

CHAPTER VII

IDENTITY-BASED KILLINGS

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A. INTRODUCTION

In analysing the dynamics and causes of extrajudicial, summary, or arbitrary executions, the Special Rapporteurs have found it useful to broadly categorise killings according to the *type of perpetrators* (e.g., law enforcement officials, non-state actors) and the *context in which killings occur* (e.g., during armed conflict). These categories have been examined in preceding chapters. This chapter focuses on a third category – the *identity of the person threatened or killed*, and highlights the experiences of rightsholders and the dynamics of killings targeted at persons or groups who may experience particular vulnerability, discrimination, or marginalization. The existence of an observable pattern may heighten the state’s responsibility to safeguard individuals in particular circumstances.

Individuals may be especially vulnerable to unlawful killings due to one or more aspects of their identity, including race, gender, nationality, ethnicity, religion, disability, sexual orientation, age, or socio-economic status. The intersection of these identities may also create heightened and unique vulnerabilities to unlawful killing. Individuals may also experience vulnerability or be targeted because of their circumstances—e.g., being internally displaced or seeking asylum—or because of their actions or profession, such as being a journalist or a human rights defender.

The Special Rapporteurs have investigated and reported widely on killings against persons belonging to these identities or groups. This chapter highlights some of the types of identity-based killings on which the Special Rapporteurs mostly commonly reported.

B. LEGAL FRAMEWORK

As has been noted in the context of killings by state and non-state actors in previous chapters, there is a duty on the state to respect as well as to protect the rights of members of the population. The state must respect the rights of potentially vulnerable individuals or groups (e.g., police forces must not target ethnic minorities), and must also exercise due diligence to protect rights. Due diligence requires states to take positive steps to protect individuals’ right to life against threats from non-state actors. The due diligence obligation requires states to respond proactively when a pattern of unlawful killings emerges.

In one of his first reports to the Commission on Human Rights, Special Rapporteur Alston elaborated on this obligation.

Report to the Commission on Human Rights (E/CN.4/2005/7, 22 December 2004, ¶¶71-75)

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 (A/34/583/Add.1, para. 124). 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,¹ 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 (see, e.g., E/CN.4/2000/68, para. 53).

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.

In his final report to the General Assembly, Special Rapporteur Heyns described generally the state's responsibilities in this context.

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

¹ *Velásquez Rodríguez v. Honduras*, OAS/Ser. L./V./III.19, doc. 13 (1988), 28 ILM (1989) 291.

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. SELECTED TYPES OF IDENTITY-BASED THREATS AND KILLINGS

This section provides a non-exhaustive sample of the different identity-based threats of violence and killings to which the Special Rapporteurs have responded, including against women, LGBTQI+ persons, children, migrants, IDPs, and persons targeted as a result of their work (for examples journalists or human rights defenders).

1. Women

Women and girls are frequent targets of unlawful killings of many forms, from “femicide” to the persecution of “witches,” “dowry deaths,” and so-called “honour” killings, and killings that occur in the context of domestic violence or sexual assault. The mandate has frequently focused on the experiences of women and the different patterns of violence against women.

The Special Rapporteur’s engagement around the particular challenge of “honour killings” was presented in Chapter 6, along with other killings motivated by some form of non-state “justice” rationale. The victims of such killings are overwhelmingly women.

(i) “Femicide”

“Femicide” is the intentional killing of women or girls and sometimes constitutes a form of hate crime. In Guatemala, Special Rapporteur Alston investigated this phenomenon:

Report on Mission to Guatemala (A/HRC/4/20/Add.2, 19 February 2007, ¶¶22-26)

“Femicide”: the unexplained surge in murders of women

22. The recent upward trend in murders of women is an issue that has provoked outrage in Guatemalan society. The number of women murdered has been increasing year by year, as has the proportion of murder victims who are women. In 2001, there were 303 homicides of women; in 2002, 317; in 2003, 383; in 2004, 531; in 2005, 665; and by mid-August 2006, there had been 359.² In other words, the female homicide rate increased by 117 per cent over five years. (By comparison, the female population increased by 8 per cent.³)

23. These murders of women are collectively referred to as “*femicidio*”, suggesting that they constitute a discrete phenomenon. However, the causes of this upward trend remain poorly understood. I asked numerous interlocutors what they understood the causes of this upsurge to be, and I received a very large number of hypotheses, including:

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

3 United States Census Bureau, International Data Base, Table 094 for Guatemala, available at: www.census.gov/ipc/www/idbprint.html.

- As more women enter areas of life traditionally reserved for men, they are targeted to put them in their place;
- As more women enter areas of life traditionally reserved for men, they become more exposed to the kinds of murder men have traditionally suffered;
- In connection with organised crime, women are killed to put pressure on their husbands or boyfriends;
- Men feel increasingly free to rape and murder women given the climate of impunity;
- Police are increasingly engaged in the social cleansing of gang members and associates and, in doing so, do not grant women any special dispensation.

24. It is likely that individual women have indeed been killed for each of these reasons. However, there is a risk that the term *femicidio* may obscure the diversity of crimes involved. This matters because, without an analysis that distinguishes between the various reasons that women are killed, it will be impossible to strategically confront the problem by reforming institutions or productively mobilizing outrage.

25. In Guatemala, the concept of *femicidio* is often explicated by comparison to the murders of women in Ciudad Juárez, Mexico. When my predecessor, Asma Jahangir, visited Mexico in 1999, she concluded that, “The events in Ciudad Juárez ... constitute[d] a typical case of gender-based crimes which thrive on impunity”, observing that it appeared that “many of the crimes were never investigated for the sole reason that the victims were ‘only’ young girls with no particular social status and who therefore were regarded as expendable” (E/CN.4/2000/3/Add.3, para. 89). It remains unclear, however, whether the murders of women in Guatemala fit the same profile.

26. The hypothesis that the rising number of female murder victims is due to the increasing use of social cleansing would point in another direction. The fact that a significant and rapidly growing number of female murder victims show signs of intimate violence is often cited as indicating that these are gender-based crimes. However, when these murders are placed in the broader context of murders involving torture and other abuse, the data lead to more equivocal conclusions. A PDH [*Procuradía de los Derechos Humanos*] study based on media reports showed that, among those murder victims who experienced torture or abuse, the acts committed by the perpetrators were generally similar whether the victim was male or female. Of those bodies showing signs of torture or abuse, roughly 40 per cent of both male and female corpses showed signs of strangulation, about 15 per cent of female corpses were left naked and about 11 per cent of male corpses were. The one notable distinction was that while 15 per cent of the female corpses showed signs of sexual abuse, none of the male corpses did. The increase in female homicides involving abuse or torture shown in the PDH study would account for at least two fifths of the increase in total female homicides shown in police statistics. Finally, the PDH study found that, in 2005, 18 per cent of homicide victims whose bodies showed signs of torture or other physical abuse were women, while only 10 per cent of all homicide victims were women. The most obvious explanation of these data is that while women have been relatively immune from some forms of social violence, both men and women are being targeted by social cleansing. It is impossible to be sure of any explanation for this pattern of violence against women without effective investigations and prosecutions, but it appears likely that at least some of it is due to social cleansing rather than gender-specific reasons. Further research is needed, and strategies must be adopted to confront the full range of threats to women’s lives.

Special Rapporteur Alston referred to the visit by his predecessor, Asma Jahangir, to Mexico in 2004. Special Rapporteur Heyns examined femicide in Mexico again when he visited in 2013.

Report on Mission to Mexico (A/HRC/26/36/Add.1, 28 April 2014, ¶¶71-73)

71. Numerous interlocutors alerted the Special Rapporteur to the persistence of violence against women, often resulting in death, and to the impunity enjoyed by perpetrators. Killings of women reportedly often involve gender-based attacks including sexual assault and other forms of brutality such as hanging, strangulation, suffocation and drowning. The Special Rapporteur was also informed that there is a direct link between the dramatic increase in numbers of femicides and the deployment of the army in law enforcement contexts.

72. The Special Rapporteur takes note of the progress regarding Mexico's legislative and institutional framework to address violence against women at the federal level. The adoption of the 2007 General Act on Women's Access to a Life Free of Violence⁴ and the codification of femicides at the federal and state levels are developments in the right direction. However, violence against women, specifically femicide, remains a serious concern in practice, as indicated in the 2012 concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/MEX/CO/7-8, para. 17). According to [the *Comisión Nacional de los Derechos Humanos*], 4,419 femicide have been registered since 2007.

73. While some positive steps have been taken to implement the *Campo Algodonero* (Cotton Field) ruling of the Inter-American Court of Human Rights,⁵ further action remains to be taken. The Special Rapporteur emphasises that femicide should be codified in all relevant criminal codes based on objective characteristics and that police investigation protocols for femicide should be standardised.

(ii) Violence against alleged “witches”

Historically, the killing of alleged “witches” had not attracted a great deal of attention from the international human rights community, despite its prevalence in many countries. Women are often the targets, and this form of violence is often linked to intersectional vulnerabilities—with both the very young as well as the elderly particularly affected. Persons with albinism and with disabilities can be especially targeted.

In a 2009 report to the Human Rights Council, Special Rapporteur Alston discussed the reasons for this lack of attention, and surveyed the contexts in which “witchcraft”-related killings occur.

Report to the Human Rights Council (A/HRC/11/2, 27 May 2009, ¶¶43-59)

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

44. While there has been a steady trickle of reports from civil society groups alleging the persecution and killing of persons accused of being witches, the problem has never been addressed systematically in the context of human rights. There is little systematic information available on

4 Published in the Official Gazette on 1 February 2007.

5 Inter-American Court of Human Rights, *Case of González et al (“Cotton Field”) v. Mexico*, Judgment of 16 November 2009 (Preliminary Objection, Merits, Reparations, and Costs).

the numbers of persons so accused, persecuted or killed, nor is there any detailed analysis of the dynamics and patterns of such killings, or of how the killings can be prevented. The lack of attention paid to the issue is especially true of the various United Nations human rights bodies that might have been expected to have engaged in in-depth examination. A prominent exception is the Office of the United Nations High Commissioner for Refugees (UNHCR), which acknowledges in its guidelines that women are still identified as witches in some communities and burned or stoned to death. These practices may be culturally condoned in the claimant's community of origin but still amount to persecution.⁶

45. Defining witches and witchcraft is not an easy task. "Witchcraft" has denoted many different practices or beliefs at different times and in diverse cultures. In some cultures, belief in witchcraft is rare; in others, people see it as "everyday and ordinary, forming as it does an integral part of their daily lives".⁷ Such beliefs are not confined to any particular strata of society, whether in terms of education, income or occupation. Both the concept and the terminology also vary from one scholarly discipline to another. In Western Europe and the United States, witchcraft and the persecution of so-called witches are often associated with the witch-hunts and trials that took place there through the fifteenth and seventeenth centuries. Today, in the social sciences, and especially in the disciplines of religious studies, anthropology and ethnology, a wide range of contemporary beliefs and practices termed "witchcraft" or "sorcery" are studied around the world.

46. In the popular imagination, witchcraft is often associated with the infliction of harm on people or property through the purported exercise of supernatural powers. In sociological and anthropological terms, it can be described as a phenomenon that is invoked to explain misfortune by attributing it to the evil influence of someone, either from within or outside the community. Thus witchcraft has historically been employed to bring about "the death of some obnoxious person, or to awaken the passion of love in those who are the objects of desire, or to call up the dead, or to bring calamity or impotence upon enemies, rivals and fancied oppressors".⁸

47. Alternatively, witchcraft may refer to or be associated with, for example, neo-paganism, shamanism or traditional healers. Some have emphasised its close links to moral and broader belief systems and portrayed it more benignly as providing a framework of moral agency that enables believers to make sense of otherwise seemingly inexplicable coincidences or happenings.⁹ It is also associated with positive connotations such as healing or cleansing,¹⁰ and as a means for articulating and coping with psychological problems.¹¹ In some regions, traditional communities had elders who acted as mediums in communicating with spirits from the other world and who were widely respected.¹²

48. Older scholarship tended to emphasise the pitfalls of taking the meaning and significance attached to the term "witchcraft" in any given context and seeking to transpose it to other settings.¹³

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

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

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

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

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

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

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

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

More recently, however, comparative studies have become much more common.¹⁴ Ronald Hutton, for example, has identified five characteristics generally shared by those who believe in witches and witchcraft across different cultures and time periods: (a) witches use non-physical means to cause misfortune or injury to others; (b) harm is usually caused to neighbours or kin rather than strangers; (c) strong social disapproval follows, in part because of the element of secrecy and in part because their motives are not wealth or prestige but malice and spite; (d) witches work within long-standing traditions, rather than in one-time only contexts; and (e) other humans can resist witches through persuasion, non-physical means (counter-magic), or deterrence including through corporal punishment, exile, fines or execution.¹⁵

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

- a) The killing of accused witches was reported as a significant phenomenon in the Central African Republic. Articles 162 and 162 bis of the country's criminal code indicate that a person convicted of "witchcraft" (*charalatinisme and sorcellerie*) can face capital punishment, a prison sentence or fine. While the death penalty does not appear to have been used recently for this purpose, there were many reports of individuals being killed by private citizens or sometimes by the army after having been accused of witchcraft;¹⁶
- b) In the context of the universal periodic review, issues have arisen about the fight against traditional practices such as sorcery and infanticide of the so-called "witch children" in Gabon,¹⁷ and about the psychological trauma, physical harm, social exclusion and impoverishment suffered by alleged witches in Burkina Faso;¹⁸
- c) The Committee on the Elimination of All Forms of Discrimination against Women considered problems relating to the persecution of witches on a number of occasions. With regard to India, in 2007, the Committee noted its concern about the practice of witch-hunting, which it characterised as an extreme form of violence against women (CEDAW/C/IND/CO/3). It recommended that the State party adopt appropriate measures to eliminate the practice, to prosecute and punish those involved, and provide for rehabilitation of, and compensation to, victimised women. It also linked the issue to the struggle for control over land by recommending that the necessary measures be identified on the basis of an analysis of such causes. In 2002, the Special Rapporteur on violence against women, its causes and consequences, also drew attention to these problems in India, Nepal and South Africa;¹⁹

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

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

16 See Report of the Special Rapporteur, Philip Alston, Mission to Central African Republic, A/HRC/11/2/Add.3, 27 May 2009.

17 See UPR Second Session Meeting Highlights (7 May 2008), adoption of the report of Gabon, available at: www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights7May2008am.aspx.

18 OHCHR Summary of Stakeholder Submissions – Burkina Faso, A/HRC/WG.6/3/BFA/3, 15 September 2008, para. 12.

19 Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, E/CN.4/2002/83, 31 January 2002, paras. 45-48.

