



Resource Pack on the Right to Life in International and National Instruments in Africa

**Prepared for the Working Group on Death Penalty and Extrajudicial, Summary or Arbitrary
Killings of the African Commission on Human and Peoples' Rights by the Unlawful Killings
Unit at the Centre for Human Rights, University of Pretoria**

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This Resource Pack has been collated from a broad range of sources of international law by researchers at the Unlawful Killings Unit in Pretoria, ahead of consideration by the Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Killings of the African Commission on Human and Peoples' Rights of a proposed General Comment on the Right to Life.

The Unlawful Killings Unit is proud to be able to support the work of the African Commission in this regard. The formulation of a General Comment presents a welcome opportunity to elaborate the African Charter with respect to this fundamental issue. The Unit looks forward to this process over the coming months.

Since this Resource Pack is a collation of international legal material, much of which is available in French, the Unit has also produced a French-language version of this document. However, that version includes untranslated passages from certain contexts (such as the Inter-American system) where translation into French has not previously taken place. With the exception of some of the constitutional provisions included toward the end, the English version should be taken as authoritative.

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The Nature of State Obligations

International Legal Framework

International Covenant on Civil and Political Rights (1966) Article 2

2. (1.) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2.) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

(3.) Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

[[FULL DOCUMENT](#)]

African Charter on Human and Peoples' Rights (1981) Articles 1 & 27(2)

1. The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them.

...

27.(2) The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

[[FULL DOCUMENT](#)]

African Commission Decisions

Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001) ¶¶51, 64

44. Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights, both civil and political rights and social and economic, generate at least four levels of duties for a State that undertakes to

adhere to a rights regime, namely the duty to respect, protect, promote, and fulfil these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties. As a human rights instrument, the African Charter is not alien to these concepts and the order in which they are dealt with here is chosen as a matter of convenience and in no way should it imply the priority accorded to them. Each layer of obligation is equally relevant to the rights in question.

45. At a primary level, the obligation to respect entails that the State should refrain from interfering in the enjoyment of all fundamental rights; it should respect right-holders, their freedoms, autonomy, resources, and liberty of their action. With respect to socio economic rights, this means that the State is obliged to respect the free use of resources owned or at the disposal of the individual alone or in any form of association with others, including the household or the family, for the purpose of rights-related needs. And with regard to a collective group, the resources belonging to it should be respected, as it has to use the same resources to satisfy its needs.

46. At a secondary level, the State is obliged to protect right-holders against other subjects by legislation and provision of effective remedies. This obligation requires the State to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms. This is very much intertwined with the tertiary obligation of the State to promote the enjoyment of all human rights. The State should make sure that individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, raising awareness, and even building infrastructures.

47. The last layer of obligation requires the State to fulfil the rights and freedoms it freely undertook under the various human rights regimes. It is more of a positive expectation on the part of the State to move its machinery towards the actual realisation of the rights. This is also very much intertwined with the duty to promote mentioned in the preceding paragraph. It could consist in the direct provision of basic needs such as food or resources that can be used for food (direct food aid or social security).

48. Thus, States are generally burdened with the above set of duties when they commit themselves under human rights instruments. Emphasising the all-embracing nature of their obligations, the International Covenant on Economic, Social, and Cultural Rights, for instance, under Article 2(1) stipulates exemplarily that States “undertake to take steps...by all appropriate means, including particularly the adoption of legislative measures.” Depending on the type of rights under consideration, the level of emphasis in the application of these duties varies. But sometimes, the need to meaningfully enjoy some of the rights demands a concerted action from the State in terms of more than one of the said duties. Whether the government of Nigeria has, by its conduct, violated the provisions of the African Charter as claimed by the Complainants is examined here below.

[\[FULL DOCUMENT\]](#)

The Right to Life in International and Regional Instruments

International Legal Framework

Universal Declaration of Human Rights (1948) Article 3

3. Everyone has the right to life, liberty and security of person.

[\[FULL DOCUMENT\]](#)

International Covenant on Civil and Political Rights (1966) Article 6

6.(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

(2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

(3) When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

(4) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

(5) Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

(6) Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

[\[FULL DOCUMENT\]](#)

African Charter on Human and Peoples' Rights (1981) Articles 4 & 5

4. Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

5. Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

[\[FULL DOCUMENT\]](#)

European Convention on Human Rights (1950) Article 2

2.(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

(2) Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

[\[FULL DOCUMENT\]](#)

American Convention on Human Rights (1969) Article 4

4.(1) Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

(2) In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

(3) The death penalty shall not be re-established in states that have abolished it.

(4) In no case shall capital punishment be inflicted for political offenses or related common crimes.

(5) Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

(6) Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

[\[FULL DOCUMENT\]](#)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) Article 4(1)

4.(1) Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.

[\[FULL DOCUMENT\]](#)

African Charter on the Rights and Welfare of the Child (1990) Article 5

5.(1) Every child has an inherent right to life. This right shall be protected by law.

(2) State Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.

(3) Death sentence shall not be pronounced for crimes committed by children.

[\[FULL DOCUMENT\]](#)

Other Instruments

CCPR General Comment No. 6: Article 6 (Right to Life), 30 April 1982

1. The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (art. 4). However, the Committee has noted that quite often the information given concerning article 6 was limited to only one or other aspect of this right. It is a right which should not be interpreted narrowly.

2. The Committee observes that war and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year. Under the Charter of the United Nations the threat or use of force by any State against another State, except in exercise of the inherent right of self-defence, is already prohibited. The Committee considers that States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. Every effort they make to avert the danger of war, especially thermonuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life. In this respect, the Committee notes, in particular, a connection between article 6 and article 20, which states that the law shall prohibit any propaganda for war (para. 1) or incitement to violence (para. 2) as therein described.

3. The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.

4. States parties should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often to arbitrary deprivation of life. Furthermore, States should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.

5. Moreover, the Committee has noted that the right to life has been too often narrowly interpreted. The expression “inherent right to life” cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures. In this connection, the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.

6. While it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the “most serious crimes”. Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the “most serious crimes”. The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee. The Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States’ reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.

7. The Committee is of the opinion that the expression “most serious crimes” must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can

only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.

[\[FULL DOCUMENT\]](#)

CCPR General Comment No.24: Issues related to reservations, 4 November 1994 ¶10

10. The Committee has further examined whether categories of reservations may offend the “object and purpose” test. In particular, it falls for consideration as to whether reservations to the non-derogable provisions of the Covenant are compatible with its object and purpose. While there is no hierarchy of importance of rights under the Covenant, the operation of certain rights may not be suspended, even in times of national emergency. This underlines the great importance of non-derogable rights. But not all rights of profound importance, such as articles 9 and 27 of the Covenant, have in fact been made non-derogable. One reason for certain rights being made non-derogable is because their suspension is irrelevant to the legitimate control of the state of national emergency (for example, no imprisonment for debt, in article 11). Another reason is that derogation may indeed be impossible (as, for example, freedom of conscience). At the same time, some provisions are non-derogable exactly because without them there would be no rule of law. A reservation to the provisions of article 4 itself, which precisely stipulates the balance to be struck between the interests of the State and the rights of the individual in times of emergency, would fall in this category. And some non-derogable rights, which in any event cannot be reserved because of their status as peremptory norms, are also of this character - the prohibition of torture and arbitrary deprivation of life are examples. While there is no automatic correlation between reservations to non-derogable provisions, and reservations which offend against the object and purpose of the Covenant, a State has a heavy onus to justify such a reservation.

[\[FULL DOCUMENT\]](#)

Constitutive Act to the African Union (2001) Article 4(o)

Article 4 – Principles

The Union shall function in accordance with the following principles:

(o) respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities;

[\[FULL DOCUMENT\]](#)

Protocol Relating to the Establishment of the Peace and Security Council of the African Union (2002) Articles 3(f), 4(c), 7(m)

ARTICLE 3- OBJECTIVES

The objectives for which the Peace and Security Council is established shall be to: [...]

(f) promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law, as part of efforts for preventing conflicts.

ARTICLE 4 - PRINCIPLES

The Peace and Security Council shall be guided by the principles enshrined in the Constitutive Act, the Charter of the United Nations and the Universal Declaration of Human Rights. It shall, in particular, be guided by the following principles: [...]

(c) respect for the rule of law, fundamental human rights and freedoms, the sanctity of human life and international humanitarian law;

ARTICLE 7 - POWERS

In conjunction with the Chairperson of the Commission, the Peace and Security Council shall: [...]

(m) follow-up, within the framework of its conflict prevention responsibilities, the progress towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law by Member States;

[\[FULL DOCUMENT\]](#)

ACHPR Resolution 227 (LII) on the expansion of the mandate of the Working Group on Death Penalty in Africa (2012)

Recalling its mandate to promote human and peoples' rights under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling its Resolution ACHPR/Res.79 (XXXVIII) 05, on the Composition and Operationalisation of the Working Group on the Death Penalty adopted at its 38th Ordinary Session held in Banjul, The Gambia;

Reaffirming the commitment of the Commission to promote the right to life and human dignity as fundamental rights and to encourage States Parties to abolish the death penalty;

Emphasizing that the right to life is a fundamental human right guaranteed by Article 4 of the African Charter which enshrines the absolute prohibition of the arbitrary deprivation of life;

Concerned about the recent upsurge in extra-judicial, summary or arbitrary killings and aware of the need to eliminate the practice in Africa, which is a grave violation of the inherent right to life;

Recalling its Resolution adopted at its 18th Ordinary Session held in Praia, Cape Verde, from 2 to 11 October 1995 establishing the mandate of the Special Rapporteur on Extra-judicial, Summary or Arbitrary Killings in Africa;

Noting that the mandate of the Special Rapporteur on Extra-judicial, Summary or Arbitrary Killings in Africa has not been operational since the resignation of the Special Rapporteur, Commissioner Ben Salem, who tendered his resignation at the 29th Ordinary Session of the Commission held from 23 April to 7 May 2001 in Tripoli, Libya;

Committed to halting massive human rights violations on the continent, including extra-judicial, summary or arbitrary killings;

Decides to expand the mandate of the Working Group to include issues of extra-judicial, summary or arbitrary killings with the following amended title: The Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary killings in Africa;

Further decides to entrust the Working Group with the additional mandate to:

- I. Monitor situations relating to extra-judicial, summary or arbitrary killings in all its ramifications;

- II. Collect information and keep a database of reported instances of situations concerning extra-judicial, summary or arbitrary killings in Africa;
- III. Undertake studies on issues of relevance to extra-judicial, summary or arbitrary killings;
- IV. Advise the Commission on urgent measures to be taken to address situations of extra-judicial, summary or arbitrary killings that require immediate attention;
- V. Respond effectively to information that comes before it, in particular when an extra-judicial, summary or arbitrary killing is imminent or when such a killing has occurred;
- VI. Submit its findings, conclusions and recommendations on the situation of extra-judicial, summary or arbitrary killings to each session of the Commission.

[[FULL DOCUMENT](#)]

African Case Law

Forum of Conscience v Sierra Leone (2000) AHRLR 293 (ACHPR 2000), ¶19

19. The right to life is the fulcrum of all other rights. It is the fountain through which other rights flow, and any violation of this right without due process amounts to arbitrary deprivation of life. Having found above that the trial of the 24 soldiers constituted a breach of due process of law as guaranteed under article 7(1)(a) of the Charter, the Commission consequently finds their execution an arbitrary deprivation of their rights to life provided for in article 4 of the Charter. Although this process cannot bring the victims back to life, it does not exonerate the government of Sierra Leone from its obligations under the Charter.

[[FULL DOCUMENT](#)]

Other Documents

E/CN.4/2002/74, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2002) ¶8

8. During the reporting period, the Special Rapporteur acted in the following situations:

- (a) Genocide;
- (b) Violations of the right to life during armed conflict, especially of the civilian population and other non-combatants, contrary to international humanitarian law;
- (c) Deaths due to attacks or killings by security forces of the State, or by paramilitary groups, death squads or other private forces cooperating with or tolerated by one or several States;
- (d) Deaths due to the use of force by law enforcement officials or persons acting in direct or indirect compliance with the State, when the use of force is inconsistent with the criteria of absolute necessity and proportionality;
- (e) Deaths in custody due to torture, neglect or use of force, or life-threatening conditions of detention;
- (f) Death threats and fear of imminent extrajudicial executions by State officials, paramilitary groups, private individuals or groups cooperating with or tolerated by the Government, as well as by unidentified persons who may be linked to the categories mentioned above;
- (g) Expulsion, refoulement or return of persons to a country or a place where their lives are in danger, as well as the prevention of persons seeking asylum from leaving a country where their lives are in danger through the closure of national borders;

- (h) Deaths due to acts of omission on the part of the authorities, including mob killings. The Special Rapporteur may take action if the State fails to take positive measures of a preventive and protective nature necessary to ensure the right to life of any person under its jurisdiction;
- (i) Breach of the obligation to investigate alleged violations of the right to life and to bring those responsible to justice;
- (j) Breach of the additional obligation to provide adequate compensation to victims of violations of the right to life, and failure on the part of Governments to recognize compensation as an obligation;
- (k) Violations of the right to life in connection with the death penalty. The Special Rapporteur intervenes where capital punishment is imposed in violation of articles 6.2 and 15 of the International Covenant on Civil and Political Rights and article 37 (a) of the Convention on the Rights of the Child, article 77.5 and other relevant articles of the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977. [...]

[\[FULL DOCUMENT\]](#)

E/CN.4/2005/7, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2004) ¶6

6. The terms of reference of this mandate are not best understood through efforts to define individually the terms “extrajudicial”, “summary” or “arbitrary”, or to seek to categorize any given incident accordingly. These terms had important roles to play in the historical evolution of the mandate but today they tell us relatively little about the real nature of the issues. The broad coverage of the mandate as it now exists reflects the very real needs perceived over time by the Commission to be able to respond to a range of contexts in which killings have taken place in circumstances which contravene international law and which the Commission has determined require a response. Thus, the most productive focus is on the mandate itself, as it has evolved over the years through the various resolutions of the General Assembly and the Commission.

[\[FULL DOCUMENT\]](#)

A/HRC/11/2/Add.5, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Mission to the United States of America (2009) ¶3

3. Although the title of my mandate may seem complex, it should be simply understood as including any killing that violates international human rights or humanitarian law. This may include unlawful killings by the police, deaths in military or civilian custody, killings of civilians in armed conflict in violation of humanitarian law, and patterns of killings by private individuals which are not adequately investigated and prosecuted by the authorities. My mandate is not abolitionist, but the death penalty falls within it with regard to due process guarantees, the death penalty’s limitation to the most serious crimes and its prohibition for juvenile offenders and the mentally ill.

