to justify vigilante killings as an expression of popular sovereignty: “one of the key reasons for vigilantism’s taking hold in America was the belief that the rule of the people superseded all other rule. And from that followed the premise that they had the power to act in their own best interest in the absence of effective constituted authority”.<sup>42</sup> Later writings, however, stressed the negative consequences that such killings have for the rule of law.<sup>43</sup>

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

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

42 Burrows, *supra* note 41, p. 17. See pp. 8-23 for discussion of arguments for vigilantism in the nineteenth century United States context. Also see Abrahams, *supra* note 41 above, pp. 12-13.

43 Burrows, *supra* note 41, p. 11.

21. Until the late 1980s the phenomenon appears to have received little scholarly attention outside of the United States. Since then, edited volumes and articles have discussed vigilantism in the context of Latin America (especially Brazil), Africa (especially South Africa, Nigeria, Tanzania, Ghana) and Asia (especially the Philippines).<sup>44</sup>

22. Various definitional attempts have been made. Johnston, for example, argues that vigilantism has six key elements involving: (a) planning and organization by (b) private agents (c) acting autonomously (d) using or threatening the use of force (e) in reaction to real or perceived criminal activity or deviance and (f) aiming to control crime or deviance by offering security.<sup>45</sup> Burrows earlier set out a similar list of elements for defining a vigilante group: (a) a formal organization, (b) existing for varying periods of time, which (c) justifies its existence as due to the failures of the State to provide security, (d) professes to act only as a “last-resort”, (e) works to strengthen “the legal system, never for its destruction”, and (f) “represents the establishment”.<sup>46</sup>

23. Subsequent writing has, however, challenged these definitions, noting their general accuracy in the United States context, but arguing that they are not fully appropriate for other contexts, especially where the killings are undertaken in a more spontaneous or disorganised fashion.<sup>47</sup>

### C. Survey: vigilante killings around the world

24. Vigilante killings have been an issue in many of the countries visited by the Special Rapporteur, including Brazil, Nigeria, Kenya, the Philippines, the Central African Republic and Guatemala. Further research indicates their widespread occurrence across the globe, and that they are confined neither to specific regions nor to particular phases of national socio-economic development.

[...]

### D. Preliminary analysis and issues of concern

[...]

#### 1. Definitions of vigilantism

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

51. At their core, vigilante killings are those undertaken by individuals or groups who “take the law into their own hands”.<sup>48</sup> They are killings carried out in violation of the law by private individuals with the purported aim of crime control, or the control of perceived deviant or immoral behaviour. Specific incidents of vigilante killings can most usefully be categorised along various axes – such as spontaneity, organization and level of State involvement – and can be considered in relation to various characteristics – including the precise motivation for the killing, the identity of the victim

44 See, for example, Abrahams, *supra* note 41 (arguing that vigilantism has received insufficient attention outside the United States and seeking to address this by analysing vigilantism in, for example, Tanzania, Uganda and the Philippines); Martha K. Huggins, “Introduction: vigilantism and the State – a look south and north”, in Martha K. Huggins (ed.), *Vigilantism and the State in Modern Latin America: Essays on Extralegal Violence* (1991) (applying United States literature on vigilantism to the Latin American context).

45 Les Johnston, “What is Vigilantism?”, *British Journal of Criminology*, vol. 36, No. 2, 1996.

46 Burrows, *supra* note 41, pp. 13-14.

47 Huggins, *supra* note 44, pp. 3-4 (questioning the requirement of “organization”).

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

and the identity of perpetrators.<sup>49</sup> At one end of a spontaneity planning continuum, for example, would be a set of killings carefully planned and orchestrated by a group which formed itself for the purpose of killing, for example, the listed leaders of a known criminal gang in a particular town. At the other end would be a group of people unknown to each other who responded to a person's cry to catch a thief in the street and who came together at that point to murder the suspect in an instant of "mob justice". It is the illegality and motive which brings these killings together as instances of vigilantism.

52. Although the lines can sometimes become blurred, vigilante killings should be conceptually separated from a range of other types or forms of killings which may definitionally overlap in certain respects, but which are in fact distinct. For example, although vigilante killings are sometimes justified by individual perpetrators as "necessary" or as "self-defence", they are distinct from killings lawfully committed in self-defence, because they are not actually carried out in response to an immediate threat or use of lethal force. Killings by vigilantes are also distinct from those that may be committed by mercenaries, in that the actions of the latter are carried out by persons motivated primarily by personal gain.<sup>50</sup> Vigilantes are also distinct from insurgents, guerrillas and rebel groups because vigilantes are not against the State as such; nor do they seek fundamental changes in the structure of the State, or separatism. Vigilantism is "conservative violence ... designed to create, maintain, or recreate an established socio-political order".<sup>51</sup> In addition, vigilante killings should be analytically separated from the broad category of killings carried out by armed groups or forces during international or non-international armed conflict, although vigilante killings can of course be committed within the general context of an armed conflict.

## *2. The role of the State and the State's obligations to respect and ensure the right to life*

53. Very often, conceptions of vigilantes paint them as individuals or groups acting privately to provide justice where the State fails to do so. States also commonly deny any official involvement in vigilante killings. However, the survey indicates that a more accurate accounting of vigilante killings must take cognizance of not only fully private vigilante acts, but also a spectrum of State involvement. An important conclusion to be drawn from the examples above is that covert or overt official involvement in or encouragement of vigilante killings is actually quite common, and perhaps more common than might otherwise be assumed given that the justification generally given for vigilantism is that it is necessary in lieu of effective State power.<sup>52</sup>

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

55. Recognition of the various roles that States have played in vigilante killings has important implications for considering States' international legal obligations. States are obliged both to respect and to ensure the right to life.<sup>53</sup> This means that they are required to refrain from violating the right to life and also that they must adopt the necessary legislative, judicial, administrative, educative

49 For discussion of some of these variables, see Huggins, *supra* note 44, pp. 8-10.

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

51 Rosenbaum and Sederberg, *supra* note 41, p. 4.

52 State involvement in vigilantism is not a new development. See e.g. Burrows, *supra* note 41, pp. 20-21 (describing senior official involvement in or support for vigilantism in the nineteenth century United States context).

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

and other measures to guarantee that the right to life is respected within their territory or areas under their control.<sup>54</sup> In other words, just as States are prohibited from using otherwise private actors to carry out vigilante killings, they are required to protect people from violent vigilantism carried out by privately formed groups.

56. With respect to the relationship between vigilantism and the obligation to respect the right to life, some types or cases of vigilante killings appear to have such a level of State involvement on the facts that the killings could reasonably be judged as attributable to the State. The conduct of private individuals is attributable to a State where, for example, those actors are acting on the instructions of, or under the direction or control of, the State.<sup>55</sup> Whether any particular vigilante killing is attributable to the State needs to be determined on a case-by-case basis. An example that would likely satisfy the attribution test would be where State officials fund the formation of a vigilante group and instructs it to kill certain named individuals or to patrol a certain area and kill suspected criminals. Where attribution exists on the facts, the State is internationally responsible for the killing itself. The provision of compensation or rewards for such killings would likely satisfy the criteria for attribution.

57. Outside of such cases of direct liability, the State can also be internationally responsible for failing to meet its due diligence obligations to ensure that rights are respected.<sup>56</sup> The State's obligations to protect victims from vigilante violence and to investigate and prosecute perpetrators are especially relevant. All too often, the actions of officials encourage or permit vigilante killings in such a way that they entail a failure to meet the State's due diligence obligations. A State's obligation to "ensure" the right to life is not breached simply because a vigilante kills a suspected criminal. Generally, isolated killings of individuals will constitute a crime in violation of the State's domestic laws, but not give rise to any international governmental responsibility. However, a State will violate its obligation to "ensure" the right to life when it fails to take appropriate measures to prevent, punish, investigate or redress the harm caused by vigilantes.<sup>57</sup> The police, for example, fail in their duty to prevent when they refuse to respond to calls of ongoing mob justice, or to take victims for medical treatment.<sup>58</sup> States also fail in their obligations when they permit the perpetrators of vigilante killings to escape prosecution, as so often happens.<sup>59</sup> Where vigilante killings are known to be a significant phenomenon, the State should take specific and focused action to investigate and stop them. The State may need to create a specialised law enforcement task force to dismantle vigilante groups and arrest and prosecute perpetrators,<sup>60</sup> or investigations by a State's national human rights institution may be appropriate (as is currently occurring in the Philippines). The international

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

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

56 E/CN.4/2005/7, *supra* note 7, para. 73; *Velásquez Rodríguez v. Honduras*, *supra* note 4, p.291.

57 CCPR/C/21/Rev.1/Add.13, *supra* note 54; Commission on Human Rights, Resolution 2004/37, para. 9.

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

59 For example, in one study of 82 cases, "Police inquests had not closed even one case": Maria-Victoria Benevides and Rosa-Maria Fischer Ferreira, "Popular responses and urban violence: lynching in Brazil", in Huggins, *supra* note 44, p. 38.

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

community can usefully assist States in such efforts through the provision of technical advice and resources.

### 3. *The victims and perpetrators of vigilante killings*

58. The survey indicates that the most common victims of vigilante violence are suspected criminals, generally young males and especially those suspected of having committed theft. Country-specific studies confirm the latter group as the primary victims: studies in Brazil show that the “majority of lynch victims were poor people accused of thievery”,<sup>61</sup> research in Guatemala found that 55 per cent of victims were suspected thieves,<sup>62</sup> analysis from Ghana found that most victims were young males accused of theft<sup>63</sup> and a study from Tanzania found that 95 per cent of victims were suspected robbers.<sup>64</sup>

59. Other frequent targets of vigilante violence are suspected murderers, perpetrators of assault, gang or cartel members and suspected or convicted sex offenders, including rapists and child sex offenders. Suspected “witches”, a victim group upon which the Special Rapporteur reported in his latest report to the Human Rights Council, are also commonly targeted in mob attacks.<sup>65</sup> Likewise, so-called “street children” have often been killed by vigilantes wanting to “cleanse” society of undesirables. Victims are also often those who are considered to have violated an individual’s or group’s moral or religious codes, such as abortion doctors, sex workers or those judged inappropriately dressed.

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

61. The perpetrators of vigilante killings can vary widely from one context to another. In some cases, the perpetrators are unknown to each other: a suspected thief will be identified in the street, calls will be made to catch him and passers-by will join in chasing, beating and killing the suspect.<sup>66</sup> In others, a group of perpetrators who know each other (often neighbours, or residents of a small community) will join together to hunt down a suspect. Both types of killings are often referred to as “mob justice” and are frequently carried out in public. They tend to be committed in a particularly gruesome manner, with the victim often being severely beaten before death, murdered in a slow and painful fashion (e.g., dismembered or burned to death) and the corpse is often further disfigured after death.

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

61 Benevides and Ferreira, *supra* note 59, p. 37.

62 Report of the Special Rapporteur, Philip Alston, Follow-Up to Mission to Guatemala, A/HRC/11/2/Add.7, 4 May 2009, para. 14.

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

64 Paul M. Ng’walali and James N. Kitinya, “Mob justice in Tanzania: a medico-social problem”, 2006, *African Health Science*, vol. 6 (1). p. 36.

65 Report of the Special Rapporteur, Philip Alston, A/HRC/11/2, 27 May 2009, paras. 43-59. *Editors’ Note*: The phenomenon of violence against “witches” is further discussed in Chapter 7.

66 Benevides and Ferreira, *supra* note 59, pp. 39-40, refer to such killings as “anonymous lynch action”, in comparison to “communal lynchings”.



membership fees. They afford their victims varying degrees of “due process”, with some groups carrying out their own “investigations” and mini-“trials” of suspects.

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

64. Knowledge of the predominant identities of victims and perpetrators in a particular country or area should guide the response of States and the international community to the killings. Very differently tailored responses will be necessary to combat mob killings of “witches” than would be necessary to stop formally organised group murders of named criminals. The importance of careful research-based responses to vigilante killings, and the response implications in various circumstances, are addressed in section 5 below.

#### 4. Human rights and security implications

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

66. It is a basic tenet of human rights law, however, that suspected criminals should not be sentenced and punished until they have been through a trial respecting fair trial guarantees, and the punishment of death should be reserved strictly for only the “most serious crimes” (intentional murder).<sup>67</sup> However nobly stated the aims of any vigilante killing may be, by their very nature, they are murders and grave violations of the right to life and of the right to be fairly tried by a court of law. Victims are simply summarily executed, often in a particularly brutal manner, thus introducing an element of torture or cruel, inhuman and degrading treatment. Sometimes, there will be a pretence of a “trial”, but generally the person is presumed guilty, found, detained and killed by the same individual or group that acts as victim, police, prosecutor, judge, jury and executioner. This presents a great risk that innocent people will be killed. The punishment is also generally entirely disproportionate to the crime allegedly committed. Very often, individuals are murdered for minor offences, especially petty theft, and for imputed beliefs, practices or identities which are not and should not be criminal offences at all (such as witchcraft). In one study of 82 lynching incidents in Brazil between 1979 and 1982, many killings were in response to thefts of items of low value, including “a cheap radio or a small amount of food”.<sup>68</sup>

67. Less obviously, vigilante killings can also violate the rights of the victims of the crimes that the vigilante killing purports to address. Victims of crime have a right to a remedy, including a judicial remedy.<sup>69</sup> The murder of a suspect denies the possibility of a trial and of the victim being heard, and seeking and arriving at the truth. Further, the arbitrary killing of a suspected but never convicted wrong-doer may lead to the actual criminal escaping investigation and prosecution.

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

67 International Covenant on Civil and Political Rights, art. 6.2; Report of the Special Rapporteur, Philip Alston, Mission to Guatemala, A/HRC/4/20/Add.2, 19 February 2007, para. 28.

68 Benevides and Ferreira, *supra* note 59, p. 37.

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



criminal justice system, they further erode respect for the rule of law and undermine efforts to develop responsible policing and effective justice systems. Some vigilantism not only bypasses the police, but also actively targets them. Assaults on police officers who intervene to stop vigilante killings, or at police stations where suspects are held, are not uncommon. In many cases, the initial “justice” violence of vigilante groups metamorphoses into regular thuggery and organised criminal violence. The South African vigilante group PAGAD, for example, started as a group targeting suspected drug dealers, but quickly became increasingly militant and attacked and bombed the police themselves.<sup>70</sup> The initially contained and targeted violence of such groups has the clear potential to spiral out of control, as occurred with the Bakassi Boys in Nigeria. Where vigilante killings in one city or town of a country continue unchecked, they can stand as an example for others and readily spread to other cities. Vigilante killings can also result in increased violence through revenge attacks and the formation of counter-groups (for example, in Nepal and Kenya). Given their often public nature, vigilante killings can further increase the fear and insecurity felt by citizens who are forced to watch a fellow citizen murdered on the street and who are then unable to speak out for fear of retribution.<sup>71</sup>

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

69. The most commonly stated or theorised reasons – whether presented in news reports, academic writing, human rights reporting or by the perpetrators themselves – for the occurrence of vigilante killings are actual or perceived high crime rates and general insecurity, ineffective policing, widespread corruption and a lack of faith that the criminal justice system will in fact provide justice because it is too slow, too lenient, too corrupt, too expensive or too inaccessible. In some countries, the breakdown of traditional justice (due, for example, to protracted armed conflict) has also been an important factor in the growth of alternative methods of “justice”. Times of transition, especially from military or authoritarian governments to democracy, or from armed conflict to peace, can often be accompanied by vigilantism.<sup>72</sup>

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

71. A report on lynchings by the United Nations Verification Mission in Guatemala (MINUGUA) provides a notable exception.<sup>73</sup> As the Special Representative discussed in his report on his 2005 fact-finding mission to Guatemala, the MINUGUA report found that lynchings were predominantly due to the “incomplete transition from the period of armed confrontation”, in which the counter-insurgency movement had disrupted indigenous justice systems. When the war formally ended, the criminal justice system was not sufficiently developed and this left a “power vacuum”.<sup>74</sup> The detailed analysis of causes positioned MINUGUA to be able to propose context-specific reforms targeted at reducing vigilante killings, which included developing indigenous justice and adapting criminal justice to rural communities’ needs.<sup>75</sup> The tailored nature of the recommendations, based upon serious and thorough analysis of the context for the killings, provides an important example

70 See Anthony Minnaar, “The ‘new’ vigilantism in post-April 1994 South Africa: searching for explanations”, in Dermot Feenan (ed.), *Informal Criminal Justice*, (2003). pp. 124-128.

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

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

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

74 A/HRC/4/20/Add.2, *supra* note 67, para. 29.

75 *Ibid.*, para. 30.

of the first step that should be taken by those seeking to address vigilantism: reforms should be built upon context-specific analysis.

72. Similarly, academic analysis of the determinants of support for vigilante killings in Ghana provided important insights for developing reform measures in that country. Tankebe's in-depth study found that "public support for vigilante selfhelp was fundamentally linked to people's judgments about the trustworthiness of the police; people who perceived that the police were not trustworthy were more likely to support vigilantism"<sup>76</sup> Perceptions about how well the police leadership was addressing corruption in the force was also a factor.<sup>77</sup> Importantly, Tankebe also found that "contrary to many current understandings of vigilantism, neither experience of police corruption nor perceptions of police (in)effectiveness were significant predictors of support for vigilantism"<sup>78</sup> His study also found that those with higher levels of education were less likely to support vigilantism and that, although much vigilantism was carried out by younger people, support was strongest amongst older people.<sup>79</sup> These findings provide important information to assist with the design and targeting of education programmes directed at reducing vigilantism. For instance, not only do they suggest that likely perpetrator groups should be included in education efforts, but they also support the inclusion of other demographic groups who might otherwise not be the subject of focus (such as older people, revealed by the study to be those supporting the perpetrators). Crucially, the study also indicates that, in reducing support for vigilantism, particular attention should be paid to measures taken to increase public confidence in the police and positive attitudes towards the police, rather than indicators of police effectiveness alone.

73. Research undertaken in South Africa by Sekhonyane and Louw has also stressed the importance of looking beyond justice system effectiveness, to include public perceptions of effectiveness in the context of vigilantism.<sup>80</sup> The authors argued that the public was provided with insufficient information about the criminal justice process, especially the purpose, function and effect of bail for suspects, and that that was a notable factor in support for vigilantism.<sup>81</sup> Such a conclusion suggests that, in addressing vigilante killings as part of law and order reform, emphasis should be placed on ensuring that there is appropriate communication to the public about the workings and outcomes of the criminal justice system. In practice then, while educational measures to reduce vigilante killings are important, those measures which would simply convey the unlawful nature of vigilante killings will likely be ineffective; education should include a focus on criminal justice and be tailored to address the concerns of specific communities.