- d) In examining the report on Ghana, the Committee received information alleging that some 2,000 witches and their dependents were confined in five different camps.²⁰ A member of the State party delegation acknowledged the existence of the camps, but said that their character had changed over the years. She called for community sensitization, especially of the chiefs, before laws could be enacted and warned that the persecution of witches could [otherwise] turn into an underground practice.²¹ The Committee subsequently expressed its concern about the persistence of the belief in witchcraft and the subjection of women in witch camps to violence. It called for the elimination of these practices through legislative action and education and awareness-raising campaigns.²² After a visit to Ghana, the Special Rapporteur on violence against women called upon the Government to demystify the beliefs around witchcraft and sorcery and criminalise acts of undue accusations of persons of causing harm through the use of supernatural powers;²³
- e) The Committee has received estimates of up to 1,000 witches being killed annually in the United Republic of Tanzania;²⁴
- f) In 1998, the Committee recommended further research into the prevalence of witch burning in South Africa, and called for the prohibition and eradication of such practices.²⁵ The South African Truth and Reconciliation Commission granted amnesty to 33 individuals accused of killing alleged witches.²⁶ In relation to Mozambique, the Committee expressed concern about the situation of older women, who were subject to accusations of witchcraft, and urged the State party to challenge such traditional views;²⁷
- g) With regard to Angola, in 2004, the Committee on the Rights of the Child called for immediate action to eliminate the mistreatment of children accused of witchcraft, including by prosecuting the perpetrators of this mistreatment and intensive education campaigns that involve local leaders.²⁸ The same issue was taken up in almost identical terms four years later by the Committee on Economic, Social and Cultural Rights;²⁹
- h) The role of witch doctors has also been raised. In Mali, the traditional practice of giving a girl in marriage to a witch doctor for religious reasons still persists;³⁰ in the United Republic of Tanzania, concern has been raised about the practice of hunting down and murdering albinos so that their body parts can be used by witch doctors;³¹

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- 20 Committee on the Elimination of Discrimination Against Women, Summary Record of 741st Meeting, CEDAW/C/SR.741 (B), 2006, para. 19. Other estimates are closer to 5,000.
- 21 Ibid., para. 23.
- 22 Report of the Committee on the Elimination of Discrimination against Women, A/61/38 (2006), paras. 232-33.
- 23 Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, Mission to Ghana, A/HRC/7/6/Add.3, 21 February 2008 para. 93.
- 24 Help Age International 'Thematic Shadow Report on Older Women's Rights in Tanzania, Submitted to 41st session of the Committee on the Elimination of All Forms of Discrimination Against Women, April 2008, available at: www2.ohchr.org/english/bodies/cedaw/docs/ngos/HAITanzania41.pdf, p. 7.
- 25 *Official Records of the General Assembly, Fifty-third Session, Supplement No. 38 (A/53/38/Rev.1)*, para. 134. This was probably a response to the report of the Commission of Inquiry into Witchcraft Violence and Ritual Murder in the Northern Province (1995), chaired by Professor N.V. Ralushai.
- 26 'Granting and Denying of Amnesty to Witchcraft Killers', 14 June 2000, available at <http://www.justice.gov.za/trc/media/pr/2000/pr000614a.htm>.
- 27 Committee on the Elimination of All Forms of Discrimination Against Women, Concluding comments on Mozambique, CEDAW/C/MOZ/CO/2, 11 June 2007, paras. 42-43.
- 28 Committee on the Rights of the Child, Concluding Observations: Angola, CRC/C/15/Add.246, 3 November 2004, paras. 30-31.
- 29 Committee on Economic, Social and Cultural Rights, Concluding Observations: Angola, E/C.12/AGO/CO/3, 1 December 2008, para. 25.
- 30 Committee on the Elimination of Discrimination Against Women, Combined Periodic Reports: Mali, CEDAW/C/MLI/2-5, 25 April 2004.
- 31 'The Story of the Honorable Al Shaymaa J. Kwegyir' Durban Review Conference, (April 2009) available at: www.un.org/en/durbanreview2009/story22.shtml.

i) In Papua New Guinea, provincial police commanders in two highlands provinces, Eastern Highlands and Chimbu, reportedly told journalists that there had been more than 50 sorcery-related killings in their provinces in 2008. Other independent sources estimate that there have been up to 500 attacks against women accused of practising witchcraft that have resulted in torture and murder;³²

j) In the Democratic Republic of the Congo, civil society reports suggest that most of the 25,000 to 50,000 children living on the streets of Kinshasa are there because they have been accused of witchcraft and rejected by their families. In 2009, the Committee on the Rights of the Child expressed concern that a large number of children are labelled as witches and consequently suffer serious stigmatization. It observed that violence against children accused of witchcraft was increasing, and that children were being kept as prisoners in religious buildings where they were exposed to torture and ill-treatment or even killed under the pretext of exorcism. The Committee called for effective measures to prevent children from being accused of witchcraft, including through continuing and strengthening public awareness-raising activities, particularly directed at parents and religious leaders and by addressing the root causes, *inter alia*, poverty. It also recommended legislative and other measures to criminalise making accusations against children of witchcraft, efforts to prosecute those responsible for violence and ill-treatment against alleged child witches, and programmes to promote the recovery and reintegration of child victims;³³

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

l) In Nepal, various groups have also reported the persistence of traditional beliefs about witchcraft that largely concern elderly women and widows in rural areas. Exorcism ceremonies involve the public beating and abuse of suspected witches by shamans or village elders. It has been reported that the existing law is inadequate to prevent these abuses and that no system is in place to provide compensation for those persecuted;³⁴

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

n) In Saudi Arabia, in 2006, a woman was sentenced to death for witchcraft, recourse to supernatural beings (*jinn*) and the slaughter of animals. The conviction is said to have been based solely on statements by individuals claiming to have been bewitched.³⁵

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

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

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

33 Committee on the Rights of the Child, Concluding Observations: Democratic Republic of the Congo, ,CRC/C/COD/CO/2, 10 February 2009, paras. 78-79.

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

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

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

53. At the national level, legal approaches vary greatly. A significant number of States have legislation providing for the punishment of witchcraft. Few appear to make regular use of such laws routinely. In some States, such as the Central African Republic, witchcraft is a capital offence. In the Islamic Republic of Iran, a pending draft bill to amend the Islamic Penal Code of 1991 prescribes the death penalty for any Muslim who is involved with witchcraft and promotes it in the society as a profession or sect, but not for non-Muslims. Where the formal legal system is silent, traditional or customary law will often be used. Customary approaches vary from a heavy emphasis on mediation to severe and even deadly punishments.³⁶

54. In 1998, in South Africa, a national conference on witchcraft violence called for the repeal of the Witchcraft Suppression Act of 1957, in part because it could in fact be fuelling witchcraft violence. It called for new legislation to adopt a pragmatic approach acknowledging the belief in witchcraft and the possibility that some forms are benign. It called for clear definitions of “witch”, “wizard” and “witchcraft”, and an emphasis on conciliation and mediation.³⁷ Other studies, however, have highlighted the inherent contradictions between a judicial approach that “objectifies *sorcellerie* as always evil and hence to be completely eradicated” and local discourse on witchcraft, which views it more positively “as a special force that can be used for various ends”.³⁸

55. Commentators are sceptical of the value of judicial approaches in many settings: “Where cases of witchcraft have entered the formal judicial system in Africa, the results have generally not been salutary for the health of that system or the cause of justice.”³⁹ The available evidence from human rights sources also counsels against the criminalization of witchcraft. The first reason relates to the difficulty of defining with any accuracy the conduct being proscribed. The second is the difficulty of ensuring respect for other rights, including cultural rights and freedom of speech and religion in such contexts. In the vast majority of cases examined, the offence has been defined in a vague and open-ended manner, which lends itself almost unavoidably to abuse. The vaguely defined elements of the “crime” can easily operate to permit those with a personal grudge or enmity to accuse others of having practised witchcraft. A third reason is empirical evidence, which shows that, in most instances, the criminalization of witchcraft is interpreted as legitimizing the punishment of accused witches in vigilante-like fashion, with no regard for the specific details of the alleged conduct, no due process protections being accorded to the accused, and no evidentiary burdens being met. Instead, there is usually a flagrantly discriminatory approach that results in the singling out of those who are simply “different”, feared or disliked. The accused witches are then often killed by vigilantes or mobs.

56. Even in States that have detailed laws providing for the punishment of witches, the law does not always explicitly address penalties for the persecution or killing of witches. Where it does, it sometimes permits the defence to invoke witchcraft as an extenuating circumstance warranting a lesser sentence. Where Governments identify genuinely abusive practices on the part of those accused of witchcraft, the challenge is to identify which criminal laws have been violated by the conduct and not to use the nebulous, catch-all label of “witchcraft”. Similarly, those who live in fear

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

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

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

39 Adam Ashforth, *Witchcraft, Violence and Democracy in South Africa*, (2005).

of witches should be educated and sanctioned to act within the law and on the basis of a criminal code that respects human rights when taking measures against those whom they believe to be engaging in harmful acts. In such circumstances, it is wholly unacceptable to invoke a subjective and highly manipulable accusation of witchcraft as the basis for either arbitrary private acts of violence or for Government-sponsored or tolerated acts of violence.

57. For present purposes, the most important point is to ensure that all killings of alleged witches are treated as murder and investigated, prosecuted and punished accordingly. In most of the cited problem situations, the Governments concerned have not been accused of playing an active part in the persecution or killings of witches. There are, however, questions as to whether they have met their due diligence obligations to prevent such killings. These require Governments to take all available measures to prevent such crimes and prosecute and punish perpetrators, including private actors.⁴⁰ Indeed, there is an interesting historical parallel with anti-lynching statutes in the United States, which were proposed in response to the almost 5,000 lynchings reported between 1882 and 1968. They were explicitly designed to go beyond the simple criminalization of the murder involved, and provided severe penalties for State or municipal officials who failed to take reasonable steps to prevent a lynching. In addition, any county in which a lynching occurred would have to compensate the victim's family.⁴¹

58. It is also important for the problems surrounding the persecution and killing of witches to be reflected in the guidelines and operational programmes of development agencies working in countries in which there is a significant level of belief in witchcraft. In addition to providing education and practical programmes to address the situation, protection should be arranged for individuals accused of witchcraft and who are at risk of retribution or even death outside the framework of the law.

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

As mentioned in the above report, there have been a number of "witchcraft"-related killings in the highlands of Papua New Guinea. The following allegation letter was sent in 2009 by Special Rapporteur Alston in response to some of those killings.

Allegation letter sent to the government of Papua New Guinea (11 February 2009) (with the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences)

According to the information received:

A woman was stripped naked, gagged, tightly strapped and burned alive by a group of men at Kerebug Dump in Mount Hagen on 6 January 2009. As of 27 January 2009, the identity of the victim was still unknown, and the Provincial police authorities were still investigating. The body was reportedly too badly burnt for identification purposes.

In addition, at least four similar cases in the highlands area (two resulting in deaths of women, one in which a female victim was tortured but survived, and the killing and burning of a father and son in Ban village on 8 February 2009) were reported to us after the killing in Mount Hagen on 6 January 2009. Provincial police commanders in two highlands provinces, Eastern Highlands and Chimbu, reportedly told journalists that there were more than 50 sorcery-related killings in

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

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

their provinces in 2008. Other independent sources estimate that there have been up to 500 of attacks against women accused of practicing witchcraft that have resulted in torture and murder. The police are often unable to enforce the law and stop mob killings. In the case of the killing and burning of a father and son suspected of sorcery in Ban village on 8 February 2009, the police were able to visit the crime scene and confirm their deaths, but heavily armed locals prevented them from removing the bodies to hospital for autopsies.

While we do not wish to prejudge the accuracy of these allegations, there would be ground for serious concerns if they were correct. We recall that, to the extent that mob killings of persons suspected of sorcery are not effectively prevented, investigated and met with stringent punishments, the State does not live up to its due diligence obligations in this respect. Under international law, Papua New Guinea has the legal obligation to ensure the right to physical and mental integrity and the right to life by effectively punishing those who commit murder, torture or cruel, inhuman and degrading treatment or punishment. Article 6(1) of the International Covenant on Civil and Political Rights, to which Papua New Guinea is a Party, 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. As the Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a report to the Commission on Human Rights, “crimes, including murder, can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators.” (E/CN.4/2005/7, para. 71.)

[...]

While it would appear that some of the persons killed on suspicions of sorcery were men, these mob killings appear to target primarily women. In this respect, we would like to draw the attention of Your Excellency’s Government to Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of states to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. Article 4 further calls on States not to invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.

As the Special Rapporteur on Torture recommended in a report to the Human Rights Council, “... torture and ill-treatment [should] be understood in a gender-inclusive way and that States [should] extend their prevention efforts to fully include torture and ill-treatment of women, even if it occurs in the “private” sphere” (A/HRC/7/3, para. 73).

Following his mission to Papua New Guinea, Special Rapporteur Heyns further addressed the issue in 2015:

Report on Mission to Papua New Guinea (A/HRC/29/37/Add.1, 30 March 2015, ¶¶49-55)

49. Violence related to accusations of sorcery and witchcraft is a widespread problem in many parts of Papua New Guinea. In some instances, when a person dies (generally of unexplained causes or prematurely), someone is accused of having caused the death by witchcraft and is attacked by community members as “payback”.

50. The reality of the terror, pain and suffering and social disruption caused by accusations of sorcery and witchcraft is only fully understood when one is confronted with the family of victims and the survivors who carry the scars of the attacks. The identification of individuals as witches or

sorcerers is arbitrary and subjective. According to many people interviewed, the accusation may be motivated by considerations such as jealousy or greed (e.g. wanting the property of the accused person); aimed against those who do not fully fit in (e.g. not showing enough grief when someone dies); or intended to get rid of outsiders, the elderly and the marginalised, often women. It is a vicious practice with no place in today's human rights era.

51. The Special Rapporteur was informed that, on more than one occasion, the police had been reluctant to intervene as they, themselves, were members of the community and might face retributive attacks or were afraid of the alleged sorcery or witchcraft tool. In some cases, police officers stated that they lacked the manpower to intervene against large crowds. Sorcery-related killings are generally carried out by a group of people. In the rare cases where perpetrators have been apprehended, it was often only those involved in the actual killing that were charged, not the instigators of the violence, although the law is flexible enough to prosecute instigators.

52. The law may offer some relief to persons accused of sorcery and witchcraft. The Special Rapporteur learned that the Office of the Public Solicitor had helped four (elderly) people to bring civil defamation suits in similar cases. One magistrate stated that she had referred to section 7 of the Summary Offences Act, 1977, which prohibits the use of "threatening, abusive or insulting words", in, for instance, cases where a person has called another a *sanguma* (witch or sorcerer). That would result in a fine and/or compensation. While such cases are exceptions, they do provide a starting point.

53. The repeal of the Sorcery Act, 1971, was a positive development. Section 16 of the Act allowed for sorcery as provocation to be raised as a defence in cases of sorcery-related murder, for example, that the deceased was a sorcerer who provoked the murder, and if that were proven, the accused might be found guilty of a lesser offence.⁴²

54. While views differ in the legal profession, a senior judge informed the Special Rapporteur that, nowadays, in most cases of sorcery-related killings, the motive is seen as an aggravating circumstance. That appears to be a sensible approach.

55. The Government has taken other steps to address sorcery-related violence, including in particular the process led by the Department of Justice and Attorney General to develop a multi-sectoral national action plan on sorcery and witchcraft accusation-related violence, through consultation with a wide range of governmental and non-governmental stakeholders. If formally adopted and implemented, the action plan would make an important contribution towards eradicating the violence associated with belief in sorcery and witchcraft.

Special Rapporteur Alston's 2009 report on the Central African Republic explained how the criminalization of "witchcraft" in national legislation reinforced social stigma and legitimised violence against alleged "witches":

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

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

42 See Sorcery Act 1971, sects. 7 and 16

[...]

51. Under the Criminal Code, a person convicted of “witchcraft” (*charlatanisme* and *sorcellerie*) can face capital punishment, a prison sentence or fine.⁴³ While imposing the death penalty for this “offence” would violate international law – which permits death penalty only for the crime of intentional murder – no recent instances in which the death penalty had been applied were reported. But it is common for accused persons to be arrested, tried, convicted and imprisoned on the basis of spurious evidence. These problems must be taken seriously. The criminalization of “witchcraft” by the State reinforces the social stigmatization of those accused of witchcraft. Indeed, the proscription of “witchcraft” tends to lead vigilantes, soldiers and rebels alike to view the killing of suspected “witches” as legitimate. It is, moreover, a “crime” that lends itself ideally to the persecution and victimization of women and children in particular. A clear and immediate message should be sent by amending the Criminal Code so as to abolish the crime of witchcraft. Further, there is an educational challenge to ensure that those who fear witches act within the law and on the basis of a criminal code which fully respects human rights when taking measures against those whom they believe to be engaging in harmful acts. In such circumstances, it is wholly unacceptable to invoke the amorphous, subjective and highly manipulable accusation of engaging in “witchcraft” as the basis for either arbitrary private acts of violence or for Government-sponsored or tolerated acts of violence. The killing of “witches” should be prosecuted like any other murder, and other violent acts against such individuals should also be prosecuted.

When Special Rapporteur Alston submitted a follow-up report on the same country, the situation had become worse:

Follow-up report on Mission to Central African Republic (A/HRC/14/24/Add.5, 19 May 2010, ¶¶34-37)

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

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

36. At the time of the Special Rapporteur’s visit, the Criminal Code criminalised witchcraft and provided for penalties of capital punishment, a prison sentence or a fine. The Special Rapporteur recommended that “witchcraft” be decriminalised, because it reinforced social stigmatization, led people to view the killing of alleged witches as legitimate, and lent itself to the persecution of women and children. The revised Code of 6 January 2010 has replaced the death penalty with life in prison, a welcome, though insufficient, change – the Code still contains provisions criminalizing witchcraft.⁴⁴ The continued criminalization of witchcraft perpetuates and legitimises

⁴³ Criminal Code of the Central African Republic, arts. 162 and 162 *bis*.

⁴⁴ Witchcraft is punishable with a range of penalties, such as 5 to 10 years’ imprisonment, a fine or forced labour. Criminal Code of the Central African Republic, arts. 149 and 150.

the widespread targeting of alleged witches and provides a convenient *carte blanche* for the killing of disfavoured individuals in many settings.

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

In another example of the challenge posed by “witchcraft”-related violence, in 2010 Special Rapporteur Alston described the especially dire situation of children accused of “witchcraft” in the Democratic Republic of the Congo.

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

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

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

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

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

In 2013, Special Rapporteur Heyns reported on efforts to address “witchcraft”-related killings in India:

Report on Mission to India (A/HRC/23/47/Add.1, 26 April 2013, ¶¶61-63)

61. The Special Rapporteur observed the phenomenon of witch killings in parts of India, which appears to be largely directed against women. It is reportedly prevalent among poorer members of the population. Various reasons exist for accusing individuals of being witches, including superstitions and attempts to obtain property.

62. The NCRB [National Crime Records Bureau] reported 240 deaths due to witchcraft in 2011, an increase from 2010. The actual figure is likely higher due to possible underreporting. The Special Rapporteur heard from the Indian authorities that witch killings did not warrant his concern. Yet, authorities in Assam acknowledged that this was a valid concern and a growing one, as there was a trend of the practice's spill-over beyond tribal groups.