[\[FULL DOCUMENT\]](#)

Importance of Accountability

International Legal Instruments

Rome Statute of the International Criminal Court (1998) preamble, Part II: Jurisdiction, admissibility and applicable law

[...] *Mindful* that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

[...]

Article 5 — Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6 — Genocide

For the purpose of this Statute, ‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 7 — Crimes against humanity

1. For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) ‘Attack directed against any civilian population’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) ‘Extermination’ includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) ‘Enslavement’ means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) ‘Deportation or forcible transfer of population’ means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) ‘Torture’ means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) ‘Forced pregnancy’ means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) ‘Persecution’ means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) ‘The crime of apartheid’ means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (i) ‘Enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term ‘gender’ refers to the two sexes, male and female, within the context of society. The term ‘gender’ does not indicate any meaning different from the above.

Article 8 — War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, 'war crimes' means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) Wilful killing;
- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) Unlawful deportation or transfer or unlawful confinement;
- (viii) Taking of hostages.

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;

- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (iii) Taking of hostages;
- (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (v) Pillaging a town or place, even when taken by assault;
- (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
- (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (ix) Killing or wounding treacherously a combatant adversary;
- (x) Declaring that no quarter will be given;
- (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

[\[FULL DOCUMENT\]](#)

Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (2014)
Article 46A Bis

“No charges shall be commenced or continued before the Court against any serving African Union Head of State or Government, or anybody acting or entitled to act in such capacity, or other senior state officials based on their functions, during their tenure of office”.

[\[REFERENCE TO EDIT\]](#)

Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989)

Prevention

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.

3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extralegal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall cooperate fully in international investigations on the subject.

Investigation

9. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for

effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect. over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. 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. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

Legal proceedings

18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise

jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extralegal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

[\[FULL DOCUMENT\]](#)

UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1991).

II. THE ELABORATION OF INTERNATIONAL STANDARDS FOR EFFECTIVE PREVENTION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS

The need for an international scientific protocol for the investigation of deaths has been recognized for several years. In 1979, the Danish Medical Group of Amnesty International expressed a desire for established international rules for the completion of death certificates. In 1984, J. L. Thomsen observed that forensic medicine was being practised in different ways, and that common guidelines and definitions would facilitate communications.

Non-governmental organizations emphasized the need for developing and adopting international standards as a practical outcome of their missions to countries where extra-legal, arbitrary and summary executions were alleged to take place. For example, an Amnesty International mission to one country found in 1983 that the procedures of the authorities for recording and investigating violent deaths were totally inadequate for determining the causes of more than 40,000 deaths that had occurred between 1979 and 1984, or for identifying the parties responsible. The procedures were even inadequate to determine the precise number of these deaths.

Similarly, a delegation from the American Association for the Advancement of Science sent to another country to assist in the identification of thousands of persons abducted or killed between 1976 and 1983 concluded that the identification of the remains was beyond the capabilities of local institutions, and recommended the establishment of a national investigative centre with well-trained forensic scientists and a director with independent investigative powers. The delegation, however, was optimistic that even the identification of the remains of a small number of the "disappeared" and a determination of the causes of their deaths could be a significant deterrent if those responsible for the deaths could be identified and brought to justice.

Even when Governments order inquests, investigators often find it difficult to ascertain the facts surrounding arbitrary executions. Eyewitness accounts may be hard to obtain because witnesses fear reprisals or because the only witnesses were those conducting executions themselves. Assassins often conceal their crimes by making their victims "disappear". As a result, bodies of victims are usually found months or years later, buried in shallow, unmarked graves. Disposal in this manner often complicates identification of the body and determination of the cause and manner of death. In some cases, the natural decomposition of the body's soft tissue erases evidence of trauma such as bruising, stab wounds or gunpowder burns. In others, the perpetrators deliberately mutilate the person, either before or after death, in an attempt to thwart identification or to intimidate others.

Most countries have a system for investigating the cause of death in cases with unusual or suspicious circumstances. Such a procedure provides some reassurance that unexplained deaths do not remain unexplained and that the perpetrator is tried by a competent court established by law. In some countries, however, these procedures have broken down or have been abused, particularly where the death may have been caused by the police, the army or other

government agents. In these cases, a thorough and independent investigation is rarely done. Evidence that could be used to prosecute the offender is ignored or covered up, and those involved in the executions go unpunished.

To address the need for developing uniform standards, the international community began to formulate a set of principles and medicolegal standards for the investigation and prevention of extra-legal, arbitrary and summary executions. That work, which dates back to the beginning of the 1980s, made considerable advances with the preparation of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions recommended by the Committee on Crime Prevention and Control at its tenth session in Vienna in 1988. The Principles set forth in annex 1 were adopted by the Economic and Social Council in its resolution 1989/165, annex, of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989.

It is hoped that observance of the provisions of the Principles will lead to a decrease of extra-legal, arbitrary and summary executions in two ways. First, use of the adopted procedures during death investigations should produce the evidence necessary for increased detection and disclosure of other executions. The persons responsible for such executions can then be held accountable through judicial or political sanctions. Secondly, adoption of the standards will also provide international observers with guidelines to evaluate investigations of suspicious deaths. Non-compliance with the standards can be publicized and pressure brought against non-complying Governments, especially where extra-legal, arbitrary and summary executions are believed to have occurred. If a Government refuses to establish impartial inquest procedures in such cases, it might be inferred that the Government is hiding such executions. The fear of condemnation by the international community may encourage government compliance with the inquest standards, which, in turn, should reduce extralegal, arbitrary and summary executions.

An additional benefit of compliance with these standards is that a Government suspected of involvement in an extra-legal, arbitrary and summary execution would have an opportunity of satisfying the international community, as well as its own people, that it was not responsible for the death of a particular person or persons. A Government's compliance with these standards, regardless of the outcome of an inquiry, may increase confidence in the rule of law, including the commitment of Governments to human rights.

III. MODEL PROTOCOL FOR A LEGAL INVESTIGATION OF EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS ("MINNESOTA PROTOCOL")

A. Introduction

Suspected extra-legal, arbitrary and summary executions can be investigated under established national or local laws and can lead to criminal proceedings. In some cases, however, investigative procedures may be inadequate because of the lack of resources and expertise or because the agency assigned to conduct the investigation may be partial. Hence, such criminal proceedings are less likely to be brought to a successful outcome.

The following comments may enable those conducting investigations and other parties, as appropriate, to obtain some in-depth guidance for conducting investigations. Such guidance in a general way, has been set out in the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (see annex I, below, paragraphs 9-17). The guidelines set forth in this proposed model protocol for a legal investigation of extra-legal, arbitrary and summary executions are not binding. Instead, the model protocol is meant to be illustrative of methods for carrying out the standards enumerated in the Principles.

By definition, this model protocol cannot be exhaustive as the variety of legal and political arrangements escapes its application. Also, investigative techniques vary from country to country and these cannot be standardized in the form of internationally adopted principles. Consequently, additional comments may be relevant for the practical implementation of the Principles.

Sections B and C of this model protocol contain guidelines for the investigation of all violent, sudden, unexpected or suspicious deaths, including suspected extra-legal, arbitrary and summary executions. These guidelines apply to investigations conducted by law enforcement personnel and by members of an independent commission of inquiry.

Section D provides guidelines for establishing a special independent commission of inquiry. These guidelines are based on the experiences of several countries that have established independent commissions to investigate alleged arbitrary executions.

Several considerations should be taken into account when a Government decides to establish an independent commission of inquiry. First, persons subject to an inquiry should be guaranteed the minimum procedural safeguards protected by international law at all stages of the investigation. [In particular, all persons must be guaranteed the due process rights set forth in article 14 of the International Covenant on Civil and Political Rights.] Secondly, investigators should have the support of adequate technical and administrative personnel, as well as access to objective, impartial legal advice to ensure that the investigation will produce admissible evidence for later criminal proceedings. Thirdly, investigators should receive the full scope of the Government's resources and powers. Finally, investigators should have the power to seek help from the international community of experts in law, medicine and forensic sciences.

The fundamental principles of any viable investigation into the causes of death are competence, thoroughness, promptness and impartiality of the investigation, which flow from paragraphs 9 and 11 of the Principles. These elements can be adapted to any legal system and should guide all investigations of alleged extra-legal, arbitrary and summary executions.

B. Purposes of an inquiry

As set out in paragraph 9 of the Principles, the broad purpose of an inquiry is to discover the truth about the events leading to the suspicious death of a victim. To fulfil this purpose, those conducting the inquiry shall, at a minimum, seek:

- (a) To identify the victim;
- (b) To recover and preserve evidentiary material related to the death to aid in any potential prosecution of those responsible;
- (c) To identify possible witnesses and obtain statements from them concerning the death;
- (d) To determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death;
- (e) To distinguish between natural death, accidental death, suicide and homicide;
- (f) To identify and apprehend the person(s) involved in the death;
- (g) To bring the suspected perpetrator(s) before a competent court established by law.

[[FULL DOCUMENT](#)]

Other Documents

A/HRC/14/24, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2010) ¶53, 84

53. Impunity is often a central cause of continued killings. In many of the countries visited, impunity is maintained through problems at every level of the criminal justice system. Thus, police may be unwilling or unable to carry out an independent investigation of the killing. The State may lack forensic capacity to conduct investigations. Crimes scenes may not be secured. The police may fail to refer cases to the prosecution service. Prosecutors may be corrupt or poorly trained. Witnesses may justifiably be unwilling to testify because of inadequate witness protection programmes. Judges' dockets may be so overcrowded that cases are delayed for years, or judges may also take bribes to delay cases or absolve perpetrators. If perpetrators are convicted, prison systems may be insecure or susceptible to corruption, resulting in prisoners escaping or bribing their way out of detention.

[...]

84. Human rights law, humanitarian law and the international law on State responsibility require that individuals should have an effective remedy when their rights are violated, and that the State must provide reparations for its own violations. States must ensure that victims' families are able to enforce their right to compensation, through judicial remedies where necessary. In many cases, reparations can mean the difference between the destitution of innocents and their families, and their ability to rebuild their lives and livelihoods.

[\[FULL DOCUMENT\]](#)

E/CN.4/2006/53, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2006) ¶35

35. Human rights law imposes a duty on States to investigate alleged violations of the right to life “promptly, thoroughly and effectively through independent and impartial bodies”. This duty is entailed by the general obligation to ensure the right to life to each individual. The particular measures States may take to fulfil this duty have been elaborated in detail with respect to law enforcement operations. Most prominently, in 1989 the Economic and Social Council adopted the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. These detailed principles should guide States whenever they carry out law enforcement operations, including during armed conflicts and occupations.

[\[FULL DOCUMENT\]](#)

A/HRC/4/20/Add.2, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Mission to Guatemala (2007) ¶¶42,52

42. Guatemala has a single-digit conviction rate for murder. The implication is obvious and disturbing: Guatemala is a good place to commit a murder, because you will almost certainly get away with it.

[...]

52. If Guatemala is to stop being a good place to commit murder, its criminal justice system institutions must be reformed so that more crimes are effectively investigated, more suspects are successfully apprehended, and more cases effectively prosecuted. This will require major budget increases, the implementation of long overdue reforms, a relentless campaign against corruption, and serious inter-institutional cooperation. More simply, it will require a society-wide focus on the bottom line: The State must meet its obligation to apprehend and convict criminals.

[\[FULL DOCUMENT\]](#)

A/HRC/8/3, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2008) ¶¶12,22,27,51

12. The duty arising under international human rights law to respect and protect life imposes an obligation upon Governments to hold an independent inquiry into deaths where an extrajudicial execution may have taken place. While an independent police investigation will often suffice for this purpose, the creation of an official commission of inquiry with a human rights mandate is a time-honoured and oft-repeated response, especially to incidents involving multiple killings or a high-profile killing. These commissions vary greatly as to the terminology used, and their composition, terms of reference, time frames and powers.

[...]

22. In principle, commissions of inquiry can play an important role in combating impunity. First, the commission may be tasked with carrying out some of the functions normally performed by criminal justice institutions. A commission will often be established to provide an independent investigation where the criminal justice institutions

are seen to be biased or incompetent. This is often the case where key government agents, such as the police or military, are themselves involved in abuses and where there is no reliable system of police or military oversight.

[...]

27. A comprehensive review of the work of the Special Rapporteur since 1982 indicates that many commissions have achieved very little. They are often set up to show domestic constituents and the international community that the Government has the will and capability to address impunity. Subsequent assessments undertaken by the Special Rapporteurs, however, indicate that many of them have in fact done little other than deflect criticism.

[...]

51. In essence, the problem is that commissions can be used very effectively by Governments for the wrong purposes: to defuse a crisis, to purport to be upholding notions of accountability and to promote impunity. The mere announcement by a Government of a commission is often taken at face value to mean that the Government is “doing something” to address impunity. Because a commission creates the appearance of government action, its announcement often prevents or delays international and civil society advocacy around the human rights abuses alleged. Moreover, an ineffective commission can be more than just a waste of time and resources; it can contribute to impunity by deterring other initiatives, monopolizing available resources and making subsequent endeavours to prosecute difficult or impossible.

[[FULL DOCUMENT](#)]

Death Penalty

International Legal Instruments

Economic and Social Committee, Safeguards guaranteeing protection of the rights of those facing the death penalty (21st session, 1984) Resolution 1984/50

1. In countries which have not abolished the death penalty, capital punishment 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.
2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, c/ including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering

[\[FULL DOCUMENT\]](#)

Economic and Social Committee, Implementation of the Safeguards guaranteeing protection of the rights of those facing the death penalty (15th session, 1989) Resolution 1989/64

1. Recommends that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by:
 - (a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;
 - (b) Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;
 - (c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

(d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution;

2. Invites Member States to co-operate with specialized bodies, non-governmental organizations, academic institutions and specialists in the field in efforts to conduct research on the use of the death penalty in every region of the world;

3. Also invites Member States to facilitate the efforts of the Secretary-General to gather comprehensive, timely and accurate information about the implementation of the safeguards and the death penalty in general;

4. Invites Member States that have not yet done so to review the extent to which their legislation provides for the safeguards guaranteeing protection of the rights of those facing the death penalty as set out in the annex to Economic and Social Council resolution 1984/50;

5. Urges Member States to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law;

6. Recommends that the report of the Secretary-General on the question of capital punishment, to be submitted to the Economic and Social Council in 1990, in pursuance of Council resolution 1745 (LIV) of 16 May 1973, should henceforth cover the implementation of the safeguards as well as the use of capital punishment;

7. Requests the Secretary-General to publish the study on the question of the death penalty and the new contributions of the criminal sciences to the matter prepared pursuant to section X of Economic and Social Council resolution 1986/10 and to make it available, with other relevant documentation, to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

[\[FULL DOCUMENT\]](#)

Economic and Social Committee, Safeguards guaranteeing protection of the rights of those facing the death penalty (45th session, 1996) Resolution 1996/15

[...]

