

Statement by Professor Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions

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Mr President, distinguished delegates,

Today I am presenting my annual report along with three thematic reports, a communications report, follow-up reports on Brazil and the Central African Republic; final reports on missions to Colombia and the Democratic Republic of the Congo; and a preliminary report on a mission to Albania.

In 15 minutes I cannot hope to do justice to the complexity of these reports. I will thus confine my remarks to a few brief observations on some specific issues and situations.

In 2008 my annual report addressed the issue of commissions of inquiry established by states to investigate grave instances of alleged extrajudicial executions. I observed that “[t]he duty arising under international human rights law to respect and protect life imposes an obligation upon Governments to hold an independent inquiry into deaths” in such circumstances. I then recalled many instances in which national-level commissions had been established, but which had in fact resulted in comprehensive impunity. Overall, the track record of such inquiries is remarkably poor.

This conclusion, based on careful empirical analysis, indicates that the international community will often need to insist that an international inquiry takes place where particularly serious allegations are made and where domestic practice has been unconvincing. To assert in such circumstances that matters should be left entirely to a domestic inquiry will generally be tantamount to an abdication on the part of the international community. Let me cite two examples. The first concerns the attack on the humanitarian flotilla off Gaza. I believe that there is a compelling need for an objective and impartial international investigation to ascertain the facts and make recommendations. The second concerns the allegations that as many as 30,000 persons were killed in Sri Lanka in the closing months of the conflict and that grave violations of human rights and humanitarian law were committed. In this case also there is a need for an independent international inquiry. While the Council rejected this proposal a year ago, there is now a great deal of new evidence which would warrant effective action.

A. Annual report (A/HRC/8/3)

My annual report provides a round-up of the activities of the past six years. It explains the key issues that arise under the mandate, surveys the research that has been undertaken, and identifies areas for future research. I will highlight just two issues out of many:

(i) The need to revitalize the communications system

The system of communications with Governments has grown without any real planning or strategic vision. It is time to make it both more effective and more efficient. I propose six steps to promote this goal: (i) an evaluation of the effectiveness of the system; (ii) better integration of many separate communications arrangements into a unified one; (iii) updating the techniques and technology for sending, receiving and managing communications; (iv) revisiting the rule about non-reliance on media reports; (v) making better systemic use of the information generated; and (vi) action by the Council when States persistently ignore communications.

Mr President, I regret to say that the pertinence of my call to reform the communications system is illustrated by the fact that the Government of India informs me that the statistics relating to its response rate to communications are highly inaccurate. My report is based on statistics provided to me, but it now appears that these may well be wrong in this case and I shall take appropriate action.

(ii).The need to devise means by which to encourage greater cooperation by States

The ability of the mandate to be effective is significantly undermined by the extent to which States in which there would appear to be serious problems of extrajudicial executions can systematically ignore requests to visit, in some cases for over a decade. It is appropriate to recall in this respect the recommendations of the most systematic and transparent review ever undertaken by the Commission, in 1999 (E/CN.4/1999/104). It stated that

“The essential foundation on which the effectiveness of the Commission and its mechanisms rests is the responsibility of all Governments to cooperate fully with those mechanisms.”

And it specifically recommended that, at each session, the Commission should conduct:

“regular, focused and systematic deliberations on serious incidents or situations involving a failure or denial of cooperation by Governments with the Commission or its mechanisms.”

Mr President, I want to express my particular appreciation to the Governments of Ecuador and Argentina which have agreed to visits in the near future.

B. Thematic reports

I am presenting three thematic reports. One is on the importance of external oversight bodies to promote police accountability. Another is on the major but largely neglected problem of election-related killings, and the third is on targeted killings, to which I now turn.

Report on targeted killings

Targeted killings pose a rapidly growing challenge to the international rule of law. While over 40 states already have drone technology, the United States is the dominant user of drones to kill. My report analyses the complex rules which apply to all such killings. Let me acknowledge at the outset that terrorists pose grave problems to international order. I have always condemned unreservedly the wholesale and utterly unlawful killing of innocent civilians by al-Qaeda, the Taliban and other groups. But the challenge is to fight to uphold the rule of law by respecting it, not by taking short cuts that trample on it.

Drone killings in armed conflict may be fully legal, if used against combatants, or against civilians when they are directly participating in hostilities, and in accordance with the standard rules governing targeting and accountability. Today, however, such killings are increasingly being used far from any battle zone. The US, in particular, argues that the ‘law of 9/11’ enables it legally to use force in the territory of any other State against certain “terrorists” as part of its inherent right to self-defence. This proposition is justified on the basis that it is in an armed conflict with al-Qaeda, the Taliban and ‘associated forces’. But such an expansive and open-ended interpretation of the right to self-defence comes close to destroying the prohibition on the use of armed force contained in the UN Charter. If invoked by other States, in pursuit of those they deem to be terrorists and to have attacked them, it would cause chaos.