63. The Special Rapporteur noted that a draft Act on matters of witchcraft was elaborated in Rajasthan, while legislation concerning witchcraft already exists in Bihar, Jharkhand and Chhattisgarh. The legal provisions provide punishment for labelling a person a witch. However, such conduct results in light sentences, not commensurate with the long-term negative impact of labelling individuals as witches. The Special Rapporteur was also informed that when prosecutions occur witnesses are often unwilling to provide testimonies, either due to their fear of being associated with the alleged witch, or because they regard the death as an appropriate punishment.

(iii) Sexual violence and domestic violence

Women are often targets of sexual violence. The fact that many women die as a result of sexual assault brings such violence firmly into scope of the mandate. In 2008, Special Rapporteur Alston joined other Special Rapporteurs in responding to attacks on two Sudanese villages by the Sudan People's Liberation army, preliminary investigations into which had revealed widespread rape:

Urgent appeal sent to the Government of Sudan (8 October 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 the question of torture and 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 regarding attacks against the civilian population of the villages Logurony and Ioli in Eastern Equatoria State by the Sudan People's Liberation Army, which resulted in the killing and beating of civilians, rape of women and destruction of dwellings and livelihoods on 4 June 2008 and in the following days.

According to the information received:

The villages of Logurony and Ioli are located near Hiyala, in Torit county, Eastern Equatoria State, Southern Sudan. The two villages have a history of occasionally tense relationships, due primarily to cattle raiding incidents. At the beginning of June 2008, the Governor of Eastern Equatoria State dispatched the Sudan People's Liberation Army (SPLA) to the two villages.

On 4 June 2008 at around 4 a.m., SPLA forces surrounded Logurony. While it was still completely dark, they started shooting, at first aiming in the air. The villagers, who were on high alert due to an expected attack from Ioli, returned fire. Only when it became light, they realised that they had killed SPLA soldiers. Fearing retaliation by the SPLA, they fled into the bush. SPLA soldiers shot at Logurony villagers, reportedly killing four .

[...]

Also on 4 June 2008, SPLA forces (reportedly counting 300 men) surrounded Iloli. When news of the SPLA members killed in Logurony reached Iloli, the soldiers took the inhabitants outside the village and then started burning down the village, killing one woman, Abung Elizabeth.
[...]

Soldiers gathered the remaining Iloli and Logurony villagers, approximately one thousand persons, and brought them to the SPLA barracks in Ramshel. There they spent the remainder of the day under the trees. Women were reportedly beaten with sticks. Many women were raped by SPLA soldiers at the SPLA barracks in Ramshel on 4 June, some of them in front of their children. The raped women include M.E. and A.T. (full names on record with the Special Rapporteurs), as well as Kelenga Obong. The mortal remains of Kelenga Obong, who suffered from epilepsy, were later found in the bush. She did not survive the torture she underwent including the stress resulting from her flight.
[...]

We would also like to recall Article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women. In addition, Article 4 (c & d) of the Declaration 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.

Special Rapporteur Alston reported on sexual violence to the Human Rights Council, highlighting the links between rape and killings, and the problem of data collection due to under-reporting, social stigma, and ongoing armed conflict:

Report to the Human Rights Council (A/HRC/14/24, 20 May 2010, ¶¶62-63)

62. [...] [S]ituations in which women are literally raped to death have actually been significantly underreported, and the links between rape and killings have been under-studied.⁴⁵ While men are also subject to sexual violence linked to killings, women have been subject to such killings in situation after situation around the world:

- a) Women are killed if they resist rape or are murdered immediately after it;
- b) Women are taken into sexual slavery and then killed;
- c) Family members (generally men) or others who attempt to stop a rape, or refuse orders to rape their female relatives, are killed (S/2009/693, para. 80);
- d) Women who have been attacked die as a result of rape-related injuries, or contracting HIV/AIDS or other sexually transmitted diseases (A/HRC/14/24/Add.3).

63. Rape/killings may be particularly brutal when conducted as reprisal attacks for alleged cooperation with an opposition group. Deaths are more likely in remote areas where victims have little or no access to health services (A/HRC/14/24/Add.3). A consistent problem, however, is that data collection in relation to this phenomenon is especially difficult. In conflict situations, resources are scarce and survivors become the priority. Privacy concerns, combined with problems of stigmatization and reprisals, also restrict the possibilities for meaningful data collection. But it is

⁴⁵ For recent exceptions, see Report of the Special Rapporteur, Philip Alston, Mission to Democratic Republic of the Congo, A/HRC/14/24/Add.3, 1 June 2010, and Report of the International Commission of Inquiry mandated to establish the facts and circumstances of the events of 28 September 2009 in Guinea, S/2009/693, annex, 18 December 2009, para. 79.

important that the scale and severity of the problem should not be underestimated. More research is needed in order to: ensure that the full extent of phenomenon is recognised; combat impunity; and understand better the dynamics which are at play and thus help craft strategies for the future.

Special Rapporteur Alston also reported to the Council in 2010 more specifically on sexual violence suffered by women in the Democratic Republic of the Congo, following his mission to the country:

Report on Mission to the Democratic Republic of the Congo (A/HRC/14/24/Add.3, 1 June 2010, ¶¶63-68)

63. Sexual violence in the Congo, and especially in the Kivus, falls squarely within my mandate because it has reached such levels of brutality that women have literally been raped to death.⁴⁶ Many others have died subsequently. Women and girls, including babies⁴⁷ – have been gang raped, had guns, wood, sand or glue inserted into their bodies, and had their genitals mutilated. Some pregnant women have had foetuses ripped out of their wombs by perpetrators. I received multiple accounts in the Kivus of gang rapes so vicious that women died from bleeding or from ruptured uteruses. I also received numerous accounts of severe rape-related injuries – e.g., gunshots to a woman's vagina – that resulted in death days or weeks later. Such deaths are especially likely in remote areas where victims have little or no access to health services. Those who survive are often left with debilitating physical injuries, such as fistula or displaced uterus, and deep psychological harm.

64. Victims have, additionally, been killed when they resist rape, or murdered immediately following a rape. Victims are sometimes taken into sexual slavery and then killed when their captors are no longer able to rape them (because of the victim's injury or illness). Family members attempting to stop a rape have been killed, as have men who refuse the perpetrators' orders to rape female family members. Those working to assist rape victims have also been attacked and threatened and, in some instances, also raped.

65. Evidence from a variety of sources indicates that rape and related killing are particularly vicious when either the FARDC [Armed Forces of the Democratic Republic of the Congo] or FDLR [Democratic Forces for the Liberation of Rwanda] retaliate against communities they suspect of collaborating with the opposing force. FARDC soldiers, for example, have engaged in widespread rape as punishment for alleged collaboration with rebel groups. FARDC soldiers have also raped women during the course of raids to steal food or other goods. FDLR attackers have also engaged in a campaign of rape, repeatedly telling victims the rape was "punishment" for alleged cooperation with MONUC [United Nations Organization Mission in Democratic Republic of the Congo] or the Government.

66. Despite the political attention that sexual violence in the DRC has garnered, key officials continue to deny the extent of the problem. When I asked one senior military official in eastern DRC about sexual violence in the area under his command, he told me that only 15% of rapes

46 There does not appear to be any study to track how many women have died as a result of sexual violence. The difficulties of collecting information on sexual violence are exacerbated when victims have died. This is in large part because the data currently gathered is based on services provided to survivors, and also because more deaths likely take place in remote areas to which NGOs do not have access – and in which victims do not have life-saving medical support.

47 According to United Nations Population Fund (UNFPA) statistics, between January and June 2009, 57% of victims were minors and there were 460 cases against children less than 10 years old. UNFPA recorded 17 incidents against women older than 65 during the same period. There is anecdotal evidence that male rape is increasingly being used by both the FARDC and the FDLR, but because of the stigma and associated lack of formal reporting, I was not able to obtain exact numbers. Based on credible reports, at least two male rape victims have died as a result of their injuries.

alleged by NGOs and others actually occurred, that most cases were “imaginary”, and that it was in the nature of women to be unfaithful.

67. However, the truth is that rape is pervasive. The United Nations Population Fund (UNFPA) coordinates and compiles statistics on sexual violence, although its staff emphasise that their numbers are an undercount.⁴⁸ According to information provided to me by UNFPA, there were 13,404 incidents in 2006, 13,247 in 2007, and 14,245 in 2008. From January through June 2009, it provided a preliminary count of 6,433 incidents, and reports I received suggest that the annual total will exceed the deplorable heights reached in 2008.

68. Despite the prevalence and horrific nature of sexual violence atrocities, there is a shocking lack of accountability in the DRC domestic legal system, both military and civilian. Although there is generally strong substantive law, it is rare for cases to be prosecuted. Between February and August 2009, less than 100 rape cases were prosecuted by the military justice system in North and South Kivu, and most of the prosecutions were of low-ranking officers.⁴⁹ MONUC human rights officials have made commendable efforts to assist in investigations and thus support the few prosecutions that have occurred, but much more needs to be done by MONUC as a whole. MONUC launched a comprehensive strategy to address the sexual violence epidemic in April 2009, but its implementation has been delayed by staffing issues.

The Special Rapporteur has also examined the links between domestic violence and killings of women.

Report on Mission to Albania (A/HRC/17/28/Add.3, 14 March 2011, ¶¶52-53)

52. Domestic violence is widespread and some deaths have resulted. Approximately one out of three Albanian women experience physical violence at home. Violence is most often spousal abuse, although it has also resulted from attempts to restore “honour”. According to official figures, 15 women were killed as a result of domestic violence in 2008 and 2009. In 2005, there were 21 homicides resulting from violence in the home, and 25 murder threats. The number of women killed as a result of domestic violence is likely an undercount because of the limitations of Government statistics on the causes of deaths, families underreporting of “private” violence and death, and the possibility that deaths occur, especially in rural areas or informal settlements, without the State being notified.

53. Apart from some commendable civil society efforts and the recent report of the National Institute of Statistics (the first comprehensive national domestic violence survey), there have been few efforts at reliable recordkeeping on, or sociological and other analysis of, the high level of violence in the home and the deaths that result. The few studies that are specific to Albania highlight cultural factors, including a strong historic tradition of male dominance, the fact that domestic violence has long been considered to be a “normal”, private part of family life, and that Albanian society has emphasised hierarchical family order and intergenerational control. The *kanun* [traditional Albanian laws] is also seen as contributing to a culture of disrespect for and violence against women because of its patriarchal approach (for example, referring to women as sacks or a burden) and because it specifically sanctions violence, including murder of a wife for violations of the husband’s “honour” or for adultery, and beating for a disobedient wife. Women who are unemployed, less educated and living in rural areas are also seen as more vulnerable to violence.

48 The UNFPA’s statistics are an undercount and better used as trend analysis. Although a large number of NGOs provide statistics to the UNFPA, participation in reporting is not mandatory and the involvement of NGOs varies widely. Survivors and family members often do not report rape because of fear of reprisal, the social stigma attached to rape, and lack of access to support facilities.

49 Final Report of the Group of Experts on the DRC, S/2009/603, November 2009, paras. 343-344

In 2013, Special Rapporteur Heyns noted that while legislative efforts to promote the rights of women in India had produced some positive results, domestic violence and “dowry deaths” remained a pervasive problem:

Report on Mission to India (A/HRC/23/47/Add.1, 26 April 2013, ¶¶51-57)

51. The Government of India has actively sought to introduce mechanisms to ensure that men and women are placed on equal footing, such as the enactment of gender-sensitive legislation, the development of campaigns to generate awareness, and the creation in 1992 of the National Commission for Women, responsible for protecting and promoting the rights of women. In 1993, India ratified the Convention on the Elimination of Discrimination against Women (CEDAW). Yet, it has not ratified the Optional Protocol to CEDAW.

52. Women in India remain vulnerable and are too frequently victims of lethal violence. Sexual violence also occurs in the context of other forms of violence against women. Concern surrounding the violence exercised against women, in all its forms, has been expressed by a variety of international bodies.⁵⁰

53. The Special Rapporteur stresses that beyond creating laws and policies to ensure the protection of women, these must also be properly implemented. It is therefore important that gender-sensitization programmes are undertaken, particularly insofar as the law enforcement forces are concerned. The Special Rapporteur was also informed that in Kerala more women have been recruited into the police force, which has led to positive results in encouraging women to report cases and in strengthening efforts to seek justice in cases of violations.

Dowry deaths

54. Dowry-related deaths are a country-wide concern. The obligation to pay dowry rests on the family of the woman who is married. Where this is not done, or the amount is deemed unsatisfactory, there are a number of reported instances when the woman is killed by her husband or his family.

55. The official statistics indicate that the number of dowry deaths amounted to a staggering 8,618 in 2011.⁵¹ The figure increased since 2010 and may still not fully reflect the scope of the problem due to apparent underreporting in respect of this particular offence.

56. The Government has taken steps to curb the problem of dowry deaths, including through the enactment of the Dowry Prohibition Act of 1961 and codification of “dowry deaths” as a separate offence in section 304B of the Indian Penal Code (IPC).

57. In 2010, in the *Rajbir Raju and Another vs. State of Haryana* case, the Supreme Court ordered prosecutors, in cases of dowry deaths, to include a charge of murder in addition to one of dowry death. A conviction for murder in terms of section 300 of the IPC may be punishable with the death penalty,⁵² while that of a dowry death may result at most in a sentence of life imprisonment. The Court stated that persons guilty of such an offence should face capital punishment. While the

50 See Human Rights Committee, Concluding Observations: India, CCPR/C/79/Add.81, 4 August 1997; Committee on the Elimination of Discrimination Against Women, Concluding comments: India CEDAW/C/IND/CO/3, 2 February 2007; Committee on the Elimination of Discrimination Against Women, Concluding comments: India CEDAW/C/IND/CO/SP.1, 22 October 2010; Committee on the Elimination of Racial Discrimination, Concluding Observations: India, CERD/C/IND/CO/19, 5 May 2007; Committee on Economic, Social and Cultural Rights, Concluding Observations: India, E/C.12/IND/CO/5, 8 August 2008; and Summary of stakeholder submissions to the UPR of India, A/HRC/WG.6/13/IND/3, 12 March 2012.

51 National Crime Records Bureau Statistics, 2011, p. 328.

52 Section 302 of the Indian Penal Code.

attempt by the Supreme Court to seriously address the concern of dowry deaths is commended, the Special Rapporteur does not encourage the imposition of the death penalty in such cases, in particular for a problem with such complex social roots.

In 2017, Special Rapporteur Heyns noted the links between gang activity and violence against women in Honduras:

Report on Mission to Honduras (A/HRC/35/23/Add.1, 11 April 2017, ¶¶68-71)

68. Women in Honduras suffer high levels of violence, including murder, domestic violence and rape. As noted by the Special Rapporteur on violence against women, its causes and consequences, violence against women is widespread and systematic and compounded by a climate of fear in the public and private spheres.⁵³ A total of 4,013 women were killed between 2005 and 2014, and 478 femicides were registered in 2015.⁵⁴ Reports indicate a 263.4 per cent increase in femicides between 2005 (175 cases) and 2013 (636 cases),⁵⁵ and a 281 per cent increase in disappearances of women between 2008 (91 cases) and 2013 (347 cases).⁵⁶

69. The situation is compounded by gang activity. Women are often killed to settle gang disputes, or subjected to rape, torture and mutilation.

70. The Special Rapporteur on violence against women noted a culture of impunity and lack of accountability for these crimes. Despite the establishment in 2013 of femicide as a specific offence, very few cases have been tried under this offence.⁵⁷

71. In 2013, the Unit for the Investigation of Crimes against Women's Lives of the Office of the Special Prosecutor for Women, which handled femicides and violent deaths of women, was transferred to the Section on Investigation of Violent Deaths of Women of the Office of the Special Prosecutor for Crimes against Life to ensure a gender dimension to investigations. The Office of the Special Prosecutor for Crimes against Life adopted a manual for such investigations and trained justice operators nationally. Critics voiced concern that this transfer would result in a loss of a gender perspective for criminal investigations.⁵⁸

In 2011, Special Rapporteur Alston reported on efforts to strengthen the support and protection offered to women who report domestic violence:

Report on Mission to Albania (A/HRC/17/28/Add.3, 14 March 2011, ¶¶54-59)

54. High domestic violence levels have recently received much-needed attention. The Government, with United Nations support, has developed a national strategy on gender equality and domestic violence (2007-1010), which appraises State institutions dealing with domestic violence. It

53 See Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Mission to Honduras, A/HRC/29/27/Add.1, 31 March 2015, para. 9.

54 See Observatory on Violence, Bulletin on Women's Violent Deaths and Femicide No. 10, (January-December 2014), p. 1, available from www.iudpas.org/pdf/Boletines/Genero/MMEd10EneDic2014.pdf; and National Bulletin No. 40, p. 3.

55 See Inter-American Commission on Human Rights, *Situation of Human Rights in Honduras*, (December 2015), available at: www.oas.org/en/iachr/reports/pdfs/Honduras-en-2015.pdf, p. 52.