1. Notes that, during the period covered by the report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, an increasing number of countries abolished the death penalty and others followed a policy reducing the number of capital offences, and declared that they had not sentenced any offender to that penalty, while still others retained it and a few reintroduced it;

2. Calls upon Member States in which the death penalty has not been abolished to effectively apply the safeguards guaranteeing protection of the rights of those facing the death penalty, in which it is stated that capital punishment may be imposed for only the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences;

3. Encourages Member States in which the death penalty has not been abolished to ensure that each defendant facing a possible death sentence is given all guarantees to ensure a fair trial, as contained in article 14 of the International Covenant on Civil and Political Rights, and bearing in mind the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Standard Minimum Rules for the Treatment of Prisoners;

4. Also encourages Member States in which the death penalty has not been abolished to ensure that defendants who do not sufficiently understand the language used in court are fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court;

5. Calls upon Member States in which the death penalty may be carried out to allow adequate time for the preparation of appeals to a court of higher jurisdiction and for the completion of appeal proceedings, as well as petitions for clemency, in order to effectively apply rules 5 and 8 of the safeguards guaranteeing protection of the rights of those facing the death penalty;

6. Also calls upon Member States in which the death penalty may be carried out to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency of the prisoner in question;

7. Urges Member States in which the death penalty may be carried out to effectively apply the Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering.

[\[FULL DOCUMENT\]](#)

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989)

The States Parties to the present Protocol,

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

Recalling article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966,

Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

Desirous to undertake hereby an international commitment to abolish the death penalty,

Have agreed as follows:

1.(1) No one within the jurisdiction of a State Party to the present Protocol shall be executed.

(2) Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

2.(1) No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

(2) The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.

(3) The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory. [...]

[\[FULL DOCUMENT\]](#)

Regional Instruments

Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty (1983)

ARTICLE 1- Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

ARTICLE 2- Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

ARTICLE 3- Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

ARTICLE 4 - Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

[...]

[\[FULL DOCUMENT\]](#)

Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances (2002)

The member States of the Council of Europe signatory hereto,

Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings;

Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Noting that Protocol No. 6 to the Convention, concerning the Abolition of the Death Penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war;

Being resolved to take the final step in order to abolish the death penalty in all circumstances,

Have agreed as follows:

Article 1 – Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2 – Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 3 – Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

[...]

[[FULL DOCUMENT](#)]

ACHPR Resolution 42 (XXVI) Urging States to Envisage a Moratorium on the Death Penalty (1999)

Recalling Article 4 of the African Charter on Human and Peoples' Rights which affirms the right of everyone to life and Article V(3) of the African Charter on the Rights and Welfare of the Child providing that Death Sentence shall not be pronounced for crimes committed by children;

Recalling UN Commission on Human Rights' resolutions 1998/8 and 1999/61, which calls upon all states that still maintain the death penalty to, inter alia, establish a moratorium on executions, with a view to abolishing the death penalty;

Recalling UN Sub-Commission on the Promotion and Protection of Human Rights' resolution 1999/4 which calls upon all States that retain the death penalty and do not apply the moratorium on executions, in order to mark the millennium, to commute the sentences of those under sentence of death on 31 December 1999 at least to sentences of life imprisonment and to commit themselves to a moratorium on the imposition of the death penalty throughout the year 2000;

Noting that three States parties to the African Charter have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at abolition of the death penalty;

Noting further that at least 19 States parties have de facto or de jure abolished the death penalty;

Considering the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda are authorised to impose ;

Concerned that some States parties impose the death penalty under conditions not in conformity with the rights pertaining to a fair trial guaranteed in the African Charter on Human and Peoples' Rights;

1. URGES all States parties to the African Charter on Human and Peoples' Rights that still maintain the death penalty to comply fully with their obligations under the treaty and to ensure that persons accused of crimes for which the death penalty is a competent sentence are afforded all the guarantees in the African Charter;

2. CALLS upon all States parties that still maintain the death penalty to :

- a) limit the imposition of the death penalty only to the most serious crimes ;
- b) consider establishing a moratorium on executions of death penalty;
- c) reflect on the possibility of abolishing death penalty.

[[FULL DOCUMENT](#)]

ACHPR Resolution 136 (XLIV) Calling on State Parties to Observe a Moratorium on the Death Penalty (2008)

Recalling Article 4 of the African Charter on Human and Peoples' Rights, which recognises the right of everyone to life, and Article 5(3) of the African Charter on the Rights and the Welfare of the Child which guarantees the non-application of death penalty for crimes committed by children;

Considering ACHPR/Res 42 (XXVI) calling on States to consider observing a moratorium on the death penalty, adopted at the 26th Ordinary Session of the African Commission on Human and Peoples' Rights held from 1 st to 15th November 1999 in Kigali, Rwanda;

Recalling Resolution 62/149 of the General Assembly of the United Nations, adopted in 2007 calling on all States that still retain the death penalty to, inter alia, observe a moratorium on executions with a view to abolishing the death penalty;

Bearing in mind Resolution 2005/59 adopted on 20 April 2005 by the United Nations Human Rights Commission calling on all States that still retain the death penalty to totally abolish the death penalty and, in the meantime, to observe a moratorium on executions;

Considering Resolution 1999/4 of the United Nations Sub-Commission on the Promotion and the Protection of Human Rights calling on all States that still retain the death penalty and are not observing a moratorium on executions, as part of the celebration of the millennium, to at least commute death penalty sentences into life imprisonment by 31 st December 1999, and to commit themselves to observe a moratorium on the execution of death sentences throughout the year 2000;

Considering the exclusion of the death penalty from the sentences that can be pronounced by the International Criminal Court, the Extraordinary Chambers of the Tribunals of Cambodia, the Special Court of Sierra Leone, the Special Juries for serious crimes in East Timor, the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda; and

Noting that at least 27 State Parties to the African Charter on Human and Peoples' Rights have abolished the death penalty in law or de facto;

Noting also that only six out of 53 State Parties to the African Charter on Human and Peoples' Rights have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty;

Noting further that some State Parties have so far failed to give effect to all the above resolutions relating to the observation of a moratorium on the death penalty, and others have observe the moratorium but have resumed the execution of death sentences or have expressed their intention to resume the execution of such sentences;

Concerned by the fact that some State Parties to the African Charter on Human and Peoples' Rights apply the death penalty under conditions not respectful of the right to a fair trial guaranteed under the African Charter on Human and Peoples' Rights and other relevant international norms:

1. Exhorts State Parties to the African Charter on Human and Peoples' Rights that still retain the death penalty to:

- Fully comply with their obligations under this treaty; and
- Guarantee that every person accused of crimes for which capital punishment is applicable, benefits from all the guarantees of a fair trial included in the African Charter and in other relevant regional and international norms and treaties.

2. Urges State Parties that still retain the death penalty to observe a moratorium on the execution of death sentences with a view to abolishing the death penalty in conformity with Resolutions ACHPR/Res 42 (XXVI) of the African Commission and 62/149 of the General Assembly of the United Nations;

3. Calls on all State Parties that have not yet done so, to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty;
4. Calls on State Parties to the African Charter to include in their periodic reports information on the steps they are taking to move towards the abolition of the death penalty in their countries;and
5. Implores all State Parties to give their full support to the Working Group on the Death Penalty of the African Commission on Human and Peoples' Rights in its endeavour to work towards the abolition of the death penalty in Africa.

[\[FULL DOCUMENT\]](#)

Declaration of the Continental Conference on the Abolition of the Death Penalty in Africa (2014)

The Continental Conference on the abolition of the Death Penalty in Africa hereby:

1. Calls on the African Union Member States to adopt the Additional Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa.
2. Expresses its deep concern about the continued application of the death penalty in a number of African States;
3. Welcomes the steps taken by a growing number of African States to reduce the number of offences for which the death penalty may be imposed and the decision made by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty;
4. Deeply appreciates the growing number of African States that have abolished the Death Penalty;
5. Calls upon African States which have abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard;
6. Calls upon African States that have not yet done so to consider abolishing the death penalty statutorily or constitutionally, and to consider acceding to or ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
7. Further calls upon African States to vote in favour of the proposed United Nations General Assembly Resolution to be adopted this year calling for a universal moratorium on executions with a view to abolish the death penalty.
8. Further invites civil society organisations to remain seized with the matter of the death penalty and, in particular, monitor scheduled executions and alert the African Commission's Working Group on the Death Penalty, and Extra-judicial, Summary or Arbitrary Killings in Africa and the international community in a timely manner where there is reason to believe that such an execution will occur;
9. Encourages Professional Groups to continue to conduct research on issues related to the question of the death penalty;
10. Urges National Human Rights Institutions to monitor, document and report on death penalty and execution cases to the African Commission on Human and Peoples' Rights;
11. Encourages National Human Rights Institutions, Civil Society, the Media and other stakeholders to continue conducting advocacy and awareness raising on the abolition of the Death Penalty in Africa.
12. Finally calls on legislators in Africa to review their national laws and enact legislation abolishing the death penalty and to support the ratification of the Additional Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa.

[\[FULL DOCUMENT\]](#)

African Case law

Spilg and Mack & DITSHWANELO (on behalf of Lehlohonolo Bernard Kobedi) v. Botswana 277/03 (2011)

202. While further affirming that capital punishment would also constitute a violation of Article 4 of the African Charter where the imposition of death sentence is disproportionate to the gravity of the offence committed, the African Commission holds that the imposition of the death penalty to the “most serious crimes” would not constitute a violation of the right to life protected under Article 4 of the African Charter.

203. Although the African Charter and the African Commission's Resolution on the Death Penalty does not afford a definition of what constitutes “most serious crimes”, the African Commission holds that the phrase “most serious crimes” should be interpreted in the most restrictive and exceptional manner possible and that the death penalty should only be considered in cases where the crime is intentional, and results in lethal or extremely grave consequences. In this regard the African Commission relies on Article 60 of the African Charter to note that the Rome Statute has identified murder, though in a slightly different context, as one of the “most serious crimes” under international law.

204. The African Commission therefore identifies murder as one of the “most serious crimes” under domestic and international human rights law, as it amounts to an arbitrary deprivation of life as protected under Article 4 of the African Charter. In the same breath, the African Commission believes that domestic legislation allowing capital punishment for economic, nonviolent or victimless offences such as economic crimes and drug related offences would amount to a disproportionate imposition of the death penalty and thus a violation of the right to life under Article 4 of the African Charter.

205. In view of the foregoing, the African Commission finds that the death penalty would not be disproportionate when applied in cases where the crime is intentional and involves the use of violence or firearms resulting in the death of another as in the instant case where the appellant was tried, convicted and sentenced to death on the crime of murder.

[\[FULL DOCUMENT\]](#)

Interights and Others (on behalf of Bosch) v Botswana (2003) AHRLR 55 (ACHPR 2003) ¶52

52. However, it would be remiss for the African Commission to deliver its decision on this matter without acknowledging the evolution of international law and the trend towards abolition of the death penalty. This is illustrated by the UN General Assembly's adoption of the Second Optional Protocol to the ICCPR and the general reluctance by those states that have retained capital punishment on their statute books to exercise it in practice. The African Commission has also encouraged this trend by adopting a Resolution Urging States to envisage a Moratorium on the Death Penalty and therefore encourages all states party to the African Charter on Human and Peoples' Rights to take all measures to refrain from exercising the death penalty.

[\[FULL DOCUMENT\]](#)

Other Documents

E/CN.4/2006/53, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2006) ¶28

28. In his 2005 report to the Commission on Human Rights (E/CN.4/2005/7) the Special Rapporteur drew attention to the problem of a lack of transparency in relation to the death penalty. In particular, he observed that in a “considerable number of countries information concerning the death penalty is cloaked in secrecy. No statistics are available as to executions, or as to the numbers or identities of those detained on death row, and little if any information is provided

to those who are to be executed or to their families”. He observed that such secrecy is incompatible with human rights standards in various respects, and concluded that “countries that have maintained the death penalty are not prohibited by international law from making that choice, but they have a clear obligation to disclose the details of their application of the penalty”. In an addendum to the present report the Special Rapporteur analyses in detail the legal basis of the obligation to be transparent in such matters. Consideration is also given to a range of case studies that illustrate the major problems that exist in this area.

[\[FULL DOCUMENT\]](#)

E/CN.4/2005/7, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2004) ¶¶57-9,63

57. In a considerable number of countries information concerning the death penalty is cloaked in secrecy. No statistics are available as to executions, or as to the numbers or identities of those detained on death row, and little if any information is provided to those who are to be executed or to their families. Such secrecy is incompatible with human rights standards in various respects. It undermines many of the safeguards which might operate to prevent errors or abuses and to ensure fair and just procedures at all stages. It denies the human dignity of those sentenced, many of whom are still eligible to appeal, and it denies the rights of family members to know the fate of their closest relatives.

58. Moreover, secrecy prevents any informed public debate about capital punishment within the relevant society. In a reply to the Special Rapporteur in 2003 the Government of China observed that the “ultimate worldwide abolition [of the death penalty] will be the inevitable consequence of historical development”, and that “[e]ach country should decide whether to retain or abolish the death sentence on the basis of its own actual circumstances and the aspirations of its people”. It is clear, however, that such decisions and aspirations cannot be formed in a state of ignorance about the facts.

59. Countries that have maintained the death penalty are not prohibited by international law from making that choice, but they have a clear obligation to disclose the details of their application of the penalty. For a Government to insist on a principled defence of the death penalty but to refuse to divulge to its own population the extent to which, and the reasons for which, it is being applied is unacceptable. The Commission should, as a matter of priority, insist that every country that uses capital punishment undertake full and accurate reporting of all instances thereof, and should publish a consolidated report prepared on at least an annual basis.

[...]

63. The legislation of a significant number of States provides for the death penalty to be mandatory in certain circumstances. The result is that a judge is unable to take account of even the most compelling circumstances to sentence an offender to a lesser punishment, even including life imprisonment. Nor is it possible for the sentence to reflect dramatically differing degrees of moral reprehensibility of such capital crimes. Moreover, in some States even the exercise of clemency is automatically precluded in relation to certain crimes, including those that do not involve violence. It is appropriate, therefore, to note a recent judgement of the Privy Council in response to a ruling by the Court of Appeals of Barbados. The relevance of such a case in the present context is that it was decided on the basis of a careful review of international legal standards. The majority of the Court observed that the maintenance of the mandatory death penalty “will ... not be consistent with the current interpretation of various human rights treaties to which Barbados is a party”.

