

Alston and Heyns on
**UNLAWFUL
KILLINGS**

A Compendium of the Jurisprudence of the
United Nations Special Rapporteurs on
extrajudicial, summary or arbitrary executions
from 2004-2016

edited by

Philip Alston, Christof Heyns, Sarah Knuckey, and Thomas Probert

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**ALSTON AND HEYNS ON UNLAWFUL KILLINGS
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SUMMARY OR ARBITRARY EXECUTIONS FROM 2004-2016**

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About this book

This book provides a detailed overview of the law and policy related to unlawful killings and the right to life. It is organized into the key thematic issues and types of killings that arose during the mandate of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions between 2004-2016. Each chapter contains an introductory overview and selected extracts from UN Special Rapporteur reports to the United Nations General Assembly and the Human Rights Council and other normative work, and covers the applicable international law, policy considerations, and common fact scenarios.

Philip Alston held the mandate of United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions between 2004 and 2010; Christof Heyns did so from 2010 to 2016. This book was created to provide easy access to the work of the Special Rapporteurs, and to be a useful guide for those studying and working to promote respect for human rights. The book was edited by the two rapporteurs, together with their main advisors during their tenure as mandate holders, Sarah Knuckey and Thomas Probert.

The main text of reports, communications, and other work product of the mandate has not been retrospectively edited, however the footnotes have been re-numbered and lightly-edited for ease of use.

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FOREWORD

This *Compendium* is being published almost forty years after the United Nations first appointed a Special Rapporteur for dealing with what might, in common parlance, be called unlawful killings. In its current formulation the official mandate, dating from a 1982 resolution of the UN Commission on Human Rights, covers extrajudicial, summary or arbitrary executions, and in the early years of the mandate's existence a lot of effort went into defining the various terms. Even today, the range of practices falling within the scope of the overall mandate as well as the applicable normative frameworks continue to be debated. But over the past four decades a great deal of attention has been given, at both the domestic and international levels, to developing a comprehensive, coherent, and compelling jurisprudence around unlawful killings in general. As a result, endeavours to characterise killings in terms of any of the three different categories have become much less important than the overall interpretative practice that has evolved as a result of the interplay between the Special Rapporteurs, governments, courts, other human rights bodies, civil society and other actors on violations of the right to life.

Between 2004 and 2016 the two of us, in our roles as successive holders of the mandate of UN Special Rapporteur on extrajudicial, summary or arbitrary executions, placed a particular emphasis on developing an understanding of the normative aspects of the mandate. During the twelve years of our successive mandates, emphasis was placed on developing the jurisprudential analysis through the reports on country visits and in the communications letters sent to governments alleging violations, in addition to the thematic reports. For a range of reasons, this was a period in which an array of relatively novel issues were tackled and careful attention needed to be paid to providing in-depth legal analysis to support the views expressed. Our predecessors – Special Rapporteurs Amos Wako (1982-1992), Bacre Waly Ndiaye (1992-1998), and Asma Jahangir (1998-2004) – were deeply involved in winning acceptance for the mandate's procedures and in establishing the place of the mandate within the overall UN human rights system. Their important contributions to reporting on current developments and to setting out and developing the international law set the foundations for the mandate, and are reflected in the extensive citations to their work in this *Compendium*.

This *Compendium* brings together, in an accessible and systematic format, the main results of our efforts to develop the part of international human rights law that seeks to regulate the ways in which lethal and potentially lethal force may be used, the positive obligations on governments to respect, protect, and fulfil the right to life, and to spell out the obligations of governments and other actors when killings of any sort occur.