56 See A/HRC/29/27/Add.1, *supra* note 53, para. 19.

57 *Ibid*, paras. 9 and 76.

58 See United Nations Development Programme, United Nations Entity for Gender Equality and the Empowerment of Women and USAID, *Violencia y seguridad ciudadana: una mirada desde la perspectiva de género* (Tegucigalpa, 2015), available in Spanish from hn.undp.org/content/dam/honduras/docs/publicaciones/diagnosticogeneroyviolencia.pdf.

exposes failures of capacity, effectiveness, training and recordkeeping on the part of public health and medical officials, the police and the judiciary. It proposes extensive reforms to enhance victim protection and the investigation and punishment of perpetrators, a judicial and police infrastructure to protect victims, enhanced Government/civil society cooperation to assist victims, specialised training for public health, police and judicial officials, an information-sharing protocol and maintenance of reliable statistics.

55. The 2006 Law against Domestic Violence sets up a network of authorities for protection, rehabilitation and prevention, establishes victim support structures and enhances judicial protection measures for victims. Donors have funded training for police, court and other officials, special domestic violence police units have been established, and shelters have increasingly been supported. Education campaigns have been launched and civil society groups have played an active mobilizing role.

56. The above-mentioned efforts have led to dramatic increases in the number of women reporting violence to police officials (from 270 in 2007 to over 1,000 in 2009), of protection orders and of offenders prosecuted. Experts have also noted encouraging changes in official attitudes to domestic violence.

57. Attitudes remain a major challenge, however, especially with regard to Government budgeting for programme initiatives. Most financing currently comes from donors. Of 13 shelters for abused women and children, only four receive Government funding. A new shelter in Tirana, refurbished by the United Nations Development Programme, has Government support but no clear agreed budget allocation. The Government assured me that adequate funding would be forthcoming. Additional shelters are also urgently needed.

58. Gender violence experts reported that, while many police were increasingly willing to assist women, they often lacked the knowledge, resources or institutional support to do so most effectively. In some cases, the matter was as simple as providing police with the referral details of shelters and psychosocial support. In other cases, especially in rural areas, additional training and specialist police units are required.

59. More needs to be done by the Government to implement the provisions of the Domestic Violence Law. The Ministry of Justice needs to train lawyers to provide free legal representation of victims, and the Ministry of Health needs to assist health and medical officials to identify, record and provide services for victims. These burdens cannot be shouldered entirely by civil society. Finally, the media needs to be more responsible in its coverage of domestic violence.

In a 2013 mission report on Turkey, Special Rapporteur Heyns also addressed the need to implement new legal frameworks with respect to effective protection orders, and to provide other services for victims:

Report on Mission to Turkey (A/HRC/23/47/Add.2, 18 March 2013, ¶¶41-45)

41. The Special Rapporteur had the impression that the Turkish authorities do recognise the persistence of the challenge of lethal violence against women and the Government has taken a number of measures to combat it. However, there is need to further step up efforts on prevention and accountability.

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.

43. However, further solid efforts need to be undertaken with regard to the effective and swift implementation of the new legal framework. Particular importance should be attached to efforts related to the effective functioning of the protection orders system and the creation of a sufficient number of shelters for women. The Special Rapporteur received information regarding difficulties faced by women who report domestic violence to law enforcement officers. Law enforcement officers sometimes do not pay serious attention to cases of domestic violence, considering such cases as family matters, and attempting to convince the woman to reconcile with her abuser, rather than seek a protection order or pursue other legal options. In addition, victims reportedly face additional obstacles if they do seek protection orders, due to reluctance on the part of judicial professionals, lengthy processes and administrative barriers to issuing the order. Finally, once issued, protection orders are often not properly enforced and monitored, which leaves the victim at a high risk of further abuse.

44. In reply to these findings, the Government informed the Special Rapporteur that in the areas under the responsibility of the gendarmerie, protection orders were issued for 5,897 women in 2012. In addition, the Regulation on the Implementation of Law No. 6284, which entered into force on 18 January 2013, states that reconciliation or intermediary processes cannot be suggested between the victim of the violence and the perpetrator at the time of issuing or executing protective or preventive injunctions. The Special Rapporteur welcomes these strengthened measures, while underlining the need for their effective enforcement.

45. The Special Rapporteur commends the steps taken by Turkey to increase the number and capacity of shelters for women, as reported by Turkey to the Human Rights Committee in 2012.⁵⁹ He stresses the need to continue efforts to increase the number of shelters, as well as address the issues of adequate resourcing and support services for women leaving the shelters.

2. LGBTQI+ persons

LGBTQI+ persons can be especially vulnerable to unlawful killings—by both the state and private actors—due to deep-seated prejudice and bigotry; discrimination that is also often reflected in official law and policy. In some extreme cases simple expression of gender identity is criminalised and punished with the death penalty. As will be discussed in Chapter 8, this is a manifestly unlawful application of the death penalty, and it also amounts to clear official support for and indeed encouragement of a culture of discrimination.

In 2005, Special Rapporteur Alston sent an allegation letter concerning two young men who were convicted and sentenced to death under the Iranian Penal Code for engaging in consensual sexual activity.

Allegation letter sent to the Government of the Islamic Republic of Iran (25 November 2005)

Allegation concerning the situation of Mr. Mokhtar N., aged 24 and Mr. Ali A., aged 25, who were reportedly hanged publicly on or around 13 November 2005, in the Shahid Bahonar Square of the town of Gorgan.

According to the information I have received, both men were sentenced to death for the crime of “*lavai*” which is reportedly defined by Iran’s Shari’a-based Penal Code as encompassing penetrative and non-penetrative sexual acts between men. These would not appear to be isolated cases. Indeed, I have been informed of other recent cases of execution of men in Iran on the basis of their private, consensual sexual conduct. For instance, on 15 March 2005, it was reported that the Tehran

59 See Human Rights Committee, Initial State’s Report: Turkey, CCPR/C/TUR/1, 13 April 2011, paras. 68 and 76.

Criminal Court sentenced to death two men, whose names have not been made known to me, following the discovery of a video showing them engaged in homosexual acts and based on the confession of one of them.

The information I have received also indicated that, late last year, the Special Protection Division, a new institution that empowers volunteers to police moral crimes in neighbourhoods, mosques, offices and any place where people gather, was formed by the Iranian Judiciary. Concern has been expressed that the Special Protection Division functions as an intrusive surveillance system that promotes prosecution of citizens for entirely private and victimless behaviour. In this connection, I would recall the importance of the right to privacy and the strict limits that should apply to interference by governmental authorities and by those acting on their behalf in relation to private conduct.

[...]

[...] Iranian law reportedly punishes all penetrative sexual acts between adult men with capital punishment. Non-penetrative sexual acts between men are punished with lashes until the fourth offence, when they are punished with death. Sexual acts between women, which are defined differently, are punished with lashes until the fourth offence, when they are also punished with death.

In this connection, I would like to highlight that, in accordance with Article 6(2) of the International Covenant on Civil and Political Rights, “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes”, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences (Paragraph 1 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, Economic and Social Council resolution 1984/50 of 25 May 1984). In its General Comment No. 6, the United Nations Human Rights Committee has stated that “the expression “most serious crimes” must be read restrictively to mean that the death penalty should be a quite exceptional measure”. In practice, the Committee has made it clear that the death penalty should not be imposed for offences such as the commission of a homosexual act.

In 2009, Special Rapporteur Alston sent an allegation letter to Uganda regarding the implications of efforts to criminalize homosexual activity.

Allegation letter sent to the Government of Uganda (23 December 2009) (with the Working Group on arbitrary detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health)

We would like to bring the attention of your Excellency’s Government information received concerning a legislative bill pending before the Ugandan legislature, Bill N° 18 of 2009.

According to the information received, the Parliament of Uganda is currently considering Bill N° 18 of 2009 (also known as the “Anti-Homosexuality Bill”) tabled before it on 15 October 2009. The proposed Bill increases penalties for homosexual conduct and criminalises many related activities. The envisaged penalties range from imprisonment not exceeding three years for the failure to denounce the commission of an offence as defined by the Bill to life imprisonment and the death sentence. Consensual homosexual conduct is already a criminal offence under article 145 sub a) of the Ugandan criminal code, which penalises “carnal knowledge of any person against the order of nature”. However, Bill N° 18 would expand the reach of this existing provision by including “any person who touches another person with the intention of committing an act of homosexuality”.

The Bill also punishes ‘aggravated homosexuality’, including activity by ‘serial offenders’ or those who are living with HIV, with the death penalty.

In addition, the Bill punishes any form of ‘promotion of homosexuality’ with imprisonment of five to seven years. This raises concerns that the work of civil society actors and human rights defenders addressing issues of sexual orientation or gender identity might be criminalised. The Bill specifies that this includes anyone who publishes or disseminates ‘homosexual materials’, ‘funds or sponsors homosexuality and related activities’, ‘uses electronic devices which include internet, films and mobile phone’ or ‘who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices’. The Bill also criminalises failure to report any offences within its scope, compelling citizens to report to the authorities anyone whom they suspect of engaging in homosexual activity.

Furthermore, HIV prevention activities in Uganda, which rely on an ability to speak frankly about sexuality and health and to provide condoms and other safer sex materials, may be compromised by this Bill. However, women, sex workers, people living with HIV, and other marginalised groups may also find their activities tracked and criminalised through this Bill should it be enacted into law.

[...]

In this context, we would like to remind your Excellency’s Government of General Comment N° 20 on Non-Discrimination in Economic, Social and Cultural Rights, adopted by the Committee on Economic, Social and Cultural Rights in 2009. In paragraph 32, the Committee stated that “parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor’s pension rights. In addition, gender identity is recognised as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the work place”.

The Committee also underlined in paragraph 33 that “health status refers to a person’s physical or mental health. States parties should ensure that a person’s actual or perceived health status is not a barrier to realizing the rights under the Covenant. The protection of public health is often cited by States as a basis for restricting human rights in the context of a person’s health status. However, many such restrictions are discriminatory, for example, when HIV status is used as the basis for differential treatment with regard to access to education, employment, health care, travel, social security, housing and asylum. States parties should also adopt measures to address widespread stigmatization of persons on the basis of their health status”.

In relation to the penalty of imprisonment as enshrined in the Bill, we would like to draw your Excellency’s Government’s attention to article 9, paragraph 1, clause 2, of the International Covenant on Civil and Political Rights (ICCPR), which the Government of Uganda ratified on 21 June 1995. This provision stipulates that [n]o one shall be subjected to arbitrary arrest or detention. The Working Group on Arbitrary Detention has qualified deprivation of liberty as arbitrary, *inter alia*, “[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II). In this connection, we would like to draw your Excellency’s Government to Opinion N° 22/2006 (A/HRC/4/40/Add.1, page 91), in which the Working Group on Arbitrary Detention, at para. 19, held that “[e]ver since the Human Rights Committee adopted its View in *Toonen v. Australia* and it itself adopted its Opinion 7/2002 ... the Working Group has followed the line taken in those cases. That means that the existence of laws criminalizing homosexual behaviour between consenting adults in private and

the application of criminal penalties against persons accused of such behaviour violate the rights to privacy and freedom from discrimination set forth in the International Covenant on Civil and Political Rights. Consequently, the Working Group considers that the fact that the criminalization of homosexuality ... is incompatible with articles 17 and 26 of the International Covenant on Civil and Political Rights.”

[...]

Finally, we would like to draw your attention to principles of international law relevant in relation to article 3 of the Bill, which makes “aggravated homosexuality” (such as where the person against whom the “offence of homosexuality” is committed is a minor or a person with a disability, or the “perpetrator” is a person living with HIV or a “serial offender”) punishable by the death penalty. We would like to recall that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights provides that “in countries which have not abolished the death penalty”, the “sentence of death may be imposed only for the most serious crimes”. As the Special Rapporteur on extrajudicial, arbitrary or summary executions observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Article 3 of Bill N° 18 of 2009 is incompatible with this well-established principle of international law.

We urge your Excellency’s Government to take all necessary measures to ensure that the enjoyment of the right to the highest attainable standard of physical and mental health, of the rights not to be arbitrarily deprived of one’s life or personal freedom, as well as of the right to freedom of opinion and expression is protected. It is our opinion as independent human rights experts of the Human Rights Council that only the withdrawal or rejection of Bill N° 18 of 2009 can ensure that fundamental principles of international human rights law binding for Uganda are not seriously violated.⁶⁰

In 2013, Special Rapporteur Heyns noted that widespread prejudice and negative stereotyping (including by members of the judiciary) combine to contribute to impunity for the killing of LGBTQI+ persons in Turkey.

Report on Mission to Turkey (A/HRC/23/47/Add.2, 18 March 2013, ¶¶47-50, 77-79)

47. Lesbian, gay, bisexual and transgender (LGBT) individuals are also particularly vulnerable to attacks, including lethal attacks, in Turkey. This occurs in the context of a generally hostile climate towards LGBT individuals, who often face discrimination and intimidation as well as negative stereotyping, including from high-level public figures and law enforcement agents. According to information provided by non-governmental organizations, there were eight murders in 2011 and 12 murders in 2010 that are believed to have been committed on the grounds of the victims’ sexual orientation or gender identity.

48. In Turkey, killings of LGBT individuals usually occur either in the context of expression of hate or as part of the phenomenon of honour killings. With regard to hate-related incidents, the Special Rapporteur heard information on the lack of comprehensive specific legislation regarding

⁶⁰ *Editors’ Note:* The 2009 Anti-Homosexuality Bill was ultimately approved by the Ugandan Parliament in December 2013 and signed by the President in February 2014. However, in August 2014 the Constitutional Court of Uganda ruled the Act invalid on procedural ground. In January 2018, the President signed another new law that meant that homosexuality carried a life sentence, and in 2019 stories circulated of further legislation that reintroduced the sanction of the death penalty.

hate speech and hate crimes, as well as a general absence of language on gender identity and sexual orientation in Turkish legislation, including in the most recent legislative texts. This creates a gap in the legal framework with regard to the protection of LGBT individuals.

49. Another difficulty lies in the attitude of family members of LGBT individuals, who, sometimes due to so-called honour motives, insist that the investigation files in cases of murder are closed as soon as possible. Family members can also perpetrate murders of LGBT individuals in the name of honour. A prominent case concerns Ahmet Yildiz, a 26 year old man believed to have been killed in 2008 by his father who viewed his son's homosexuality as disgraceful to the family. Ahmet Yildiz reportedly addressed the Prosecution Office three times to seek protection against death threats, but his requests were never followed up with a protection order.

50. There appears to be a trend in Turkey for law enforcement officers and the judiciary to take a lenient attitude towards crimes against LGBT individuals. LGBT individuals are rarely treated seriously when they seek protection, and investigations and prosecution of crimes against them display fundamental shortcomings, leading to impunity of perpetrators. This was also confirmed by reports from other organizations.⁶¹ Problems related to reprisals and lighter sentencing of perpetrators, which have considerable application to the killings of LGBT individuals and failures of accountability for such crimes in Turkey, will be addressed [below]

[...]

77. There are cases where law enforcement officials, as well as non-State actors, had committed violations of the right to life, but were charged with offences other than killing – for instance, physical assault or another less violent crime –, resulting in very light sentences. Similarly, where it is possible to seek a lighter penalty or sentence for a certain offence, this is sometimes done by the prosecutor from the outset, signalling that the criminal responsibility is not taken seriously.

78. Even in cases where the perpetrator is charged with killing, sentences are sometimes significantly reduced by the judge further to a finding of “unjust provocation” under article 29 of the Turkish Penal Code, whereby the defendant is considered less culpable because he acted under so-called provocation. The application of this principle can be inappropriate, for example, in some cases of honour killings and killings of LGBT individuals, where judges may, on the basis of their own moral convictions, impose a lighter sentence for murder.

79. In other cases, judges apparently reduce the sentence because of the “good conduct” of the defendant during legal proceedings. According to interlocutors, there is a tendency to reduce sentences in particular in cases of violence against women, killings of LGBT individuals or offences perpetrated by law enforcement officials.

Follow-up Report on Mission to Turkey (A/HRC/29/37/Add.4, 6 May 2015, ¶¶42-46)

42. The Special Rapporteur highlighted the vulnerability of lesbian, gay, bisexual and transgender persons in Turkey. The Special Rapporteur recommended that Turkey enact comprehensive and specific legislation on hate crimes in accordance with international standards and review legislation to include language sensitive to gender identity and sexual orientation (*ibid.*, paras. 109 and 110).

43. Turkey indicated, in its response, that an amendment to article 122 of the Criminal Code, introduced in 2014, provides for hate crimes.⁶² However, the Special Rapporteur notes with regret that sexual orientation has not been included as a ground.

61 Report by Council of Europe Commissioner for Human Rights following his visit to Turkey from 10 to 14 October 2011 (CommDH(2012)2), 10 January 2012, para. 57.