[\[FULL DOCUMENT\]](#)

13. For States in which the death penalty continues to be used, international law imposes stringent requirements that must be met for judicial killing not to be regarded as an arbitrary deprivation of life and therefore unlawful. These requirements were elaborated by the Economic and Social Council in its resolution 1984/50 on safeguards guaranteeing protection of the rights of those facing the death penalty.

14. The requirement of non-arbitrariness in the context of the death penalty has a procedural component, centred on the requirements of legality and fair trial. It also has a substantive component that entails, among other requirements, imposition only for the most serious crimes, minimum standards of protection for vulnerable groups, and equality and consistency.

[...]

30. From the perspective of fair trial standards, the imposition of the death penalty, especially on civilians, by military courts and tribunals represents a worrying trend. In paragraph 22 of its general comment No. 32, the Human Rights Committee noted that the trial of civilians in military courts might raise serious problems as far as the equitable, impartial and independent administration of justice was concerned. Principle 5 of the Basic Principles on the Independence of the Judiciary provides that everyone is to have the right to be tried by ordinary courts using established legal procedures. The Working Group on Arbitrary Detention has concluded that military justice systems should be prohibited from imposing the death penalty under all circumstances (E/CN.4/1999/63, para. 80).

[...]

33. Military or other special jurisdictions are ill suited to ensuring full compliance with fair trial standards as required in capital cases (E/CN.4/1996/40, para. 107). They should not have the power to impose sentences of death on anyone.

34. A key determinant of the scope of the legitimate use of the death penalty is the range of crimes for which it may be imposed. Pursuant to article 6 (2) of the International Covenant on Civil and Political Rights, in countries which have not abolished the death penalty, a sentence of death may be imposed only for the most serious crimes.

35. The scope of article 6 (2) has been articulated restrictively. The first of the safeguards guaranteeing protection of the rights of those facing the death penalty (see para. 13) provides that capital punishment 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. The Human Rights Committee has found the imposition of the death penalty for crimes that do not result in loss of life incompatible with the Covenant (CCPR/C/79/Add.25, para. 8). As clarified by a previous mandate holder, these conclusions have been reflected in the current international legal interpretation of the term “most serious crimes” as limited to crimes involving lethal intent and resulting in death — in other words, intentional killing (A/HRC/4/20, paras. 54-62 and 66).

36. The Commission on Human Rights and the Human Rights Committee have determined that the following offences do not meet the “most serious crimes” threshold: abduction not resulting in death (CCPR/CO/72/GTM, para. 17), abetting suicide (A/50/40, para. 449), adultery (CCPR/C/79/Add.25, para. 8), apostasy (CCPR/C/79/Add.85, para. 8), corruption (CCPR/C/79/Add.25, para. 8), economic crimes (CCPR/C/79/Add.1, para. 5; CCPR/C/79/Add.25, para. 8), the expression of conscience (resolution 2005/59 of the Commission on Human Rights, para. 7 (f)), financial crimes (ibid.), embezzlement by officials (CCPR/C/79/Add.85, para. 8), evasion of military service (CCPR/C/79/Add.84, para. 11), homosexual acts (CCPR/C/79/Add.85, para. 8), illicit sex (ibid.), sexual relations between consenting adults (resolution 2005/59 of the Commission on Human Rights, para. 7 (f)), theft or robbery by force (CCPR/C/79/Add.85, para. 8; CCPR/CO/83/KEN, para. 13), religious practice (resolution 2005/59 of the Commission on Human Rights, para. 7 (f)) and political offences (CCPR/C/79/Add.101, para. 8). The Committee has also found that drug-related offences do not qualify (A/50/40, para. 449; A/55/40, para. 464).

[[FULL DOCUMENT](#)]

Use of Force

International Legal Instruments

Code of Conduct for Law Enforcement Officials (1979)

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Commentary :

- (a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.
- (b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.
- (c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.
- (d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary :

- (a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.
- (b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary :

- (a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary :

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary :

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which:

"[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(b) The Declaration defines torture as follows:

". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary :

- (a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.
- (b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.
- (c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary :

- (a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.
- (b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.
- (c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary :

- (a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.
- (b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.
- (c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.
- (d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

[\[FULL DOCUMENT\]](#)

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)

Whereas the work of law enforcement officials is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, inter alia , emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia , welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.
3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.
5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
 - (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
 - (b) Minimize damage and injury, and respect and preserve human life;
 - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
 - (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.
6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.
7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.
8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.
10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.
11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:
 - (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
 - (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
 - (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

[\[FULL DOCUMENT\]](#)

ACHPR Resolution 281(LV) on the Right to Peaceful Demonstration (2014)

Recalling its mandate to promote and ensure the protection of human and peoples' rights in the African Charter on Human and Peoples' Rights (the African Charter);

Considering the rights and freedoms guaranteed in Articles 4, 5, 6, 7 and 9 of the African Charter on Human and Peoples' Rights;

Further Considering the provisions of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials providing for conditions in which force may lawfully be used without violating human rights;

Concerned with the mass and arbitrary arrests and the continued detention of several people following peaceful demonstrations, with several reports of torture and ill-treatment in police stations;

Concerned also with the excessive use of force, live ammunition and tear gas to disperse peaceful demonstrators;

Concerned with the increasing level of sexual violence against female protesters, including cases of rape and sexual assaults in some countries;

Condemns serious restrictions imposed by some states to fundamental rights and freedoms specifically freedom of expression and the rights to information and peaceful demonstration;

Condemns the arbitrary arrests and detentions and killings of peaceful demonstrators;

Calls on States Parties to:

- Refrain from conducting arbitrary arrests and detentions of demonstrators and calls for their immediate release;

- Refrain from disproportionate use of force against demonstrators whilst fully complying with international standards on the use of force and firearms by law enforcement officials;
- Conduct impartial and independent investigations into all human rights violations to ensure that all perpetrators are held accountable;
- Protect peaceful protesters regardless of their political affiliation, and/or sex;
- Fully abide by their regional and international obligations to respect fundamental rights and freedoms;
- Uphold the right to a fair trial before an independent ordinary court of law and put an end to arbitrary arrests and detentions and to the use of special courts, including military tribunals for civilians;
- Ensure that any legislation governing the exercise of fundamental human rights fully complies with the relevant regional and international standards;

[[FULL DOCUMENT](#)]

African case law

Communication 204/97: Movement burkinabé des droits de l'Homme et des peuples / Burkina Faso

43. [...] The Commission deplores the abusive use of means of state violence against demonstrators even when the demonstrations are not authorised by the competent administrative authorities. It believes that the public authorities possess adequate means to disperse crowds, and that those responsible for public order must make an effort in these types of operations to cause only the barest minimum of damage and violation of physical integrity, to respect and preserve human life.

[[FULL DOCUMENT](#)]

Communication 295/04: Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi (represented by Zimbabwe Human Rights NGO Forum) v Zimbabwe

108. There are several reasons why the use of lethal force by the police, also in the context of arrest, should be viewed as a matter of the utmost gravity, and be based on a solid ethical and legal framework. These include the fundamental nature of the right to life; the irreversible nature of death; the potential of errors of fact and judgement; the effect on the legitimacy of the police and the State; and the trauma suffered by everyone involved when a life is ended through violence.

109. However, in some cases of urgency, law enforcement officials are given the power by law to use coercive measures and even in exceptional cases to take life-and-death decisions on the spot. [...] It should be kept in mind that law enforcement officials have a legal duty to perform their functions. Not giving the police the proper scope to protect the public and themselves could compromise the safety of the public as well as members of the police force. A system that is seen as too protective of the rights of suspects is unlikely to be effective in practice. The challenge clearly is to find the right balance between overly permissive and overly restrictive. The starting point is that life should not be taken by the State, and any action that seeks to fall in the narrow confines of exceptions to this rule requires strong motivation.

110. The authoritative statements of international law that set out the principles on the use of force by the police are to be found in the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (the Basic Principles). The essence of these instruments is reflected in the “protection of life” principle.

[...]

122. International human rights law proceeds from what is called the protection of life principle. This principle entails that while life may not be sacrificed to protect other values, under closely defined circumstances one life may be taken as a last resort in order to protect another life or lives. The use of lethal force in the case of Beavan Tatenda Kazangachire and Munyaradzi Never Chitsenga was not done as an act of last resort to protect lives. Therefore the use of lethal force by the police was not justified.

[\[FULL DOCUMENT\]](#)

Other Regional Case Law

McCann and Others v. United Kingdom (no.18984/91) (1995) ¶¶150, 212-3

150. In keeping with the importance of this provision (art. 2) in a democratic society, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination.

[...]

212. Although detailed investigation at the inquest into the training received by the soldiers was prevented by the public interest certificates which had been issued [...] it is not clear whether they had been trained or instructed to assess whether the use of firearms to wound their targets may have been warranted by the specific circumstances that confronted them at the moment of arrest. Their reflex action in this vital respect lacks the degree of caution in the use of firearms to be expected from law enforcement personnel in a democratic society, even when dealing with dangerous terrorist suspects, and stands in marked contrast to the standard of care reflected in the instructions in the use of firearms by the police which had been drawn to their attention and which emphasised the legal responsibilities of the individual officer in the light of conditions prevailing at the moment of engagement [...]. This failure by the authorities also suggests a lack of appropriate care in the control and organisation of the arrest operation.

213. In sum, having regard to the decision not to prevent the suspects from travelling into Gibraltar, to the failure of the authorities to make sufficient allowances for the possibility that their intelligence assessments might, in some respects at least, be erroneous and to the automatic recourse to lethal force when the soldiers opened fire, the Court is not persuaded that the killing of the three terrorists constituted the use of force which was no more than absolutely necessary in defence of persons from unlawful violence within the meaning of Article 2 para. 2 (a) of the Convention.

[\[FULL DOCUMENT\]](#)

Finogenov and Others v Russia (no.18299/03) (2011) ¶¶207-9, 266

207. As the text of Article 2 itself shows, the use of lethal force by law-enforcement officers may be justified in certain circumstances. Nonetheless, Article 2 does not grant them carte blanche. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations must be sufficiently regulated by it, within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force [...], and even against avoidable accident.

208. When lethal force is used within a “policing operation” by the authorities it is difficult to separate the State’s negative obligations under the Convention from its positive obligations. In such cases the Court will normally examine whether the police operation was planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force and human losses, and whether all feasible precautions in the choice of means and methods of a security operation were taken [...].

209. The authorities' positive obligations under Article 2 of the Convention are not unqualified: not every presumed threat to life obliges the authorities to take specific measures to avoid the risk. A duty to take specific measures arises only if the authorities knew or ought to have known at the time of the existence of a real and immediate risk to life and if the authorities retained a certain degree of control over the situation [...]. The Court would only require a respondent State to take such measures which are "feasible" in the circumstances [...]. The positive obligation in question must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources [...].

[...]

266. The Court acknowledges that in such situations some measure of disorder is unavoidable. It also recognises the need to keep certain aspects of security operations secret. However, in the circumstances the rescue operation of 26 October 2002 was not sufficiently prepared, in particular because of the inadequate information exchange between various services, the belated start of the evacuation, limited on-the-field coordination of various services, lack of appropriate medical treatment and equipment on the spot, and inadequate logistics. The Court concludes that the State breached its positive obligations under Article 2 of the Convention.

[\[FULL DOCUMENT\]](#)

Other Documents

A/HRC/17/28 Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2011) ¶¶43, 60-62, 135-7

43. During demonstrations, the right to life of protesters, the police and the public may be at stake. The right to life, sometimes described as the "supreme human right," constitutes a rule of customary international law and is one of the central rights recognized in international human rights treaties. The primary purpose of the recognition of the right to life is to protect people from being killed by the State, the entity that claims and, to a large extent, exercises monopoly on the use of force.

[...]

60. The guiding principle in respect of the lethal use of force or firearms is defence of one's own life or that of others. The only circumstances warranting the use of firearms, including during demonstrations, is the imminent threat of death or serious injury, and such use shall be subject to the requirements of necessity and proportionality.

61. In principle shooting indiscriminately into a crowd is not allowed and may only be targeted at the person or persons constituting the threat of death or serious injury.²⁸ The use of firearms cannot be justified merely because a particular gathering is illegal and has to be dispersed, or to protect property. This is often not reflected in domestic laws.

62. In terms of the Code and the Basic Principles, the norm in respect of the intentional use of lethal force is the same under all circumstances, whether in self-defence, arrest, quelling a riot or any other circumstances, namely, protection of life.

[...]

135. [...] the central distinction made by domestic legal systems tends to be between legal and illegal protest, while international law is rather inclined to draw the line between non-violent and violent protests. The concern of the former centres around public order; the latter prioritises the preservation of peace as the objective for police or other State intervention.

136. Under the public order paradigm, it is not difficult to argue that rights—including the right to life—may be limited during protest actions. However, if the starting point is that rights should be limited only to protect the rights of others, the bar is set higher. The life of one person may be sacrificed only if it is necessary to protect the life of others.

137. There can be no doubt about the importance of both maintenance of public order and protection of the rights of others. However, it is also clear that in some of the life-and-death situations presented by demonstrations, the emphasis on one of these two approaches will lead to different decisions on whether to use firearms. Given the status of the right to life as the supreme human right, and the irreversible nature of decisions involving lethal force, if the generally more generous approach advanced by international standards is ever to play a role, it will have to be in this context.

[\[FULL DOCUMENT\]](#)

A/61/311, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2006) ¶¶36-7, 40-41

36. Human rights standards on the use of force derive from the understanding that the irreversibility of death justifies stringent safeguards for the right to life, especially in relation to due process. A judicial procedure, respectful of due process and arriving at a final judgement, is generally the sine qua non without which a decision by the State and its agents to kill someone will constitute an “arbitrary deprivation of life” and, thus, violate the right to life.

37. Arbitrariness is not, however, simply the opposite of due process. The human rights obligations of States include protecting the right to life of private individuals against the actions of other private individuals. That is, States must not only refrain from killing but must also exercise due diligence in preventing murder. Clearly there are instances in which the decision not to kill someone suspected of, or engaged in, the commission of a violent crime would itself result in the deaths of others. [...]