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

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

77 *Ibid.*, p. 258.

78 *Ibid.*, p. 260.

79 *Ibid.*, pp. 257, 261-262.

80 Sekhonyane and Louw, *supra* note 60, chap. 4.

81 *Ibid.*

### 6. Community policing, neighbourhood watch groups and vigilante killings

75. Community policing initiatives are important and can play a much-needed role in filling gaps in law enforcement by the police. The underlying motives for vigilantism may be usefully channelled into lawful community policing or watch activities. Research from South Africa has suggested that, where appropriately designed, community policing programmes can help reduce vigilantism.<sup>82</sup>

76. However, where the State promotes community self-policing groups or neighbourhood watch groups, it must take careful steps to ensure that such groups operate within the bounds of the law and that they do not turn into criminal organizations carrying out unlawful killings in the name of “justice”. It may, for example, be necessary for such groups to be locally registered and monitored.<sup>83</sup> Community group members will need to be educated about the relevant laws, and instructed on what actions they are permitted and not permitted to take, so that their self-policing stays within lawful bounds. There should also be a clear system of liaison between such groups and the police, so that the efforts are complementary.

Vigilante killings have been prominent in many of the Special Rapporteurs’ country mission reports:

#### *Report on Mission to Nigeria (E/CN.4/2006/53/Add.4, 7 January 2006, ¶¶78-85, 107)*

78. With the end of military rule large businesses, including oil companies and banks, as well as the rich, turned to private security to fill the vacuum of authority. For the poor, vigilantes were seen as a way to make-up for inadequate, ineffectual and often malign policing. For politicians, armed volunteer groups offered a means of intimidating opponents and rewarding supporters. While “vigilante” groups play a major role in Nigeria, definitional issues are crucial to understanding the situation. The term covers a wide spectrum of groups ranging from community policing through problematic ethnic-based vigilantes, to state-sponsored or supported gangs. Because many of the groups have been openly or covertly supported by State officials, they cannot be considered classical non-state actors. The right of citizen arrest is often invoked to justify the groups’ activities.<sup>84</sup>

79. Among the most violent have been those established to defend commercial interests in urban areas. While they may carry out some “policing”, they also undertake debt collection, crime protection, extortion and armed enforcement services. The Bakassi Boys for example, is a group active mainly in Abia, Anambra and Imo states that has been responsible for many extrajudicial executions, often carried out publicly. They patrol the streets in heavily armed gangs, arrest suspects, determine guilt on the spot and exact punishment, which may involve beating, “fining”, detaining, torturing or killing the victim. The Bakassi Boys are tacitly supported by state governments and one has accorded them official recognition.<sup>85</sup>

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

82 Ibid.

83 Report of the Special Rapporteur, Philip Alston, Mission to Nigeria, E/CN.4/2006/53/Add.4, 7 January 2006, para. 107.

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

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

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

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

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

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

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

[...]

### *[Recommendations]*

#### *107. Vigilantes and community policing*

- a) The corruption and unreliability of the police force provides a convenient excuse for efforts to marginalise it: use of the military for policing, hiring “supernumary” police by oil companies, and support of vigilante gangs. But these developments further undermine the community standing of the police and make reforms even less likely. The police, at all levels, must begin to see that it is in their own interests to clean up their act. The recently launched Community Policing Initiative has huge potential to obviate the need for vigilantes and to link the police to local communities. It should be greatly expanded;
- b) Tackling the vigilante problem is especially urgent. The Federal Government should prepare and publish an authoritative inventory of all vigilante groups enjoying any form of official support and playing any role whatsoever in law enforcement. Each state Government concerned should promulgate rules regulating the activities of such groups. And the relevant authorities

must investigate and prosecute any illegal vigilante activities involving torture, detention or executions.

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

27. The lynching of suspected criminals by private individuals has been a persistent problem since the end of the armed conflict and its one that further illuminates a failure to fully transition from the era of armed confrontation. The most reliable data are those compiled by MINUGUA from 1996 to 2001. During those years, the annual number of lynchings ranged from 35 to 105, the number resulting in death ranged from 13 to 29, and the number of persons killed ranged from 23 to 54.<sup>86</sup> I have not found reliable statistics for 2002 to 2005, but, at the time of the visit, there had been 13 deaths from lynching in 2006. MINUGUA conducted an exceptionally thorough and well-reasoned study of lynching, and this continues to structure nearly all serious discussion of the phenomenon.

28. MINUGUA's study began with a general observation that the areas in which lynching is most widespread are areas that suffer disproportionate poverty, are predominantly indigenous, have a weak State presence, and experienced the most human rights violations during the armed confrontation. In seeking to explain this pattern, the study began by disproving several superficially plausible hypotheses. First, lynching is not the result of indigenous cultural traditions. Indeed, it found that lynching is a relatively recent phenomenon neither required nor permitted by the indigenous systems of justice. Second, lynching is not a simple continuation of the armed confrontation at a lower intensity. It found that lynchings are typically motivated neither by revenge for past violence nor by political or ideological agendas: 55 per cent are in response to crimes involving personal property. Third, lynchings are not opportunistic attacks on the vulnerable facilitated by the absence of State institutions: the vast majority of victims are men between the ages of 18 and 40.

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

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

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

86 MINUGUA, *supra* note 73, p. 6.



***Follow-up Report on Mission to Nigeria (A/HRC/8/3/Add.3, 14 May 2008, ¶¶96-98)***

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

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

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

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

17. The [*Procuradía de los Derechos Humanos*] PDH reports that there were 18 individuals killed by lynching in 2008. While this represents a reduction on the average numbers (23 to 54) killed in the period 1996-2001, there has been little change since the Special Rapporteur's 2006 visit. In 2006 and 2007, there were 18 and 20 lynchings respectively. In his 2007 report, the Special Rapporteur had analysed MINUGUA's 2002 extensive study of the phenomenon and supported its reasoned recommendations.<sup>87</sup> As was the case when the Special Rapporteur visited Guatemala in 2006, the majority of lynchings continue to be carried out against individuals suspected of being responsible for robberies. However, the Special Rapporteur is aware of no measures taken to address these killings.

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

94. Vigilante killings and mob justice are widespread, and on the rise.<sup>88</sup> In 2008, over 20 such killings were recorded in Bukavu (South Kivu) alone.<sup>89</sup> There are, however, no clear national statistics on the numbers of such killings. Victims are usually suspected thieves, rapists or witches.<sup>90</sup> Often

87 MINUGUA, *supra* note 73. See analysis of the MINUGUA study in A/HRC/4/20/Add.2, *supra* note 67, paras. 27-31.

88 See Combined report of seven thematic special procedures on technical assistance to the Government of the Democratic Republic of the Congo and urgent examination of the situation in the east of the country, A/HRC/10/59, 5 March 2009, para. 59.

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

90 "La justice populaire fait encore une victime à Bukavu", *Safina*, 24 October 2009; "La justice populaire à Bukavu", *Gazette de l'Abolitionniste*, Bulletin no. 2, March 2009; *Memorandum de la Société Civile du sud Kivu au Rapporteur*



they are beaten or killed with machetes, and then set on fire, sometimes while still alive.<sup>1</sup> Local populations often appear to view this as a legitimate means of securing justice, in large part due to the absence of a functioning criminal justice system.

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

*Report on Mission to Papua New Guinea (A/HRC/29/37/Add.1, 30 March 2015, ¶¶15-17)*

15. During his visit, the Special Rapporteur encountered numerous references to the role of the “wantok” system in Papua New Guinea society. “Wantokism” is the social glue, the kinship of people from the same clan or group, whose customs are often stronger than that of the law and the State, particularly in remote areas of the country, where the presence of State institutions is limited.

16. There were also many references to the practice of “payback” between individuals or groups which often result in killings. “Payback” is an act of retaliation carried out usually by a group whose members have been harmed on the individual, his or her relatives or group that perpetrated the harm. In many cases, the harm is considered resolved once the perpetrator has paid a financial compensation to the family of the victim, which may, in some instances, benefit only the family and not the victim or society at large. In the context of the right to life, the practice of payback can lead to impunity in the case of murder.

17. Impunity is further enhanced by the fact that many payback cases are not reported, due to the sense of solidarity among the group, so that a member may not report the acts of other members of the group or testify against them. Witnesses are often reluctant to testify out of fear of retaliation from within the group. The police, prosecutors and local magistrates are part of their own group

The Special Rapporteurs investigated social cleansing killings in numerous country missions, including Guatemala, Ecuador, and Brazil. Social cleansing killings often overlap with instances of mob or vigilante justice, and are similarly motivated by an explicit attempt to kill supposed criminals or other “undesirables.” Further information on social cleansing killings, which are frequently also committed by on or off duty police officials, is available in Chapter 3. They can also involve identity-based killings, discussed further in Chapter 7.

*Report on Mission to Guatemala (A/HRC/4/20/Add.2, 19 February 2007, ¶¶15-17)*

15. Guatemala is experiencing a high and rising murder rate. In 2001, there were 3,230 homicides; in 2002, 3,631; in 2003, 4,236; in 2004, 4,507; in 2005, 5,308; and by mid-August 2006, there had been 2,905. In other words, the homicide rate increased an alarming 64 per cent over five years.<sup>91</sup> (By comparison, the population increased by 8 per cent.) In this context, it is natural that few believe that the criminal justice system is functioning properly. One response has been the emergence – or re-emergence – of social cleansing as a desperate and lawless means of confronting gang violence. Today, a significant number of youth are summarily executed for their presumed participation in crime or membership in gangs.

16. The principal gangs active in Guatemala are Mara 18 and Mara Salvatrucha, which also operate in other Central American countries and parts of the United States. Estimates as to the overall

*Special des Nations Unies sur les Executions Sommaires, Arbitraires et Extrajudiciaires.*

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

membership of youth gangs vary widely, from 165,000 to 200,000 according to the Ministry of Interior to no more than 35,000 according to the non-governmental *Coordinadora Juventud por Guatemala*. There are no reliable statistics on how many murders involve gang members as perpetrators or victims. One report I received draws on data from the National Civil Police (*Policía Nacional Civil*, PNC) and attributes 40 per cent of the violent deaths in Guatemala to “fights between gangs”. Civil society organizations express strong doubts, however, with regard to the attribution by the authorities of the majority of the killings to “fights between gangs” as discounting the contributions of organised crime and of the security forces themselves.<sup>92</sup>

17. Incidents of social cleansing are not effectively investigated, so official data provide no insight into their prevalence. However, a detailed study by the *Procuradía de los Derechos Humanos* (PDH) provides a rough picture. The PDH systematically reviewed newspaper stories concerning violent deaths and tabulated the characteristics of each reported death. It found that in 2005, 63 murder victims had been dispatched with a final kill shot (*tiro de gracia*) and that the corpses of 305 murder victims showed signs of torture. Between January and June 2006, the numbers were 151 (kill shots) and 435 (torture). In 2005, the bodies of 12 per cent of all murder victims – 648 of 5,338 – were found in a location other than where they died. Information about the victims does not provide sure information about the perpetrators. However, as the PDH noted, gangs typically kill quickly and flee quickly to avoid being captured or killed, suggesting that other, less vulnerable groups engaged in execution for purposes of intimidation are responsible for these murders. 18. Many of my interlocutors suggested that most instances of social cleansing are carried out or at least initiated by private individuals. A paradigmatic example often given is that of the shopkeeper being extorted by gang members and opting to contract with either private hit men or off-duty police officers to execute the gang members. One particularly disturbing expression of the problem of social cleansing by private individuals is that there is a Guatemalan website that permits users to anonymously denounce individuals as gang members and makes publicly available their names and street addresses.[ ] Most such interlocutors also believed that police officers are involved in a more official capacity but tended to see this as a less common phenomenon. The inquiries that I made were not such as to be able to gauge the relative frequency of official versus non-official social cleansing; however, those that I met who shared first-hand knowledge of social cleansing located the responsibility with the police, and it is this kind of social cleansing that I will discuss in greater depth here.

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

14. The phenomenon of social cleansing persists, with detailed studies by NGOs suggesting that approximately 8-10 per cent of killings are carried out with the aim of “weeding out” suspected gang members and other criminals. While social cleansing is often carried out by organised criminal groups, often with the support of local authorities and private security agencies, investigations by the PDH and NGOs found continued involvement in at least some of these cases by police forces, both directly and indirectly.

15. In his 2006 report, the Special Rapporteur found credible evidence of the involvement by the *División de Investigación Criminal* (DINC) of the PNC in social cleansing. He found that while the killings were more than just the actions of a few rogue officers, they had not “risen to the level

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

of officially-sanctioned policy”. After the PNC was implicated in the murder of three Salvadorian Parliamentarians in March 2007, the Minister of the Interior was removed from office, along with over 1,900 police officers. Some civil society interlocutors have noted that this signalled a positive shift in the culture of the police leadership.

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

*Report on Mission to Ecuador (A/HRC/17/28/Add.2, 5-15 July 2010, ¶¶39-42)*

39. Evidence from around the country indicates that social cleansing killings occur regularly, but it remains unclear if the Government is doing anything meaningful to address the problem. This is largely due to the continued official policy of denying the existence of such killings, despite clear evidence to the contrary.

40. Some of the killings are committed by illegal armed groups, often in connection with their drug trafficking operations. On one main road in Putumayo, Sucumbíos, for example, robberies on public buses were known to occur frequently. The road was also an important transport route for drugs and weapons, and the FARC and others armed groups fought each other for its control. In the month or so before my visit, some 30 bodies were found along the road. Each showed signs of having been tortured. Although the cases were still being investigated at the time of my visit, interlocutors noted that the evidence strongly suggested that the killings were carried out by traffickers intent on (a) making the route safer for trafficking; (b) gaining the support of the local residents, who were fed up with the robberies; and (c) using fear to encourage the population to accept the traffickers’ control of the area.

41. In other cases, the killings appear to be part of an attempt by a group to gain control of an area by purportedly enforcing “law and order” and by punishing “undesirables”. I was provided copies of social cleansing notices from Sucumbíos in which groups stated that they had “made the irrevocable decision to attack violence with violence”, and threatened to murder sex workers and “drug dealers, thieves, carjackers, kidnappers, and young drug users”. They also stated that the group already had its “first cleansing list” and would begin killing soon. They asked the community to collaborate by distributing the leaflets widely.

42. To my knowledge, similar flyers were distributed in La Concordia, Manabí and Guayaquil. The pamphlets all warned of the elimination of “criminals” and those who “have relationships with such people.” In Guayas, LGBT activists had also received such notices.

In some countries, the Special Rapporteurs have reported on “blood feuds,” which generally emanate from deeply held cultural beliefs, and involve killing members of a tribe, clan, or other group for alleged wrongs committed by other members of the group.

During his mission to Albania, on which he reported to the Council in 2011, Special Rapporteur Alston conducted a detailed investigation of the dynamics and causes of blood feuds.

*Report on Mission to Albania (A/HRC/17/28/Add.3, 14 March 2011, ¶¶3-32, 43, 46-51)*

3. Despite their anachronistic nature, blood feuds are still a significant problem in Albania. Relevant policies and programmes can only work, however, if based on an accurate and well-rounded understanding of the problem. Unfortunately, the statistics on those killed, and families isolated as a result, vary wildly from one source to another. Factors that have combined to create confusion and misunderstanding include terminological imprecision; sensationalist media coverage, especially by the international press; international donor fascination with what appears

to be an “exotic” remnant of the country’s feudal history; civil society incentives to be overly inclusive in their counting; and Government sensitivity leading to a concern to downplay the issue.

#### A. What is a blood feud?

4. Blood feuds generally arise out of an argument, usually between two men whose families are neighbours or friends. The argument could have any cause, including an accident, a perceived insult, a property ownership disagreement or a conflict over access to electricity, water or fuel.<sup>93</sup> The argument escalates into a physical fight, and one man kills the other. The victim’s family then feels that it is “owed blood” by the killer’s family. This blood debt carries a related loss of honour, which can only be satisfied by taking the life of a member of the killer’s family. The situation is generally governed by culturally embedded rules, generally derived from the *kanun*, as codified by Lekë Dukagjini in the fifteenth century and updated in the first half of the twentieth century by Shtjefën Gjeçov.<sup>94</sup>

5. A great deal of definitional confusion has resulted from the fact that different actors tend to use different meanings of the terms “blood feud” and “blood feud killings”. The narrowest understanding of a blood feud (*gjakmarrja*), based on the above fact-pattern, is that it is a premeditated familial avenging of lost blood; that is, where the family of a murdered victim kills a member of the perpetrator’s family to restore the honour and blood lost as a result of the initial murder. One anthropologist thus refers to a blood feud as a “sanctioned killing that cleanses honour with blood to avenge a crime or infringement upon the honour of oneself or one’s family.”<sup>95</sup>

6. A less strict interpretation will classify any revenge killing (*hakmarrja*) between families as a blood feud regardless of any reference to the need to restore blood and honour or of guidance by any *kanun*-related considerations.<sup>[1]</sup> In still broader understandings – which are also sometimes referred to as *hakmarrja* – even a revenge killing without a familial dimension (for example, killings between gangs) could be counted as blood feud killings.

7. The broadest and most questionable definition would count any initial killing because it may, at some point, lead the victim’s family to seek revenge against the perpetrator’s family. An equally questionable approach is to count among families characterised as self-isolated “due to blood feud” cases in which no killing had occurred and without any strong or formal element of self-isolation, but where a physical assault, a threat or some intense dispute had created a family or neighbourly feud.

#### 1. Impact of blood feuds on families

8. Although it is primarily the alleged murderer who is targeted for a blood feud killing under *kanun*, local practices may differ so that potential targets also include other male relatives of the

93 Feuds have often been over “seduction, abduction, runaway wives, or the refusal of a girl to marry the man she was betrothed to ... and land disputes.” Mentor Mustafa and Antonia Young, “Feud narratives: contemporary deployments of *kanun* in Shala Valley, northern Albania”, *Anthropological Notebooks*, vol. 14, no. 2, Slovene Anthropological Society, 2008, p. 93.