In the course of our mandates, we worked closely with a range of colleagues and advisers, both from the UN Office of the High Commissioner for Human Rights and from our respective institutional bases at the Center for Human Rights and Global Justice at New York University School of Law and the Centre for Human Rights at the University of Pretoria. We are particularly indebted to Sarah Knuckey, now the Lief Cabraser Clinical Professor of Law at Columbia Law School, and Thomas Probert, now Head of Research for the Freedom from Violence project at the Centre for Human Rights, both of whom were especially instrumental in much of the work that we undertook during this period and in bringing this book together. In addition, Philip Alston would like to acknowledge the exceptional contribution made to the work of the mandate by William Abresch and Hina Shamsi, and the important research by others including Jason Morgan-Foster and Jonathan Horowitz. Christof Heyns would like to recognise the sterling work done by his research assistants including Gus Waschefort, Romi Brammer, Tess Borden, and Thompson Chengeta.

He is indebted to the expertise shared on a constant basis by colleague Stuart Maslen. Both would like to express gratitude for the first-class support provided to their mandates by the various staff members at the Office of the High Commissioner for Human Rights, including Cecile Aptel, Orest Nowosad, Ulrich Garms, Eric Mongelard, Neal Gilmore, Lydie Ventre, Ugo Cedrangolo, Brenda Vukovic, Irina Tabirta, Alice Viviane Mauske, and Vanessa Asensio Perez, among others.

Philip Alston

UN Special Rapporteur on extrajudicial,
summary or arbitrary executions
2004-2010

Christof Heyns

UN Special Rapporteur on extrajudicial,
summary or arbitrary executions
2010-2016

ABOUT THE EDITORS

Philip Alston is John Norton Pomeroy Professor of Law at New York University School of Law. He was the UN Human Rights Council's Special Rapporteur on extreme poverty and human rights (2014-2020) and Rapporteur (1987-1990) and Chairperson (1991-1998) of the UN Committee on Economic, Social and Cultural Rights.

Christof Heyns is professor of human rights law at the University of Pretoria. He also teaches at Oxford University and the Geneva Academy of International Humanitarian Law and Human Rights. Heyns served as a member of the United Nations Human Rights Committee from 2017-2020. He is a member of the Working Group on Death Penalty, Extra-Judicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa of the African Commission on Human and Peoples' Rights. During 2016, he chaired the UN Independent Investigation on Burundi.

Sarah Knuckey is the Lief Cabraser Clinical Professor of Law at Columbia Law School, the Director of the Human Rights Clinic, and Faculty Co-Director of the Human Rights Institute. She was an advisor to the UN Special Rapporteur on extrajudicial executions from 2007-2016, and was the Chair of the Legal Working Group for the Drafting of the Revised Minnesota Protocol on the Investigation of Potentially Unlawful Death. She previously directed the Project on Extrajudicial Executions and the Initiative on Human Rights Fact-Finding at the Center for Human Rights and Global Justice at NYU School of Law. She has been appointed an expert to *Le Tribunal de Grande Instance de Bossembélé* (Central African Republic) and to the Office of the Prosecutor of the International Criminal Court. She has investigated and reported on human rights violations around the world, and is a co-founder of the Human Rights Methodology Lab.

Thomas Probert is an Extraordinary Lecturer at the Centre for Human Rights, University of Pretoria, where he is Head of Research for the international research collaboration 'Freedom from Violence in Africa'. From 2013 to 2016 he was a Research Consultant to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, partly based in the Office of the High Commissioner for Human Rights in Geneva. He is also a Research Associate of the Centre of Governance and Human Rights at the University of Cambridge.

ABOUT THE MANDATE

The human rights mechanisms of the United Nations can broadly be divided into two categories: those created under the UN Charter, and those based on specific treaties. The mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions is a Charter-based mechanism.

The mandate is one of the Special Procedures established by the Human Rights Council to provide it with advice and inputs that are both expert and independent. The Council (which replaced the Commission on Human Rights in 2006) is a subsidiary of the General Assembly. Each one of the more than 40 'thematic' Special Procedures focuses on a particular human right or issue. The holders of these mandates serve in effect as special advisors to the UN on the relevant thematic issue. They serve for three-year terms (renewable once). They are not remunerated and thus mostly serve on a part-time basis.