62 State response, October 2014.

44. The Special Rapporteur was also informed that a draft law on the establishment of an anti-discrimination equality board was still pending before the Office of the Prime Minister. It is unfortunate that references to gender identity and sexual orientation were removed from the bill in the early stages of drafting.⁶³ Turkey has yet to enact hate crime specific legislation that is inclusive of gender identity and sexual orientation.

45. The Law to Protect Family and Prevent Violence Against Women is silent on gender identity and sexual orientation.

46. The challenges relating to the protection of lesbian, gay, bisexual and transgender persons are exacerbated by the attitude of some family members of such individuals, as well as the trend observed by the Special Rapporteur during his visit, whereby law enforcement officials and the judiciary seem to take a lenient attitude towards crimes committed against such individuals. In order to address those challenges, the Special Rapporteur recommended that awareness-raising campaigns and training should be launched on the rights of those individuals [...]. The Government of Turkey informed the Special Rapporteur that members of the judiciary were under an obligation to investigate and adjudicate crimes against lesbian, gay, bisexual and transgender persons.⁶⁴ Despite this, it appears that discrimination and lenient attitudes continue, in practice.⁶⁵ The Special Rapporteur notes with regret that no explicit training or awareness-raising campaigns in relation to the rights and protection of lesbian, gay, bisexual and transgender persons are taking place in the country.

In 2015, Special Rapporteur Heyns reported to the Council on anti-LGBTQI+ hate speech by senior members of the government in The Gambia.

Report on Mission to The Gambia (A/HRC/29/37/Add.2, 11 May 2015, ¶¶78-79)

78. The Special Rapporteur received concerning reports about hate speech, persecution and violence against LGBT persons in the Gambia. Numerous reports have emerged of threatening and inflammatory public speeches by Mr. Jammeh [Gambia's president] against homosexuals. Such messages include threats to decapitate any homosexuals found in the country, depictions of gay people as "vermin" who should be treated worse than mosquitoes, threats to kill anyone who seeks asylum who claims to be persecuted for his or her sexual orientation, and assessments of homosexuals as more deadly than all natural disasters put together.

79. He is also concerned about the 2014 amendment to the Criminal Code on "aggravated homosexuality", which carries punishments of up to life in prison and contributes to the existing climate of hostility against LGBT persons. The approval of the amendment was followed by rounds of arrests, prosecutions and attacks, and humiliation and even torture of persons, because of their presumed sexual orientation. In addition, some were detained in the security wing of Mile 2 Prison. The Special Rapporteur warns that hate speech and discriminatory legislation risks inciting societal misconceptions and violence against LGBT persons, putting them at great risk of attacks, humiliation and even murder, and recalls the responsibility of States to respect the human rights of LGBT persons and to avoid discrimination, as well as to prevent and punish violence and abuses against them by third parties.

In 2017, Special Rapporteur Heyns reported statistics showing an alarmingly high number of LGBTQI+ homicide victims in Honduras.

63 See European Commission, "Turkey Progress Report" (October 2014), available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf, p. 59.

64 State response, October 2014.

65 See, "Human Rights Violations of LGBT Individuals in Turkey", available at: www.kaosgldernegi.org/resim/yayin/dl/upr_submission_on_lgbt_ppl_in_turkey.pdf.

Report on Mission to Honduras (A/HRC/35/23/Add.1, 11 April 2017, ¶¶44-47)

44. The Special Rapporteur received reports of a high number of attacks and killings against lesbian, gay, bisexual and transgender persons. In total, 123 homicides were registered between 2010 and 2014.⁶⁶

45. Of the 216 cases registered by civil society organizations between 2004 and 2015, 103 victims were gay, 78 transgender and 13 lesbian.⁶⁷

46. The Section on Violent Deaths of Persons from Vulnerable Groups investigates such deaths. The Public Prosecutor's Office informed the Special Rapporteur that, of the 232 killings registered from 2008 to March 2017, investigations had led to 48 prosecutions, 19 convictions and 9 acquittals.

47. While the Special Rapporteur welcomes the amendments to the Criminal Code criminalizing hatred on the basis of sexual orientation or gender identity, he is concerned to learn that investigations into deaths of lesbian, gay, bisexual and transgender persons continue to be influenced by discriminatory stereotypes,⁶⁸ and that a fraction (20.6 per cent) of murder cases appear to lead to prosecutions.

3. Children

International law provides specific protections for children because their dependence on adults and their physical and mental development can make them especially vulnerable to harm.⁶⁹ This can sometimes intersect with other forms of vulnerability: children of colour, children with disabilities, and children living in poverty can be particularly at risk of violence. The Special Rapporteurs have reported on unlawful killings of children in a number of country and thematic reports.

In 2005, Special Rapporteur Alston sent an allegation letter to the government of Papua New Guinea regarding police brutality against children.

Allegation letter sent to the Government of Papua New Guinea (10 November 2005)

I would like to draw the attention of your Excellency's Government to reports regarding accounts of police violence against children. According to the information I have received, three school children who were shot dead by police on 31 October in Enga province while another twenty to thirty five persons, some as young as nine or ten years old, were injured. The police reported that they were met by rock-throwing students when they went to arrest the headmaster of Porgera top-up primary school. It is my understanding that these executions have taken place in the context of repeated police violence – including arbitrary arrests, torture and deaths in custody – against children perceived as gang members, street vendors, child sex workers and boys engaged in homosexual conduct. At the same time, internal police statistics indicate that very few officers are punished for violence against children.

If these allegations were correct, there would be ground for serious concerns. Therefore, while I do not wish to prejudge the accuracy of these allegations, I would like to draw the attention of your

66 Data from the Office of the Special Prosecutor for Crimes against Life provided by the Government.

67 See Asociación para una Vida Mejor de Personas Infectas y Afectadas por el VIH-SIDA en Honduras, *Informe sobre muertes violentas por crímenes de odio motivados por orientación sexual e identidad de género en Honduras* (Tegucigalpa, December 2015), p. 25. Available at: www.ci-romero.de/fileadmin/media/informieren-laender/honduras/INFORME_2015_CRIMENES_DE_ODIO_APUVIMEH.pdf.

68 See Inter-American Commission on Human Rights, Preliminary Observations concerning the Human Rights Situation in Honduras, 5 December 2014, available at: www.oas.org/en/iachr/media_center/preleases/2014/146a.asp.

69 See, e.g., Geneva Declaration on the Rights of the Child (1924), Convention on the Rights of the Child (1989).

Excellency's Government to the fundamental principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and political Rights. Article 3 and 6 of these instruments, respectively, provide that every individual has the right to life and security of the person, that this right shall be protected by law and that none shall be arbitrarily deprived of his or her life. I would also like to refer your Government to the United Nations Basic Principles on the Use of Firearms by Law Enforcement officials applicable to such an incident as the one that took place in Enga province on 31 October. Under the Principles, law enforcement officials may use lethal force only "when strictly unavoidable in order to protect life". When doing so they must act with restraint and in proportion to the seriousness of the offense, minimise injury and respect and preserve life.

After a mission to the Democratic Republic of Congo, Special Rapporteur Alston drew attention to the extremely grave violations ongoing in the country, including the kidnapping of children in order to force them to become soldiers:

Report on Mission to the Democratic Republic of the Congo (A/HRC/14/24/Add.3, 1 June 2010, ¶47)

47. Over 1,300 Congolese civilians have been killed by the LRA Ugandan rebel group since September 2008. The LRA, led by Joseph Kony, against whom the International Criminal Court issued an arrest warrant in 2005, has committed some of the most calculated and horrific killings I have encountered during my nearly six years as Special Rapporteur.⁷⁰ Over a 20-year period, the LRA terrorised many tens of thousands of victims; it has kidnapped children and forced them to become soldiers, hacked civilians to death or left them with mutilated limbs and faces, and it has engaged in frequent looting, pillaging and sexual violence, including sexual slavery. By some estimates, the LRA has killed over 65,000 civilians and abducted some 40,000 children.

In Mexico, Special Rapporteur Heyns found that children were often the victims both of cartel activity and the governments' counter-measures in the "war" on drugs:

Report on Mission to Mexico (A/HRC/26/36/Add.1, 28 April 2014, ¶¶79-81)

79. There is no systematic or disaggregated official data on the total number of children who have been unlawfully executed, but a number of civil society actors informed the Special Rapporteur that the number is high. Since 2007, a steady increase has been recorded in the number of deaths of young people aged between 12 and 17. The Special Rapporteur was informed that from 2006 to 2010, 994 children lost their lives in the so-called war against organised crime.

80. The Special Rapporteur was informed about a number of serious cases of unlawful killing of children by police or soldiers, including but not limited to the cases of:

- a) Martin and Brayan Almanza on 3 April 2010, in the state of Tamaulipas. The killings were allegedly carried out by soldiers, who also altered the crime scene to try to escape responsibility and make it appear that the deaths were the result of an armed confrontation;
- b) Daniel Zamorano Rocha on 8 January 2013, in Colonia Tantocob, Ciudad Valles, San Luis Potosí. Several witnesses indicated that a state police agent, apparently intoxicated, shot the minor in the head. In connection with this case, the Special Rapporteur sent an allegation letter on 12 June 2013. The Special Rapporteur thanks the Government of Mexico for its response to this communication on 27 August 2013. He notes that the state police officers allegedly involved

⁷⁰ See e.g. Scott Johnson, "Hard Target: The hunt for Africa's last warlord," *Newsweek*, 16 May 2009. The ICC issued an arrest warrant for Kony in 2005. He is charged with 33 counts of crimes against humanity and war crimes, including enlisting children, cruel treatment, pillaging, enslavement, murder, and inhuman acts against civilian populations.

in the crime are being prosecuted and he recommends that the State meet its obligation to bring the perpetrators to justice.

81. Interlocutors stated that children are also recruited by organised criminal groups and thus become potential targets of inter-cartel violence and the “war on drugs”, and authorities are therefore less committed to investigation and accountability. The Special Rapporteur was informed that on a number of occasions, authorities publicly identified innocent young people as members of gangs or suspected perpetrators of organised criminal violence, then released them without protective measures. The young people were subsequently found executed, presumably the result of either vigilante justice or action by members of rival cartels or security forces.

Similarly, in Honduras, children are frequent victims of both gang and anti-gang police activity:

Report on Mission to Honduras (A/HRC/35/23/Add.1, 11 April 2017, ¶¶72-75)

72. The context of violence and insecurity in Honduras puts children and adolescents in a particularly vulnerable position. In total 21,710 children suffered violent deaths between January 2010 and March 2016.⁷¹ A civil society organization reported 79 deaths per month between January 2014 and December 2015.⁷² While in most cases the perpetrators remained unidentified and unpunished, reports indicated that security forces had been involved in the killing of at least seven children and adolescents between June and December 2015.⁷³

73. Children living in areas under the influence of *maras* [gangs] are placed in particular distress as they are both harassed, threatened and attacked by gang members, and stigmatised, discriminated against and mistreated by law enforcement forces, who often regard them as potential criminals or gang members.⁷⁴

74. Young students are also frequently targets of violence. At least 1,183 students were killed in Honduras between 2010 and 2016, of whom 52 per cent had been secondary school students and 13.5 per cent had been university students.⁷⁵ Young people are particularly targeted for their participation in protests and other forms of public demonstrations. In March 2015, Honduran society was shocked to learn about the killing of four young people who had participated in student protests. One of the victims, a 13-year-old girl, had been seen expressing her demands on television days before her body was found in a bag with signs of torture.

75. Civil society organizations reported a worrying increase in cases where bodies were found with signs of torture, strangled to death, in plastic bags, tied with ropes or wrapped in sheets.⁷⁶ During the visit, the Special Rapporteur received numerous and concerning reports about the existence of extermination squads that targeted children. The actions of these squads were reportedly motivated by considerations of “social cleansing”.

71 See Observatory on Violence, *Special Bulletin No. 42* (June 2016), available at: www.iudpas.org/pdf/Boletines/Especiales/BEP_Ed42.pdf, p. 1.

72 See Casa Alianza, “Monthly report: December 2016”, available in Spanish at: www.casa-alianza.org.hn/images/documentos/Comunicados/CAH.2015/Informes.Mensuales.2015/12.%20informe%20mensual%20diciembre%202015_cah.pdf, p. 31.

73 Ibid, p. 33.

74 See *Situation of Human Rights in Honduras*, supra note 55, p. 48.

75 See *Special Bulletin No. 42*, supra note 71, p. 1.

76 See Casa Alianza, “Annual report: 2014”, available at: www.casa-alianza.org.hn/images/documentos/Comunicados/CAH.2015/Informes.Mensuales.2015/situacin%20de%20derechos%20de%20nios%20nias%20y%20jvenes%20en%20honduras.pdf, p. 18.

4. Refugees, internally displaced persons, and undocumented migrants

In several communications and country reports, the Special Rapporteurs have highlighted the particular vulnerability of refugees, asylum seekers, internally displaced persons (IDPs), and undocumented migrants, and reminded states of their obligation to respect the rights of such persons:

Allegation letter sent to the Government of Egypt (16 September 2008) (with the Special Rapporteur on the human rights of migrants)

[W]e would like to bring to your Government's attention information we have received in relation to reports of the use of lethal force by Egyptian border guards against migrants, asylum seekers and refugees from other African countries trying to cross the border between Egypt and Israel without authorization.

According to the information received:

On 22 July 2007, just after midnight, Hajja Abbas Haroun, a pregnant Sudanese woman aged 28, was trying to cross the border near Rafah together with her husband and her two year old daughter as part of a group of Darfurians. They were shot at by Egyptian border guards. Hajja Abbas Haroun was hit at the head and died immediately. On 16 February 2008, Mervat Mer Hatover, an Erytrea citizen aged 37, was shot at by Egyptian security forces as she was trying to cross a barbed wire border fence near El Kuntillah on the Sinai Peninsula together with her two child daughters. A bullet hit her in her head and killed her. On 19 February 2008, Egyptian border security forces purportedly shot and killed Ermeniry Khasheef, a Sudanese citizen aged 50, as he was trying to cross the border near Rafah. Another Sudanese man, Adam Mohamed Othman (aged 23), was killed in the same area on 10 March 2008. On 28 June 2008, Egyptian border guards allegedly killed a seven-year-old Sudanese girl and a man as they were trying to cross the border near Rafah. Overall 17 persons were shot dead by Egyptian border guards to prevent them from crossing the border since the beginning of the year 2008. Tens more were injured and taken to hospital with serious bullet injuries to the chest, back, thighs or legs.

The reports we have received indicate that the refugees, asylum seekers and migrants arrive near the border fence separating Egypt from Israel at night in small groups aided by local smugglers. They run towards the barbed wire fence and try to either climb over it or cut through it. The Egyptian border security reportedly usually first order them to stop and fire warning shots in the air. However, as the above alleged deadly shootings indicate, those who do not stop may be killed or seriously injured by shots to their head or body.

[...]

In particular, Article 6 of the ICCPR requires that force be used by law enforcement officials only when strictly necessary, and that force must be in proportion to the legitimate objective to be achieved. As expressed in the UN Basic Principles on the Use of Firearms by Law Enforcement Officials ("Basic Principles"), this requires that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force (Basic Principles, Principle 4). Further, whenever the lawful use of force is unavoidable, law enforcement officials shall exercise restraint and act in proportion to the seriousness of the offence, minimise injury, and respect human life (Basic Principles, Principle 5). Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Basic Principles, Principle 9).

We would also like to bring to your Government's attention that your Government has a duty to investigate, prosecute, and punish all violations of the right to life. The investigation of such cases "shall be thorough, prompt and impartial. ... 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.” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (“Prevention and Investigation Principles”). Principle 17 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (“Prevention and Investigation Principles”) provides that “[a] written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law.”

Urgent appeal sent to the Government of Yemen (22 September 2009) (with Representative of the Secretary-General on the human rights of internally displaced persons)

[W]e would like to draw the attention of your Excellency’s Government to information we have received regarding reports of attacks on civilian targets, in particular camps for internally displaced persons in Adi in the Amran governorate, by the Yemeni armed forces on 14 and 17 September 2009 resulting in the killing of numerous civilians.

According to information we have received:

In mid-August 2009 renewed armed conflict between Yemeni governmental armed forces and insurgents referred to as “Al Huthis” broke out in ‘Amran and Saada Governorates in northern Yemen. The United Nations estimate that the recent combat has brought the total number of internally displaced people to 150,000, the majority of whom are women and children.

On 16 September 2009, a Yemen air force attack caused the death of internally displaced persons (IDPs) in an improvised camp in Adi east of Harf Sufian in ‘Amran governorate. According to witnesses, the attack took place in two waves, the first targeting IDPs gathering in makeshift tents and under trees, the second targeting people fleeing towards a canal. The number of persons killed is indicated as 87 in some reports, 85 in others, as “dozens of displaced persons, mostly women and children” in others yet. In speaking to journalists, a Government official claimed that the fighter jets targeted rebels who were hiding among the IDPs.

The attack on 16 September was preceded by the air force attack on a crowded market place in Saada Governorate on 14 September 2009. This attack left dozens of victims killed and wounded, including women and children, and caused huge material losses to trade shops, cars and houses near to the market.