40. To fully understand the legal basis for these provisions it is important to distinguish the proportionality criterion from the necessity criterion and to evaluate the contribution each safeguard makes to reconciling the obligations to respect and to ensure while adhering as closely as possible to the due process ideal.

41. While the proportionality requirement imposes an absolute ceiling on the permissible level of force based on the threat posed by the suspect to others, the necessity requirement imposes an obligation to minimize the level of force applied regardless of the level of force that would be proportionate. With respect to the use of firearms, the applicable standard of necessity is that the resort to this potentially lethal measure must be made “only when less extreme means are insufficient to achieve these objectives”. The question of a measure’s sufficiency can hardly be determined in advance. It is, rather, determined by the nature of the resistance put up by the suspect. In general, the way in which law enforcement officials should determine the necessary level of force is by starting at a low level and, in so far as that proves insufficient in the particular case, graduating, or escalating, the use of force [...]

[\[FULL DOCUMENT\]](#)

A/HRC/14/24/Add.6, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Report on Targeted Killings (2010) ¶¶28, 31-33

28. Whether or not a specific targeted killing is legal depends on the context in which it is conducted: whether in armed conflict, outside armed conflict, or in relation to the interstate use of force. The basic legal rules applicable to targeted killings in each of these contexts are laid out briefly below.

[...]

31. The legal framework: The legality of a killing outside the context of armed conflict is governed by human rights standards, especially those concerning the use of lethal force. Although these standards are sometimes referred to as

the “law enforcement” model, they do not in fact apply only to police forces or in times of peace. The “law enforcement officials” who may use lethal force include all government officials who exercise police powers, including a State’s military and security forces, operating in contexts where violence exists, but falls short of the threshold for armed conflict.

32. Under human rights law: A State killing is legal only if it is required to protect life (making lethal force proportionate) and there is no other means, such as capture or nonlethal incapacitation, of preventing that threat to life (making lethal force necessary). The proportionality requirement limits the permissible level of force based on the threat posed by the suspect to others. The necessity requirement imposes an obligation to minimize the level of force used, regardless of the amount that would be proportionate, through, for example, the use of warnings, restraint and capture.

33. This means that under human rights law, a targeted killing in the sense of an intentional, premeditated and deliberate killing by law enforcement officials cannot be legal because, unlike in armed conflict, it is never permissible for killing to be the sole objective of an operation. Thus, for example, a “shoot-to-kill” policy violates human rights law. This is not to imply, as some erroneously do, that law enforcement is incapable of meeting the threats posed by terrorists and, in particular, suicide bombers. Such an argument is predicated on a misconception of human rights law, which does not require States to choose between letting people be killed and letting their law enforcement officials use lethal force to prevent such killings. In fact, under human rights law, States’ duty to respect and to ensure the right to life entails an obligation to exercise “due diligence” to protect the lives of individuals from attacks by criminals, including terrorists. Lethal force under human rights law is legal if it is strictly and directly necessary to save life.

[\[FULL DOCUMENT\]](#)

Further Material

Geneva Academy, *Facilitating Peaceful Protests* (Academy Briefing No.5, January 2014) [available [here](#)]

Armed Conflict

International Legal Framework

Geneva Conventions I, II, III and IV (1949) Common Article 3

ARTICLE 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

[[FULL DOCUMENT](#)]

Protocol Additional to the Geneva Conventions, relating to the protection of victims of international armed conflicts (Protocol I) (1977) Part IV: Civilian Population

Article 48 — Basic rule

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

Article 49 — Definition of attacks and scope of application

1. "Attacks" means acts of violence against the adversary, whether in offence or in defence.

2. The provisions of this Protocol with respect to attacks apply to all attacks in whatever territory conducted, including the national territory belonging to a Party to the conflict but under the control of an adverse Party.

3. The provisions of this Section apply to any land, air or sea warfare which may affect the civilian population, individual civilians or civilian objects on land. They further apply to all attacks from the sea or from the air against objectives on land but do not otherwise affect the rules of international law applicable in armed conflict at sea or in the air.

4. The provisions of this Section are additional to the rules concerning humanitarian protection contained in the Fourth Convention, particularly in Part II thereof, and in other international agreements binding upon the High Contracting Parties, as well as to other rules of international law relating to the protection of civilians and civilian objects on land, at sea or in the air against the effects of hostilities.

Article 50 — Definition of civilians and civilian population

1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

2. The civilian population comprises all persons who are civilians.

3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

Article 51 — Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:

- (a) Those which are not directed at a specific military objective;
- (b) Those which employ a method or means of combat which cannot be directed at a specific military objective; or
- (c) Those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

5. Among others, the following types of attacks are to be considered as indiscriminate:

- (a) An attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
- (b) An attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

6. Attacks against the civilian population or civilians by way of reprisals are prohibited.

7. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

8. Any violation of these prohibitions shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians, including the obligation to take the precautionary measures provided for in Article 57.

[...]

Article 57 — Precautions in attack

1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.

2. With respect to attacks, the following precautions shall be taken:

(a) Those who plan or decide upon an attack shall:

(i) Do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;

(ii) Take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;

(iii) Refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(b) An attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(c) Effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.

3. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.

4. In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.

5. No provision of this Article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects.

Article 58 — Precautions against the effects of attacks

The Parties to the conflict shall, to the maximum extent feasible:

(a) Without prejudice to Article 49 of the Fourth Convention, endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives;

(b) Avoid locating military objectives within or near densely populated areas;

- (c) Take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.

[[FULL DOCUMENT](#)]

Protocol Additional to the Geneva Conventions, relating to the protection of victims of non-international armed conflicts (Protocol II) (1977) Part IV – Civilian Population

Article 13 — Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

Article 14 — Protection of objects indispensable to the survival of the civilian population

Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as food stuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.

Article 15 — Protection of works and installations containing dangerous forces

Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.

Article 16 — Protection of cultural objects and of places of worship

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.

Article 17 — Prohibition of forced movement of civilians

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.
2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

Article 18 — Relief societies and relief actions

1. Relief societies located in the territory of the High Contracting Party, such as Red Cross (Red Crescent, Red Lion and Sun) organizations, may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict. The civilian population may, even on its own initiative, offer to collect and care for the wounded, sick and shipwrecked.

2. If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.

[\[FULL DOCUMENT\]](#)

Case law

Commission Nationale des Droits de l'Homme et des Libertés v Chad (2000) AHRLR 66 (ACHPR 1995)

18. In this case, the complainant claims that not only did government agents commit violations of the African Charter, but that the state failed to protect the rights in the Charter from violation by other parties.

19. The government claims that no violations were committed by its agents, and that it had no control over violations committed by other parties, as Chad is in a state of civil war.

20. The Charter specifies in article 1 that the states parties shall not only recognise the rights, duties and freedoms adopted by the Charter, but they should also 'undertake ... measures to give effect to them'. In other words, if a state neglects to ensure the rights in the African Charter, this can constitute a violation, even if the state or its agents are not the immediate cause of the violation.

21. The African Charter, unlike other human rights instruments, does not allow for state parties to derogate from their treaty obligations during emergency situations. Thus, even a civil war in Chad cannot be used as an excuse by the state violating or permitting violations of rights in the African Charter.

22. In the present case, Chad has failed to provide security and stability in the country, thereby allowing serious and massive violations of human rights. The national armed forces are participants in the civil war and there have been several instances in which the government has failed to intervene to prevent the assassination and killing of specific individuals. Even where it cannot be proved that violations were committed by government agents, the government had a responsibility to secure the safety and the liberty of its citizens, and to conduct investigations into murders. Chad therefore is responsible for the violations of the African Charter.

23. The complainant claims that the events in Chad constitute violations of articles 4 (right to life), 5 (prohibition of torture, inhuman and degrading treatment), 6 (right to security of person), 7 (right to a fair trial), and [9] (right to freedom of expression).

[\[FULL DOCUMENT\]](#)

Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) / Sudan

201. It is the primary duty and responsibility of the Respondent State to establish conditions, as well as provide the means, to ensure the protection of both life and property, during peace time and in times of disturbances and armed conflicts. The Respondent State also has the responsibility to ensure that persons who are in harm's way, as it seems the victims were, are resettled in safety and with dignity in another part of the country.

[\[FULL DOCUMENT\]](#)

Other Documents

E/CN.4/2006/53, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2006) ¶¶33, 39, 41

33. It is of continuing concern that States often fail to comply with their obligation to effectively investigate, prosecute, and punish violations of the right to life in situations of armed conflict and occupation. This failure has taken a number of forms. Policies on investigating deaths have permitted unjustifiable exceptions and have often failed to provide for impartiality and independence. During armed conflicts, even grave crimes such as murder are often leniently punished when committed by members of the armed forces. Trends in the investigation, prosecution, and punishment of commanding officers have been even less encouraging. Impunity for individuals has not been the only failure. In some cases, a strategic reluctance to engage in “body counts” may have impeded full consideration of how the impact of armed conflict on civilian populations can be minimized. Efforts at monitoring the consequences of choices of weapons and tactics on the incidental loss of civilian life generally remain ad hoc, leaving compliance with requirements of proportionality and precautionary measures under-examined.

[...]

39. The legal obligation to effectively punish violations is as vital to the rule of law in armed conflict as in peace. It is, thus, alarming when States punish crimes committed against civilians and enemy combatants in a lenient manner. The legal duty to punish those individuals responsible for violations of the right to life is not a formality. Punishment is required in order to ensure the right to life by vindicating the rights of the victims and preventing impunity for the perpetrators. Therefore, States must punish those individuals responsible for violations in a manner commensurate with the gravity of their crimes.

[...]

41. The obligation to investigate is part and parcel of the obligation to ensure the right to life and, thus, entails more than the determination of criminal responsibility. States are also responsible for undertaking the systematic supervision and periodic investigation necessary to ensure that their institutions, policies, and practices ensure the right to life as effectively as possible. Canada’s experience in Somalia illustrates the complementary roles of criminal and non-criminal investigation. Canada prosecuted and punished several soldiers for their actions in Somalia, but it also established a Commission of Inquiry to determine the institutional defects that allowed those abuses to occur. By identifying pervasive problems in how rules of engagement were drafted, were disseminated through the chain of command, and were taught to soldiers on the ground, Canada improved its institutional capacity to better ensure the right to life in the future. States must constantly monitor and investigate whether they are effectively ensuring human rights law and adopt all necessary measures to prevent the recurrence of a violation.

[[FULL DOCUMENT](#)]

E/CN.4/2006/53/Add.5, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Mission to Sri Lanka (2006) ¶31

31. Common article 3 prohibits the murder of persons taking no active part in hostilities. This prohibition is both more limited than sometimes hoped and more expansive than sometimes realized. It leaves the use of lethal force in the midst of combat - the “conduct of hostilities” - largely unregulated. However, in other contexts, it protects combatants as well as civilians, prohibiting the murder of all “[p]ersons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause”. The killings that have taken place in which a person is abducted and subsequently killed violate this rule without exception. The bedrock legal principle that persons who are captured have a right to humane treatment should not be obscured by any implication that their execution is worse if they are civilians.

[[FULL DOCUMENT](#)]

A/HRC/4/20, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2007) ¶38

38. It warrants underlining the fact that international humanitarian law does not allow – under any circumstances - the taking of the life of another as a purported act of “mercy”. The obligation to treat injured soldiers “humanely” and the obligation to “respect and protect” the wounded are incompatible with the idea of “mercy killings”. Rather, the obligation of parties to a conflict, in the presence of injured persons, is (i) to “take all possible measures to search for, collect and evacuate the wounded, sick and shipwrecked without adverse distinction” and (ii) to seek the appropriate medical care to the fullest extent practicable and with the least possible delay. Individual parties to the conflict, who lack medical training, may not take the medical care of the wounded into their own hands by deciding to end the life of an injured person on the battlefield. Such killings are an unequivocal violation of international humanitarian law.

[\[FULL DOCUMENT\]](#)

A/HRC/14/24/Add.6, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Report on Targeted Killings (2010) ¶87

87. The failure of States to comply with their human rights law and IHL obligations to provide transparency and accountability for targeted killings is a matter of deep concern. To date, no State has disclosed the full legal basis for targeted killings, including its interpretation of the legal issues discussed above. Nor has any State disclosed the procedural and other safeguards in place to ensure that killings are lawful and justified, and the accountability mechanisms that ensure wrongful killings are investigated, prosecuted and punished. The refusal by States who conduct targeted killings to provide transparency about their policies violates the international legal framework that limits the unlawful use of lethal force against individuals.

[\[FULL DOCUMENT\]](#)

Other Violations by State Actors

Case law

Amnesty International and Others v Sudan (2000) AHRLR 297 (ACHPR 1999)

48. It is alleged that prisoners were executed after summary and arbitrary trials and that unarmed civilians were also victims of extrajudicial executions. These allegations are upheld by evidence taken from the report of the United Nations Special Rapporteur.

49. The government has provided copies of the laws governing the executions alleged in the communications, but provides no specific information on the said executions. Neither has the Commission's delegation been able to obtain this information.

50. In addition to the individuals named in the communications, there are thousands of other executions in Sudan. Even if these are not all the work of forces of the government, the government has a responsibility to protect all people residing under its jurisdiction (see *Commission Nationale des Droits de l'Homme et des Libertés v Chad* (communication 74/91) ¶21). Even if Sudan is going through a civil war, civilians in areas of strife are especially vulnerable and the state must take all possible measures to ensure that they are treated in accordance with international humanitarian law.

51. The investigations undertaken by the government are a positive step, but their scope and depth fall short of what is required to prevent and punish extrajudicial executions. Investigations must be carried out by entirely independent individuals, provided with the necessary resources, and their findings should be made public and prosecutions initiated in accordance with the information uncovered. Constituting a commission of the district prosecutor and police and security officials, as was the case in the 1987 Commission of Inquiry set up by the Governor of South Darfur, overlooks the possibility that police and security forces may be implicated in the very massacres they are charged to investigate. This Commission of Inquiry, in the Commission's view, by its very composition, does not provide the required guarantees of impartiality and independence.

52. According to the Commission's long-standing practice in cases of human rights violations, the burden of proof rests on the government. [...] If the government provides no evidence [to] contradict an allegation of human rights [violations] made against it, the Commission will take it as proven, or at the least probable or plausible. On the information available the Commission considers that there was a violation of article 4 of the African Charter on Human and Peoples' Rights.

[\[FULL DOCUMENT\]](#)

Other Documents

A/HRC/14/24/Add.7, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Election related violence and killings (2010) ¶¶2, 9-11, 70-3, 89

2. Election-related killings violate not only the right to life but also the right to participate in the democratic process, as well as a range of other human rights. They have featured prominently in the Special Rapporteur's country fact-finding missions, his communications to Governments and regular monitoring work.