94 Despite the importance of these codification efforts, the *kanun* is largely a set of orally transmitted customary rules, the content of which differs from region to region and over time. See *ibid.*, p. 94 (“Ethnographic studies of blood feuds find that the *kanun* should be considered the ‘ideal’ version; but in reality, blood feuds are managed quite differently in different local contexts.”). Under the traditional requirements of *kanun*, as soon as one person kills another, the murderer should inform the victim’s family, so that there is no confusion regarding the identity of the perpetrator. *Kanun*, art. 164. After the initial killing, the *kanun* calls for a truce so that the murderer can attend the victim’s funeral. *Kanun*, arts. 854-856. Local practices may differ, however, and based on accounts of blood feuds in the Shkodra region and Puka, in some localities the victim’s family is understood to be permitted to take revenge on the murdered or any of his male family members encountered within the first 24 hours of the murder.

95 Mustafa and Young, *supra* note 93, p.95.

alleged murderer, including brothers, uncles, children and grandchildren. In northern Albania, as an example, families identify according to their *fisi i madh* (the clan or tribe, generally consisting of approximately 100 households, which may be spread over two or more villages) and their *fisi i vogël* (a smaller unit based on patrilineage, which usually encompasses five to ten households). It is the small *fis* that is relevant in the context of blood feuds and it is generally the nuclear family (*familja* or *shtëpia*, consisting of parents, their children, the father's parents, any son's wife and children) that "carries the burden of revenge".<sup>96</sup> The basic shared understanding, however, is that the killer's family is implicated by his act, thus entitling the victim's family to take revenge against them.

9. Family members of those subjected to blood feuds, and mediators, emphasised that it is generally not permitted to kill a family member in his own home, or to kill women or children. Thus, for those families observing the traditions of blood feuds, when the initial killing occurs, the male members of the killer's family immediately "self-isolate" by not leaving their home. This self-isolation is maintained even where there are no specific threats or assault attempts by the other family. The isolated family presumes that an attack is possible, unless the other family offers them a *besa* (a reprieve from the threat of revenge, which is often limited in scope or temporary in duration). Isolated families often also feel that, in the absence of a *besa*, honour requires them to remain isolated, even where there has been no concrete threat of vengeance.

## 2. Resolution of blood feuds

10. The blood feud continues until the lost blood is avenged or until the family of the deceased man forgives the killer's family. When it occurs, forgiveness generally follows lengthy mediation. The *kanun* sets out the steps for mediation and conflict resolution, essentially requiring that the offending party repay the blood debt so that the honour of the victim's family is restored in the eyes of the community. The settlement may be in goods, such as livestock, or in money (although monetary payments are often not regarded as the most honourable means of settling a blood debt), and may also include the agreement of the offender's family to relocate from the area or community. Marriage between feuding families may also settle a feud.<sup>11</sup> I was informed by mediators that settlements often require the offending party to never again mention the killing, reflecting the traditional sense that it is inappropriate to discuss settlement terms. Reconciliation is generally formalised in a ceremony.

11. Mediation is usually performed by a male elder of stature in the community. The mediation process is seen as delicate and sensitive, involving overtures to family members directly affected by the blood feud, as well as other family members who may intercede, and may take years to resolve. One reconciliation ceremony that took place around the time of my visit involved a feud that had been resolved after approximately 50 years. A number of non-governmental organizations devoted to the reconciliation of blood feuds have also been established in recent years.<sup>11</sup> They perform reconciliations on a voluntary basis, receiving payment only for their expenses. Payment to mediators is not prohibited, however, and some interlocutors expressed concern that monetary incentives may be involved, with negative consequences.

12. Government officials may also play a helpful role. District officials and police in Shkodra detailed their own successful efforts in some cases to work with local religious leaders and mediators to ensure the security of families and children and to permit isolated children to return to school.

## B. Disputed extent of blood feuds

13. As noted above, there are deep discrepancies in the statistics concerning blood feuds and related killings. At one extreme, media reports have referred to hundreds of blood feud killings per year

96 Ibid., p.92.

and thousands of children living in isolation.<sup>[1]</sup> At the other, according to Government statistics, such killings fell steadily from 45 in 1998 to just one in 2009, while the number of isolated children ranges from 36 to 57 countrywide, of which 29 to 45 in Shkodra.<sup>[1]</sup> The variation in Government figures depended on whether the sources were police, education, or ministry officials.<sup>[1]</sup> The Government estimates that 124 to 133 families are in isolation countrywide.<sup>[1]</sup>

14. The figures used by civil society groups also vary widely. The Albanian Foundation for Conflict Resolution and Reconciliation of Disputes, an organization, with extensive field operations, told me that there had been significant reductions over the past five years and that there were currently only a few blood feud killings per year, with most cases taking place in Shkodra, Puke and the Malesise se Madhe districts. The organization estimated that not more than 350 families and 80 to 100 children were in isolation nationally. Another prominent organization, however, estimated some 9,800 blood feud killings since 1991, dropping to a figure still in excess of 30 in 2009.<sup>[1]</sup> By their calculations, there were 1,450 families and 800 children in isolation nationally.<sup>[1]</sup>

15. My own carefully considered view is that the correct numbers are at the lower end of the scale. Consistent with the view of the Government and the non-governmental organization with extensive field experience cited above, there are now few blood feud killings each year. The official figures for isolation seem more likely to be an underestimate, but not by a large margin. This is not to say that any one set of published estimates is definitive. Their accuracy is limited by inadequate data-gathering and recording techniques, and insufficient coordination. Even the official figures provided were inconsistent, and there seems to be no sustained effort to reconcile the discrepancies that result from definitional differences, underreporting, limited coverage of issues and incentives to exaggerate.

16. The largest discrepancy results from the use of differing definitions described above – from the narrow *gjakmarrja* revenge killing of a member of the perpetrator’s family to avenge honour, to the *hakmarrja* revenge killing that is unrelated to the restoration of honour. Both of these understandings – the narrow *gjakmarrja* and the broader *hakmarrja* – are reflected in most police and court statistics, especially since it is difficult to prove any specific cultural motivation for a particular killing. The greatest distortion is caused by counting as a “blood feud” any killing that might lead, at some point, to revenge.

17. Comparable problems result from differing interpretations of the effect or impact of blood feuds on family members. Some statistics count children who are “completely” isolated and unable to go to school as affected by blood feuds, while others include children who occasionally leave the house (including to go to school).<sup>[1]</sup>

18. A second factor is underreporting by affected families or officials. Killings in remote areas might not be systematically reported, and some families opt to pursue traditional remedies and avoid all State involvement. In addition, to the extent that statistics are based on court judgements, they may be a poor indicator of blood feud killings because the perpetrator of a premeditated blood feud killing may be found guilty of a lesser charge, whether because of insufficient evidence, a family refusal to testify or corruption leading to a conviction for a lesser offence.

19. The coverage of Government programmes may also be incomplete. For example, Government figures on children in isolation are based on its Second Chance homeschooling programme, which goes only through ninth grade; older children are thus not covered. Similarly, focusing only on those killed and on self-isolated children will only partly capture the total of lives seriously affected by blood feuds.

20. A fourth factor is a tendency by some groups to overstate the magnitude of the problem to enhance their funding prospects. While various non-governmental organizations do extremely good work on these issues, many officials and independent observers expressed concern that a



small number of groups deliberately exaggerate for fund-raising purposes. One group, for example, cited the figure of 300 police officers killed since 1991 in the line of duty. The historical accuracy of this figure cannot be confirmed, but it seems highly questionable, especially since police records over the past five years show just four killings of police in the line of duty. Some mediators told me that blood feud statistics should include all persons affected by any possible source of conflict that could be governed by *kanun*. Such a figure, however, would number in the tens of thousands and bear little or no relation to actual blood feuds. International donors do not help the situation when they provide funding for blood feud-related programmes without adequate scrutiny.

### C. Causes

21. Commentators attribute the revival of the blood feud to various causes.

#### 1. Criminal and civil justice systems

22. The blood feud phenomenon re-emerged at the end of the communist era and increased significantly following the 1997 breakdown in law and order.<sup>[1]</sup> Many observers consider that the absence of effective governmental responses to criminality and the inability of the civilian justice system to provide effective dispute resolution have encouraged Albanian citizens to use *kanun*-based mechanisms to obtain justice.<sup>97</sup> Since 1998, the justice system has been almost entirely transformed from its non-adversarial communist-era structure to a more modern one with checks and balances, although in practice much remains to be done to implement those reforms, build capacity and train Government officials.<sup>[1]</sup>

23. Weaknesses that undermine citizens' trust in the legal system exist at all stages of the process and among all institutions. Historically, Albania had no experience with an adversarial justice system and the Government has not done enough to build the necessary understanding of the system.<sup>[1]</sup> In addition, the judicial process lacks transparency: poorly reasoned decisions are issued by often inadequately trained judges, judgements are often not published or made easily available, and public access to judicial proceedings is limited by the inadequate size and availability of courtrooms. Enforcement mechanisms, including bailiffs' powers, are also lacking. Even reasoned and reasonable decisions may not result in effective remedies. This applies in both the criminal and civil contexts, especially in relation to property disputes.<sup>[1]</sup> Other major problems include the lack of reliable data on judicial processes and enforcement and the lack of meaningful institutional monitoring and evaluation mechanisms, both of which impede effective reform.

24. Although the Constitution guarantees separation of powers, it is widely acknowledged that there is improper political influence on the judiciary at all levels.<sup>[1]</sup> Constitutional rights are either not reflected in the Criminal or Civil Procedure Codes, or not implemented in practice because of a lack of resources, lack of infrastructure, inexperienced judges and counsel, and corruption. Interlocutors also raised concerns about the treatment of the constitutional immunity of ministers and judges in the Criminal Procedure Code. This immunity applies from the earliest stage of investigation, rather than at the point of charge or arrest. Thus, the target of what is often a sensitive investigation is informed as soon as an investigation is instigated, thus jeopardizing the chances of an effective investigation.

25. A number of interlocutors also raised concerns about the impact of corruption in the justice system on charges and sentencing for blood feud-related killings.<sup>[1]</sup> There is at least a widely held perception that bribing a judge may result in a lower sentence. Bribing a prosecutor was also

97 Accounts of the blood feud phenomenon in the post-communist period almost uniformly identify as a cause individuals' recourse to an alternative justice system because the State justice system is, in reality and perception, subject to political pressure, inefficient and corrupt.

seen as a means of reducing the potential charge from that for blood feuds, which carries a 20-year minimum sentence, to one that carries a lesser sentence. These concerns highlight the need for judicial probity to maintain the ability of the justice system to prosecute and punish killings effectively. They also underscore the necessity of anti-corruption and oversight measures.

26. Finally, there is continuing – and destabilizing – uncertainty around the composition of the Constitutional Court and the criteria and process for the appointment of judges to the Court. The Constitutional Court is a vital component in upholding the rule of law in Albania. The terms of two thirds of the judges expired in early 2010, and they were due to be replaced by the President, with the consent of the Assembly. In any such situation, a Government runs the risk of being seen to use the opportunity to significantly alter the composition of the court in its own favour. It is therefore important for the Government to demonstrate that the replacement process is governed by procedures that are, and can be seen to be, fair. It is desirable for the Government to commit itself, in all judicial appointments, to transparent procedures formulated to ensure a qualified and independent judiciary, and to reflect those procedures in legislation.

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

28. A much more salient problem is that many families involved in blood feuds do not see the State's criminal justice system as being capable of addressing their concerns, which centre on the loss of blood and honour caused by the initial killing. Sentencing a killer to a long prison term might be inadequate to satisfy some families' conception of justice, which requires restoration of the lost blood, either through a revenge killing or a voluntary formal reconciliation between the families. The actions of the State vis-à-vis the perpetrator are thus sometimes perceived to be irrelevant in the families' evaluation of whether there has been a "just" response.

29. On the other hand, the State's role in relation to the family in isolation varies. For many such families, it is limited at best. Some believe that, in practical terms, there is little the State could do to protect them. Others think the State should do little because matters of honour and respect must be resolved privately, rather than by the police. One such family indicated to me that, although they were deeply unhappy with the restraints and strictures of isolation under *kanun*, they felt obliged to remain in isolation in deference to the other family's respect for *kanun* rules. To this family, State intervention was beside the point. Moreover, many isolated families never receive a specific threat to which police could respond; they just believe that the lack of *besa* means they could be targeted at any time.

30. There are, however, cases in which the State could play a more active protection role for the isolated family. Offers to monitor are sometimes made, but it is not clear how seriously they are followed up. In one case in which I received evidence, the individual subject to threats and isolation sought protection from the local police and Government officials, but was told that, unless he could document and prove that he was under threat, he could receive no assistance. Internal relocation has occurred, but a more systematic programme could be developed. Threats could be tracked more effectively and prosecuted far more often than has been the case to date.

31. Each of these weaknesses, and the actions necessary for reform, have been exhaustively analysed and addressed by entities, including the European Assistance Mission to the Albanian Justice System, the Organization for Security and Cooperation in Europe, the Council of Europe, the United States Agency for International Development, and international civil society organizations, such as the American Bar Association.<sup>[1]</sup> The problem is not a lack of analysis or a dearth of recommendations. Rather, greater coordination among institutions and, above all, the exercise of political will and deployment of necessary resources to implement reforms are necessary.

## *2. Property disputes*

32. Property disputes have been a major cause of conflicts, including contributing to blood feuds, in the post-communist era.<sup>[1]</sup> In one village in Shkodra district, for example, I was provided with evidence of six families who were in isolation as a result of blood feuds; the underlying cause in four of these cases was property disputes. Expert interlocutors told me that, given the current state of property and land reform, property issues would continue to be a source of conflict for the foreseeable future. Yet, neither the Government nor civil society has attempted to collect or analyse data on the issue, including which of the many complex aspects of the country's post-communist property decollectivization and land reform process gives rise to blood feuds. Police statistics indicate that killings as a result of property disputes appear to be tracked separately from blood feud or revenge killings, although they may be related.

[...]

43. The inefficiency and ineffectiveness of the justice system is the main barrier to the resolution of property disputes by courts instead of through illegal and extralegal measures.<sup>[1]</sup> The problems described above mean that judgements are long delayed, unregistered, unexecuted or ignored.<sup>[1]</sup> Both the Government and donors are taking steps to address the broader reforms needed in the Albanian justice system, but training and specific reforms targeted at resolving land and property cases would significantly reduce the likelihood of resort to extralegal or traditional measures.<sup>[1]</sup>

[...]

### *E. Need to increase efforts to address blood feuds*

46. Important steps have been taken in the past five years to address blood feuds. The Criminal Code has been amended in important respects (minimum sentences and specific criminalization of blood feuds and blood feud killings),<sup>[1]</sup> and specialised police and prosecution units have been created to investigate blood feud killings and conflicts.<sup>98</sup> A high-level coordination committee on blood feuds was established by the Government in 2005, but it appears to have achieved little. The Second Chance programme of the Ministry of Education is an effective means of providing home schooling for isolated children. Based on my investigations in Shkodra district, the programme is staffed by clearly dedicated officials and teachers. But much more could and should be done.

47. Many interlocutors suggested the Government could do relatively little beyond its existing efforts to eliminate blood feuds and that community groups must do the rest themselves<sup>[1]</sup> I disagree. I believe that the Government has important additional work to do in research, community education and outreach.

98 In Shkodra, for example, the police told me that, in 2004-2007, a specialised unit was established to focus on criminal activity related to blood feuds or arising out of a revenge motive. Personnel assigned to this section investigated alleged crimes for prosecution, and also monitored the security of families in isolation as a result of blood feuds. The police attributed the decline in blood feuds in Shkodra largely to these efforts, and stated that the special unit had been merged back into the regular police force.

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

49. Community education is also important. Although more research is needed, it is clear that low educational levels, especially in the areas most affected by blood feuds, are an important contributing factor to the decision to revenge killings. The north-east, in which feuds are the most common, is the poorest region in Albania.<sup>[1]</sup> Community education requires schooling and training, as well as broader community outreach. This includes educating citizens about the justice system and confronting the notion that collective punishment is acceptable. Such notions are utterly incompatible with the assumptions upon which Albanian society now operates, and the Government should encourage a greater understanding of the individual foundations of rights. Greater State involvement is also necessary to educate families who, once a killing has occurred, might turn for advice to civil society interlocutors who unnecessarily invoke the *kanun*. The perpetuation of the *kanun* mentality might unintentionally result.

50. Indeed, a number of self-isolating families indicated that they may not have gone into isolation were it not for pressure from societal elders or mediators to follow *kanun*-based precepts. This was borne out by a recent study carried out by the Justice and Peace Commission of Albania and Caritas.<sup>[1]</sup> Some 75 per cent of adults surveyed in 12 different districts of Albania stated that they knew little or nothing about *kanun*, and 81 per cent “blamed” the *kanun* for being the main cause of blood feuds.<sup>[1]</sup> For 57 per cent of those surveyed, killings were better dealt with through law enforcement.<sup>[1]</sup>

51. Finally, the Government could play a stronger role in outreach, especially in facilitating efforts to achieve family reconciliation, which to date has been almost completely left to families themselves and civil society.<sup>99</sup> A number of interlocutors informed me that they had approached the Government for assistance to end their self-isolation through reconciliation, but the State did little in response. The Government should be aware that while traditional mediation services can assist, they also perpetuate a parallel structure for conflict resolution that may be to the detriment of the government’s goal of strengthening courts to achieve justice.

### 3. Communal violence

The Special Rapporteurs have frequently reported on killings which occur during the course of ethnic and/or religious communal violence. While the causes, scope, and scale of communal violence encountered by the mandate varies, the following extracts highlight some common elements.

<sup>99</sup> In 2003, Albania passed a law on dispute resolution through mediation, which sets out who is eligible for blood feud mediation, who can work as a mediator and how the process works. The law provides that mediation is fully voluntary, and neither family should pay for it. The law also provides that the non-governmental organizations that conduct the mediation must be registered, the mediators must be especially trained, and the organizations must complete studies on the conflicts addressed.

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

72. In recent years large-scale violence between religious and/or ethnic groups have cost thousands of lives. For example, in Kaduna State in 2002, Christian/Muslim riots coincided with the 2002 Miss World contest, and led to the deaths of some 250 people.<sup>100</sup> In February 2004 violent clashes shook Yelwa in Plateau State. At least 78 Christians, and a number of Muslims, were killed in well-organised attacks. Smaller scale attacks occurred in nearby villages. In May 2004 an attack by Christians killed an estimated 700 Muslims.<sup>101</sup> A little over a week later the violence spread to Kano where Muslims retaliated against Christians, resulting in the deaths of more than 200.<sup>102</sup>

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

74. Although religious events are often the trigger, these divides coincide with ethnic and political splits and religion is often exploited for populist reasons. Underlying many incidents is a legal distinction drawn between “indigenes” (individuals considered to be living in their state of “origin”) and settlers (“newcomers” who might have lived in the state for decades). The distinction often coincides with ethnic and/or religious divisions, and is used to justify according indigenes privileged access to government jobs, educational institutions and political positions.<sup>103</sup> The distinction itself and the ways in which it operates are, at least potentially, highly discriminatory. Unless steps are taken to significantly downplay its importance, it will sow the seeds of a great many future incidents of communal violence.