While we do not wish to prejudge the accuracy of these reports, we would like to refer Your Excellency’s Government to the fundamental legal rules applicable to all armed conflicts under international humanitarian law and human rights law.

Specifically, your Government is under an obligation to distinguish between combatants and civilians and to direct attacks only against combatants (Rules 1, 6 and 7 of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross (“Customary Rules”).

Regarding claims that rebels were hiding among the IDPs and attacking the governmental forces, we would recall that indiscriminate attacks are prohibited as well (Rule 11 of the Customary Rules). They include attacks which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law (Rule 12). Further, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14 of the Customary Rules). All feasible precautions must be taken to avoid and minimise incidental loss of civilian life (Rule 15 of the Customary Rules). This

explicitly requires that parties to a conflict must give effective advance warning of attacks which may affect the civilian population (Rule 20 of the Customary Rules).

1214. We urge your Excellency's Government to ensure that immediate and independent investigations are carried out into these killings and to protect those displaced by the conflict according to the UN Guiding Principles on Internal Displacement including Principle 10 on the right to life which codifies and reflects the above mentioned basic guarantees of international humanitarian law.

Report on Mission to Mexico (A/HRC/26/36/Add.1, 28 April 2014, ¶74)

74. Undocumented migrants who transit through Mexico put their lives at serious risk, although it is difficult to obtain reliable figures on the numbers killed. Reportedly, there is a direct link between disappearances and killings of migrants, organised crime, and complicity of law enforcement, investigative and other authorities. Migrant shelters have been subject to multiple attacks by organised criminal groups and insufficient preventative and accountability measures have been inadequately mobilised. Moreover, migrants are afraid to bring cases to the police. Chronic impunity therefore persists. The Special Rapporteur urges prompt investigation of killings of migrants in order to punish those responsible and provide compensation to victims or families of victims. He also calls for strengthening of the protection framework, including ensuring the safe operation of shelters.

Report on Mission to Honduras (A/HRC/35/23/Add.1, 11 April 2017, ¶¶60-67)

60. The impact of gang violence and organised crime in certain regions of the country is leading to the forced migration of thousands of persons who try to avoid extortion, forced integration to gangs, sexual violence and killings.

61. According to the Internal Displacement Monitoring Centre, at the end of 2014, there were an estimated 29,400 internally displaced persons in Honduras. The Office of the United Nations High Commissioner for Refugees (UNHCR) reported that, between 2004 and 2014, 174,000 persons had been affected by internal displacement owing to violence. In a 2015 study, it was reported that persecution and insecurity had been the determining factors of displacement for 67.9 per cent of internally displaced households, particularly threat, murder, injury, extortion, insecurity and sexual violence.

62. The impact of violence is also evident in the growing number of Honduran asylum seekers and refugees in neighbouring countries, Mexico and the United States. UNHCR reported a 1,153 per cent increase in the number of asylum applications from – 810 to 10,146 – between 2012 and 2014, and a 59 per cent increase in the number of refugees, from 2,613 to 4,159, in the same period.

63. Migrants on route to northern countries face numerous risks and many end up as victims of trafficking networks that subject them to kidnapping, torture, mutilation or murder. In recent years, around 400 Honduran migrants were reported missing on their way to the United States. Three mass graves were found in Mexico between 2010 and 2012, which contained the remains of dozens of migrants who had been in transit including from Honduras. The relatives of the victims reported delays in the repatriation of the remains and difficulties in gaining access to justice.

64. Many migrants are deported to Honduras while in transit or on arrival at their country of destination, even those who face serious risks back home. UNHCR reported that 249,618 Hondurans had been deported between 2011 and 2014.⁷⁷ In the United States alone, 20,309 Hondurans were

⁷⁷ UNHCR, Protection and Solutions Strategy for the Northern Triangle of Central America 2016-2018 (Geneva),

deported in 2015⁷⁸ and 10,468 unaccompanied migrant children were apprehended in 2016.⁷⁹ On their return to Honduras, many of the deportees face the same perils they had attempted to elude. As at 2014, 35 returnees had been killed soon after arriving in Honduras.⁸⁰ The Special Rapporteur on the human rights of internally displaced persons received confirmation from United States officials that criminal activity in their home countries was not considered grounds for individuals to claim asylum.⁸¹

65. The Special Rapporteur was informed about the precarious conditions of detention of Hondurans deportees held in United States migration detention centres and was particularly alarmed at reports of deportees detained in cold cells referred as “iceboxes”. He was also informed that Hondurans were prevented from gaining access to the relevant authorities to process their asylum requests or were deported before they could get a chance to submit them. In total, 80 per cent of Hondurans were placed in expedited removal procedures in which asylum claims were not properly considered.⁸² Civil society organizations have also noted the precarious conditions and abusive treatment received by Honduran deportees in Mexican detention centres and the lack of information about asylum procedures offered to migrants victims of violence.⁸³ Mexican authorities also return migrants in immediate danger.

66. The Special Rapporteur visited the Returnee Migrant Care Centre in San Pedro Sula and was impressed by the commitment of its staff and the quality of the support provided to Hondurans returnees before being transferred to their hometowns. While he encourages the Government to maintain and support this much needed initiative, he warns about the need to establish medium- and long-term measures to support the returnees’ reinsertion in their communities and to guarantee their safety and integrity, especially to those at risk of violence.

67. To respond to this critical situation, in 2013 the Government established the Inter-institutional Commission for the Forced Displacement of Persons, and is currently working on a draft law on migration to regulate the situation of refugees, asylum seekers and stateless persons, and a draft law to protect and assist displaced persons and prevent forced displacement.

available at: <http://reporting.unhcr.org/sites/default/files/Protection%20and%20Solutions%20Strategy%20for%20the%20Northern%20Triangle%20of%20Central%20America%202016-2018.pdf>, p. 5.

78 See US Immigration and Customs Enforcement, *ICE Enforcement and Removal Operations Report, Fiscal Year 2015*, 22 December 2015, available at: www.ice.gov/sites/default/files/documents/Report/2016/fy2015removalStats.pdf.

79 See United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016, Statement by Secretary Johnson On Southwest Border Security, October 2016, available at: www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016.

80 See Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, Mission to Honduras, A/HRC/32/35/Add.4, 5 April 2016.

81 Ibid.

82 See Human Rights Watch, “You don’t have rights here”: US border screening and returns of Central Americans at risk of serious harm, 16 October 2014, available at: www.hrw.org/report/2014/10/16/you-dont-have-rights-here/us-border-screening-and-returns-central-americans-risk.

83 See “Monthly report: September 2016”, *supra* note 72, p. 20.

5. Journalists and human rights advocates

Those who seek to publicise information that others would prefer remain hidden or those who advocate for human rights have long been the target of unlawful killings. In addition to violating the right to life, such killings often have direct and indirect effects on many other rights, including to assembly, opinion, speech, and expression. Threats against and killings of human rights advocates can also put essential social justice work at risk.

In 2012, Special Rapporteur Heyns set out the rationale for dedicating an entire thematic report to the Human Rights Council to the subject of the protection of journalists.⁸⁴ The report highlighted that the word “journalist” refers to a wide range of individuals, including photographers, reporters, support staff, as well as citizen and online journalists. The report also noted the significant overlap that can exist between the categories of journalist and human rights advocate.

Report to the Human Rights Council (A/HRC/20/22, 10 April 2012, ¶¶20-27, 30-34, 36, 40, 46-50)

20. Because of the power of information, news and journalism is a heavily contested domain. Journalists are often in a vulnerable position, where their physical integrity and life may be at stake because of the actions of State or non-State actors. They may face attempts at influence or censorship, but also in some cases physical danger, ranging from getting caught in crossfire to threats, attempted or actual assaults, abductions, disappearances, and even death. If journalists are in danger, the media cannot be free.

21. The most extreme form of censorship is to kill a journalist. The killing not only silences the voice of the particular journalist, but also intimidates other journalists and the public in general. The free flow of ideas and information is replaced by the silent warning of the grave.

22. In the present report, the Special Rapporteur examines how legal and other protective measures may be used to protect the right to life of journalists, and those close to them, against actual deprivation of life and assaults on their physical integrity that may endanger life.

23. Freedom of expression, as the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted, is also a collective right held by society as a whole (A/HRC/14/23, paras. 29 and 105). Freedom of expression and the concomitant right to receive information are—meta rights—rights on which the realization of most of other rights depends. They are also the cornerstones of democracy, anticorruption measures, good governance and in general the ability of society to take informed decisions.

24. Journalists deserve special concern not primarily because they perform heroic acts in the face of danger—although that is often the case—but because the social role they play is so important. Just as the shooting of a police officer warrants messages of calling all units, officer down throughout the police force, an attack on a journalist represents an assault on the foundations of the human rights project and on informed society as a whole. Violence against a journalist is not only an attack on one particular victim, but on all members of the society.

25. Within the framework of the mandate, issues regarding assaults on the life of journalists have been addressed in a number of ways.⁸⁵ Noteworthy is that the then Special Rapporteur

⁸⁴ *Editors’ note:* This report was produced in parallel with that of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (A/HRC/20/17, 4 June 2012). In addition to the challenge of impunity for attacks against journalists, Mr La Rue’s report also looked at criminalisation of expression, and particular challenges of safety and protection of journalists online.

⁸⁵ See A/HRC/14/24/Add.3, *supra* note 45, paras. 2 and 92; Report of the Special Rapporteur, Philip Alston, Mission

on extrajudicial, summary or arbitrary executions noted in her 2003 report that journalists are among the persons who receive the most death threats (E/CN.4/2003/3 and Corr.1, para. 54). Journalists have regularly been the subject of communications. Indeed, approximately 8 per cent of the communications sent under the mandate on extrajudicial, summary or arbitrary executions between 2003 and 2011 concerned killings of journalists, or threats to their lives.

26. For the purposes of the present report, a functional approach will be taken in respect of the question of who is to be regarded as a journalist, and hence who deserves special attention. The following definition represents a fairly widely accepted understanding of what this concept entails: The term ‘journalist’ means any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication.⁸⁶ Reporters and photographers and those who directly support their work—stringers and drivers—are potentially vulnerable, and because they fulfil a crucial social function they are deserving of special protection. This includes the new media or citizen and online journalist.⁸⁷

27. Not all journalists focus on human rights—they shine their light on a wide range of issues. Since some journalists are human rights defenders and some human rights defenders are journalists, these two categories are overlapping but not identical.

[...]

30. According to CPJ [Committee to Protect Journalists], as at 28 March, 909 journalists had been killed since 1992. In 566 of these cases there has been total impunity.⁸⁸

31. The 20 deadliest places during that period, according to CPJ, were as follows: Iraq: 151 killings; Philippines: 72; Algeria: 60; Russian Federation: 53; Colombia: 43; Pakistan: 42; Somalia: 39; India: 28; Mexico: 27; Afghanistan: 24; Brazil: 21; Turkey: 20; Bosnia and Herzegovina: 19; Sri Lanka: 19; Rwanda: 17; Tajikistan: 17; Sierra Leone: 16; Bangladesh: 12; Israel and the occupied Palestinian territory: 10; and Nigeria: 10.⁸⁹

32. The causal correlation between impunity and the killing of journalists is evident from the fact that the countries where the highest number of journalists are killed are also, almost without exception, those with the highest level of impunity.⁹⁰ Impunity is a major, if not the main, cause of the high number of journalists killed every year.

to Colombia, A/HRC/14/24/Add.2, 31 March 2010, appendix B, para. 2; Report of the Special Rapporteur, Philip Alston, Mission to the Philippines, A/HRC/8/3/Add.2, 16 April 2008, paras. 38 and 45; Report of the Special Rapporteur, Asma Jahangir, Mission to Jamaica, E/CN.4/2004/7/Add.2 and Corr.1, 26 September 2003, paras. 50-51; Report of the Special Rapporteur, Asma Jahangir, Mission to Turkey, E/CN.4/2002/74/Add.1 and Corr. 1, 18 December 2001, paras. 42 and 56; Report of the Special Rapporteur, Asma Jahangir, Mission to Nepal, E/CN.4/2001/9/Add.2, 9 August 2000, paras. 32 and 73; and Report of the Special Rapporteur, Asma Jahangir, Mission to Mexico, E/CN.4/2000/3/Add.3, 25 November 1999, paras. 70, 81-84 and 107. See also Report of the Special Rapporteur, Philip Alston, Follow-up to country recommendations: Brazil, A/HRC/14/24/Add.4, 28 May 2010, para. 26; Report of the Special Rapporteur, Philip Alston, Follow-up to country recommendations: the Philippines, A/HRC/11/2/Add.8, 29 April 2009, para. 10; and Report of the Special Rapporteur, Philip Alston, Follow-up to country recommendations: Sri Lanka, A/HRC/8/3/Add.3, 14 May 2008, para. 45.

86 Council of Europe, recommendation No. R (2000) 7 of the Committee of Ministers to member States on the right of journalists not to disclose their sources of information, adopted on 8 March 2000.

87 Report of the Special Rapporteur on the right to freedom of opinion and expression, Frank La Rue, A/65/284, 11 August 2010, paras. 61-76.

88 CPJ statistics on the killing of journalists, 1992-2012, available at: www.cpj.org/killed.

89 Ibid.

90 CPJ 2011 Impunity Index, available at: www.cpj.org/reports/2011/06/2011-impunity-index-getting-away-murder.php#index

33. Two thirds of these deaths occur outside armed conflict. About 40 per cent of the journalists killed covered politics; 34 per cent war; 21 per cent corruption; 15 per cent crime; and 15 per cent human rights.⁹¹ The overriding problem is murder, not accidents. Freelance journalists are at a much higher risk than those who work for news agencies.

34. It is clear from these statistics that the most common profile of a journalist who is killed is that of a local as opposed to foreign correspondent, who covers politics or corruption for a newspaper or a radio station. While the plight of the foreign war correspondent attracts the most attention, and is worthy of such concern, special attention should also be paid to the question of how to alter the fate of the local newspaper journalist who drives home after work and is intercepted by two people on a motorbike, one holding a gun. It is a threat to the human rights project as whole when a blogger is tracked and her head is found next to her keyboard with a threatening note.

[...]

36. One of the main changes in the way in which the news is disseminated around the world in recent years has been the emergence of online journalists, both professionals as well as people who are untrained, who use social media. With the spread and increased availability of technology, the pool of who we now consider journalists has expanded rapidly, and so has the number of people who are potential targets of those who want to control the flow of information. In parts of Mexico, for example, the conventional media have for all practical purposes been replaced by new media—and assassins have likewise moved their sights.

[...]

40. There is no specific international treaty dedicated specifically to the protection of journalists from physical attacks. Various parts of the international system collectively play this role.

[...]

(a) United Nations level

46. The Secretary-General has on various occasions condemned the killing of journalists.⁹²

47. In resolutions adopted at its special sessions, the Human Rights Council has condemned the killing of journalists.⁹³ The targeting of journalists in a number of countries, including Somalia, Colombia, Mexico, Honduras and the Philippines, has been addressed under the universal periodic review mechanism.⁹⁴

91 See CPJ statistics, *supra* note 88. Some overlap results in a total of more than 100 per cent.

92 See, among others, Report of the Secretary General on the protection of civilians in armed conflict, S/2007/643, 28 October 2007, paras. 29-30; Report of the Secretary General on the protection of civilians in armed conflict S/2009/277, 29 May 2009, para. 19; Report of the Secretary General on the protection of civilians in armed conflict, S/2010/579, 11 November 2010, para. 16; Report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security, A/56/681-S/2001/1157, 6 December 2001, para. 34; Report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security, A/61/326-S/2006/727, 31 August 2006, para. 44; Report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security, A/62/345-S/2007/555, 21 September 2007, para. 53; see also Report of the Secretary-General on the situation in Afghanistan and its implications for international peace and security, A/63/372-S/2008/617, 10 March 2009, para. 50.

93 Human Rights Council Resolutions 12/16, para. 3; Human Rights Council Resolution S-15/1, para. 3; Human Rights Council Resolution S-16/1, paras. 1-2; Human Rights Council Resolution S-17/1, para. 5; and Human Rights Council Resolution S-18/1, para. 2 (a).

94 See the respective annual reports of the Human Rights Council: A/HRC/18/2 (advance unedited version), paras. 319 and 321 (Somalia); A/HRC/10/29, paras. 651 and 662 (Colombia); A/HRC/11/37, paras. 609 and 616 (Mexico); A/HRC/16/2, paras. 525-526 (Honduras); A/HRC/8/52, paras. 473-474 (Philippines).

48. Different special procedures have also dealt with the safety of journalists. The topic is central to the mandate of the Special Rapporteur on the right to freedom of opinion and expression, and he has submitted a comprehensive report to the General Assembly on the topic (A/65/284, in particular para. 20ff).⁹⁵ The Special Rapporteur on the situation of human rights defenders devoted a section of her 2012 annual report to the Human Rights Council on the action taken by her mandate regarding journalists as human rights defenders (A/HRC/19/55, paras. 29-59).