[...]

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

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

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

[...]

70. Political candidates at all levels have been killed during election cycles, and particularly during the pre-election stage, for a range of reasons. Candidate killings have taken place as part of a general attempt to disrupt elections [...].

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

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

73. In some cases, the killings were part of an attempt by criminal organizations to exercise influence over candidates and policies. In Guatemala, for example, over 50 candidates and activists were killed in the run-up to the 2007

elections, many of whom seem likely to have been killed by organized criminal groups to increase their political influence.

[...]

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

[\[FULL DOCUMENT\]](#)

Custodial Deaths

International Legal Framework

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

[...]

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.* No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

* The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.

Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.
2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.
3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

[...]

Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Principle 25

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

[...]

Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

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ICRC Guidelines for Investigating Deaths in Custody

Annex I: Eight Points of Note

1. All deaths in custody must be investigated promptly by an independent and impartial body regardless of whether the relatives of the deceased request it.
2. The main purpose of the investigation is to:
 - clarify the circumstances surrounding the death.The investigation may also contribute to:
 - reducing trauma and providing an effective remedy for the next of kin
 - prosecuting and punishing those responsible
 - preventing the recurrence of deaths in custody.
3. The investigation should be thorough. This implies that it must seek, at the least, to:
 - obtain and preserve physical and documentary evidence in connection with the death
 - identify possible witnesses and record their statements
 - identify the deceased
 - determine the extent of involvement of all those implicated in the death
 - establish the cause, manner, place and time of death, as well as any pattern or practice that may have caused it
 - differentiate between natural death, accidental death, suicide, and homicide.
4. The scene of death should be regarded as potentially a crime scene, especially if the death was unexpected.
5. A thorough autopsy, by a trained medical officer, is a must – especially where death was unexpected.
6. The next of kin should be immediately informed of their relative's death and kept abreast of the progress and findings of the investigation.
7. A complete death certificate should be issued to the next of kin as soon as possible after the death.
8. On completion of all post-mortem examinations essential to the investigation, the body should be returned to the next of kin in a manner that is fully respectful of the dignity of the deceased.

[\[FULL DOCUMENT\]](#)

Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (2014)

20. State responsibility to account for death and serious injury in police custody and pre-trial detention

Given the control that the State exercises over persons held in police custody or pre-trial detention, States shall provide a satisfactory explanation, and make available information on the circumstances surrounding custody or detention, in every case of death or serious injury of persons who are deprived of their liberty.

21. Deaths in police custody and pre-trial detention

(a) If a person under arrest, in police custody, pre-trial detention, or in the process of transfer dies, a prompt, impartial and independent inquiry into the cause of death shall be undertaken by a judicial authority. 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. The investigating authority shall have access to all necessary information and persons to conduct a thorough, impartial and independent inquiry.

(b) The detainee's next of kin shall be promptly informed the death, be provided with regular updates by the authority investigating the death, and have access to information about the detainee and the investigative process in accordance with the principles set out in the African Commission on Human and Peoples' Rights' Model Law on Access to Information.

(c) On completion of all examinations essential to the investigation, the body of the deceased shall be returned to the family, in a manner that is fully respectful of the dignity of the deceased, so that funeral rites or other customary procedures can be conducted with the least possible delay. The investigating authorities should hand over to the next of kin a complete death certificate as soon as possible after the death. The personal belongings of the deceased should be returned to the next of kin as soon as possible.

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Regional Case Law

Salman v. Turkey (no.21986/93) ECHR 2000 ¶¶99-100

99. In the light of the importance of the protection afforded by Article 2, the Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Consequently, where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V). The obligation on the authorities to account for the treatment of an individual in custody is particularly stringent where that individual dies.

100. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see the *Ireland v. the United Kingdom* judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.

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***Anguelova v. Bulgaria* (no.38361/97) ECHR 2002 ¶¶110-11**

110. In the light of the importance of the protection afforded by Article 2, the Court must subject complaints about deprivations of life to the most careful scrutiny, taking into consideration all relevant circumstances.

Persons in custody are in a vulnerable position and the authorities are under an obligation to account for their treatment. Consequently, where an individual is taken into police custody in good health but later dies, it is incumbent on the State to provide a plausible explanation of the events leading to his death (see, *mutatis mutandis*, *Selmouni v. France* [GC], no. 25803/94, ¶87, ECHR 1999-V, and *Salman and Velikova*, cited above).

111. In assessing evidence, the Court adopts the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, ¶161). However, such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman*, cited above, ¶100).

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288/04: *Gabriel Shumba v Zimbabwe*

130. The jurisprudence of the African Commission indicates that the right enshrined in Article 4 “is the fulcrum of all other rights. It is the fountain through which other rights flow, and any violation of this right without due process amounts to arbitrary deprivation of life”⁸ - that states not only have to refrain from intentional and unlawful deprivation of life, but must also take appropriate steps to safeguard the lives of those within their jurisdiction. The right enshrined in this article is the supreme right of the human being. It follows that the deprivation of life by the authorities of the state is a matter of the utmost gravity. The requirements that the right shall be protected by law and that no one shall be arbitrarily deprived of his life mean that the law must strictly control and limit the circumstances in which a person may be deprived of his life by the authorities of a State.

131. The jurisprudence of the African Commission further indicates that in terms of Article 4 of the African Charter, every person deprived of his or her liberty has the right to live in detention conditions compatible with his or her personal dignity, and the state must guarantee to that person the right to life and to humane treatment. Consequently, since the state is the institution responsible for detention establishments, it is the guarantor of these rights of the prisoners.¹⁰ In the instant case, the Victim was detained for not more than forty eight hours. The African Commission notes the allegation of torture which (could lead to death) is addressed in its analysis of Article 5. However, it also notes that the Complainant has not given enough evidence that during those two days the Victim was facing eminent (sic.) death.

[...]

137. The African Commission is aware that regardless of the seriousness of certain actions and the culpability of the perpetrators of certain crimes, the power of the state is not unlimited, nor may the state resort to any means to attain its ends. The state is subject to law and morality. Disrespect for human dignity cannot serve as the basis for any state action. Article 4, which safeguard the right to life, ranks as one of the most fundamental provisions in the African Charter, to which no derogation is permitted. Together with Article 5, it also enshrines one of the basic values of democratic societies. The circumstances in which deprivation of life may be justified must, therefore, be strictly construed. The object and purpose of the African Charter as an instrument for the protection of individual human beings also requires that Article 4 be interpreted and applied so as to make its safeguards practical and effective. However, in the instant case the Complainant has not adequately demonstrated that the Respondent State’s agents used lethal force to subjugate the Victim that will lead to a violation of Article 4.

138. As the African Commission has held on many occasions, Article 4 of the Charter enshrines one of the most fundamental values of a democratic society.¹⁸ It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour. However, the African Commission is of the view that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 4 of the African Charter.¹⁹ The assessment of this minimum level is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.²⁰ Furthermore, in considering whether treatment is "degrading" within the meaning of Article 4, the African Commission will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 4.

139. The African Commission will take into consideration that the suffering and humiliation involved must in any event exceed the inevitable element of suffering or humiliation connected with a legitimate deprivation of liberty. Nevertheless, in the light of Article 4 of the African Charter, the state must ensure that a person is detained (especially those who are to be executed) under conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the individual to distress or hardship exceeding the unavoidable level of suffering inherent in detention, and that, given the practical demands of imprisonment, the person's health and well-being are adequately secured, with the provision of the requisite medical assistance and treatment. When assessing conditions of detention, account will be taken of the cumulative effects of these conditions, as well as the specific allegations made by the Complainant.

[\[FULL DOCUMENT\]](#)

Other Documents

A/61/311, Report of the Special Rapporteur on extrajudicial executions to the General Assembly (2006) ¶50

50. What makes "custodial death" a useful legal category is not the character of the abuse inflicted on the victim but the implications of the custodial context for the State's human rights obligations. These implications concern the State obligations to both prevent deaths and respond to those deaths that occur. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies in State custody, there is a presumption of State responsibility. These interlocking implications produce the legal specificity of custodial death as a human rights violation.

[\[FULL DOCUMENT\]](#)

A/HRC/8/3, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2008) ¶¶71-2

71. How does it come to pass that certain prisoners are placed in the position of maintaining order and imposing discipline on their peers, often arbitrarily and abusively, while the prison authorities stand idly by? The origins of this practice vary. In some cases, staff may have deliberately delegated power to particular prisoners, sometimes beginning by designating "trusties" or individuals who are trusted to behave responsibly, but then losing a degree of control over, or becoming in thrall to, the "trusties". In other cases, inmates may have coerced the staff into recognizing their power. The extent to which control is surrendered also varies. Sometimes, the guards continue to monitor conditions and retain the capacity to intervene. In a remarkable number of cases, however, the guards have abandoned any attempt at regulating life within the prison and, instead, only secure the perimeter, preventing escapes and searching visitors for weapons and other contraband.

72. The violent death of some inmates is an almost invariable consequence of the abdication of authority to prisoners. There are several reasons for this. First, when prisoners run prisons, the "discipline" they impose is typically ruthless.

Prisoners who fail to abide by their arbitrary rules risk beating, stabbing and other unlawful violence. Second, when prisoners run prisons, the strength of gangs will increase, as will the likelihood of fights between gangs. Third, when criminals run prisons, it is relatively easy for them to organize riots and uprisings. When guards exercise strong, continuous supervision, grievances can be addressed before they explode, and fights can be broken up before they escalate. However, once a full-blown riot has developed, the usual response is large-scale intervention by a military or police unit that too often resorts to overwhelming force and indiscriminate violence. On various occasions, scores of prisoners have died during the suppression of a single prison riot.

[\[FULL DOCUMENT\]](#)

A/HRC/4/20/Add.2, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Mission to Guatemala (2007) ¶41

41. The human rights law on deaths in custody involves the situation-specific application of the due diligence standard. Many inmates who suffer violent deaths in custody do so at the hands of other inmates. This does not, however, absolve the State of legal responsibility under international law. As discussed above, the State's obligation to respect and ensure the right to life requires exercising due diligence by taking measures to prevent murders. In most contexts, exercising due diligence primarily entails the investigation, prosecution, and punishment of murderers so as to deter future crimes. However, in the custodial context, this obligation has more far-reaching implications. The controlled character of the custodial environment permits the State to exercise unusually comprehensive control over the conduct of government officials - police officers, prison guards, soldiers, etc. - in order to prevent them from committing violations. The controlled character of the custodial environment also permits the State to take unusually effective and comprehensive measures to prevent abuses by private persons. Moreover, by severely limiting inmates' freedom of movement and capacity for self-defence, the State assumes a heightened duty of protection. While the same basic standard applies in custodial and non-custodial settings - the State must exercise "due diligence" in preventing abuse - the level of diligence that is due is considerably higher in the custodial context (A/61/311, para. 51). This obligation to exercise due diligence is breached both when prison officials permit inherently dangerous situations to develop and when they tacitly delegate their powers and responsibilities to gangs or individual inmates.

[\[FULL DOCUMENT\]](#)

A/HRC/14/24/Add.3, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Mission to the Democratic Republic of the Congo (2010) ¶82

82. Prison conditions, per se, do not come within my mandate. But the atrocious state of prisons across the DRC leads to frequent deaths of detainees. The Minister of Justice acknowledged to me that prison conditions are "horrible" and that many people in detention die of hunger. The Government is failing in its duty to ensure even minimum detention conditions. As a result, prisoners die from preventable causes, and there are regular riots and escapes. Almost non-existent records and monitoring mean that it is not known how many deaths in prisons there actually are, although information provided by one source recorded 23 deaths in 2009 at one prison in Kinshasa alone.

[\[FULL DOCUMENT\]](#)

Violations by Non-State Actors

International Legal Framework

CCPR General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant, 26 May 2004, ¶8

8. The article 2, paragraph 1, obligations are binding on States [Parties] and do not, as such, have direct horizontal effect as a matter of international law. The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. States are reminded of the interrelationship between the positive obligations imposed under article 2 and the need to provide effective remedies in the event of breach under article 2, paragraph 3. The Covenant itself envisages in some articles certain areas where there are positive obligations on States Parties to address the activities of private persons or entities. For example, the privacy-related guarantees of article 17 must be protected by law. It is also implicit in article 7 that States Parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power. In fields affecting basic aspects of ordinary life such as work or housing, individuals are to be protected from discrimination within the meaning of article 26.

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Case law

Application No 013/2011 - Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo & Burkinabe Human and Peoples' Rights Movement v. The Republic of Burkina Faso ¶156

156. Because of all these shortcomings, the Court concludes that the respondent State has not acted with due diligence in the investigation, prosecution and trial of those responsible for the murders of Norbert Zongo and his three companions. The Court notes accordingly that the respondent State has violated, in this respect, the applicants' right to have their case heard by national courts guaranteed by section 7 of the Charter.¹

[\[FULL DOCUMENT\]](#) (in French)]

Velásquez Rodríguez v. Honduras IACHR Ser.C/no.4 (1988) ¶172

172. Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases

¹ Unofficial Translation. (En raison de toutes ces carences, la Cour conclut que l'État défendeur n'a pas agi avec la diligence due dans la recherche, la poursuite et le jugement des responsables des assassinats de Norbert Zongo et ses trois compagnons. La Cour note en conséquence que l'État défendeur a violé, sous cet aspect, le droit de requérants à ce que leur cause soit entendue par les juridictions nationales garanti par l'article 7 de la Charte.)

in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.

[\[FULL DOCUMENT\]](#)

19 Tradesmen v. Colombia IACHR Ser.C/no.109 (2004) ¶¶139-41

139. The Court must decide whether these facts give rise to the State's international responsibility. This calls for a thorough examination of the conditions in which a specific act or omission that harmed one or more of the rights embodied in the American Convention can be attributed to a State party and, consequently, entail its responsibility, under the rules of international law.

140. It is a basic principle of the law on the international responsibility of the State, embodied in international human rights law, that this responsibility may arise from any act or omission of any State agent, body or power, independent of its hierarchy, which violates internationally enshrined rights. The Court has also considered that "an illegal act that violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified), can lead to the international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention."

141. In order to establish that a violation of the rights embodied in the Convention has occurred, it is not necessary to determine, as it is under domestic criminal law, the guilt of the perpetrators or their intention, nor is it necessary to identify individually the agents to whom the violations are attributed. It is sufficient to demonstrate that public authorities have supported or tolerated the violation of the rights established in the Convention.