75. Another problem is a failure by the security forces to react quickly, let alone pre-emptively, to situations of inter-communal tension, thereby allowing the violence to escalate.<sup>104</sup> In addition, politicians have been accused of actively fuelling violence for political gain.

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

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

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

102 Ibid.

103 World Organization Against Torture and Centre for Law Enforcement Education, *Hope Betrayed? A Report on Impunity and State-Sponsored Violence in Nigeria*, 14 (2002). See also Human Rights Watch, *supra* note 101, p. 8.

104 For example, it was reported that even though special units had been set up following earlier violent attacks in Kaduna in order to respond to future such incidents, these units were not deployed when the 2002 violence first broke out, see Human Rights Watch, *supra* note 100, p. 24. Similarly, the report of the Administrative Committee of Inquiry investigating the 2004 violence in Kano observed that, although “it was obvious that tension was building up two to three weeks before the Kano Crisis” due to the earlier violence in Plateau State, security forces failed to act pre-emptively to prevent the violence from spreading to Kano. See *Report of the Administrative Committee of Inquiry on May 11, 2004 Kano Sectarian Crisis*, pp. 6-7.

*Allegation letter sent to the Government of Nigeria (22 January 2010) (with the Special Rapporteur on freedom of religion or belief)*

We have previously written to your Excellency's government in a communication dated 22 January 2010, concerning violent clashes that have occurred in Plateau State between 2001 and 2010. In that communication we sought from your government information on the inquiries into the inter-communal clashes and their outcomes, on the measures taken to hold those responsible for killings accountable, and on the measures taken to prevent further outbreaks of deadly inter-communal violence in Plateau State. We are yet to receive a reply from your Excellency's Government.

According to new information received:

On 7 March 2010, men armed with guns, machetes, and knives attacked residents of the villages of Dogo Nahawa, Zot, and Ratsat, 10 kilometers south of Jos, the capital of Plateau State. The attackers hunted down and attacked Christian residents, killing and burning them as they fled. It is reported that at least 200 people have been killed including women and children.

The present attack appears to be in retaliation for the violent clashes that occurred in the town of Kura Karama on 19 January 2010, against Muslim communities in which more than 150 people were killed. It is believed that some of the attackers had previously lived in the same villages but had re-located due to inter-communal tensions.

We are informed that communal clashes in Jos are a recurring phenomenon. In September 2001, a major outbreak of violence claimed as many as 1,000 lives; in May 2004, about 700 were killed in the town of Yelwa in the southern part of Plateau State and in November 2008, about 700 people were killed in Jos.

We are informed that your Excellency's Government had responded to the January 2010 clashes by deploying additional troops to the areas of Jos and surrounding communities. However, the troops have been largely limited to the major towns and not deployed in the smaller communities.

While we do not wish to prejudge the accuracy of the reports received, we would like to recall the relevant international human rights obligations that your Excellency's has undertaken. In particular, we would refer to the International Covenant on Civil and Political Rights ("ICCPR"), to which Nigeria is a party, which provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (Article 6).

We recognise that some important measures were taken to provide security in the area of Jos. It appears, however, from the information received that these measures were not adequate. As noted by the Special Rapporteur on summary executions in his mission report on Nigeria, there remains a problem of failure by the security forces to react quickly, let alone pre-emptively, to situations of inter-communal tension, thereby allowing the violence to escalate (E/CN.4/2006/53/Add.4, para. 75). We wish to bring to the attention of your Excellency's Government the responsibility that States have to protect persons from human rights violations committed by non-state actors. In this regard the Human Rights Committee has pointed out that the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There are circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights. This applies when a State Party permits or fails to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. General Comment No. 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant (para. 8).



We remain concerned over the lack of investigation and prosecution of those responsible for the communal clashes. In general, it appears that after such communal clashes a few arrests are made and prosecutions of minor players follow. In some cases, an inquiry is also held, but the resulting report remains confidential and without meaningful follow up. In this regard, we wish to bring to the attention of your Excellency's Government the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions which stipulate that "There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses" (Principle 9). Further it is provided that "Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice" (Principle 18). The Human Rights Committee has observed that failure to investigate and failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. Such failures lead to impunity which can encourage a repetition of the crimes by others in subsequent incidents. General Comment No. 31 (para. 15).

The Special Rapporteur on summary executions has submitted in his report to the Human Rights Council that crimes, including murder, carried out by individuals can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators as well as to address any attitudes or conditions within society which encourage or facilitate such crimes. Once a pattern becomes clear in which the response of the Government is clearly inadequate, its responsibility under international human rights law becomes applicable. Through its inaction the Government confers a degree of impunity upon the killers (E/CN.4/2005/7, paras. 71-2).

[...]

We urge your Excellency's Government to consider the need for thorough-going reforms and long term preventive measures targeted to address the root causes of communal clashes and preventing future recurrences.

*Report on Mission to Kenya (A/HRC/11/2/Add.6, 26 May 2009, ¶¶38-44)*

### III. EXTRAJUDICIAL EXECUTIONS IN MT. ELGON

#### A. Background

38. The general background to the Mt Elgon violence is well recorded elsewhere, and I will only outline its basic contours here.<sup>105</sup> From the mid-1960s, various phases of a settlement scheme (Chepyuk Settlement Scheme, Phases I, II and III) were initiated by the Government to resettle and provide land to the Ndorobo and Soy sub-clans of the Sabaot people.

<sup>105</sup> See: Kenya Police, "Report into Violations of Human Rights in Mt Elgon Region" (2008); Kenya National Assembly, "Report of the Joint Visit to Mt Elgon Region by the Committees on Defence and Foreign Relations, and Administration, National Security and Local Authorities" (November 2008); Human Rights Watch, "All the Men Have Gone: War Crimes in Kenya's Mt Elgon Conflict" (2008); Kenya National Commission on Human Rights, "The Mountain of Terror: A Report on the Investigations of Torture by the Military at Mt Elgon" (May 2008).

39. The Sabaot Land Defence Force (SLDF) militia was born out of disputes over the fairness of allocations in Phase III.<sup>106</sup> The early membership of the SLDF appears to have primarily drawn its ranks from those who were unhappy with the results of Phase III and believed there was little alternative but to resist by force. The SLDF also used varying degrees of intimidation and force to increase its ranks. If members later became discontented with the activities of the SLDF, they were unable to leave without fear of fatal reprisals.

*B. Sabaot Land Defence Force operations and militia atrocities (2006-2008)*

40. It is clear that the residents of Mt Elgon district were terrorised by the SLDF militia for approximately two years (2006-2008). I spoke with many victims of SLDF abuse, and also with former members of the SLDF. From their testimonies, and together with police, Government, and civil society accounts, I have been able to form a detailed picture of the SLDF's operations and abuses. Intimidation, physical abuse, and killings appear to have been carried out for three primary reasons.

41. First, those occupying land desired by the SLDF – especially members of the Ndorobo sub-clan, who most SLDF saw as their “enemy” in land allocations – were chased out or killed. Soy and others who were seen to be benefiting from the land allocations, or who criticised the land reform aims of the SLDF, also became victims.

42. Second, as the SLDF increased its control over villages in the Mt Elgon region, anyone living in those areas who failed to follow SLDF rules or orders was punished commonly through having an ear cut off. Residents who refused to “donate” food or pay levies were beaten or killed. The SLDF used “informers” within the villages, and those who were believed to have divulged information to the police were killed. Such SLDF killings could take place anywhere, but typically took place at designated areas in the forests, where the victims' bodies were often just left on the ground surface, with previous victims.

43. Third, some killings were politically motivated. The members of the Mt Elgon District Security and Intelligence Committee (DSIC) acknowledged that the SLDF began and operated with political backing. The SLDF supported the candidacy of Fred Kapondi in the 2007 elections, and for each ward, the SLDF had its favoured candidate, based on that candidate's support for the land reallocations that the SLDF wanted. Supporters of rival parties, and especially of John Serut, who was running against Kapondi, were targeted by the SLDF.

44. Over 700 killings and 120 disappearances by the SLDF have to date been individually documented by local organisations; although this is likely a fraction of the total number.

*Urgent appeal sent to the Government of India (29 August 2008) (with the Special Rapporteur on freedom of religion or belief)*

[W]e would like to draw the attention of your Government to information we have received regarding attacks on the Christian community in the Kandhamal district of the state of Orissa since 24 August 2008.

*According to the allegations:*

The context of violence has been triggered by the murder of Swami Lakhmananda Saraswati, a local leader of the Vishwa Hindu Parishad (VHP), as well as four other VHP members, who were

<sup>106</sup> In Phase III, 1,732 plots of 2.5 acres each were available for allocation. The plots were divided equally between the Ndorobo and Soy sub-clans, with each clan getting 866 plots. But some 7,000 sought the 1,732 plots.

shot dead on the night of the 23 August 2008. Before his death, Swami Lakhmananda Saraswati was reportedly active in opposing conversions away from Hinduism and negatively portraying the Christian minority. On 24 August 2008, the State VHP General Secretary Gouri Prasad Radh told the *Hindustan Times* that “this attack is the handiwork of Christians. There were four home guards at the ashram. Had the attackers been Maoists, they would have first attacked these cops. Swami was fighting the missionaries for four decades. We see a clear Christian conspiracy behind this attack”.

Although the Christian leadership condemned the killing of the VHP leader and his four associates, attacks on Christians and their places of worship, as well as Christian-ran orphanages and businesses, began on 24 August 2008. The incidents have been focused on Kandhamal district, but other districts reported to have been affected include Angul, Bargarh, Baudh, Debagarh, Gajapati, Jajapur, Koraput, Rayagada, Sambalpur and Sundargarh. Many mobs reportedly carried out their attacks while chanting slogans in the Oriya language, translating as “Kill the Christians”. At least 10 people have been killed so far, and the violence is continuing, putting many others in danger.

Among the victims, a nun was burnt to death on 25 August 2008, after a mob set fire to an orphanage in at Phutpali in Bargarh district. 20 children, who were at the orphanage, managed to escape but a priest suffered serious burn injuries in the attack. Pastors were also murdered on 25 August 2008. They include Nayak Samuel, a Seventh Day Adventist pastor from Bakingia, and Nayak Akbar, a Pentecostal pastor from Mandakia.

Allegedly, the police delayed taking action and did not enough to protect the district population. Further, though the State Government announced on 25 August 2008 that a special team had been constituted to investigate the murder of the Hindu leader and his associates, this appeared to have had little effect on the violence.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to Your Excellency’s Government to ensure the right to freedom of religion or belief in accordance with the principles set forth in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration on Human Rights as well as of the International Covenant on Civil and Political Rights, to which India is a State Party. In addition, we would like to recall your Excellency’s Government that the Human Rights Council has, in its Resolution 6/37, urged States to “take all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence, with particular regard to religious minorities”.

In the press statement released by the Special Rapporteur on freedom of religion or belief at the end of her visit in India on 20 March 2008, she had already referred to the widespread violence in December 2007 targeting primarily Christian communities in the State of Orissa.

Furthermore, she had expressed concern about organised groups based on religious ideologies which had unleashed the fear of mob violence in many parts of the country and noted that law enforcement was often reluctant to take any action against individuals or groups that perpetuate violence in the name of religion or belief. This institutionalised impunity for those who exploit religion and impose their religious intolerance on others has made peaceful citizens, particularly the minorities, vulnerable and fearful.

In this respect, we would like to bring to your attention that Article 6(1) of the International Covenant on Civil and Political Rights requires States to provide effective protection to those whose lives are in danger. As expressed in Principle 4 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, this requires that individuals in danger of such executions be guaranteed effective protection. We urge your government to

immediately take all necessary steps, as required under international law, to protect the right to life of the Christian communities in the State of Orissa.

Regarding the killings that already have taken place, we would like to bring to your attention the Government's duty to thoroughly, promptly and impartially investigate suspected cases of extrajudicial execution, and to prosecute and punish all violations of the right to life. As reiterated by the Human Rights Council in resolution 8/3 on "The Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4), all States have "the obligation ... to conduct exhaustive and impartial investigation into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, ... and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions". We would submit that an exhaustive investigation into the alleged incidents described above must include investigation of allegations of police inaction or connivance in the face of the violence against the Christian communities in the State of Orissa.

In the event that your investigations support or suggest the above allegations to be correct, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of the Christian community in the State of Orissa are respected and accountability of any person guilty of the alleged violations ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

#### *Report on Mission to India (A/HRC/23/47/Add.1, 26 April 2012, ¶¶43-50)*

##### *B. Killings related to communal violence*

43. Tension between representatives of various communities remains an ever-present concern in India. Reports by official Commissions of Inquiry, Committees and civil society organizations have, regarding many major incidents of communal violence, indicated that the State and its agents, particularly the police forces, wilfully did not exercise diligence in its duty to protect, and thus tolerated attacks on the life and rights of religious minorities, and, in some cases engaged, in active support.<sup>107</sup>

44. According to the MHA [Ministry of Home Affairs], 580 communal incidents occurred in India in 2011, with 91 lives lost.

45. The Special Rapporteur was informed that attacks of communal violence are often planned in order to target members of a particular group or acquire its property. For instance, Hindu fundamentalists reportedly carried out attacks against Dalits, who had changed religion to escape the degrading treatment associated with being a Hindu Dalit. The Special Rapporteur was informed of the severe communal violence against Dalit and Adivasi Christians in Orissa, between 2007 and 2008 when, according to non-governmental sources, approximately 100 individuals were killed.<sup>108</sup> In this regard, the Government of India commented that, in the communal violence between Hindus and Christians, three persons were killed in 2007, and 40 persons were killed in 2008.

46. The Special Rapporteur's attention was particularly drawn to the high level of communal violence in Gujarat. The most serious incident dates to 2002, as a consequence of the burning of a

107 See e.g. Concerned Citizen's Tribunal, "An Inquiry into the Carnage in Gujarat Findings and Recommendations", 2002, pp. 75–95. The Tribunal was headed by retired Supreme Court Justice V.R. Krishna Iyer; Human Rights Watch, "We Have No Orders To Save You", April 2002, Vol. 14, No. 3 (C), p. 23.

108 See National Coalition for Strengthening the Prevention of Atrocities Act and National Campaign on Dalit Human Rights, Joint Stakeholder's Report on Caste Based Discrimination in India, submitted for India's 2012 Universal Periodic Review session, para. 19.

train which caused the death of 58 Hindu pilgrims in February 2002. It was alleged that Muslims perpetrated the incident, which resulted in retaliatory acts and, eventually, communal violence. According to the data provided by the Government of India, the police records indicate 1,071 persons killed and 228 persons reported missing in the ensuing violence. Non-governmental organizations reported approximately 2,000 individuals killed and several hundred persons missing.<sup>109</sup> The Special Rapporteur heard several testimonies from survivors of the 2002 events on violence occurred against them, and their family members. He was informed of widespread allegations that the violence was fuelled by members of the Government of the State of Gujarat.<sup>110</sup>

47. The Special Rapporteur notes some progress, albeit slow, in respect of holding perpetrators of the 2002 Gujarat communal violence to account.<sup>111</sup> He is concerned, however, about the lengthy and less than effective conduct of the current inquiries into these events. In particular, the Nanavati-Mehta Commission, which was appointed the same year to investigate the 2002 events in Gujarat, has not yet published its final report. At the time of drafting this report, the Commission's term was extended for the 19th time in December 2012 and was required to publish its findings on 30 June 2013. The Special Rapporteur will follow the outcome in this regard.

48. The Special Rapporteur is concerned about the information received that the judicial investigations into the 2002 events are being hampered by destruction of evidence, refusal to investigate and witness intimidation.<sup>112</sup> Furthermore, a large number of the accused standing trial for the 2002 violence appear to have been released on bail, thus living in the areas where they allegedly committed serious violations. The Special Rapporteur acknowledges that the MHA released funds to the Government of Gujarat to ensure payment of compensation to the victims of the 2002 killings. He also notes the comments of the Government of India that the authorities have been sensitive to the issue of witness and victim protection, and provided protection when required. He encourages the Indian authorities to treat witness and victim protection as a crucial element specifically in the process of shedding light on the 2002 events.

49. In a broader context, several Governmental bodies are charged with investigating and addressing communal violence. In this regard, the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill was elaborated in 2011, with the aim of preventing communal violence and ensuring accountability of those in positions of power and authority for failure to prevent it and protect life and property. The Bill also introduces the principle of command and/or superior responsibility, and stipulates the rights of victims to reparations and remedies.

50. It is also noteworthy that mechanisms have been put in place for investigating and prosecuting those responsible for violence motivated by religious tensions, namely through the creation of Special Investigative Teams (SIT)<sup>113</sup> and Fast Track courts.<sup>114</sup> The Special Rapporteur nevertheless was informed of concerns that high levels of corruption, religious bias and the inconsistent application of investigations impede effective progress in such cases, thus fostering a culture of impunity.<sup>115</sup>

109 Human Rights Watch, "India: A Decade on, Gujarat Justice Incomplete, 24 February 2012".

110 See e.g. Gardiner Harris and Hari Kumar, "32 People Convicted for Roles in Gujarat Riots", *New York Times*, 29 August 2012, available at: [http://www.nytimes.com/2012/08/30/world/asia/32-people-convicted-for-roles-in-gujarat-riots.html?\\_r=0](http://www.nytimes.com/2012/08/30/world/asia/32-people-convicted-for-roles-in-gujarat-riots.html?_r=0).

111 The Government of India commented in this regard that 4,274 cases have been registered, and 27,007 persons accused have been arrested. See also "Indian Court jails 21 Hindus over Muslim deaths", available at: [www.guardian.co.uk/world/2012/jul/30/india-jails-hindus-muslim-deaths](http://www.guardian.co.uk/world/2012/jul/30/india-jails-hindus-muslim-deaths).

112 Amnesty International, *Report 2011: The State of the World's Human Rights*, p 168.

113 SITs conduct investigations and may register FIRs.

114 These courts are designed to deal expeditiously with specific matters of concern.

115 See e.g. Saumya Uma, "Kandhamal: The Law Must Change its Course", Multiple Action Research Group, (2010), pp. 93–119.