49. Special procedures have the ability to move fast, have the mandate to cover all countries (not only those that have ratified particular human rights treaties) and do not require the exhaustion of domestic remedies. They often send letters of allegation to States where journalists have been killed, in order to ensure accountability. Of particular importance to the issue of prevention, however, is the fact that they also have the power to send urgent appeals to States where journalists and others are under threat, to urge those States to protect the person in question. It is an important access point that should be used more often. It should be noted that the special procedures may not act merely on the basis of newspaper reports, but have to be approached by an individual, group, non-governmental organization, intergovernmental agency or Government, who must provide information regarding the incident, the victims of the incident, the alleged perpetrators and the source of the allegations.⁹⁶

50. In a welcome development, several special procedures in the global and regional systems have recently made joint declarations condemning the killing of journalists.⁹⁷ The special procedures of the United Nations and the African Union met in Addis Ababa in January 2012 to enhance collaboration between the global and the regional system, which could also lead to more cooperation in respect of journalists in Africa.

The confidential communications procedure is an important tool for the mandate in ensuring the safety of, and promoting accountability for the deaths of, journalists and human rights advocates. The following are examples of some such communications sent by the Special Rapporteurs:

Urgent appeal sent to the Government of Bahrain (10 January 2008) (with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the question of torture 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 information we have received regarding the death of Mr Ali Jassim Meki, human rights defender with close links to the HAQ Movement of Liberties and Democracy, and the arrest and detention of the following eleven human rights defenders: Mr Shaker Mohammed Abdul-Hussein Abdul-Aal, Mr Abdullah Mohsen Abdullah Saleh, Mr Maytham Bader Jassim Al-Sheikh, Mr Majid Salman Ibrahim Al-Haddad,

95 See also previous annual reports: Report of the Special Rapporteur on freedom of opinion and expression, Mr Ambeyi Ligabo, E/CN.4/2003/67, 30 December 2002, paras. 32, 59 and 70-71; Report of the Special Rapporteur on freedom of opinion and expression, Mr Ambeyi Ligabo, E/CN.4/2005/64 and Corr.1, 17 December 2004, paras. 53-54 and 56; Report of the Special Rapporteur on freedom of opinion and expression, Mr Ambeyi Ligabo, E.CN.4/2006/55, 30 December 2005 paras. 59-61, and mission reports: for example, Report of the Special Rapporteur on freedom of opinion and expression, Mr Frank La Rue: Mission to Mexico, A/HRC/17/27/Add.3, 19 May 2011; Report of the Special Rapporteur on freedom of opinion and expression, Mr Ambeyi Ligabo: Mission to Colombia, E/CN.4/2005/64/Add.3, 26 November 2004, para. 94; and Report of the Special Rapporteur on freedom of opinion and expression, Mr Ambeyi Ligabo: Mission to Côte d'Ivoire, E/CN.4/2005/64/Add.2, 1 November 2004, paras. 48-49.

96 See www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx.

97 See for example www.osce.org/fom/41439.

Mr Ahmad Jaffar Mohammed Ali, Mr Hassan Abdalnabi, Mr Nader Ali Ahmad Al-Salatna, Mr Hassan Abdelnabi Hassan, members of the Unemployment Committee, as well as Mr Naji Ali Fateel, member of the Bahrain Youth Society for Human Rights, Mr Mohammed Abdullah Al Sengais, head of the Committee to Combat High Prices, and Mr Ebrahim Mohamed Amin-Al-Arab, founding member of the Martyrs and Victims of Torture Committee. They are reportedly all being detained at the Criminal Investigations Department, (CID) in Adliya. Mr Hassan Abdalnabi was the subject of a joint urgent appeal sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Representative of the Secretary-General on the situation of human rights defenders on 14 December 2005. According to information received:

On 17 December 2007 a demonstration was held in the Sanabis area, organised to commemorate victims of torture in the past. The demonstration was violently dispersed by members of the riot police and of the special security force. Tear gas and rubber bullets were employed by security forces and some participants were beaten.

After the demonstration, Mr Ali Jassim Meki returned to his home, where his condition rapidly deteriorated. He died some hours later on his way to hospital. The autopsy subsequently conducted by government-assigned doctors stated that he had died of natural causes. Mr Ali Jassim Meki's family requested a second opinion of an independent specialist, but was reportedly informed that there was none available in the country.

Following this, and other similar demonstrations, a number of people, including at least the aforementioned eleven human rights defenders, were arrested between 21 and 28 December 2007. All of them have been accused of having taken part in an 'illegal gathering and rioting' and of 'theft of a weapon and ammunition and possession of a weapon and ammunition without permission'. For the first ten days of their detention they were denied access to their lawyers, and interrogations carried out inside the detention chambers and at the Public Prosecutor's office were conducted without the presence of a lawyer. The Public Prosecutor is refusing to pass a copy of the case files, detailing the charges, to a group of lawyers defending the activists.

Some of the human rights defenders have been ill-treated and possibly tortured while in detention. Visitors from human rights organizations have been refused access.

Concern is expressed for the physical and psychological integrity of the abovementioned eleven human rights defenders while in detention. Further concern is expressed that the death of Mr Ali Jassim Meki and the arrest, detention and alleged ill-treatment of the eleven human rights defenders may be directly related to their work in defence of human rights.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

[...]

In this connection, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary

in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- 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.

Urgent appeal sent to the Government of The Gambia (29 September 2009) (with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression)

In this connection, we would like to draw the attention of your Excellency’s Government to information we have received regarding the recent speech of the President of the Gambia, Colonel A.J.J Jammeh, allegedly threatening human rights defenders and anyone who seeks to “destabilise” the country.

According to the information received:

On 21 September 2009, President Jammeh delivered a speech on the state-owned Gambia Radio and Television Services (GRTS), where he allegedly threatened to kill human rights defenders in the Gambia, together with anyone who seeks to “destabilise” the country. Some excerpts of his speech read as follows: “What I want to make very clear to everybody and those so-called human rights campaigners is that I will never allow anyone to destabilise this country. [...] If you think that you can collaborate with so-called human rights defenders, and get away with it, you must be living in a dream world. I will kill you, and nothing will come out of it. If you are affiliated with any human rights group, be rest (sic) assured that your security is not guaranteed by my Government. We are ready to kill saboteurs.”

Deep concern is expressed for the physical and psychological integrity of all human rights defenders in the Gambia, including all personnel and persons working with the African Commission on Human and Peoples’ Rights, which has its headquarters in Banjul, and which will be holding its 46th ordinary session from 11 to 25 November 2009. The content of the speech is of particular concern as it follows a recent case of six journalists who were arrested and sentenced to two years of imprisonment and fined 250,000 Dalasis (US\$10,000) for criticizing

the government regarding the lack of investigation into the murder of journalist Mr. Deydra Hydera, which was the subject of our urgent appeal sent to your Excellency's government on 12 August 2009. While we welcome the fact that the journalists were later released on a presidential pardon, we remain concerned that the right to freedom of opinion and expression is being stifled in the Gambia and that all persons who voice criticism of the government are now exposed to heightened risk to their physical and psychological integrity.

While we do not wish to prejudge the accuracy of these allegations, we would like to stress that each Government has the obligation to protect the right to life, 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 appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression of all persons, including human rights defenders in the Gambia, in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and reiterated in article 19 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

We would further like to reiterate the principle enunciated in Resolution 2005/38 of the Commission on Human Rights, which, while noting that article 19, paragraph 3, of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, calls on States to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Furthermore, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, and in particular 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 this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Moreover, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all

conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.
- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.
- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 13 (b) and (c) which stipulate that everyone has the right, individually and in association with others, to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights and fundamental freedom, through peaceful means.

We would like to urge your Excellency’s Government to take all necessary steps to protect the life, physical and psychological integrity of all Gambian human rights defenders as well as all personnel and persons working with the African Commission on Human and Peoples’ rights. We would welcome any clarification on this issue and we trust that your Excellency’s Government will reaffirm its position to protect and promote fundamental rights and freedoms for all and the essential role human rights defenders play in this regard.

In the course of their work, journalists often enter conflict zones and may face insecurity and violence. As Special Rapporteur Heyns explained in his 2012 report to the Council, “journalists who are members of the armed forces are subject to targeting on the same basis as other soldiers or fighters. However, journalists who are not members of the armed forces are protected on the same basis as civilians and may not be deliberately targeted.”⁹⁸

The following 2005 exchange between Special Rapporteur Alston and the United States concerning the killing of an Iraqi reporter by a United States military sniper highlights the dangers faced by journalists in war zones.

Allegation letter sent to the Government of the United States (16 September 2005) (with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression)

In this connection, we should like to bring to your Government’s attention – as well as to the attention of the Government of Iraq, which we are addressing in this matter as well – information we have received concerning the fatal shooting of Waleed Khaled, a 24-year old TV soundman working for Reuters, based in Samawa.

98 Report of the Special Rapporteur, Christof Heyns, A/HRC/20/22, 10 April 2012, para. 66 (citations omitted).

According to information received, on 28 August 2005 a Reuters TV crew consisting of Waleed Khaled and the cameraman Haider Khadem went to the site of a terrorist attack that had resulted in the death of two Iraqi policemen in the Hay-al-Adil district of West Baghdad. Upon arrival at the scene, a United States military sniper standing on the roof of a shopping centre opened fire on him, hitting him fatally once in the head and four times in the chest. Mr. Khadem was slightly wounded and immediately arrested by U.S. forces. A U.S. military statement said that “U.S. Task Force Baghdad units responded to a terrorist attack on an Iraqi Police convoy. (...) One civilian was killed and another was wounded by small-arms fire during the attack.”

Without in any way implying any determination on the facts and circumstances of this case, we would like to refer Your Excellency’s Government to the fundamental principles applicable to such an incident under international law. Article 6 of the International Covenant on Civil and Political Rights provides that no one shall be arbitrarily deprived of his or her life. As the Human Rights Committee has clarified, “arbitrarily” means in a manner “disproportionate to the requirements of law enforcement in the circumstances of the case” (Views of the Committee in the case *Suárez de Guerrero v. Colombia*, Communication no. 45/1979, § 13.3). In order to assess whether the use of lethal force was proportionate to the requirements of law enforcement, there must be a “thorough, prompt and impartial investigation” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was recently reiterated by the 61st Commission on Human Rights in Resolution 2005/34 on “Extrajudicial, summary or arbitrary executions” (OP 4), stating that all States have “the obligation ... to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

In Resolution 2005/38 the Commission on Human Rights restated this principle with specific regard to acts of violence against journalists, calling on States to investigate such acts and to bring those responsible to justice, and adding explicitly that the principle applied also in situations of armed conflict. Respect of the outlined norms of international law is crucial not only in order to protect the right to life of journalists, but also to ensure respect for the right to freedom of opinion and expression, as set forth in article 19 of the Universal Declaration of Human Rights and reiterated in article 19 of the International Covenant on Civil and Political Rights.

Response from the Government of the United States of America (14 July 2008)

This letter responds to Mr. Ligabo and Mr. Alston’s communication of September 16, 2005, concerning circumstances surrounding the death of Waleed Khaled. We sincerely apologise for the long delay in responding to your inquiry, due in part to unexpected delays in researching the facts of this case and the need for careful coordination among all government agencies with responsibility for the subject of the inquiry. As an initial comment, we note that your request for information cited the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights (ICCPR). The United States has long taken the position that the ICCPR does not apply extraterritorially. In Iraq, U.S. forces are operating as part of the Multi-National Forces under a UN Security Council Chapter VII mandate. Furthermore, the circumstances of this incident did not involve, as your letter suggests, a law enforcement operation. Nonetheless, the U.S. Government is pleased to provide this response as a courtesy.

On August 28, 2005, Waleed Khaled, a reporter from Reuters news agency, and his cameraman, Haider Khadem, were reporting on an attack against an Iraqi police envoy in the Hay-al-Adil district of west Baghdad. U.S. military units were dispatched to Hay-al-Adil in response to the attacks against the Iraqi police, Emd, as described below, fired at the reporters car, killing Mr. Kahled and wounding the cameraman, Mr. Khadem.

The U.S. Government conducted a comprehensive investigation into the shooting of Mr. Khaled and concluded that no disciplinary action against military personnel was required. The U.S. Government (Army) investigation determined that the shooting followed. The applicable rules of engagement, under which military personnel are authorised to use force if they feel someone poses an immediate threat or threatens the integrity of the operation. The investigation indicated that Mr. Khaled failed to use appropriate precaution upon entering a hostile environment; the investigation found that Mr. Khadem was hanging out of the car window, holding what appeared to be a potential explosive device or a rocket-propelled grenade launcher.

The investigation later confirmed that this piece of equipment, which U.S. forces believed at the time to be a deadly weapon, was the video camera Mr. Khadem used to investigate the original attacks against the Iraqi police. The military officers perceived the failure of Misters Khaled and Khadem to slow their vehicle down as a potential threat, because of previous experiences by military personnel with suicide car bombers. Under these circumstances, U.S. military personnel used force against what appeared to be an immediate threat to their unit and civilian and military personnel nearby.

The U.S. military rules of engagement promote the physical protection of journalists, as well as of other civilians. The U.S. Government strongly supports freedom of the press and freedom of opinion, and tries to equip journalists with the tools and protection that will allow them to conduct their jobs in a safe and effective manner. Specifically, the U.S. military guidelines and protocols detail how journalists should conduct themselves when reporting from a conflict area. The codes of conduct and procedures pertaining to the proper conduct and engagement by journalists operating in hostile areas are put in place for the safety of the journalists. The responsibility to abide by these rules, however, ultimately rests with the journalists, who must exercise discretion and caution in dangerous situations.

The U.S. Government deeply regrets the loss of life and fully recognises the important role played by the news media in Iraq and other hostile environments.

In 2013, Special Rapporteur Heyns reported to the Council, after a mission to India, that violence against human rights advocates and journalists was on the rise in India.

Report on Mission to India (A/HRC/23/47/Add.1, 26 April 2013, ¶¶81-84)

81. Human rights defenders are increasingly targeted by both State and non-State actors. Especially vulnerable are RTI [right to information] activists, those exposing mining corruption, environmental and poverty issues, land rights of marginalised communities, and accountability concerns.

82. While the adoption of the RTI Act in 2005, aiming at ensuring access to information and transparency on violations of human rights, is a welcome measure, it is alarming that those who lodge requests for information are often targeted for doing precisely that and are sometimes killed. According to information received from non-governmental sources, it is estimated that 12 RTI activists were killed in 2010 and 2011.⁹⁹ For instance, on 20 July 2010, Mr. Amit Jethwa, an RTI activist, was killed by unidentified assailants near the Gujarat High Court, due to his exposing political involvement in illegal mining activities.

⁹⁹ Asian Centre for Human Rights, "RTI activists", *The Quarterly Journal of Asian Centre for Human Rights*, January-June 2011, Issue 3 & 4, p. 1.

83. Human rights defenders and journalists regularly are victims of violence between armed groups and Governmental forces, in a context where both sides suspect human rights defenders and journalists of supporting the other side.

84. The Government has attempted to address the concerns related to the protection of human rights defenders, including through its invitation to the United Nations Special Rapporteur on the situation of human rights defenders in 2011. Her 2012 report to the Human Rights Council¹⁰⁰ provided a range of recommendations which could assist in curbing violence against human rights defenders. The Government is therefore invited to make a concerted effort to implement these recommendations.

In 2013, Special Rapporteur Heyns reported on the murder of Armenian journalist Hrant Dink, which was also the subject of European Court of Human Rights litigation.

Report on Mission to Turkey (A/HRC/23/47/Add.2, 18 March 2013, ¶¶51-52)

51. The Special Rapporteur received information on the risks faced by journalists in the performance of their activities. Journalists are often targets of death threats as a consequence of their work. The investigation process into the death threats and killings of journalists suffer from the same challenges of delayed and ineffective investigation.

52. The case of the murder of the Armenian journalist Hrant Dink, killed in January 2007, is a prominent example. Reports indicate that the murder could have been prevented had the security forces acted diligently. In this regard, the ECtHR held that the Turkish State had failed to protect the life of Hrant Dink.¹⁰¹ With regard to accountability, the court case ended on 17 January 2012, and resulted in the conviction of one person for incitement to murder; and the acquittal of the other defendants. The Special Rapporteur takes note of the information that, following an inquiry by the Presidential State Inspection Board, the family of Hrant Dink requested a new investigation into the possible involvement of various law enforcement officers. He hopes that a prompt, impartial and thorough judicial process will be ensured on this case. He also stresses the importance of ensuring accountability of all involved in death threats and killings of journalists.

In his country report on Mexico, Special Rapporteur Heyns illustrated some of the causes of killings of journalists and human rights advocates, and the effects such killings have on other rights and the availability of information to ensure that the public is informed of matters of importance and able to participate in public debate.