The other major problem is accountability. When targeted killings occur, states must demonstrate compliance with the law of armed conflict, which requires weapons operators to be trained in international humanitarian law, to be able to demonstrate safeguards used in targeting, and to investigate and account for civilian casualties. The clearest challenge to this principal today comes from the program operated by the US Central Intelligence Agency which carries out targeted killings from drones. Hundreds of people have been killed as a result, including some innocent civilians. Because this program remains shrouded in official secrecy, the international community does not know when and where the CIA is authorized to kill, the criteria for individuals who may be killed, how it ensures killings are legal, and what follow-up there is when civilians are illegally killed. In a situation in which there is no disclosure of who has been killed, for what reason, and whether innocent civilians have died, the legal principle of international accountability is, by definition, comprehensively violated. Without apparent irony, those speaking for the CIA respond that they can neither confirm nor deny its involvement in any such program, but can confirm with certainty that no more than 50 civilians have been killed and that there is full domestic accountability. But entirely

secret reporting to one's own paymasters is no form of international accountability, as required by international law.

There is an urgent need for clearer and more transparent discussion of these issues. The bottom line is that the rules being set today are those that will govern the conduct of many States tomorrow. In the absence of much clearer compliance with international law, grave damage will be done to the legal framework long in place to protect the right to life and prevent extrajudicial executions.

C. Final reports

1. The Democratic Republic of the Congo

Two days ago, an individual I met during my October visit, M. Floribert Chebeya Bahizire, was killed in Kinshasa in circumstances which strongly suggest official responsibility. He was the Executive Director of Voix des sans-voix pour les droits de l'homme (VSV) and a hugely respected human rights leader in the DRC. An urgent independent investigation is essential.

During my visit to the DRC I was told that the Lord's Resistance Army had been eliminated in the DRC and that violations by elements within the armed forces were greatly diminished. Since then, hundreds of civilians have been killed, and many more displaced and gravely injured, often at the hands of the very troops whose duty it is to protect civilians. Rebel groups have attacked unprotected civilians, individuals charged with war crimes continue to serve in the Congolese army, and the LRA continues on its murderous way. Since my mission, the UN operation, soon to be renamed the UN Stabilization Mission in the DRC (MONUSCO), has begun to develop a conditionality policy spelling out when it can and cannot support Congolese troops accused of human rights violations. The UN needs to make this policy public, and to back it up with sustained and credible monitoring and investigation of alleged army abuses.

2. Colombia

The Government of Colombia provided exemplary cooperation in relation to my visit. My report identifies many challenges, but two stand out. The first is the problem of *falsos positivos* (false positives) in which security forces killed civilians and fraudulently presented them as being "killed in combat". I documented such killings committed around the country and by a large number of military units. I met for over two hours with President Uribe and I believe that he is strongly committed to eliminating this problem. I am, however, deeply troubled by what I see as the renewed determination of the military, and especially the Military Justice system, to sabotage effective prosecutions. Many examples could be cited of ways in which this is being achieved. If developments continue in this direction, nearly comprehensive impunity for the military will be the tragic outcome. Strong, public, and targeted Presidential intervention is again indispensable and urgent.

The second problem is the resurgence of killings by paramilitary groups, including especially individuals amnestied under the Peace and Justice law. My report urges much stronger measures to combat impunity in this area as well.

E. Follow-up reports

1. Brazil

My follow up report on Brazil expresses my appreciation of the consistent support of the Federal Government for the work of the Special Rapporteur and highlights several very positive recent developments. They include a form of community policing in Rio, some important investigations of killings by police, militias and death squads, and moves to increase police salaries in anticipation of the Olympics and the World Cup. By the same token, the major problem of resistance killings has continued to grow, and brings with it a deeply troubling level of police impunity. I would mention two other matters.

I understand that the São Paulo Ministério Público is planning to appoint a “Special Action Group” (Grupo de Atuação Especial) of prosecutors to examine institutional violence, which would include police violence. If taken, this step would represent major progress, assuming that it is adequately resourced and its mandate includes alleged killings by military police officers and off-duty military or civil police officers.

I am particularly troubled by a proposed amendment to Article 144 of Brazil’s Constitution (Proposta de Emenda Constitucional (PEC) 381-2009) which would remove the Ministério Público’s constitutional role in police oversight and instead give it to a new National Police Council, whose membership would be dominated by police officers. This would be a severely retrograde step in terms of police accountability and I hope it will be rejected by the Government.

2. The Central African Republic

Although the Government has made a commitment to security sector reform and has taken admirable steps towards achieving it, its lack of funding and institutional capacity has resulted in minimal improvement. Impunity for abuses committed on all sides remains the status quo, and no high ranking officials have been prosecuted for the most serious crimes. The long-discussed national human rights commission has yet to be created

F. Conclusion

In reviewing my six years as Special Rapporteur I would suggest that the broad range of activities I have been mandated to undertake by the Council have mattered a great deal. Lives have been saved, lethal practices have been abandoned, greater caution has been shown, and awareness of the issues has grown at many levels. If the Council has the political will it can do even more to prevent unlawful killings around the world and to tackle widespread impunity.

In closing I want to express my deep appreciation to many State representatives who have been extremely supportive of my work and to thank the officials of the Office of the HCHR for their strong support over the years. I also want to thank my extraordinary colleagues at New York University’s Center for Human Rights and Global Justice who have provided invaluable assistance to me.

Most of all, I thank those human rights defenders in the many countries in which I have worked, without whose amazing courage and dedication to the cause my own work would have achieved very little. Many face death on a daily basis in struggling to protect human rights.