*Report on Mission to Papua New Guinea (A/HRC/29/37/Add.1, 30 March 2015, ¶¶56-59)*

56. Traditionally, tribal violence occurred in the villages. However, today, it has found its way into the cities as well. Fights between members of different tribes occur regularly and may be triggered for a variety of reasons, including sorcery and witchcraft, land and territory-related issues, jealousy and inequality. Payback violence is regularly cited as being linked to tribal disputes.

57. Tribal violence has become increasingly violent over the years as individuals have greater access to firearms.

58. The Inter-group Fighting Act, 1977, prohibits certain conduct related to inter-tribal fighting with a view to eradicating this problem; the mere fact of taking part in inter-tribal fighting is an offence. Section 11 (2) of the Act provides for a punishment of between three and six years imprisonment, where a person has taken part in inter-tribal fighting that has resulted in death. However, that provision does not absolve a person from any other offence that he or she may be guilty of in terms of another law (see section 11 (3)). Furthermore, in terms of section 11 (3A), where, after an inquiry, a Court determines that an individual is a principal offender or a leader of the fight that results in death, he or she shall be liable to imprisonment for a term of 20 to 30 years. While in some cases, individuals involved in tribal fighting have been prosecuted, problems often arise in relation to securing witnesses to support the prosecution, as many people fear that they will be subjected to payback if they testify.

59. Tribal disputes are often brought before the village courts, rather than the higher level courts. In Goroka, a Peace Park – a large open space – has been established, where the magistrates of the Village Court, the tribal groups involved, the police and other interested parties meet to mediate problems and reach a settlement. Generally, a cash payment of is offered as compensation to resolve the dispute. However, it may happen that the communities are not satisfied with the financial compensation offered, which could give rise to renewed fighting. In addition, Village Court mediations could foster impunity if the tribal fight involved crimes such as killing or rape and serious physical injury.

#### **4. Profit-motivated killings: hired killers, organised crime, and banditry**

A wide range of killings by non-state actors are largely motivated by personal profit or are closely linked to the perpetrators' economic interests.

The following country mission report extracts address hired killers, banditry, and criminal gangs. Death squads and militia groups are covered in Chapter 3. Policing strategies for addressing violent gangs, and armed forces killings carried out for profit motives are also addressed in Chapter 3.

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

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

37. There is a dearth of reliable information about the bandits, unsurprisingly given the absence of effective law enforcement in the area. The information provided by most interlocutors came at second-hand from villagers who have encountered or been held hostage by bandits. Nevertheless, some basic facts appear reliable. Banditry in the north-west is a form of organised crime. The general *modus operandi* of bandits is to ambush a vehicle, loot its contents and take hostage anyone who appears likely to garner a significant ransom. Their activities are sophisticated: foreign bandits will use a citizen of the Central African Republic to act as an interpreter; they hold groups of hostages



in the bush for weeks or months; and they efficiently conduct hostage negotiations. Travellers and villagers are not generally killed unless they resist. There are killings, however, but reliable statistics are not available. Over the course of 2007, bandits increasingly attacked and looted villages, and also engaged in village burning, seemingly as revenge for resistance to their demands.

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

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

#### *Government response to banditry*

40. Government forces have made only limited efforts to respond to banditry. In both Ouham and Ouham-Pendé, local officials acknowledged that they seldom arrest or engage with bandits. One prosecutor who asserted that there had been successful prosecutions of bandits could not, however, cite any specific case. Military and gendarmerie commanders in both prefectures stated that their forces were unable to pursue bandits because they lack sufficient vehicles and are relatively evenly matched in firepower. In a rare instance of which officials could provide a detailed account, Government forces engaged with the bandits, but the operation failed, leaving two dead hostages and no captured bandits.

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

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

43. There are several factors that were widely believed to have limited the urgency with which the Government has responded to the principal human security problem in the north-west today. One is that banditry principally affects poor, rural residents – people with little political clout. Indeed, merchants can pay for gendarmes to travel on top of their trucks, which has generally proven sufficient to deter bandit attacks. One interlocutor noted that insofar as some bandits are *ex-libérateurs*, moving strongly against bandits risks provoking diplomatic incidents with the Government of Chad. Some interlocutors suggested that there may also be an ethnic dimension to the Government's inaction. The victims are disproportionately Peulh, a predominantly Muslim

ethnic group. Peulh traditionally herd cattle, making them wealthier than most other rural residents. Moreover, cattle are a relatively mobile and “liquid” form of wealth that may be stolen by bandits or sold by the herders to pay ransoms to bandits. There is also tension between the Peulh and other citizens of the Central African Republic. First, as the Special Rapporteur observed in interviews, there is a tendency to lump Peulh in with Muslims from other countries and not consider them “true” citizens of the Central African Republic. Second, the Peulh’s comparative wealth creates tensions grounded in resentment. Third, as has been observed in other areas, there is often tension between the interests of sedentary agriculturalists and pastoral nomads.

*Report on Mission to Colombia (A/HRC/14/24/Add.2, 31 March 2010, ¶¶61-69)*

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

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

63. Unlike the original paramilitaries, they generally lack a common ideology. Some wear uniforms of sorts (e.g., camouflage), or other identifying insignia and have informal (and sometimes formal) command structures. Witnesses from some areas (including Cordoba and Meta) described armed patrols carried out openly by what appear to be subunits of IAGs. These groups may have spread across Colombia<sup>116</sup> and, in the aggregate, their members may number in the thousands.<sup>117</sup> Most individual groups’ membership is in the low hundreds. Weapons seized in police operations against the IAGs show they have access to a range of weapons: from January to May 2009, the Government “seized 326 long-range weapons, 543 side arms and 18 support weapons, including machine guns and mortar tubes.”<sup>118</sup>

64. The relationship between the new IAGs and other armed groups differs substantially across the country. In some areas, guerrillas and IAGs cooperate closely, in others they are in violent conflict. Violence among the IAGs seems to a large extent to be competitive – relating to “turf wars”. Most IAGs engage in and are financially sustained by drug trafficking; many also engage in extortion from local businesses and landowners, kidnapping, money-laundering and other criminal behaviour. When local populations resist corruption or participation in illegal conduct, they are threatened with death and, all too often, killed.<sup>[1]</sup>

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

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

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

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

66. First, IAGs have targeted human rights defenders, leaders and members of indigenous and Afro-Colombian communities and of victims' groups, and local government officials who speak out against IAG activities.<sup>119</sup> In Meta, a local community leader who had criticised the IAGs in his region, including for three killings of community members, told me that he had received anonymous death threats. He had to cease community work and stay home for fear of being killed. Also worrisome are threats against and killings of those seeking to assert their rights under the JPL, or demobilised paramilitaries who refuse to join IAGs.

67. Second, the IAGs have killed or threatened civilians as a means of terrorizing local populations in order to exert control over areas important for the growth, production or transport of drugs or for other criminal purposes. In Meta, I met family members whose loved ones had been killed in order to intimidate local communities. In a deeply troubling development, an Organization of American States monitoring mission has noted "the reappearance of massacres" as an intimidation tool, especially in rural areas including in Narino, Cauca and Cordoba.<sup>120</sup>

68. Third, IAGs have threatened and sometimes killed alleged prostitutes, drug addicts and small-time criminals, as "social cleansing".<sup>121</sup>

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

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

22. Banditry has become the major source of insecurity for civilians in the Central African Republic. In his initial report, the Special Rapporteur described the bandits' general method of operation as ambushing vehicles, looting their contents and taking hostages for ransom. Many of the bandits are from neighboring countries including Cameroon, Chad and Niger. They tend to operate in loosely organised groups and are well armed.

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

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

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

119 Ibid.

120 MAPP/OAS, *supra* note 118.

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

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

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

*Report on Mission to Ecuador (A/HRC/17/28/Add.2, 9 May 2011, ¶¶19-33, 95)*

*II. Homicide and hired killers*

19. The national homicide rate has skyrocketed in the past 20 years, almost doubling from 10.3 murders per 100,000 in 1990 to 18.7 in 2009. The rate for 2010 is expected to be even higher; the first five months of 2010 showed a 7.39 per cent increase over the same period in 2009.<sup>122</sup> The increase is attributed to various factors, including greater organised crime activity, expanded drug trafficking, high drug and alcohol abuse rates and economic insecurity. Ineffective policing, breakdowns in law and order and failures in the criminal justice system have led private citizens to resort to murder and made punishment unlikely.

20. The use of hired killers (*sicarios*) to carry out murders has been the subject of significant media attention and instilled fear in the population. These killings are commonly committed by masked men, working alone or in small groups, who shoot at their victim from a passing motorcycle. The killers are rarely identified and almost never captured.

21. I met with many officials, experts and witnesses in order to understand the dynamics and causes of this phenomenon. Hired killings are not new to Ecuador, and numerous cases of politically motivated hired killings occurred through the 1980s and 1990s. However, the extent and nature of the problem has significantly changed in recent years. Although media sensationalization has exaggerated the scale of the problem, it is clear that the number of hired killings has increased notably. They are increasingly used to “solve” a range of personal, business, narco-trafficking and organised crime problems.<sup>123</sup> Between 11 and 14 per cent of homicides in 2010 were estimated to be hired killings, amounting to around 450 killings per year. This has contributed significantly to the increase in the homicide rate.

22. In analysing the problem, it is important to distinguish between “professional” and unprofessional hired killers. The latter are poorly trained, relatively inexpensive and generally used in disputes within families or among neighbours. Such personal relationship disputes are now a major cause of hired killings. The deficiencies in the justice system are an important factor contributing to the use of hired killers in these contexts. Individuals conclude that taking private action to “resolve” a dispute is likely to be more effective than relying on the police and the courts. Such action is

122 From 1,136 homicides from January to May 2009 to 1,220 in 2010. The rates in some provinces are significantly higher. In 2009, the provinces with the highest homicide rates were Esmeraldas (62.40 per 100,000), Sucumbios (44.39) and Santo Domingo (38.5).

123 Organised crime is a serious and growing problem in Ecuador. According to information received, there are over 700 gangs, many of which are based in Guayas and Pichincha.

facilitated by the disturbing ease with which a private citizen can find a killer. In many towns, there are known locations (e.g., certain bars) where a killer can be readily hired. Killers have also been known to openly advertise their services on the Internet. They can be relatively inexpensive: police estimates ranged from \$200-\$10,000, depending on the victim, the “skill” and reputation of the killer, and how complicated the killing would be. Others said that killers could be hired in some areas for as little as \$20. Members of the police stated that the killers were predominantly uneducated, unemployed males (including, sometimes, minors). They may be recruited by criminal organizations, might join together in small informal groups, or operate independently. Because such killings are so rarely punished, becoming a *sicario* has become a desirable career choice for some otherwise poor and unemployed men, fuelling the growth of available and cheap killers.

23. More professional and thus more expensive killers are often hired by an “intellectual author”, who pays a middleman to arrange the hit. The killers and middlemen are often linked to organised crime groups, and sometimes carry out political killings. In the past, many professional killers were foreigners, but the trade is now increasingly home-grown. I was also provided evidence that some police and ex-police have worked as hired killers. The nature of the professional killing “business” makes it especially important that investigations should not focus solely on the individual killers, but should examine the broader context and the various actors involved.

24. “Loan sharks” are also often implicated in hired killings. Because of the difficulty of obtaining bank loans, many poorer Ecuadorians have to turn to the informal sector and loan sharks, who charge exorbitant interest rates (reportedly as high as 10 per cent per day) and are known to use killers to punish those who cannot repay their loans, or to intimidate family members to pay. [...]

### *1. Government response*

25. The Government now acknowledges the seriousness of the problem and in 2010 began to take strong measures to address it.

26. Expert advisers have been brought in from Colombia and France to assist at the policy level, and an inter-agency police team has been created to coordinate the police response. Importantly, a specialised police intelligence group (*Unidad de la Lucha Contra el Crimen Organizado*, ULCO) has been created to counter organised crime, including by researching the methods employed by hired killers and the causes of the killings. Witness protection is being strengthened, and rewards will be offered for information on organised crime activity.

27. In some cities, stronger steps have been taken to “geo-reference” criminal incidents, so that police patrols can be increased in especially affected areas, and greater attention has been given to the loan shark problem. The police also indicated that more would be done to investigate online advertisements posted by would-be hit men. In Guayas, motorcycles were required to display registration details, which led to a small drop in killings. Controls were also placed on alcohol consumption, and efforts were increased to close non-licensed premises.

### *2. Settlement of accounts*

28. The measures taken by the Government to date are important and should be continued and strengthened. However, my investigations clearly indicated that a significant factor in the thriving business of hired killings is the near complete impunity that killers enjoy. In part, this is due to factors that are difficult for the Government to control, such as the reluctance of surviving family members to report killings and the absence or fear of witnesses.

29. Impunity also results, however, from the unwillingness of police and prosecutors to fully investigate all hired killings. From my meetings with police and prosecutor officials, it became clear that they consider many hired killings cases to be what they categorised as a “settling of accounts”.

While it is desirable to categorise different types of killings in order to shed light on the motives and causes, the “settling of accounts” category is currently being used in a highly problematic way, which seriously hinders efforts to reduce hired killings.

30. First, the category is ill-defined and does little to illuminate the problem or facilitate its resolution. I asked many different officials what they understood the term to mean, and received as many different answers. Among the competing interpretations suggested to me were any case of revenge killing; inter-gang or inter-criminal violence; killings where the victim had a criminal record; or where both the victim and killer were believed to have records. Some used it where the victim had merely a police record, which can exist as a result of many forms of contact with the police, quite apart from actual criminality. Members of the police in Guayas told me that an estimated 40 per cent of victims of hired killers had police records, and so they assumed that many of those killings were connected to broader criminal activity. It was often simply assumed that the killings were part of organised crime rivalry, an assumption that curiously led to a lack of police interest in further investigation rather than the opposite, as might reasonably be expected.

31. Second, it gives unjustified importance to a victim’s criminal or police record. It makes little sense to automatically treat every case in which a victim had a police record as a case of inter-gang violence. It makes even less sense to assume a settling of accounts without information about whether the killer or the person ordering the killing had a criminal record.

32. Third, it is clear, despite some official denials, that settling of accounts cases are investigated less seriously than other cases. I received reliable evidence from a range of sources, including officials, that cases in which victims have a police record are generally not comprehensively pursued. It was clear, especially in Guayaquil, that once the settling of accounts determination was made, in-depth investigations were rarely conducted by police and prosecutors. Such cases are either considered too difficult and not worthy of the same attention as cases involving “innocent” victims, or relatively easy to neglect because family members are too afraid to push them forward. This policy is mistaken and deeply counterproductive. It denies justice to the victim’s family, leaves the perpetrator free to kill again and sends a message that it is easy to get away with murder. It also prevents the police from obtaining information on criminal networks that would facilitate more effective prosecutions against organised crime groups.

33. Fourth, the category provides a convenient cover for not pursuing killings in which the police themselves or other officials were involved. Once a case is categorised as a settling of accounts, the likelihood of a serious investigation diminishes dramatically. It is thus ideal for the purposes of covering up crimes. [...]

[...]

95. The Government should build on its recent initiatives to address the problem of hired killings by adopting a national strategy to combat this growing phenomenon. Efforts should be made to:

- a) Study the causes of the growth of hired killings, with an analysis of how and why they occur;
- b) Expand “geo-referencing” of killings, and tailor policing accordingly;
- c) Promote greater cooperation between police and prosecutors;
- d) Promote investigation and prosecution strategies that target not only the hired killer but also the intellectual author, middleman and others involved;
- e) Address the problem of loan sharks and their role in hired killings, and to consider reforms to the formal loan sector to enable more citizens to take out legal loans;
- f) Require police to investigate all cases of hired killings thoroughly, regardless of whether families formally complain or the deceased had a police record;
- g) End the use of the vague “settlement of accounts” classification by police



## 5. Election-related and other political killings

The Special Rapporteurs investigated killings linked to elections and/or motivated by concerns to install, maintain, or undermine the political position of an individual or political party in numerous countries. Such killings occur frequently and have been carried out by the military, police, and a variety of non-state actors.

*Urgent appeal sent to the Government of Zimbabwe (22 April 2008) (with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression)*

[W]e would like to draw the attention of your Government to information we have received regarding reports of intimidation, violence and torture as a form of retribution or victimization in the aftermath of recent elections.

According to the information received:

Between 29 March and 14 April 2008, 160 cases of injury resulting from organised violence and torture have been treated by various doctors with many of the patients still remaining in hospital. One third of the patients were women. A fifth of the victims were members of the opposition Movement for Democratic Change (MDC) and another 20% were involved in the elections for the Zimbabwe Electoral Commission (ZEC). Nine patients sustained fractures (broken bones), reportedly typical of “defence injuries”, resulting from the victim raising his or her hands and arms to protect the face and upper body from assault.

At least two politically motivated murders, 15 abductions of women, 288 cases of homes destroyed through politically motivated arson subjecting 175 families and 14 persons to displacement, and 48 cases of assault took place during this period. The majority of persons displaced are said to be women and children. About 70 MDC members have been arrested in the last few days.

The above-described violence has been perpetrated by police officers, soldiers and members of the ruling Zanu PF party as part of a retributive and reprisal campaign mainly in rural areas, where people have voted for opposition candidates. In many instances victims were told that they were being victimised because they support the opposition; they were accused of “celebrating the MDC victory”, “of selling the country to the whites” and/or “of being responsible for the rigging of elections in favour of the MDC”.

Reports also indicate that the authorities are targeting the independent local and foreign media, attempting to impede reporting on the current situation and the aftermath of the election, by resorting increasingly to police harassment and the arrest and detention of journalists; the deportation of one foreign journalist has been reported.

In parallel, the State-controlled media is reportedly airing programmes and songs encouraging violence, such as “Mr Government” by Man Soul Jah, which celebrates the Government’s land seizures and calls for the decimation of perceived political sell-outs (the song says: “We are living like squatters in the land of our heritage... give me my spear so that I can kill the many sell-outs in my forefathers’ country.”) and a well known song encouraging people to take up arms and fight for their freedom aired by ZTV. Moreover, reports have appeared that there are plans to entrust the distribution of food aid to the military in order to control the population through the politicization of food distribution.

While we do not wish to prejudge the accuracy of these allegations, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the allegations above. We would like to stress that each Government has the obligation to protect the right to physical

and mental integrity of all persons. This right is set forth *inter alia* in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. We would also like to recall that human rights law protects every individual's inherent right to life and security (Article 6, International Covenant on Civil and Political Rights (ICCPR); Article 3, Universal Declaration of Human Rights (UDHR)). Article 6 of the ICCPR provides that the right to life and security shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. Your government has a due diligence obligation to protect the lives of persons within your territory and jurisdiction from attacks by other persons within your territory (*Jiménez Vaca v Colombia*, UN Human Rights Committee, 25 March 2002, paragraph 7.3). We would also like to bring to your Government's attention the duty to thoroughly, promptly and impartially investigate killings, and to prosecute and punish all violations of the right to life. As reiterated by the 61st Commission on Human Rights in Resolution 2005/34, all States have "the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions"; and "to identify and bring to justice those responsible".