The official title of the mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions evolved over the years. The position was originally established in 1982, and has been held by the following individuals:

- Amos Wako (1982-1992)
- Bacre Waly Ndiaye (1992-1998)
- Asma Jahangir (1998-2004)
- Philip Alston (2004-2010)
- Christof Heyns (2010-2016)
- Agnès Callamard (2016-)

As will be discussed further in Chapter 2, the Special Rapporteur relies on various working methods, including presenting periodic thematic reports (to the Human Rights Council in Geneva and to the General Assembly in New York), undertaking country visits, and engaging in communications with States about specific allegations of violations or thematic concerns.

During the period covered by this *Compendium*, the Special Rapporteurs visited and wrote reports concerning the following countries: Nigeria (June-July 2005), Sri Lanka (November-December 2005), Guatemala (August 2006), Israel and Lebanon (September 2006, joint mission), the Philippines (February 2007), Brazil (November 2007), the Central African Republic (January-February 2008), the United States of America (June 2008), Afghanistan (May 2008), Kenya (February 2009), Colombia (June 2009), the Democratic Republic of the Congo (October 2009), Albania (February 2010), Ecuador (June 2010), India (March 2012), Turkey (November 2012), Mexico (April – May 2013); Papua New Guinea (March 2014); The Gambia (November 2014), Ukraine (September 2015), and Honduras (May 2016). Special Rapporteur Heyns also served as Chair of the Independent Investigation on Burundi, for which purpose he visited Burundi twice.

During the same period, the Special Rapporteurs presented thematic reports on the following topics (those with "HRC" or "CN.4" in the symbol number were presented to the Human Rights Council, or to the Commission on Human Rights; the others were presented to the General Assembly):

- 2005 – Genocide and crimes against humanity; armed conflict; capital punishment; non-state actors (E/CN.4/2005/7)
- 2006 – Transparency and the imposition of the death penalty (E/CN.4/2006/53)
- 2006 – Legal framework for accountability (A/61/311)
- 2007 – The mandate in armed conflict; mercy killings; "most serious crimes"; mandatory death sentences (A/HRC/4/20)
- 2007 – Counter-terrorism tactics; IDPs; armed groups; and working methods (A/62/265)

- 2008 – The role of national commissions of inquiry; right to seek pardon or commutation of a death sentence; and prisoners running prisons (A/HRC/8/3)
- 2008 – Witness protection programmes; issues of military justice (A/63/313)
- 2009 – Reprisals; the execution of juveniles; killing of witches; and policing public assemblies (A/HRC/11/2)
- 2009 – Vigilante killings and mob justice (A/64/187)
- 2010 – Overview of developments over the past six years (A/HRC/14/24)
- 2010 – Report on targeted killings (A/HRC/14/24/Add.6)
- 2010 – Report on election-related violence and killings (A/HRC/14/24/Add.7)
- 2010 – Report on police oversight mechanisms (A/HRC/14/24/Add.8)
- 2010 – Technology and human rights fact-finding; targeted killings and accountability; and extrajudicial executions and robotics (A/65/321)
- 2011 – The norms applicable to the use of force during demonstrations (A/HRC/17/28)
- 2011 – International standards on the use of force during arrest (A/66/330)
- 2012 – The safety of journalists (A/HRC/20/22)
- 2012 – The use of the death penalty under international law (A/67/275)
- 2013 – The use of “lethal autonomous robotics” (A/HRC/23/47)
- 2013 – The use of armed drones under international law (A/HRC/23/47)
- 2014 – National legislation concerning use of force in law enforcement (A/HRC/26/36)
- 2014 – The role of regional systems; resurrections of the death penalty; less-lethal weapons; and the use of statistical indicators (A/69/265)
- 2015 – The use of information communication technologies to protect the right to life (A/HRC/29/37)
- 2015 – The impact on foreign nationals of the death penalty; and the role of investigations in the protection of the right to life (A/70/304)
- 2016 – The proper management of assemblies [A joint report with the Special Rapporteur on the rights to freedom of peaceful assembly and of association] (A/HRC/31/66)
- 2016 – The use of force by private security providers (A/HRC/32/39)
- 2016 – An overview of six years in the mandate on summary executions, including recent developments (A/71/372)