[\[FULL DOCUMENT\]](#)

Other Documents

E/CN.4/2005/7, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2004) ¶¶72-3

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

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51. At their core, vigilante killings are those undertaken by individuals or groups who “take the law into their own hands”. They are killings carried out in violation of the law by private individuals with the purported aim of crime control, or the control of perceived deviant or immoral behaviour. Specific incidents of vigilante killings can most usefully be categorized along various axes—such as spontaneity, organization and level of State involvement—and can be considered in relation to various characteristics—including the precise motivation for the killing, the identity of the victim and the identity of perpetrators. At one end of a spontaneity-planning continuum, for example, would be a set of killings carefully planned and orchestrated by a group which formed itself for the purpose of killing, for example, the listed leaders of a known criminal gang in a particular town. At the other end would be a group of people unknown to each other who responded to a person’s cry to catch a thief in the street and who came together at that point to murder the suspect in an instant of “mob justice”. It is the illegality and motive which brings these killings together as instances of vigilantism.

[...]

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

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

55. Recognition of the various roles that States have played in vigilante killings has important implications for considering States’ international legal obligations. States are obliged both to respect and to ensure the right to life. [ICCPR art.2 & art.6.1] This means that they are required to refrain from violating the right to life and also that they must adopt the necessary legislative, judicial, administrative, educative and other measures to guarantee that the right to life is respected within their territory or areas under their control. In other words, just as States are prohibited from using otherwise private actors to carry out vigilante killings, they are required to protect people from violent vigilantism carried out by privately formed groups.

[...]

57. [...] A State’s obligation to “ensure” the right to life is not breached simply because a vigilante kills a suspected criminal. Generally, isolated killings of individuals will constitute a crime in violation of the State’s domestic laws, but not give rise to any international governmental responsibility. However, a State will violate its obligation to “ensure” the right to life when it fails to take appropriate measures to prevent, punish, investigate or redress the harm caused by vigilantes. The police, for example, fail in their duty to prevent when they refuse to respond to calls of ongoing mob justice, or to take victims for medical treatment. States also fail in their obligations when they permit the perpetrators of vigilante killings to escape prosecution, as so often happens. Where vigilante killings are known to be a significant phenomenon, the State should take specific and focused action to investigate and stop them. The State may need to create a specialized law enforcement task force to dismantle vigilante groups and arrest and prosecute perpetrators, or investigations by a State’s national human rights institution may be appropriate (as is currently occurring in the Philippines). The international community can usefully assist States in such efforts through the provision of technical advice and resources.

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A/HRC/14/24, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2010) ¶¶45-47

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

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

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

[[FULL DOCUMENT](#)]

A/HRC/11/2, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2009) ¶¶43, 57

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.

[...]

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. 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.

[[FULL DOCUMENT](#)]

E/CN.4/2000/3, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2000) ¶¶78-84

78. In the period under review the Special Rapporteur has continued to receive reports of so-called "honour killings" of women. The perpetrators of these crimes are mostly male family members of the murdered women, who go unpunished or receive reduced sentences on the justification of having murdered to defend their misconceived notion of "family honour". The Special Rapporteur is working closely with the Special Rapporteurs on violence against women, its causes and consequences and on the independence of judges and lawyers to monitor incidents of "honour killings" where the State either approves of and supports these acts, or extends a form of impunity to the perpetrators by giving tacit or covert support to the practice. The Special Rapporteur has received reports of "honour killings" from Bangladesh, Turkey, Jordan, Israel, India, Italy, Sweden, the United Kingdom, Pakistan, Brazil, Ecuador, Uganda and Morocco. The practice of "honour killings" is more prevalent although not limited to countries where the majority of the population is Muslim. In this regard it should be noted that a number of renowned Islamic leaders and scholars have publicly condemned this practice and clarified that it has no religious basis. At the same time, it is reported that some Governments of countries where Muslims are in a minority do not take a firm position against such violations of human rights on the pretext of not wanting to hurt cultural sensitivities among the minority population.

[...]

81. The Special Rapporteur notes that some countries retain legislation allowing for reduction of sentences and exemption from prosecution to those who kill in the name of honour. The authorities often maintain a deadly and deliberate silence over such killings, thereby encouraging perpetrators to adopt a self-righteous stance in regard to such inhuman crimes. The courts in many of these countries continue to justify such killings. Lesser punishment is often awarded on the grounds that the victim offered "provocation" by disobeying or violating cultural norms. The Special Rapporteur deplores the refusal of the Senate of Pakistan to discuss a resolution condemning "honour killings". The senators favouring such a resolution were physically intimidated in the presence of the press and women activists attending the session. The Government of Pakistan has further refused to condemn honour killings despite public protests throughout the country against the decision of the Senate. The Special Rapporteur is deeply concerned at the Government's attitude of tolerance of such killings despite its statement to the contrary at the fifty-fifth session of the Commission on Human Rights.

[[FULL DOCUMENT](#)]

A/HRC/14/24, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (2010) ¶62

62. The link between gender-based violence and killings has been a central theme in many situations, whether concerning "honour" killings, "femicide", domestic violence or "witchcraft" killings. But situations in which women are literally raped to death have actually been significantly underreported, and the links between rape and killings have

been under-studied. 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).

[\[FULL DOCUMENT\]](#)

A/HRC/11/2/Add.2, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Mission to Brazil (2009) ¶40

40. Extermination groups are also responsible for the murders of landless workers and indigenous persons in rural areas, generally in the context of disputes over land. While the numbers of landless workers or indigenous persons executed each year does not form a large proportion of Brazil's total homicides, the killings that take place serve to reinforce a broader system of repression by demonstrating the lethal consequences of defying powerful actors. [...] While individual killings are a result of structural land conflict issues, complex and long-term land use and ownership issues should not be used as an excuse for failing to take immediate action to prevent, prosecute and punish extrajudicial executions in this context. Land conflicts form the context in which these murders take place. But it is not the case that executions inevitably follow from conflicts over land. Executions occur because those who order and carry out the murders know that they will get away with it. Brazil must ensure that reported death threats are investigated and the perpetrators punished.

[\[FULL DOCUMENT\]](#)

E/CN.4/1996/53, Report of the Special Rapporteur on violence against women, its causes and consequences (1996) ¶30-33

30. Under international human rights law, Governments are not only obliged to refrain from committing human rights violations but also to prevent and respond to human rights abuses, without discrimination. In the past, however, a narrow interpretation of international human rights protections has overlooked the issue of State inaction to prevent and punish violations committed by private actors, despite provisions in, inter alia, the International Covenant on Civil and Political Rights, which require States to respect and ensure, among other things, the right to life, the right to be free from torture and cruel, inhuman or degrading treatment and the security of person.

31. Increasingly, however, international legal interpretations and norms are evolving to define more clearly the positive role and responsibility of the State in preventing abuses perpetrated by para-State or private actors. The concept of State responsibility has developed to recognize that States also have an obligation to take preventive and punitive steps where human rights violations by private actors occur. In this context, the Human Rights Committee has clearly stated that a State not only has a duty to protect its citizens from such violations but also to investigate violations when they occur and to bring the perpetrators to justice. 8/ At the regional level, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (the "Convention of Belém do Pará") is the first regional human rights treaty to focus exclusively on gender-based violence and to prohibit violence within the home.

32. It follows from the above that, by definition, a State can be held complicit where it fails systematically to provide protection from private actors who deprive any person of his/her human rights.

33. However, unlike for direct State action, the standard for establishing State complicity in violations committed by private actors is more relative. Complicity must be demonstrated by establishing that the State condones a pattern of abuse through pervasive non-action. Where States do not actively engage in acts of domestic violence or routinely disregard evidence of murder, rape or assault of women by their intimate partners, States generally fail to take the minimum steps necessary to protect their female citizens' rights to physical integrity and, in extreme cases, to life. This sends a message that such attacks are justified and will not be punished. To avoid such complicity, States must demonstrate due diligence by taking active measures to protect, prosecute and punish private actors who commit abuses.

[\[FULL DOCUMENT\]](#)

Broader Interpretations of the Right to Life

International legal instruments

International Covenant on Economic, Social and Cultural Rights (1966)

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

[...]

11.(1) The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

[\[FULL DOCUMENT\]](#)

African Charter on Human and Peoples' Rights (1981) Article 22

22.(1) All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

(2) States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

[\[FULL DOCUMENT\]](#)

Other Instruments

Pretoria Declaration on Economic, Social and Cultural Rights in Africa (2004) ¶10

10. The social, economic and cultural rights explicitly provided for under the African Charter, read together with other rights in the Charter, such as the right to life and respect for inherent human dignity, imply the recognition of other economic and social rights, including the right to shelter, the right to basic nutrition and the right to social security.

[\[FULL DOCUMENT\]](#)

Committee on Economic, Social and Cultural Rights, General Comment No.14, The right to the highest attainable standard of health (2000) ¶3

3. The right to health is closely related to and dependent upon the realization of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.

[\[FULL DOCUMENT\]](#)

CCPR Communication 1791/2008, Boudjemai v Algeria ¶8.4

8.4 The Committee notes that, according to the author, her son, Djaafar Sahbi, was arrested on 3 July 1995 at around 10 o'clock in the morning by two uniformed police officers at the exit of the hospital where he worked, and the victim's daughter was present at the time of his arrest. It further notes that, according to the author, such a disappearance entails a high risk to the victim's right to life and that his prolonged absence and the circumstances and context of his arrest lead to the conclusion that it seems likely that he died while in custody. The Committee notes that the State party has produced no evidence refuting the author's allegation. The Committee recalls that, in cases of enforced disappearance, the deprivation of liberty, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate of the disappeared person, effectively removes the person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable. In the present case, the Committee notes that the State party has produced no evidence to indicate that it has fulfilled its obligation to protect Djaafar Sahbi's life. Therefore the Committee concludes that the State party has failed in its duty to protect Djaafar Sahbi's life, in violation of article 6, paragraph 1, of the Covenant.

[\[FULL DOCUMENT\]](#)

African Commission Decisions

Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001) ¶¶51, 64

51. These rights [articles 16 and 24] recognise the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual. As has been rightly observed by Alexander Kiss, "an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and the development as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health.

64. The communication argues that the right to food is implicit in the African Charter, in such provisions as the right to life (Article 4), the right to health (Article 16) and the right to economic, social and cultural development (Article 22). By its violation of these rights, the Nigerian Government trampled upon not only the explicitly protected rights but also upon the right to food implicitly guaranteed.

[\[FULL DOCUMENT\]](#)

International Pen and Others (on behalf of Saro-Wiwa) v Nigeria (2000) AHRLR 212 (ACHPR 1998)

104. The protection of the right to life in Article 4 also includes a duty for the state not to purposefully let a person die while in its custody. Here at least one of the victims' lives was seriously endangered by the denial of medication during detention. Thus, there are multiple violations of Article 4.

[\[FULL DOCUMENT\]](#)

Aminu v Nigeria (2000) AHRLR 258 (ACHPR 2000)

17. The complainant alleged that the series of arrests and detention suffered by his client, and his subsequent going into hiding is in violation of his right to life under article 4 of the Charter.

18. The Commission notes that the complainant's client (the victim) is still alive but in hiding for fear of his life. It would be a narrow interpretation of this right to think that it can only be violated when one is deprived of it. It cannot be said that the right to respect for one's life and the dignity of one's person, which this article guarantees, would be protected in a state of constant fear and/or threats, as experienced by Mr Kazeem Aminu[’s client]. The Commission therefore finds the above acts of the security agents of the respondent state in violation of article 4 of the Charter. [...]

[\[FULL DOCUMENT\]](#)

Sudan Human Rights Organisation and Another v Sudan (2009) AHRLR 153 (ACHPR 2009) ¶¶146-8

146. Article 4 of the Charter protects the right to life and provides that: ‘Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of his right’. The right to life is the supreme right of the human being. It is basic to all human rights and without it all other rights are without meaning. The term ‘life’ itself has been given a relatively broad interpretation by courts internationally, to include the right to dignity and the right to livelihood.

147. It is the duty of the state to protect human life against unwarranted or arbitrary actions by public authorities as well as by private persons. The duty of the state to protect the right to life has been interpreted broadly to include prohibition of arbitrary killing by agents of the state and to strictly control and limit the circumstances in which a person may be deprived of life by state authorities. These include the necessity to conduct effective official investigations when individuals have been killed as a result of the use of force by agents of the state, to secure the right to life by making effective provisions in criminal law to deter the commission of offences against the person, to establish law-enforcement machinery for the prevention, suppression, investigation and penalisation of breaches of criminal law. In addition to the foregoing, the State is duty bound to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. In *Article 19 v Eritrea* this Commission noted that ‘arbitrariness is not to be equated with against the law but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process ...’.

148. States as well as non-state actors, have been known to violate the right to life, but the State has dual legal obligations, to respect the right to life, by not violating that right itself, as well as to protect the right to life, by protecting persons within its jurisdiction from non-state actors. In *Zimbabwe Human Rights NGO Forum v Zimbabwe*, the Commission noted that an act by a private individual or (non-state actor) and therefore not directly imputable to a state, can generate responsibility of the State, not because of the act itself, but because of the lack of due diligence on the part of the state to prevent the violation or for not taking the necessary steps to provide the victims with reparation.

[\[FULL DOCUMENT\]](#)

Other Regional Decisions

Velásquez Rodríguez v. Honduras IACHR Ser.C/no.4 (1988) ¶¶157, 188

157. The practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life [...]

188. [...] The context in which the disappearance of Manfredo Velasquez occurred and the lack of knowledge seven years later about his fate create a reasonable presumption that he was killed. Even if there is a minimal margin of doubt in this respect, it must be presumed that his fate was decided by authorities who systematically executed detainees without trial and concealed their bodies in order to avoid punishment. This, together with the failure to investigate, is a violation by Honduras of a legal duty under Article 1(1) of the Convention to ensure the rights recognized by Article 4(1). That duty is to ensure to every person subject to its jurisdiction the inviolability of the right to life and the right not to have one's life taken arbitrarily. These rights imply an obligation on the part of States Parties to take reasonable steps to prevent situations that could result in the violation of that right.

[\[FULL DOCUMENT\]](#)

Osman v United Kingdom (no.23452/94) ECHR 1998 ¶115-6

115. The Court notes that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction [...]. It is common ground that the State's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. It is thus accepted by those appearing before the Court that Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual. The scope of this obligation is a matter of dispute between the parties.