[...]

We would also like to bring to Your Excellency's attention Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop or have available penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, inform women of their rights in seeking redress through such mechanisms.

In the event that your investigations support or suggest the above allegations to be correct, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of all persons concerned by the violence described above are respected and accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopt effective measures to prevent the recurrence of these acts.

***Follow-up Report on Mission to Nigeria (A/HRC/8/3/Add.3, 14 May 2008, ¶¶92-95)***

92. The Special Rapporteur recommended that Nigeria address the problem of violence caused by vigilante groups. These groups are largely formed to fill the security vacuum caused by ineffectual policing, and in some instances are actually supported by members of the Government. Some of these vigilante groups have evolved into highly armed criminal gangs that are sponsored by politicians. Members in these gangs give an oath of allegiance, and they function as organised criminal enterprises, despite portraying themselves as vigilante groups performing a necessary public service in the face of inadequate State policing. The "Niger Delta Vigilante" is one such notorious criminal gang. Unlike the vigilante groups who are, in theory, accountable to the community, these thugs-for-hire are solely responsible to their patrons. Once the gangs break with their political sponsor, they have no unaccountability whatsoever.

93. This problem became manifest with disastrous consequences during the April 2007 elections. The estimated 300 deaths associated with the election period have been attributed to gangs hired by politicians to ensure their election. These gangs were reportedly paid, armed and promised favors by political sponsors in exchange for intimidating voters and opposition supporters. The gangs have continued their violence after the election because they became empowered by their sponsorship and, in some circumstances, believe their promised political favors have not been

forthcoming. The police were largely unwilling to investigate killings by the criminal organizations, and no one has been held to account for the extrajudicial executions associated with Nigeria's 2007 elections.

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

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

In 2010, Special Rapporteur Alston attached a dedicated addendum to his thematic report to the Council on the problem of election-related killings.

*Report to Human Rights Council on Election-Related Violence and Killings  
(A/HRC/14/24/Add.7, 21 May 2010, ¶¶1-4, 6-48, 63-92, 97-101)*

*I. Introduction*

1. In the present report, the Special Rapporteur on extrajudicial, summary or arbitrary executions examines the widespread, but under-studied, phenomenon of election-related killings. He draws upon his extensive first-hand experience investigating and reporting on killings around the world, as well as upon extensive research undertaken specifically for this purpose.

2. Election-related killings violate not only the right to life but also the right to participate in the democratic process, and a range of other human rights. They have featured prominently in the Special Rapporteur's country fact-finding missions, his communications to Governments, and his regular monitoring work. Such killings have occurred on a large scale in many of the countries to which the Special Rapporteur has carried out fact-finding missions, including Kenya, the Democratic Republic of the Congo, the Philippines, Afghanistan, and Nigeria. Prominent recent incidents include the massacre in the Philippines in November 2009 of 57 relatives and supporters of a gubernatorial candidate by a rival candidate's private militia, the deaths of at least 1,113 civilians in post-election December 2007-January 2008 protests in Kenya, and killings of protesters by police and militia forces in Iran following contested elections in June 2009.

3. Reports by human rights and election monitors, as well as the Special Rapporteur's country reports, provide important analysis of election-related killings in a wide range of countries. [...] There has, however, been little cross-national research. Detailed typologies of election-related killings have not been set out, and the dynamics of the main forms of such killings across the world have not been closely analysed. As a subject of academic study, "election-related killings" barely exists, although the broader subject of election-related violence has experienced important recent growth.

4. In part II of the report, the Special Rapporteur proposes a working definition of election-related killings. In part III, he surveys the limited academic research on election-related violence and

reviews the main areas of focus and findings of the field. Drawing upon the country case studies in the appendix, in part IV, he sets out his general findings on the perpetrators, victims, timing, motive, methods, and effects of election killings. In part V, he then analyses the most significant types of election killings: killings by security forces during election protests; killings by insurgents; killings of political candidates; killings of supporters of a rival candidate or party; rival supporter-on-supporter killings; and the state's use of the death penalty. In part VI, he examines election monitoring reports and guidelines, which need to be strengthened in terms of their coverage of election violence. The report concludes with general findings and recommendations. [...]

[...]

## II. Defining election-related killings

6. There is no accepted definition of “election-related killings”. But closely related definitions of electoral violence prove useful in analysing the scope of election killings, in illuminating common elements, and in pointing towards a working definition.

7. Many definitions of election violence rely strongly on an *intent* or *motive* element. In these definitions, violence is “election violence” if it is carried out with the intent to influence the election in some way. Högland, for example, notes that:

“In essence, electoral violence is separated from other forms of political violence by a combination of timing and motive. The time aspect relates to violence carried out during the election period. The objective of electoral violence is to influence the electoral process and in extension its outcome.”<sup>124</sup>

Similarly, Laakso writes that:

“[E]lectoral violence by definition has to be seen as an activity motivated by an attempt to affect the results of the elections – either by manipulating the electoral procedures and participation or by contesting the legitimacy of the results.”<sup>125</sup>

In one of the most influential and important global studies of electoral violence, Fischer defines electoral conflict and violence as:

“any random or organised act to intimidate, physically harm, blackmail, or abuse a political stakeholder in seeking to determine, delay, or to otherwise influence an electoral process.”<sup>126</sup>

8. Haid concisely writes that electoral violence is “violence employed to affect electoral outcomes.”<sup>127</sup> A comprehensive 2009 report by UNDP on elections and conflict, primarily authored by academic Timothy Sisk, defines election-related violence more broadly as “[a]cts or threats or coercion, intimidation, or physical harm perpetrated to affect an electoral process *or that arise in the context of electoral competition*.”<sup>128</sup>

124 Kristine Högland, “Electoral Violence in Conflict-Ridden Societies: Concepts, Causes, and Consequences” *Terrorism and Political Violence*, Vol 21, No 3 (2009), p. 417.

125 Liisa Laakso, “Insights into Electoral Violence in Africa”, in Matthias Basedau, Gero Erdmann and Andreas Mehler (eds.), *Votes, Money and Violence: Political Parties and Elections in Sub-Saharan Africa* (2007), pp. 227-228.

126 Jeff Fischer, “Electoral Conflict and Violence: A Strategy for Study and Prevention”, IFES White Paper (2002), p. 1.

127 Christopher Haid, “Explaining Electoral Violence: Gunmen, Garrisons, and Graft in Jamaican Politics” (February 2010) (Working Paper), p. 1.

128 United Nations Development Programme (UNDP), *Elections and Conflict Prevention: A Guide to Analysis, Planning and Programming* (August 2009), p. 4 (emphasis added).

9. Much election-related violence is indeed motivated by a desire to influence the conduct or outcome of an election in some way, and definitions emphasizing or relying on intent capture many of the cases of killings that the Special Rapporteur has investigated. Such definitions would clearly encompass, for example, assassinations of a rival candidate, killings by insurgents designed to disrupt an election, or killings of citizens to intimidate voters to vote a particular way. However, the category of electoral killings also goes beyond those killings motivated by an intention to influence an election. This is particularly the case with killings in the context of riots or protests. While some protests may be intended to influence or change electoral outcomes, others are motivated by indignation, anger or disappointment with a result, and are not necessarily intended to change that result. This is even more so for killings in the context of protests. Killings between private citizens in the midst of protests may be better explained, for instance, by the complex dynamics of crowd behaviour or mob violence. More significantly, many killings during riots are committed by security forces while attempting to (legitimately or otherwise) pacify or end a protest. There are many types of such security force killings (e.g. intentional targeting of perceived enemies of a regime, identified by their presence at the protest; excessive use of force caused by failures in training on crowd control), but few are well captured by definitions that emphasize a motive to affect election results.

10. A focus on the motivation also fails to clearly capture government trials and executions of individuals for their election-related activities. Following the 2009 elections in Iran, for example, individuals were charged, tried, convicted, and sentenced to death for their involvement in post-election protests against the Government. These deaths were intimately linked to conduct during and after the elections and should thus be considered election-related killings.

11. Consequently, a more inclusive definition is in order. For the purposes of this report, election related killings may relate to election processes or outcomes. They include killings (a) designed to influence, or to prevent attempts to influence, an election outcome, (b) that arise in the context of election processes, or (c) that seek to promote or hinder election-related activity.

### *III. Review of academic research on election-related violence*

12. Until recently, there has been little academic research on the specific subject of election violence. While there has been a tremendous amount of writing on elections generally, and on political violence generally, there has been little on the intersection of these two fields: election-related violence.<sup>129</sup> Research gaps that have been generally identified include work on the causes and effects of election violence, cross-national studies, efforts to understand the specific forms or

129 David C Rapoport and Leonard Weinberg, "Elections and Violence", in David C Rapoport and Leonard Weinberg, *The Democratic Experience and Political Violence* (2001), p. 15 ("No subject attracts political scientists more than elections do. Still, the intimate link with violence has scarcely been noticed.... Questions concerning why ballots create occasions for bullets and the relationship between violence-producing and violence-reducing propensities of elections are ignored."); Fischer, *supra* note 126, p. 2 ("Past thinking at stemming electoral conflict and violence has been deficient because of the lack of a common framework for research and practice."); Höglund, note 124, p. 413 ("[I]t is peculiar to note that electoral violence to a large extent remains an unmapped research field... in terms of research on the causes and effects of electoral violence, much is yet to be done... electoral violence deserves to be studied as a phenomenon in itself"); Kristine Höglund and Anton Piyarathne, "Paying the Price for Patronage: Electoral Violence in Sri Lanka" *Commonwealth and Comparative Politics* Vol 47, No 3 (2009), p. 287 ("While there is a large literature on elections, and an almost equally large literature on political violence, there are only a few studies addressing the election-violence nexus."); Lindsay Shorr Newman, "Electoral Violence: Whether and How Terrorist Attacks Trend during the Election Cycle" (2010) (unpublished manuscript), p.1 ("the shadow of violence that elections cast remains poorly understood. Existing work on electoral violence has been scarce and almost entirely theoretical ... or case-specific."); Bekoe, "Managing Electoral Conflict in Africa" (2010) (manuscript), p. 3 ("Only a few studies address electoral violence directly.")

variations of violence, work that is both theoretical and case-oriented, and research on the scope, gravity and timing of election violence.<sup>130</sup>

13. Scholarly work on the subject of election violence has grown significantly in recent years. The analysis that follows maps the concerns and findings of this growing field, in terms of: the timing of election violence; the perpetrators of violence; the targets and victims; motives; method, means or form of violence; causes and enabling conditions; extent; and effects.<sup>131</sup>

#### A. *Timing*

14. Election violence has often been classified as occurring in one of three phases: pre-election, on election-day(s), or post-election.<sup>132</sup> Fischer has proposed a more detailed five phase typology: during the voter registration process; during the campaign; on election-day; when results are announced; and in what he calls “representation conflict”.<sup>133</sup> The UNDP study also proposes a more detailed election cycle division: 18 months to three months prior to election day; three months prior to election day; election day; the period between voting and the results announcement; and post-election.<sup>134</sup> Bekoe, in describing where tensions arise in the election process, notes that they can occur, “when decisions are made about who possesses the right to vote; when and if one can exercise the right to vote; which candidates are eligible to represent particular groups; the integrity of the registry; the credibility of the results; or the process for filing grievances.”<sup>135</sup>

15. Many authors note that while significant attention is often paid by election monitors and the media to election-day, most violence actually occurs either before or after that day, and that election-day itself “often is remarkably peaceful”.<sup>136</sup> Many such statements have not, however, been empirically based. Thus, Bekoe makes an important contribution by examining fatalities in 110 national elections from 1990-2005 in Africa. She found that election-day is the “least volatile stage in the three months before and three months following the election.”<sup>137</sup> She found that 11 percent of fatalities (by stage) occurred on election-day, 46 percent pre-election, and 43 percent post-election. She hypothesised that countries had an interest in keeping election day calm, because of the attention the media and election monitors paid to it, and the affect that negative publicity could have on foreign relations and aid.<sup>138</sup> Importantly, however, she notes that while election-day was not the most violent *stage*, it was the “most violent *day*”.<sup>139</sup>

16. In another detailed study, Newman analysed over 5,000 terrorist attacks between 2000-2005, and found that, in general, “the frequency of terrorist attacks increases closer to the actual election date. This is true of both pre-election as well as post-election violence ... [and attacks are] almost evenly distributed before and after an election.”<sup>140</sup>

130 See e.g. Haid, *supra* note 127, pp.1-4; Bekoe, *supra* note 129, p. 3; Newman, *supra* note 129, p. 1; Rapoport and Weinberg, *supra* note 129, p. 15; Höglund, *supra* note 124, p. 413.

131 A number of the articles referred to here are works in progress or manuscripts not yet published. The Special Rapporteur is grateful to the authors for providing drafts of their research to him for the purposes of this report.

132 Höglund, *supra* note 124, p. 416; Höglund and Piyaratne, *supra* note 129, p. 289.

133 Fischer, *supra* note 126, p. 10.

134 UNDP, *supra* note 128, pp. 20-22.

135 Bekoe, *supra* note 129, p. 11.

136 Höglund, *supra* note 124, p. 416. Also see: Rapoport and Weinberg, *supra* note 129, p. 19 (“The violence often ceases when the voting begins”, and giving two examples from elections in East Timor and Zimbabwe); Laakso, *supra* note 125, p. 228 (“the actual polling, which is the mostly keenly monitored phase of the elections, is often the most peaceful period.”)

137 Bekoe, *supra* note 129, p. 10.

138 *Ibid.* pp. 10-11.

139 *Ibid.* p. 10, fn. 20.

140 Newman, *supra* note 129, pp. 16-18.



17. Some recent work has also begun to map the relationship between the stage of the election and the types and perpetrators of violence. The UNDP study, for instance, sets out in general terms the different types of violence that may occur in each of their five election phases.<sup>141</sup>

18. Country-specific case studies have also addressed the timing of election violence. In Patino and Velasco's study of election violence in the Philippines, for example, they found that most violent incidents and deaths occurred during the campaign period, but that incidents also occurred before the campaign period, on election day, and in the period embracing the processes of counting, canvassing, and proclaiming results.<sup>142</sup>

### *B. Perpetrators*

19. General studies have identified the categories of the perpetrators of election violence. Höglund has noted that violence can be committed by, "state actors (military and police), political parties, guerrilla/rebel groups, and militia and paramilitary groups."<sup>143</sup> Similarly, Laakso notes that perpetrators might include government forces (notably the police and army) supporters of either the government or opposition groups, spontaneous demonstrators and even rebel organizations.<sup>144</sup> The UNDP, in setting out an initial typology of actors, lists: political parties and candidates, citizens, the state (police, army), non-state security forces (rebels, militias, vigilantes), and organizations of citizens.<sup>145</sup> Work has also examined the identity and interests of perpetrators in more detail in specific country case studies, including on Sri Lanka,<sup>146</sup> Zimbabwe,<sup>147</sup> and the Philippines.<sup>148</sup>

20. A small amount of work draws broader conclusions about the type and extent of violence by particular perpetrators. Importantly, a number of writers have noted that much evidence suggests that political parties are frequently responsible for election violence.<sup>149</sup> In a largely theoretical study, Chaturvedi hypothesised that the party with "less initial political support will resort to more political violence."<sup>150</sup>

21. In groundbreaking research on elections in Jamaica, Haid examines the relationships between politicians and criminal organizations, and how "variation in these organizations might affect the type, tenor, duration and effects" of election related violence.<sup>151</sup>

### *C. Targets and victims*

22. Höglund, drawing upon Fischer's analysis, concludes that the targets of election violence can be: "electoral stakeholders (voters, candidates, election workers, media, and monitors), electoral

141 UNDP, *supra* note 128, pp.20-22.

142 Patrick Patino and Djorina Velasco, "Election Violence in the Philippines", Friedrich Ebert Stiftung, (2004) (finding, for example, in 1998, 7 deaths in the pre-election period, 53 in the campaign period, 9 on election day, and 8 after election day).

143 Höglund, *supra* note 124, p. 416.

144 Laakso, *supra* note 125, p. 228.

145 UNDP, *supra* note 128, p. 13.

146 Höglund and Piyaathne, *supra* note 129.

147 Norma Kriger, "ZANU(PF) Strategies in General Elections, 1980-2000: Discourse and Coercion" *African Affairs*, Vol 104, No 414 (2005).

148 Patino and Velasco, *supra* note 142.

149 Rapoport and Weinberg, *supra* note 129, p. 42. See also Höglund, *supra* note 124, p. 416 (political parties have been "key organisers of electoral violence").

150 Ashish Chaturvedi, "Rigging elections with violence" *Public Choice*, Vol 125 (2005), p. 190.

151 Haid, *supra* note 127, p. 5.

information (registration data, vote results, ballots, campaign material), electoral facilities (polling and counting stations), and electoral events (campaign rallies, travelling to a polling station).<sup>152</sup>

23. There is little detailed cross-national analysis of the targets and victims of electoral violence. With respect to electoral stakeholders or victims specifically, Rapoport and Weinberg give some cross-national examples of killings of political candidates, voters, and party-workers.<sup>153</sup> Country case studies provide more detail on victims. In a study of post-election violence in Kenya, de Smedt provides detail on the targets of violence in the Kibera slum.<sup>154</sup> In Höglund and Piyarathne's detailed study on Sri Lanka, they found that many victims had been politically active during the election, and had themselves been involved in violence.<sup>155</sup> They also found that more victims had supported the opposition parties, and that "party activists belonging to the lower class – from either party – were victims of more serious violence than the local elites."<sup>156</sup> Robinson and Torvik, in a study of violence in Zimbabwe, hypothesised that much of the violence in elections there "was aimed not at the core supporters of Mugabe's opposition, but rather at the swing voters."<sup>157</sup> They reasoned that violence was a more effective strategy than attempting to give the swing voters "policy favors."<sup>158</sup>

#### D. Motive

24. As explained above, "motive" is often one of the key factors differentiating election-related violence from other violence. Rapoport and Weinberg note that, "Most of the time, violence is designed to influence elections by intimidating voters and striking candidates down. But violence can prevent an election from taking place or a victor from taking charge of the government."<sup>159</sup> Similarly, Höglund and Piyarathne explain that violence can be used for a number of reasons: "to hinder people from voting, to prevent candidates from campaigning, to display discontent with election results, or to overturn the outcome of the election."<sup>160</sup> In setting out motives in a different form, Höglund writes that some "actors object to elections of any sort... [others] try to prevent or postpone elections ... [others] want to influence the outcome of the election."<sup>161</sup> Violence may be used to "suppress opposition turnout or disrupt opponents' campaigns."<sup>162</sup>

25. Some research has specifically focused on the relationship between the motives for violence, and vote buying. Kasara notes that Kenyan politicians may use election "violence as a substitute for political inducements such as vote buying."<sup>163</sup> She found that politicians encouraged violence that changed the voter/ethnic composition of an area, to "create winnable parliamentary seats".<sup>164</sup> In a detailed study of this phenomenon in Jamaica, Haid hypothesises that "the violence used to affect electoral outcomes may be viewed by a candidate as either substitutable for or complementary of clientistic vote buying ... Sometimes spending on violence is used *instead* of non-violent activities

152 Höglund, *supra* note 124, p. 417. See Fischer, *supra* note 126, p. 9.

153 Rapoport and Weinberg, *supra* note 129, p. 19.

154 Johan de Smedt, "'No Raila, No Peace!' Big Man Politics and Election Violence at the Kibera Grassroots", *African Affairs*, Vol 108 (2009), p. 581.