Report on Mission to Mexico (A/HRC/26/36/Add.1, 28 April 2014, ¶¶75-78)

75. Journalists and human rights defenders are key actors for a democratic society. During the course of his visit, the Special Rapporteur received information indicating that an alarming number of these individuals receive threats and are deprived of their lives. According to the CNDH [National Human Rights Commission], 83 journalists have been killed since 2000.[¶] Journalists who report on crime and public officials appear to be at greatest risk. CNDH reports that since 2005, 18 human rights defenders have been killed and many more have faced death threats.

76. Several interlocutors indicated that many of the attacks against journalists and advocates are carried out by authorities. In the city of Chihuahua, the Special Rapporteur was presented with the case of human rights defender, Marisela Escobedo, who was murdered in December 2010 outside

100 Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Mission to India, A/HRC/19/55/Add.1, 6 February 2012.

101 See *Dink v. Turkey*, ECtHR Chamber Judgement of 14 September 2010.

the state offices while demanding justice for the femicide of her daughter. In this regard, the Special Rapporteur stresses the importance of ensuring effective protection measures, through judicial or other means, for individuals and groups in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.¹⁰²

77. The Special Rapporteur takes note with appreciation of the adoption of the Act on the Protection of Human Rights Defenders and Journalists,¹⁰³ the creation of an office of the special prosecutor for offences committed against freedom of expression; and the constitutional and legal reforms that enable federal authorities to investigate, prosecute and judge crimes against journalists specifically. Yet despite these positive institutional steps, the Special Rapporteur was informed that these developments have yet to be sufficiently implemented in practice.

78. Because of the threat of targeting and reprisals, many journalists and human rights defenders continue to self-censor, leading to further impunity and lack of public information. Precautionary measures granted to journalists and human rights defenders are often subject to delay, very limited and not adapted to the particular risks they continue to face. The full participation of journalists and human rights defenders in the mechanism created by the Act on the Protection of Human Rights Defenders and Journalists and in the elaboration of their own risk assessment and formulation of precautionary measures should be ensured.¹⁰⁴

In his 2012 thematic report on the protection of journalists, Special Rapporteur Heyns surveyed some of the international and non-governmental responses to journalists in danger.

Report to the Human Rights Council (A/HRC/20/22, 10 April 2012, ¶¶78-91)

78. There are also avenues outside the realm of the legal and intergovernmental structures outlined above, and ways of engaging with them, that can serve to protect journalists.

79. As the overview above demonstrates, there are no obvious gaps in the international framework for the protection of journalists. The main problem lies with the implementation of these norms and the creation of appropriate structures at the national level. Failure of implementation can be attributed partially to ignorance, but also to a lack of political will, requiring awareness-raising on the problem and the applicable norms. The general principle is that the issue must be elevated from the local level to a higher level.

80. It is therefore important to ensure that governmental and civil society structures keep the issue on their agendas, and to focus attention on specific incidences of killings, to emphasise the human aspect of the problem.

81. There are a number of international NGOs worldwide that focus on the issue of protecting journalists and elevate it to a level where it attracts international attention. These include, *inter alia*, CPJ [Committee to Protect Journalists], IFJ [International Federation of Journalists], INSI [International News Safety Institute], RWB [Reporters Without Borders] and the Press Emblem Campaign¹⁰⁵. Others have a broader focus, such as freedom of expression in general, but also include the safety of journalists in their work, for example Article 19.¹⁰⁶ Similar work is done by local organizations, such as, for example in the Russian Federation, the Russian Union of Journalists,¹⁰⁷

102 Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, para. 4.

103 Published in the Official Gazette on 25 June 2012.

104 See www.scribd.com/document/105228482/Freedom-House-Estudio-proteccion-Legal-de-periodistas-en-Mexico.

105 See www.presseblem.ch.

106 See www.article19.org.

107 See www.ruju.ru (Russian only).

the Glasnost Defence Foundation¹⁰⁸ and the Centre for Journalism in Extreme Situations.¹⁰⁹ (a) Safety codes

82. A wide array of safety codes have been developed, which enable journalists to protect themselves. This includes the INSI safety code of 2007¹¹⁰ and the RWB Charter for the Safety of Journalists Working in War Zones or Dangerous Areas of 2002.¹¹¹

(b) Training

83. Some news organizations and NGOs, for example IFJ, INSI and Article 19, provide journalists with safety training, which includes risk awareness and avoidance and first aid. The Rory Peck Trust funds such training.

84. The International Committee of the Red Cross (ICRC) provides first-aid courses for journalists in cooperation with national Red Cross and Red Crescent Societies, and also training on international humanitarian law. ICRC is currently developing a new tool on the training of journalists. Pilot courses are being implemented in Tunisia.

85. The Green Book issued by the Ministry of Defence of the United Kingdom provides a positive example by providing clear instructions on how military staff must treat media workers in the field.

(c) Diplomatic channels

86. Governments can use diplomatic channels and diplomatic protection to address the plight of their nationals in other countries.

(d) Emergency helplines and contacts

87. Both RWB and INSI have established 24-hour emergency contact points for journalists in trouble. ICRC provides a permanent hotline and e-mail contact to report a missing, wounded, or detained journalist and request assistance.

(e) Support for journalists at risk or in hiding

88. Colombia has initiated, with some success, a programme for the protection of those at risk, including journalists.¹¹² The Government of Sweden, within the context of its Special Initiative for Democratization and Freedom of Expression, funded a safe house for journalists in Kalmar, Sweden.

89. One of the high-profile activities of CPJ is its support for journalists forced to go into hiding.¹¹³

90. ICRC plays an ongoing role, for example in tracking missing journalists and evacuating wounded journalists.

91. Further support that some journalists receive from NGOs, employers or others includes loans of equipment, evacuation, medical care, counselling and support for families.

108 See www.gdf.ru (Russian only).

109 See <http://cjes.org/about/?lang=eng>.

110 See <https://newssafety.org/about-insi/insi-safety-code/>.

111 See https://d3n8a8pro7vhmx.cloudfront.net/cjfe/pages/1479/attachments/original/1439686829/charter_en.pdf?1439686829.

112 See CPJ, 'Attacks on the press 2002: Colombia', available from <http://cpj.org/2003/03/attacks-onthe-press-2002-colombia.php>.

113 See <http://cpj.org/campaigns/assistance/what-we-do.php>.

In a 2012 follow-up report to a mission to the Democratic Republic of the Congo, the Special Rapporteur commended a national draft law to protect human rights defenders and journalists:

*Follow-up to Country Recommendations: Democratic Republic of the Congo
(A/HRC/20/22/Add.1, 16 April 2012, ¶50)*

50. The most emblematic case is the murder during the night of 1 to 2 June 2010, in Kinshasa, of Floribert Chebeya, executive-secretary of the Réseau national des ONG des droits de l'homme de la République démocratique du Congo and president of the Congolese NGO Voix des Sans-Voix pour les droits de l'homme, and his driver, Fidèle Bazana, whose body has not yet been found. The Special Rapporteur is aware of the investigations and trial launched in this case and will address this aspect in chapter VIII below.

51. The Special Rapporteur expresses his concern at the current level of attacks against human rights defenders and journalists, and urges the Congolese authorities to ensure protection of the right to life of these professionals. He takes note of the recent initiatives of the Government to create a legislative and institutional framework to achieve this goal, such as the introduction of a draft law in the Parliament on the protection of human rights activists in May 2011, and the adoption of the Ministerial Decision from June 2011 to establish a protection cell for human rights defenders within the Ministry of Justice and Human Rights. These mechanisms should be implemented swiftly and become effectively functional as soon as possible.

After his 2016 mission to Honduras, Special Rapporteur Heyns highlighted a new piece of legislation that was designed to offer protection for those working in journalism, advocacy, or the justice system:

Report on Mission to Honduras (A/HRC/35/23/Add.1, 11 April 2017, ¶¶100-101)

100. In April 2015, the National Congress adopted the Law on the Protection of Human Rights Defenders, Journalists, Media Workers and Justice Operators to respond to the high levels of violence they endured. The Law established a national protection system aimed at ensuring multisectoral coordination for its enforcement. It provided for the creation of the advisory National Council for the Protection of Human Rights Defenders and a General Directorate, which was given an executive role and mandate to process protection requests from victims, provisional and precautionary measures from the Inter-American System for the protection of human rights, as well as security measures adopted by national courts. It also established a technical committee to conduct risk analyses and adjudicate on protection requests submitted to the General Directorate. In addition, it granted powers to several State institutions to provide protection measures to rights-defenders at risk. In total, 10 million lempiras (\$440,140) was allocated to the mechanism.⁷⁶ The National Council assesses particular cases of persons at risk. In 2016, it approved a protocol for the transfer of precautionary and provisional measures of the Inter-American System, comprising a series of operating manuals and a methodology for analysing risk. A regulation of the Law was approved in August 2016 by Executive Agreement No. 59-2016.

101. The adoption of the Law and the establishment of the protection mechanism are very much welcomed but must be accompanied by the necessary resources and political will needed for their effective implementation.

In the same report on Honduras, Special Rapporteur Heyns reported that the precautionary measures granted by regional mechanisms¹¹⁴ were having little effect in ensuring the safety of beneficiaries:

¹¹⁴ Under the Inter-American system, the Inter-American Commission on Human Rights may, on its own initiative or at the request of a party, “request that a State adopt precautionary measures. Such measures, whether related to a petition or not, shall concern serious and urgent situations presenting a risk of irreparable harm to persons or to

Report on Mission to Honduras (A/HRC/35/23/Add.1, 11 April 2017, ¶34)

34. From 2006 to 2015, the Inter-American Commission on Human Rights granted 49 precautionary measures for persons at imminent risk in Honduras. Beneficiaries between 2009 and 2015 included 34 per cent of peasants, 17 per cent of journalists, 14 per cent of indigenous persons, 7 per cent of environmental rights defenders and 6 per cent of lesbian, gay, bisexual and transgender persons. According to a study conducted in 2016 by civil society organizations, 99 per cent of beneficiaries considered that those measures had not granted them security because the protection mechanisms offered by the government had been inadequate or ineffectively implemented.

6. Members of the legal profession

Members of the legal profession, including lawyers and members of the judiciary, can sometimes face particular threats as a result of their work. Special Rapporteur Alston made recommendations about this phenomenon as part of a set of general observations about impunity in Colombia:

*Report on Mission to Colombia (A/HRC/14/24/Add.2, 31 March 2010, ¶¶103-5)**Killings of and threats against vulnerable groups and State officials*

103. The Government should ensure that full and impartial criminal investigations into killings and death threats against human rights defenders, including trade unionists and minority group members, are conducted as a priority. Within three months of the publication of this report, the Government should report on the steps being taken and resources devoted to such investigations and prosecutions.

104. The Government should immediately issue instructions to Government officials at all levels to cease making statements or engaging in acts of intimidation of human rights defenders, members of the judiciary, the Fiscalía and the Procuraduría, and personeros. The text of these instructions should be made public. They should specifically prohibit Government officials and State forces from calling into question the legitimacy of the work done by each of the foregoing groups or equating the work of any group or member with the strategy or tactics of guerrillas or other illegal groups.

105. The Government should ensure that independent investigations take place to determine responsibility and, if appropriate, prosecution for the statements or acts of intimidation and harassment. Within three months of the publication of this report, the Government should report publicly on the steps it is taking to prevent and, if appropriate, prosecute any statements or acts of intimidation and harassment.

In 2017, in his report to the Human Rights Council, Special Rapporteur Heyns reported on the dangers faced by lawyers and judicial officers in Honduras:

Report on Mission to Honduras (A/HRC/35/23/Add.1, 11 April 2017, ¶¶48-51)

48. Justice operators, comprising lawyers and members of the judiciary, are frequently threatened, attacked or killed as a result of their profession. The Observatory on Violence registered 115 homicides between January 2009 and December 2015. Killings are mainly concentrated in the

subject matter of a pending petition or case before the organs of the inter-American system.” The measures may be of a collective nature to prevent irreparable harm to persons due to their association with an organization, a group, or a community with identified or identifiable members. See, “About Precautionary Measures,” available at: <http://www.oas.org/en/iachr/decisions/about-precautionary.asp>.

Central District and San Pedro Sula (66 per cent). In 67.8 per cent of cases, killings are attributable to organised crime or hitmen.¹¹⁵

49. Five prosecutors were killed between 2009 and 2015:¹¹⁶ the Chief of the Directorate for Combating Drug Trafficking; the Chief Prosecutor of the Anti-Money Laundering Unit;¹¹⁷ a leading criminal investigator on car thefts;¹¹⁸ the Coordinator of the Office of the Special Prosecutor for Crimes against Life; and the Special Prosecutor for environmental protection.¹¹⁹ The Government reported that one of the murders had been prosecuted, while investigations continued regarding the masterminds of the crimes. Twelve judges were killed in the same period.¹²⁰

50. Attacks and impunity for these crimes have a chilling effect on members of the judiciary, who will be less likely to investigate and adjudicate politically sensitive cases owing to fear of retaliation, thus reproducing existing impunity patterns, sanctioning future crimes and reducing further public trust in the judicial system.

51. In total, 96 lawyers were killed between 2009 and 2015.¹²¹ The Government noted that several criminal cases had been opened, while other reports indicated that, of the 53 homicides registered between 2010 and 2012, more than 95 per cent had gone unpunished.¹²² As lawyers play an important role in defending human rights and strengthening the rule of law, impunity thrives when they are persecuted as a result of their profession.

Special Rapporteur Heyns joined a number of other Special Rapporteurs in 2016 in calling on the Government of Turkey to respect the rights of members of judiciary in the government's response to an attempted military coup:

Press Release by the Special Rapporteur responding to the Turkish Government's crackdown following an attempted coup (19 July 2016) (with the Special Rapporteurs on the independence of judges and lawyers, on torture and other cruel, inhuman or degrading treatment or punishment, and on the promotion and protection of the right to freedom of opinion, and with the Chair-Rapporteur of the UN Working Group on Arbitrary Detention)

UN experts urge Turkey to respect the independence of the judiciary and uphold the rule of law

GENEVA (19 July 2016) – “In times of crisis, respect for human rights and fundamental freedoms is more essential than ever,” today said a group of United Nations experts^[1] calling on the Turkish Government to abide by its international human rights obligations when dealing with the aftermath of the military coup attempt.

115 Observatory on Violence, *Special Bulletin No. 45* (January 2016), pp. 1-2 available at: www.iudpas.org/pdf/Boletines/Especiales/BEP_Ed45.pdf.

116 Ibid, p. 3.

117 See ‘Honduras’ Top Anti-Money Laundering Prosecutor Murdered’, Insight Crime, 19 April 2013, available at: www.insightcrime.org/news-briefs/honduras-top-anti-money-laundering-prosecutor-murdered.

118 See ‘Inside San Pedro Sula – the most violent city in the world’ *Guardian* 15 May 2013, available at: www.theguardian.com/world/2013/may/15/san-pedro-sula-honduras-most-violent.

119 See ‘CEJIL condena los nuevos asesinatos de fiscales en Honduras’, 24 October 2014, available at: www.cejil.org/es/cejil-condena-nuevos-asesinatos-fiscales-honduras.

120 See *Special Bulletin No. 45*, *supra* note 115, p. 3.

121 Ibid.

122 See PEN International *Journalism in the Shadow of Impunity*, (London, 2014), p. 29.

“Constitutional order will only be fully re-established if the separation of powers and the rule of law are upheld,” stated the UN experts, while condemning in the strongest terms the recent events in which over 230 people have reportedly lost their lives.

Within hours of the failed coup attempt, the Turkish High Council for Judges and Prosecutors suspended a reported 2,745 judges and prosecutors of their functions. Hundreds of arrest warrants have allegedly been issued, resulting so far in the arrest of possibly up to 755 judges and prosecutors, including two judges of the Constitutional Court.

“We are particularly alarmed at the sheer number of judges and prosecutors who have reportedly been suspended and arrested since Saturday,” the experts stressed. “According to international law, judges can be suspended or removed only on serious grounds of misconduct or incompetence after fair proceedings.”

“We call on the authorities to release and reinstate these judges and prosecutors until credible allegations of wrong doing are properly investigated and evidenced. Any sanctions taken must be in line with international standards on judicial independence,” the experts added.

The human rights experts also drew attention to the number of arrests carried out to date –some 7,500 according to official sources. “We call on the Turkish Government to fully respect the rights of the detainees, in particular their right to be presumed innocent until proven guilty and to have effective access to a lawyer of their choice,” they said. “Their physical integrity while in detention should also be ensured.”

“No sustainable end to this crisis will be achieved if journalists or other critical voices in politics or civil society are harassed or silenced by authorities or any other group,” continued the experts, while recalling the importance of guaranteeing public freedoms during these critical days.

“We also urge the Turkish authorities to investigate independently and thoroughly all deaths related to this event, and to prosecute the perpetrators in full compliance with guarantees of due process and fair trial,” they added.

The UN human rights experts also expressed serious concerns regarding calls to re-introduce the capital punishment abolished in 2004. “Re-introducing the death penalty is not legally permissible under the International Covenant on Civil and Political Rights or the European Convention on Human Rights and runs counter to the worldwide trend to abolish this form of punishment,” the independent experts cautioned.