155 Höglund and Piyarathne, *supra* note 129, pp. 295-298.

156 *Ibid.* p. 301.

157 James A Robinson and Ragnar Torvik, "The Real Swing Voter's Curse", National Bureau of Economic Research Working Paper (2009), p. 1.

158 *Ibid.*

159 Rapoport and Weinberg, *supra* note 129, p. 33.

160 Höglund and Piyarathne, *supra* note 129, p. 287.

161 Höglund, *supra* note 124, p. 415.

162 Kimuli Kasara, "Electoral Geography and Conflict: Examining the Local-Level Incidence of Violence in Kenya" (2010) (unpublished manuscript) p. 4.

163 *Ibid.* p. 4.

164 *Ibid.* p. 2.

because it is believed that violent campaign activities will be more effective in ensuring victory than the same amount of resources spent on clientistic vote buying and patronage promises.”<sup>165</sup>

26. Other work has studied the motives of specific forms of violence, such as riots. Wilkinson and Haid, for example, in studying ethnic riots in India, found that politicians used them to “increase the salience of one ethnic dimension, and within that dimension one particular cleavage and category, so as to build a winning political coalition, split the opposition, and raise the turnout among their party’s core supporters.”<sup>166</sup>

#### *E. Method, means, or form*

27. The general forms of election violence have often been set out in various typologies: “riots, demonstrations, civil wars, terrorist campaigns, military coups, and assassinations”<sup>167</sup> Fischer refers to “threats, verbal intimidation, hate speech, disinformation, physical assault, forced “protection”, blackmail, destruction of property, or assassination”<sup>168</sup> The UNDP’s study notes that election violence can include “assassination of opponents or spontaneous fistcuffs between rival groups of supporters – and threats, coercion, and intimidation of opponents, voters, or election officials.”<sup>169</sup> Haid notes that election-related violence can “involve rioting (permitted or instigated), looting (spontaneous or orchestrated), intimidation (of voters or campaigns), assassination (of candidates or their staffs), or direct partisan conflict (with irregular or regular forces).<sup>170</sup> In summarizing the types of electoral violence in Tanzania, Uganda, and Kenya, Shwartz sets out the following forms: assault, murder, attempted murder, beatings, looting, arson, threats of violence, bombings, disruption of campaign rallies, torture, arbitrary detention, abduction, chasing away voters from polling stations, rape, hate speeches, closure of party offices.<sup>171</sup>

28. Country case-studies often provide more detail on specific types of violence.<sup>172</sup> Very little research focuses on one specific form of election violence and studies it globally. Newman’s paper on terrorist acts is an important exception.<sup>173</sup>

#### *F. Extent*

29. Several studies have sought to calculate the extent of election violence. In an oft-cited study, Fischer found that 24.5 percent (14 of 57) of countries that held elections in 2001 experienced electoral violence.<sup>174</sup> Bekoe found that, of 110 elections in Africa from 1990-2005, 24.5 percent (27 elections) were accompanied by election-related deaths.<sup>175</sup>

#### *G. Causes and enabling conditions*

30. Research has addressed causes or conditions of election violence in general terms, as well as in detail with respect to specific country case studies.

165 Haid, *supra* note 127, p. 3.

166 Steven Wilkinson and Christopher Haid, “Ethnic Violence as Campaign Expenditure: Riots, Competition, and Vote Swings in India” University of Chicago (2009) (unpublished manuscript), p.3.

167 Rapoport and Weinberg, *supra* note 129, p. 33.

168 Fischer, *supra* note 126, p. 8.

169 UNDP, *supra* note 128, p. 4.

170 Haid, *supra* note 127, p. 2.

171 Roland Schwartz, “Political and Electoral Violence in East Africa”, Working Papers on Conflict Management No. 2, Freidrich Ebert Stiftung & Centre for Conflict Research (2001), pp. 8-9.

172 e.g. de Smedt, *supra* note 154; Höglund and Piyarathne, *supra* note 129, pp. 294-295.

173 Newman, *supra* note 129.

174 Fischer, *supra* note 126, p. 11.

175 Bekoe, *supra* note 129, p.9 (She notes that this matches Fischer’s percentage).

31. The UNDP study provides the longest list of potential causes, addressing specific factors related to context (e.g. ethnic rivalries), process, relationship factors, political factors (e.g. weak governance, lack of political party capacity), media (e.g. biased media), administrative inadequacies (e.g. inaccurate voter lists), corruption, and security and policing (they include four factors: “reactionary policing”, “police inaction to apprehend culprits”, “lack of capacity to investigate”, and “availability of small arms”).<sup>176</sup> Höglund identifies various causes of election violence including clientism and patrimonialism, elections taking place after conflict and where parties have not yet been fully demobilised, a culture of violence and impunity, the type of election, the electoral system design, and the nature of the election administration.<sup>177</sup>

32. In Schwartz’ work on Tanzania, Uganda, and Kenya, he found that causes of violence included: a lack of faith in the electoral commission or its independence; lack of awareness of the electoral process; political repression; forced disenfranchisement of opponents; poverty; lack of funding for the electoral process; and incitement.<sup>178</sup>

33. A study of the Philippines found that relevant factors included: the monetary and other benefits of public office, which cause politicians and their supporters to kill rivals; the fact that public office allows politicians to “protect” their organised criminal activity (gambling, drugs, logging); long existing family-political rivalries; the widespread presence of private militias run by politicians; and the weakness of the state.<sup>179</sup> Work on violence in Kenya’s Kibera slum after the 2007 elections pointed to paternalism and “big man” politics, in combination with socio-economic factors, and ethnic rivalries.<sup>180</sup> Another study of the same period found that “more violence occurred in locations that had a greater effect on the overall electoral competitiveness of a parliamentary constituency”.<sup>181</sup> Similarly, studies of Gujarat found that Hindu-Muslim riots were a planned element in a larger electoral strategy, and that they “broke out disproportionately in the most competitive seats.”<sup>182</sup> And Bekoe’s study of elections in Africa found that the largest number of election related deaths occurred in countries where ethnicity was politicised.<sup>183</sup>

34. Some studies have addressed the relationship between development or poverty and election violence. One such study noted that while it is generally accepted that electoral violence is most linked to developing countries, in fact, most states have at some point experienced varying degrees of election violence.<sup>184</sup> In discussing this point further, Laakso explains the reasons why poverty may be a factor in election violence (e.g. the ease with which poor youth might be mobilised to violence), but shows that numerous poor countries have not experienced violence, and that others experiencing growth have had violence. She concludes that poverty is clearly a relevant factor, but “should not be seen as ... [a] sufficient cause for violence”.<sup>185</sup>

35. Some work has included analysis of whether the type of election (e.g. national, local, presidential, parliamentary etc.) affects violence levels. In one study of elections in Africa, Bekoe did not find

176 UNDP, *supra* note 128, pp. 15-17.

177 Höglund, *supra* note 124, pp. 420-423.

178 Schwartz, *supra* note 171, pp. 9-10.

179 Patino and Velasco, note 142; see also John Linantud, “Whither Guns, Goons, and Gold? The Decline of Factional Election Violence in the Philippines” *Contemporary Southeast Asia*, Vol 20, No 3 (1998).

180 de Smedt, *supra* note 154.

181 Kasara, *supra* note 162, p. 3.

182 Wilkinson and Haid, *supra* note 166, p. 2.

183 Bekoe, *supra* note 129, p. 12.

184 Rapoport and Weinberg, *supra* note 129, p. 42.

185 Laakso, *supra* note 125, p. 229. Also see Paul Collier, *Wars, Guns, and Votes* (2009) (discussing the relationship between poor democracies and violence).

a difference in the presence of election-related deaths in different types of elections (comparing general, parliamentary, non-concurrent presidential and parliamentary).<sup>186</sup>

36. A major topic of analysis has been the relationship between the process of the election and violence. This includes manipulation or fraud in the electoral process, particularly in terms of rigging the outcome, and post-election violence. Violence is common following fraudulent elections in Africa.<sup>187</sup> The UNDP's study posits that one of the "common understandings" about election violence is that, "[t]hose elections considered to be free, fair, and transparent are less likely to experience electoral violence than those where allegations of mismanagement or deliberate cheating are prevalent."<sup>188</sup> In contrast, however, Laakso observes that "the elections that were declared free and fair by election observers were no less violent than elections that were not declared free and fair."<sup>189</sup>

#### *H. Effects*

37. Election-related violence clearly has immediate effects on individual and community rights and security, and can result in physical harm or death, and property damage. Beyond this, a number of studies have attempted to analyse the extent to which violence had broader effects, especially on democracy and participation in democracy.

38. Election violence can reduce voter turnout, affect voter registration, prevent candidates from running for office, increase divisions in society, or even prevent or postpone an election from taking place at all.<sup>190</sup> A detailed study of the consequences of election violence in Sri Lanka, concluded that, "violence directly influenced political participation, voter turnout and voters' mobility [and that] fear and frustration linger[ed] for years after the violence occurred."<sup>191</sup> It found that individuals refrained from voting because of violence, and that party supporters went into hiding before and after the election.<sup>192</sup> A similarly detailed study of evidence from Gujarat found that Hindu-Muslim riots led to notable vote swings in later elections.<sup>193</sup>

39. The UNDP study notes that election violence can also hinder economic and other development: "incidents of violence undermine government legitimacy, scare away domestic foreign investors, and result in low levels of social trust."<sup>194</sup>

#### *IV. Typology of election-related killings*

40. [...] The most common types of election-related killings are examined in detail below in Part V. This section sets out typologies of election-related killings, providing cross-national detail on perpetrators, victims, motives, methods, locations, timing, and effects.

##### *A. Identity of the perpetrator*

41. The country case studies indicate that the perpetrators of election-related killings include:

186 Bekoe, *supra* note 129.

187 Mehler (ed.), *supra* note 125, pp. 203 and 224.

188 UNDP, *supra* note 128, p. 3

189 Laakso, *supra* note 125, p. 224.

190 Höglund, *supra* note 124, pp. 417-419.

191 Höglund and Piyaathne, *supra* note 129, p. 287.

192 *Ibid.*, p.299.

193 Wilkinson and Haid, note 166 above, p. 2.

194 UNDP, *supra* note 128, p. 5.

- State security forces, including: the regular police, specialised police units, army, intelligence, or republican or presidential guards;
- Armed non-state pro-government actors, including: paramilitaries, militias, gangs;
- Armed non-state actors linked to or controlled by politicians or political parties, including: militias, civilian armed forces, private armies, bodyguards, gangs;
- Armed non-state anti-government actors, including: insurgents, terrorist groups, rebel groups, anti-government elements, or separatists;
- Criminal gangs, especially groups involved in the trafficking of weapons or drugs, and that often have a degree of territorial control;
- Political leaders or political candidates, generally acting through armed state or non-state actors; and
- Civilian supporters of a political candidate or party.

### ***B. Identity of the victim***

42. The victims of election-related killings include:

- Political leaders or candidates;
- Members or supporters of a political candidate or party;
- Family members of political candidate or member of political party;
- Potential or actual voters for a rival party;
- Political activists;
- Protestors, demonstrators;
- Journalists;
- Human rights defenders;
- Bystanders;
- Witnesses to an election-related killing;
- State security force members, police or military (domestic, foreign, or international); and
- Bodyguards or private armed forces of a political leader or candidate.

### ***C. Motive for the killing***

43. The following motives can be identified:

- To spread fear through the electorate to inhibit voting generally and thereby disrupt or discredit the electoral process;
- To spread fear amongst political candidates generally, to prevent them from running for office;
- To neutralise the political threat of a particular rival candidate;
- To neutralise the threat of a rival party;
- To spread fear amongst election officials to disrupt the electoral process;
- To prevent potential voters from registering to vote;
- To prevent supporters of a candidate or party from hanging political posters, distributing leaflets or participating in other political campaigning;
- To pressure voters to vote for a particular candidate or party;
- To punish perceived supporters or voters of a particular candidate or a party, or to punish them for voting at all;
- To quell a public protest or prevent public political expression;
- To physically steal ballots or disrupt ballot counting;
- To force voters to leave a particular area;
- To prevent a potential coup;
- To punish a citizen for having participated in a political protest;
- To strengthen organised criminal influence over political candidates or parties;
- To prevent information about a fraudulent process or violence from being publicised;



- To prevent election-related human rights fact-finding or advocacy;
- To prevent a witness to violence from testifying.

#### *D. Method or means of killing*

44. Diverse means were employed, often depending on both the perpetrator and the motive:

- Most incidents involved victims being shot to death by security forces, militias or others with firearms, including handguns, rifles, shotguns, and automatic weapons;
- In countries experiencing armed conflict or where there is an active insurgency or terrorist group, victims were often killed by the detonation of various explosive devices. Insurgents generally used improvised explosive devices (IEDs), whether suicide IEDs, vehicle-borne IEDs, or roadside IEDs; and there was some use of grenades and landmines;
- In other incidents, especially involving clashes between rival party supporters, victims were beaten, hacked, stabbed, or burnt to death.

#### *E. Location of killing*

45. Election-related killings occur especially at election-related events or sites:

- Political rallies;
- Public or street demonstrations;
- Homes or offices of political candidates or party members;
- Political party offices;
- Sites of voter registration;
- Polling sites;
- On transport (cars, buses) to polling sites, voter registration sites, political rallies;
- Government buildings; and
- Public places where citizens gather (e.g., markets).

#### *F. Stage of the election*

46. Killings occurred at all stages of the election cycle:

- Pre-election. Some killings occur even before an election date has been announced (e.g. when an election has been postponed, or during attempts to force a government to hold an elections). Killings also occur during voter registration and the political campaign period. The most common types of killings pre-election are: killings of political rivals, killings by insurgents to disrupt the election process, or killings of protestors by state forces;
- Election-day. While numerous authors have noted that election-day itself can often be calm, this observation should not be overstated. The Special Rapporteur has recorded election-day killings in recent elections in Afghanistan, India, Indonesia, Nepal, Pakistan, and Iraq. Election-day killings were especially experienced by countries experiencing an armed insurgency, and often occurred near voting sites;
- Election run-off. Killings have been documented in the period between an initial election, and a run-off to determine the winner in an allegedly close race. Such killings were often carried out to intimidate voters to affect voter preferences;
- Post-election. Killings were committed before and after the announcement of election results, while votes are being counted, and in some cases, many months after the election. Common types of killings in this period include: killings by state forces of post-election protestors, killings of voters by state forces, militias or insurgents to punish them for having voted for a rival or at all, killings of witnesses to prevent them from testifying.

### G. Effect

47. The effects of the killings documented in the country case studies are difficult to analyse in detail due to a lack of comprehensive country information. In addition to the obvious loss of life, the consequent harm to victims' families and community, and generalised insecurity, the following effects were observed:

- Withdrawal of candidacy by political candidates;
- Difficulty in recruiting election or polling staff;
- The closure of polling stations;
- Suspension of political party campaign rallies;
- Prevented or impeded political campaigning in certain areas;
- The postponement of elections;
- Reduced political activism;
- Reduced voter turnout, generally due to voter fear of retaliation. Women voters have sometimes been especially affected;
- Change in voter preferences or voting patterns; and
- Population displacement.

### V. Analysis of election-related killings

48. This section provides detailed analysis of the most significant and common types of election related killings.<sup>11</sup>

[...]

### B. Killings by insurgents

63. Election-related killings by insurgents or other rebel groups present an entirely different set of problems. A rebel group's broad aims are to fundamentally change the structure of the state or the type of government, or to oust the present government, or to create an autonomous region or separate state. In choosing to seek these outcomes through violence, rather than through non-violent political means, they are generally opposed to elections as such. They do not view the elections as a legitimate means to determine state authority, and they use the election period to undermine the government and democratic processes. Thus, their election-related actions are often directed towards spreading fear amongst voters, candidates, party supporters and election officials, disrupting and discrediting the electoral process or election-day, and punishing voters. Before March 2010 elections in Iraq, for instance, al Qaeda in Iraq released a statement that the elections were "illicit" and that they would attempt to "prevent these elections" using "primarily military means".

64. While violence by rebel groups occurs regardless of the presence of elections, their violence often increases during the election cycle. Afghanistan's August 2009 elections, for example, saw a marked increase in attacks by Anti-Government Elements; and suicide bombings and other attacks also increased in both Iraq and Pakistan before elections. Election-day was generally not peaceful in those countries studied with insurgent activity: for example, in Afghanistan, 31 civilians, including 11 election officials, as well as 29 security force members, were killed on the day of voting (20 August 2009); killings occurred on each of India's five election days in April-May 2009; killings occurred in Papua, Indonesia on its 9 April 2009 voting day; and at least 40 were killed on election-day in Iraq's 2010 elections.

65. Because the insurgent group's intent is essentially to spread fear through the electorate, random and unpredictable election violence during the election cycle might often be expected. The case studies above do provide examples of what appear to be random or entirely indiscriminate insurgent killings during the election cycle, and these are difficult to distinguish from insurgent

violence more generally (e.g. roadside bombs killing civilians on their way to a wedding in Helmand, Afghanistan). But the case studies indicate that election-related insurgent attacks often aim at particular election-related locations or categories of victim. Thus, for example, strikes have often taken place at polling stations, political rallies, or while individuals have travelled to or from election-related locations or events. They have often targeted political candidates, election officials, and party members or candidate campaigners. In Afghanistan, for example, candidates and their staff were especially targeted in the pre-election period – they were subjected to widespread intimidation, and attacks at their homes, or attacks while travelling to or from election events. In Colombia also, approximately half of the election-related killings were of political candidates, and before Pakistan's February 2008 elections, attacks aimed at politicians and their campaign events were responsible for many deaths. Before Indonesia's 9 April 2009 parliamentary elections, 5 politicians were assassinated, most likely by separatists.

66. Insurgents have also targeted voters, or potential voters. Insurgents or rebel groups have often called for voters to boycott elections, as they did in Afghanistan, Iraq, India, Indonesia, Colombia, and Spain. In numerous cases, citizens were warned of reprisals for voting. In Afghanistan, for example, the Taliban issued a letter to the public the week before the August 2009 elections, warning of reprisals for anyone who voted. Similarly, in Iraq, a militant group issued written warnings that they would kill voters; and before India's April-May 2009 elections, the Naxalite insurgents threatened potential voters. There is not sufficient detail in many country reports to determine the extent to which voters were in fact subsequently killed for having voted, although on election-day in Afghanistan, the Taliban hung at least 2 people who had voted (indicated by their ink-stained fingers), and in West Bengal, India, in a presumed attack on voters, shortly after voting, a bomb attack resulted in 1 death.

67. Those working at polling sites, including election officials and security officials, are also prime targets of insurgent threats and violence. In India's April-May 2009 elections, Naxalites launched a number of attacks on polling places and officials, and 11 election officials were killed on election-day in Afghanistan.

68. The *methods* employed by insurgents to attack (e.g. grenade attacks in the Philippines, a variety of IEDs in Iraq, Afghanistan, and Pakistan, and landmines and other explosives in India) are often indiscriminate. Thus, while the attack may be nominally targeted at certain officials or certain locations, many civilians and bystanders have also been killed. Numerous explosions in Pakistan's pre-election period resulted in extensive civilian casualties. Suicide bombers targeting Benazir Bhutto's convoy on the night of her return to Pakistan on 18 October 2007 missed her, but killed over 140 people, and an attack aimed at another candidate on 21 December 2007 killed at least 50 people worshipping at a mosque.

69. These types of election-killings, because they occur in the context of broader conflict, are extraordinarily difficult to address specifically. However, given the often notable increase in insurgent killings during elections and their effects on candidates and voter turnout, significantly more attention needs to be given to how to minimise insurgent violence during election periods. In addition to the general counter-insurgency, peace-process, and security promoting measures taken in an attempt to resolve the underlying causes of conflict, or to reduce insurgency-related violence, some measures taken by governments and the international community might include the following:

- Insurgent election-related killings are often targeted at places or individuals. Especially vulnerable are political candidates, election officials, and election locations, including political rallies and polling sites. As the UN Commission into Bhutto's murder in Pakistan indicates, many deaths could be prevented if security measures were improved. Increased security should especially be focused on candidates and polling sites. Increased security

should be planned not just for election-day, but also especially in the pre-election period, and should continue into the post-election period where necessary.

- UN and civil society groups should, where appropriate and feasible, maintain contact with insurgent groups through the election period, to discourage them from unlawfully targeting civilians and civilian locations.
- Insurgent threats, intimidation and violence towards potential voters can result in significant reductions in voter turnout, with grave negative effects on election legitimacy, and on the development of democratic processes. In countries or areas where insurgents have called for boycotts and threatened violence against voters, more attention should be devoted to considering how voters can vote while minimizing retaliation. Voting practices that, for example, result in voters having semi-permanent marks on their bodies (e.g. ink stained fingers) allow insurgents to identify voters for punishment, and may be inappropriate in some contexts.
- Election monitors in countries experiencing insurgency operate in very difficult conditions. Special measures may need to be developed to allow them to safely (and anonymously) undertake their essential work during insurgencies or armed conflict, including by using informal networks of monitors and developing technology-based reporting.

### *C. Killings of political candidates (assassinations)*

70. Political candidates at all levels have been killed during election cycles, and particularly during the pre-election stage, for a range of reasons.

71. Candidate killings have taken place as part of a general attempt to disrupt elections (e.g. assassinations by insurgents, discussed above, which form a large proportion of the number of candidate assassinations).

72. They have been carried out as part of an attempt to reduce the threat of a particular political party or to neutralise the threat of a specific rival candidate. Many killings of this type took place before 2007 state and federal elections in Nigeria. The killings were generally carried out by rival politicians' own armed groups, composed mainly of unemployed youth. Such private gangs or militias tend to be created and maintained a long time before the election itself. Many political parties and candidates mobilised such armed groups in Nigeria, especially the larger parties who had more available funding. Both before and during the election cycle, Governments should undertake concerted efforts to dismantle private armed groups and prosecute those responsible for participating in or forming them. State forces should also protect citizens from armed groups. While private militias carried out the killings in Nigeria, Nigerian police were often blamed for failing to protect victims from violence, and for failing to hold to account perpetrators. Killings of political rivals also occurred before Guatemala's 2007 elections, during Nepal's 2008 elections, and were suspected to have occurred before Iraq's March 2010 elections (although analysts found it difficult to verify motives). Where there is a history of violent political animosity between parties, some efforts to reduce violence have included codes of conduct negotiated and agreed to by the political parties. The state may also need to provide heightened security to candidates or key officials.

73. While killings of candidates are often carried out by rival candidates' private forces (militias, gangs, bodyguards or hired killers), state security forces have also been responsible for killings. After April 2005 elections in Togo, the security forces targeted a number of opposition leaders; in 2008 in Zimbabwe, security forces and Government-aligned militias together killed rival candidates in an attempt to "dismantle" the opposition. The issues and reforms relevant to this type are similar to those discussed above with respect to political killings of protestors.

74. In some cases, the killings were part of an attempt by criminal organizations to exercise influence over candidates and policies. In Guatemala, for example, over 50 candidates and activists

were killed in the run-up to Guatemala's 2007 elections, many of whom seem likely to have been killed by organised criminal groups to increase their political influence.

#### *D. Killings of supporters of a rival candidate or party*

75. The supporters of a particular candidate or party have been frequent targets of election-violence, carried out generally by state security forces or the private armed groups of political leaders. Such killings generally take place in an environment of intimidation of supporters and potential voters of a rival party or candidate, and are generally carried out to encourage supporters to change political allegiances, or to intimidate voters into voting for the party supported by the perpetrator.

76. State security forces have been responsible for large numbers of such killings. In the DRC, for example, in March 2007, the army, Republican Guard and other security forces were deployed to target presumed opposition supporters, and they arrested and killed many. The killings occurred after the President was elected and the opposition leader refused to give up his own security force. Similarly motivated killings occurred in February 2008, when the Government launched a heavily armed police operation against a rival political-religious group, killing 100-200 people. In April 2005 in Togo, State security forces, together with militias, killed hundreds of individuals beginning on election-day and in the days following. The killings were carried out as part of an attempt to rig the election results. In Zimbabwe's March and June 2008 elections, the Government used its security forces to kill hundreds of opposition voters, in an attempt to force them to change their votes and to punish them for voting for the opposition party. These killings occur because the security forces are heavily politicised and are thus very similar to politically motivated killings by security forces in response to street demonstrations, discussed above. Security force training, and other reforms aimed at professionalizing the forces are necessary, but will be to little effect if the forces are not made independent from political leaders and if leaders are not pressured to stop violent deployments.

77. Killings of rival supporters have also been carried out by a candidate or party's private armed forces or hired killers. As well as killing rival candidates, politicians' private armed groups in Nigeria killed many rival party supporters. In an especially egregious example, in the Philippines in November 2009, an incumbent politician's private militia massacred 57 civilians who were going to witness a candidate's registration. In one incident in Sri Lanka, gunmen on motorbikes opened fire on a bus of opposition candidate supporters on their way to a rally, killing a 60-year-old woman and injuring 4 others. In Guatemala, some activists were shot while distributing party leaflets, and other party members were found dead with campaign posters covering them. The country examples studied by the Special Rapporteur indicate that the circumstances that result in the highest levels of intimidation and killings by private actors of voters are where politicians or candidates control permanent or semi-permanent armed groups. As indicated above, the Government should take measures to dismantle these groups, and significant further research is needed on the most effective ways to do so.

#### *E. Rival party supporter-on-supporter killings*

78. The Special Rapporteur's experience and the country case studies indicate that rival supporters have also killed each other during elections. There are two broad types of supporter killings: small fights between rival supporters, usually at an election-related site and that result in one or a small number of deaths; and large-scale clashes between rival supporters, generally following the release of disputed election results.

79. Small fights resulting in killings have occurred with some frequency in a range of election contexts, but supporter-on-supporter incidents generally result in a low number of killings. They are essentially one on one fights, or fights between small groups of rival supporters. Many do

not appear to have been pre-planned, but appear to be the result of an argument or dispute that escalated to murder. These incidents have often occurred on voting day, at a polling site, and they have also occurred at other election locations (e.g. campaign rallies). In Sri Lanka, for example, before the 26 January 2010 elections, on 16 January, a Rajapaksa supporter was shot dead in a clash with Fonseka supporters. On 18 January, a Fonseka supporter was beaten to death while putting up Fonseka posters. In the third phase of India's April-May 2009 elections, rival supporters fought in West Bengal, leaving 11 dead; in the fourth phase, 12 people were killed in fighting between rival parties (each party accused the other of inciting violence to prevent voting); in the fifth phase, fighting between rival parties led to 1 death in Tamil Nadu and another in West Bengal. On election-day in Nepal on 10 April 2008, one person was killed after fighting broke out between rival parties in Sunsari. Small-scale clashes resulting in deaths between rival party supporters were also reported in Pakistan.

80. When such killings occur, political leaders should immediately and publicly condemn them, and the perpetrators should be prosecuted. Where there is a history of such killings in a country, the security arrangements at key election sites should be reviewed, and where necessary, strengthened. Long-term measures to reduce supporter violence should be developed in countries with repeated violence.

81. Large-scale clashes between rivals are a very different phenomenon. Two of the most significant incidents occurred in Nigeria and Kenya. In Nigeria, the perception that a local election in November 2008 was rigged triggered clashes between the largely Christian supporters of one party, and the largely Muslim supporters of another party, resulting in the deaths of at least 700, most of whom were beaten to death by armed mobs. In Kenya, allegations of electoral fraud after the 2007 elections led to violence and riots resulting in at least 1,113 deaths. As indicated above, police were responsible for an estimated 405 deaths, but the remaining 700 plus victims were killed by fellow citizens. In the short-term, violence of this order must be countered by the immediate deployment of well-trained police, and sometimes military, forces. Deployments are often slow to arrive, and the forces ill-equipped to deal with the violence. When such clashes occur, they may be triggered by perceptions of election fraud, but they have deep long-term causes, generally linked with religious-ethnic rivalries and perceptions of unfair distribution of resources. Addressing election violence in these contexts must thus be conceived as a part of long-term efforts with respect to, for example, land disputes, institution-building, civic education and conflict resolution.

82. While the violence may at first glance appear to be by private actors, the state may nevertheless play an important role. The violence may have been instigated or planned by senior officials, as the Kenya example indicates. In addition, the police, due to resource or training deficiencies, may be unable to meet to their international due diligence obligations to effectively prevent violence. Or political or other bias by the police may result in failures to protect civilians from violence (by, for example, not intervening to prevent physical attacks, or by failing to arrest perpetrators). Kenya's Waki Commission, for example, found that officials failed to act on intelligence regarding violence, failed to respond adequately to violence, and that police lacked discipline and impartiality. [...]

#### *VI. Election monitoring and election-related violence*

83. Monitoring and reporting on election-related violence often takes place as part of a much broader assessment undertaken by election monitoring organizations. Election monitoring reports provide information on whether an election was genuinely free and fair,<sup>195</sup> and thus typically address issues related to, for example: whether the state's election law complies with international standards; the conduct of the national election commission; candidate and voter registration processes; whether

195 For the international standards for a fair election, see: European Union, *Compendium of International Standards for Elections* (2nd ed, 2008).



political parties could freely campaign; media freedom; ballot design and whether the voting process was fair; and the vote counting process.

84. Country election monitoring reports cover election-related violence to widely varying degrees, and reporting on violence is sometimes very poor. Some reports significantly under-report violence incidents, especially violence in the pre- and post-election periods;<sup>196</sup> others provide general information but without the detail necessary to understand incidents or work towards their prevention. Other reports provide detailed charts or annexes of election violence incidents; the better reports analyse the raw data to provide general conclusions on perpetrators, causes, and the like.

85. Poor coverage of violence in election-monitoring reports may be due in part to a lack of detailed guidance in election monitoring guidelines and handbooks. While most handbooks point to the importance of monitoring and reporting on election violence, little guidance is generally given on what information should be reported. The OSCE's *Election Observation Handbook (5<sup>th</sup> ed)* (2007), for example, sets out to provide a thorough overview of election-monitoring. It provides a number of references to the importance of violence-free elections, and requires observers to report incidents of violence, but does not provide further guidance. Similarly, the European Commission's *Handbook for European Union Election Observation (2<sup>nd</sup> ed)* (2008) provides detailed guidance on election monitoring, and repeatedly stresses the need for the mission to investigate and report on election violence, but it provides almost no guidance on how to do so. The Electoral Institute of Southern Africa's *Principles for Election Monitoring, Management and Observation in the SADC Region* (2003) refer to the undesirability of election violence, but impose no specific reporting obligations. The Organization of American States' *Methods of Election Observation: A Manual for OAS Electoral Observation Missions* (2007) refers in general terms to monitoring incidents of violence. The African Union's *Election Observation and Monitoring Guidelines* sets out that "intimidation" and "human rights violations" should be monitored.

86. Where reporting on violence is poor, the effects of the violence, including on election legitimacy, election processes (e.g. voter participation, voting patterns, candidate behaviour), and election outcomes are very difficult to assess. Poor reporting also makes it difficult to understand the causes of the violence, which inhibits the ability of advocates, officials or the Government to propose and implement reforms to reduce violence at future elections.

87. Election monitoring reports should, where appropriate and feasible, cover election-related violence in detail. Ideally, each incident would be recorded and reported with information gathered on the circumstances, location, perpetrators, victims, and motives. Reports should also provide general analysis of incidents or patterns across the country. Detailed guidance on violence reporting could usefully be provided in election monitoring guidelines or handbook documents. Election monitoring organizations, together with other key actors involved in addressing election violence, should consider developing common criteria and standards for collecting and reporting on election violence.<sup>197</sup>

196 In one empirical study, Judith Kelley found that "pre-election violence is associated with greater levels of [election monitor] endorsements." Kelley explains that pre-election violence actually incentivises monitors to dampen their criticism in the hopes of lessening post-election conflict: Judith Kelley, "D-Minus Elections: The Politics and Norms of International Election Observation", *International Organization* 63 (2009).

197 Guidance may usefully be developed in consultation with The International Foundation for Electoral Systems (IFES), which maintains the Election Violence and Education and Resolution Project (EVER). IFES/EVER has developed methodologies to gather, record, monitor, map, and analyse election violence in the 11 countries it has thus far been active in, and maintains detailed databases.

### *VII. Conclusions and recommendations*

88. Election-related violence, including killing, is a widespread phenomenon that does not receive sufficient direct attention. The Human Rights Council should request the High Commissioner for Human Rights to present an annual report documenting such cases and the measures taken in response to protect human rights.

89. While election killings take place at the hands of a diverse array of actors, State responsibility remains central in many cases, such as when: (a) state security forces themselves carry out the killings, which have often occurred at public demonstrations, or of rival party candidates, supporters or voters; (b) government officials plan, direct, or order private groups or militias to carry out killings; or (c) the government fails to adequately protect citizens from non-state violence (e.g. the government fails to disarm a candidate's private militia; the security forces fail to plan for post-election violence).

90. In countries with a track record of election violence, governments should draw up plans for dealing with such violence in the future in ways that are consistent with their human rights obligations. Too often, governments respond as if they had no inkling that relatively predictable violence would in fact occur. While some of the details of such contingency planning will need to remain confidential, it is also essential for the authorities to release enough detailed information in order to make it clear that serious planning has been undertaken as well as to discourage those potentially violent forces who might otherwise assume there will be few obstacles to, and no consequences flowing from, their actions.

91. Impunity for election-related violence is widespread. Investigations and prosecutions are essential to reduce future violence. In countries with recurring election violence, the Government should consider setting up special police and prosecutor taskforces to focus specifically on election-related murders and other crimes. Following extensive election violence, the Government, with international assistance where appropriate, should set up an independent commission with the mandate to comprehensively study the violence and propose the necessary reforms.

92. The international community must be prepared to offer more support in post-violence situations. Ideally, there would be a unit within the UN structure which would automatically offer assistance in all such cases. And the progress and outcomes of national commissions should be closely followed by the international community. But the reality is that in the majority of situations in which heavily challenged election practices are followed by serious violence, the government will be deeply implicated and unwilling under any circumstances to commission any sort of independent inquiry. The Secretary-General and the High Commissioner for Human Rights have a major responsibility to take appropriate action in such cases. The International Criminal Court may also have an important role to play in some situations.

[...]

97. In countries where candidates or political leaders control private armed groups, significant efforts need to be taken to researching those links and to dismantling the groups before and during elections.

98. It is important that election monitoring include detailed information on election violence, including violence that occurs in the pre- and post-election phases. Accurate and comprehensive reporting is essential to prevent the recurrence of violence during an election, permits rapid responses to violent incidents, promotes accountability, and aids in understanding election dynamics.

99. Common criteria and standards should be developed to guide election violence monitoring and reporting.

100. There is a great need for focused in-depth research in the area of election-related violence. This includes research on the various types of human rights abuses committed during election periods, including killings, torture, arbitrary detention, sexual violence, and forced displacement. Research is also especially needed on the causes and effects of election violence, which are significantly under-studied.

101. Election monitoring is a relatively recent phenomenon which came of age only at the end of the Cold War. Although it has gained a remarkable degree of acceptance, it inevitably remains a highly sensitive issue for governments struggling to stay in power. Assertions of interference in sovereignty are thus never far beneath the surface. Nevertheless, it is essential for election monitors to move systematically beyond a focus on the formal structures of elections and election-day monitoring. It should be understood that an election is not free or fair unless the authorities can show that they have done all within their power to minimise and respond to election-related violence. For its part, the human rights community also needs to pay more attention to elections *per se*, rather than focusing primarily on specific incidents of violence.