116. For the Court, and bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice [...].

In the opinion of the Court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person (see paragraph 115 above), it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. The Court does not accept the Government's view that the failure to perceive the risk to life in the circumstances known at the time or to take preventive measures to avoid that risk must be tantamount to gross negligence or wilful disregard of the duty to protect life [...]. Such a rigid standard must be considered to be incompatible with the requirements of Article 1 of the Convention and the obligations of Contracting States under that Article to secure the practical and effective protection of the rights and freedoms laid down therein, including Article 2 [...]. For the Court, and having regard to the nature of the right protected by Article 2, a right fundamental in the scheme of the Convention, it is sufficient for an applicant to show

that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge. This is a question which can only be answered in the light of all the circumstances of any particular case.

[\[FULL DOCUMENT\]](#)

Öneryildiz v Turkey (no.48939/99) ECHR 2004 ¶¶89-93

89. The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 [...] entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life [...].

90. This obligation indisputably applies in the particular context of dangerous activities, where, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks. [...]

91. The obligations deriving from Article 2 do not end there. Where lives have been lost in circumstances potentially engaging the responsibility of the State, that provision entails a duty for the State to ensure, by all means at its disposal, an adequate response—judicial or otherwise—so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished [...].

92. In this connection, the Court has held that if the infringement of the right to life or to physical integrity is not caused intentionally, the positive obligation to set up an “effective judicial system” does not necessarily require criminal proceedings to be brought in every case and may be satisfied if civil, administrative or even disciplinary remedies were available to the victims [...].

93. However, in areas such as that in issue in the instant case, the applicable principles are rather to be found in those the Court has already had occasion to develop in relation notably to the use of lethal force, principles which lend themselves to application in other categories of cases.

In this connection, it should be pointed out that in cases of homicide the interpretation of Article 2 as entailing an obligation to conduct an official investigation is justified not only because any allegations of such an offence normally give rise to criminal liability [...], but also because often, in practice, the true circumstances of the death are, or may be, largely confined within the knowledge of State officials or authorities [...].

In the Court’s view, such considerations are indisputably valid in the context of dangerous activities, when lives have been lost as a result of events occurring under the responsibility of the public authorities, which are often the only entities to have sufficient relevant knowledge to identify and establish the complex phenomena that might have caused such incidents.

Where it is established that the negligence attributable to State officials or bodies on that account goes beyond an error of judgment or carelessness, in that the authorities in question, fully realising the likely consequences and disregarding the powers vested in them, failed to take measures that were necessary and sufficient to avert the risks inherent in a dangerous activity [...], the fact that those responsible for endangering life have not been charged with a criminal offence or prosecuted may amount to a violation of Article 2, irrespective of any other types of remedy which individuals may exercise on their own initiative [...].

[\[FULL DOCUMENT\]](#)

131. The obligation on the part of the State to safeguard the lives of those within its jurisdiction has been interpreted so as to include both substantive and procedural aspects, notably a positive obligation to take regulatory measures and to adequately inform the public about any life-threatening emergency, and to ensure that any occasion of the deaths caused thereby would be followed by a judicial enquiry [citing *Öneryıldız*].

132. As regards the substantive aspect, in the particular context of dangerous activities the Court has found that special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks. Among these preventive measures, particular emphasis should be placed on the public's right to information, as established in the case-law of the Convention institutions. The relevant regulations must also provide for appropriate procedures, taking into account the technical aspects of the activity in question, for identifying shortcomings in the processes concerned and any errors committed by those responsible at different levels [citing *Öneryıldız*].

133. It has been recognised that in the context of dangerous activities the scope of the positive obligations under Article 2 of the Convention largely overlap with those under Article 8 [...]. Consequently, the principles developed in the Court's case-law relating to planning and environmental matters affecting private life and home may also be relied on for the protection of the right to life.

134. As to the choice of particular practical measures, the Court has consistently held that where the State is required to take positive measures, the choice of means is in principle a matter that falls within the Contracting State's margin of appreciation. There are different avenues to ensure Convention rights, and even if the State has failed to apply one particular measure provided by domestic law, it may still fulfil its positive duty by other means [...].

135. In this respect an impossible or disproportionate burden must not be imposed on the authorities without consideration being given, in particular, to the operational choices which they must make in terms of priorities and resources [...]; this results from the wide margin of appreciation States enjoy, as the Court has previously held, in difficult social and technical spheres [...]. This consideration must be afforded even greater weight in the sphere of emergency relief in relation to a meteorological event, which is as such beyond human control, than in the sphere of dangerous activities of a man-made nature.

136. In assessing whether the respondent State had complied with the positive obligation, the Court must consider the particular circumstances of the case, regard being had, among other elements, to the domestic legality of the authorities' acts or omissions [...], the domestic decision-making process, including the appropriate investigations and studies, and the complexity of the issue, especially where conflicting Convention interests are involved [...].

137. In the sphere of emergency relief, where the State is directly involved in the protection of human lives through the mitigation of natural hazards, these considerations should apply in so far as the circumstances of a particular case point to the imminence of a natural hazard that had been clearly identifiable, and especially where it concerned a recurring calamity affecting a distinct area developed for human habitation or use [...]. The scope of the positive obligations imputable to the State in the particular circumstances would depend on the origin of the threat and the extent to which one or the other risk is susceptible to mitigation.

[[FULL DOCUMENT](#)]

Right to Life in National Constitutions

Algeria (Article 34)

34. The State guarantees the inviolability of the human person. Any form of physical or moral violence or breach of dignity is forbidden.

Angola (Article 22)

22. (1) The State shall respect and protect the life of the human person.

(2) The death penalty shall be prohibited.

Benin (Article 15)

15. Each individual has the right to life, liberty, security and the integrity of his person.

Botswana (Section 4)

(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of an offence under the law in force in Botswana of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of subsection (1) of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable—

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

Burkina Faso (Article 2)

2. The protection of life, safety, and physical integrity are guaranteed. Slavery, slave practices, inhuman and cruel, degrading and humiliating treatment, physical and moral torture, mistreatment inflicted upon children and all forms of deprecation of man are forbidden and punished by law.

Burundi (Article 24)

24. Every woman, every man has the right to life.

Cape Verde (Article 26)

26.(1) Human life and the physical and spiritual integrity of people shall be inviolable.

(2) No one may be subjected to torture, or to cruel, degrading or inhuman punishment or treatment and in no case shall there be the death penalty.

Central African Republic (Article 3)

3. Everyone has the right to life and to bodily integrity. Liberty of the person is inviolable. These rights may only be affected by application of a law. No one will be submitted to torture or to inhuman, cruel, degrading or humiliating brutalities or treatment. Every individual and every agent of the state which is found guilty of such acts will be punished according to the law. No one may be condemned if it is not by virtue of a law in force before the committed act. The rights of the defence shall be freely exercised themselves before all the jurisdictions of the Republic. Every person being the object of a measure depriving liberty has the right to be examined and treated by a doctor of his or her choice if possible.

Chad (Article 17)

17. The human person is sacred and inviolable. Everyone has the right to life, personal integrity, security, freedom, protection of his private life and his property.

Congo (Article 7)

7. The human person is sacred and has the right to life. The state has the absolute obligation to respect it and protect it. Every citizen has the right to free development and to the full flowering of his or her personality with respect for the rights of others, public order, morals and good manners.

Democratic Republic of the Congo (Article 16)

16. The individual is sacred. The State has the obligation to respect and protect him/her. All persons have the right to life, physical integrity and to the free development of their personality, while respecting the law, public order, the rights of others and public morality.

Côte d'Ivoire (Article 2)

2. The individual is sacred. All human beings are born free and equal before the law. They enjoy inalienable rights, namely the right to life, freedom, the development of their personality and respect for their dignity. The rights of the individual are inviolable. Public authorities have the obligation to respect, protect and promote the individual. Any sanction leading to the deprivation of human life is forbidden.

Djibouti (Article 10)

10. The person is sacred. The state shall have the obligation to respect and protect it. All human beings shall be equal before the law. Every individual shall have the right to life, liberty, security and the integrity of his person. No one

may be prosecuted, arrested, accused or convicted other than by virtue of a law promulgated prior to the actions of which he is accused. All accused persons shall be deemed innocent until proved guilty by the competent jurisdiction. The right to defence, including the right to legal assistance of one's own choosing, shall be guaranteed at all stages of proceedings. Anyone who is deprived of his liberty shall have the right to be examined by a doctor of his own choosing. No one may be detained in a penal establishment other than by order of a magistrate member of the judiciary.

Equatorial Guinea (Item 13a)

13. Every citizen shall enjoy the following rights and freedoms:

(a) The respect of his person, life, integrity and physical and moral dignity. Capital punishment shall only be applied for crimes condemned by the law.

Eritrea (Article 15)

15 (1.) No person shall be deprived of life without due process of law.

(2.) No person shall be deprived of liberty without due process of law.

Ethiopia (Article 15)

15. Every person has the right to life. No person may be deprived of his life except as a punishment for a serious criminal offence determined by law.

The Gambia (Article 18)

18.(1) No person shall be deprived of his or her life intentionally, except in the execution of a sentence of death imposed by a court of competent jurisdiction in respect of a criminal offence for which the penalty is death under the laws of The Gambia, as they have effect in accordance with subsection (2), and of which he or she has been lawfully convicted.

(2) As from the coming into force of this Constitution, no court in The Gambia shall be competent to impose a sentence of death for any offence unless the sentence is prescribed by law and the offence involves violence, or the administration of any toxic substance, resulting in the death of another person.

(3) The National Assembly shall within ten years from the date of the coming into force of this Constitution review the desirability or otherwise of the total abolition of the death penalty in The Gambia.

(4) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case, that is to say -

- (a) for the defence of any person from unlawful violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny;
- (d) in order to prevent the commission by that person of a criminal offence; or
- (e) if he or she dies as a result of a lawful act of war.

Ghana (Article 13)

13.(1) No person shall be deprived of his life intentionally except in the exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted.

(2) A person shall not be held to have deprived another person of his life in contravention of clause (1) of this article if that other person dies as the result of a lawful act of war or if that other person dies as the result of the use of force to such an extent as is reasonably justifiable in the particular circumstances -

- (a) for the defence of any person from violence or for the defence of property; or
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) for the purposes of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission of a crime by that person.

Guinea (Article 6)

6. The human being has [the] right to the free development of his personality. He has [the] right to life and to physical and moral integrity; no one may be subjected to torture, to pain [peines] or to cruel, inhuman or degrading treatments. No one is required to execute a manifestly illegal order. The law determines the order manifestly illegal. No one may take advantage [se prévaloir] of a received order or of an instruction to justify acts of torture, abuse [sérvices] or cruel, inhuman or degrading treatments committed in the exercise or on the occasion of the exercise of their functions. No situation of exception or of emergency should [ne doit] justify the violations of human rights.

Guinea-Bissau (Articles 36(1) & 38(1))

36.(1) In the Republic of Guinea-Bissau the death penalty shall not be applied in any cases.

38.(1) All citizens enjoy the inviolability of their persons.

Kenya (Article 26)

26. (1) Every person has the right to life.

(2) The life of a person begins at conception.

(3) A person shall not be deprived of life intentionally, except to the extent authorised by this Constitution or other written law.

(4) Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.

Lesotho (Article 5)

5.(1) Every human being has an inherent right to life. No one shall be arbitrarily deprived of his life.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is necessary in the circumstances of the case -

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war or in execution of the sentence of death imposed by a court in respect of a criminal offence under the law of Lesotho of which he has been convicted.

Liberia (Article 20)

20.(a) No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law. Justice shall be done without sale, denial or delay; and in all cases not arising in courts not of record, under courtmartial and upon impeachment, the parties shall have the right to trial by jury.

Malawi (Article 16)

16. Every person has the right to life and no person shall be arbitrarily deprived of his or her life: Provided that the execution of the death sentence imposed by a competent court on a person in respect of a criminal offence under the laws of Malawi of which he or she has been convicted shall not be regarded as arbitrary deprivation of his or her right to life.

Mali (Article 1)

1. The human dignity is sacred and inviolable. Each individual has the right to life, liberty, and the security and integrity of his person.

Mauritius (Article 4)

4.(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable -

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

Morocco (Article 20)

20. Right to life is the premier right of every human being. The law protects this right.

Mozambique (Article 40)

40.(1) All citizens shall have the right to life and to physical and moral integrity, and they shall not be subjected to torture or to cruel or inhuman treatment.

(2) There shall be no death penalty in the Republic of Mozambique.

Namibia (Article 6)

6. The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia.

Niger (Article 12)

12. Everyone has the right to life, health, physical and moral integrity, sufficient food, clean water, education and instruction according to the conditions established by law. The State assures to each one the satisfaction of the essential needs and services as well as a full development.

Nigeria (Article 33)

33.(1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary -

- (a) for the defence of any person from unlawful violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) for the purpose of suppressing a riot, insurrection or mutiny.

Rwanda (Article 12)

12. Every person has the right to life. No person shall be arbitrarily deprived of life.

Sao Tome And Principe (Article 21)

21.(1) Human life is inviolable.

(2) Under no circumstances shall the death penalty be used.

Senegal (Article 7)

7. The human person is sacred. The human person is inviolable. The state shall have the obligation to respect it and to protect it. Every individual has the right to life, to freedom, to security, the free development of his or her personality, to corporal integrity, and especially to protection against physical mutilation. The Senegalese people recognise the existence of sacred and inalienable human rights as the basis of any human community, of peace and of justice in Senegal and the world. All human beings shall be equal before the law. Men and women shall be equal in law. No one in Senegal shall have any liabilities or privileges based upon places of birth, status or family.

Seychelles (Article 15)

15(1) Everyone has a right to life and no one shall be deprived of life intentionally.

(2) A law shall not provide for a sentence of death to be imposed by any court.

(3) Clause (1) is not infringed if there is a loss of life -

(a) by any act or omission which is made not punishable by any law reasonably justifiable in a democratic society; or

(b) as a result of a lawful act of war.

Sierra Leone (Article 16)

16.(1) No person shall be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the laws of Sierra Leone, of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case, that is to say —

(a) for the defence of any person from unlawful violence or for the defence of property; or

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) for the purpose of suppressing a riot, insurrection or mutiny; or

(d) in order to prevent the commission by that person of a criminal offence; or

(e) if he dies as a result of a lawful act of war.

South Africa (Section 11)

11. Everyone has the right to life.

Somalia (Section 13)

13. Everyone has the right to life.

Sudan (Article 28)

28. Every human being has the inherent right to life, dignity and the integrity of his/her person, which shall be protected by law; no one shall arbitrarily be deprived of his/her life.

South Sudan (Article 11)

11. Every person has the inherent right to life, dignity and the integrity of his or her person which shall be protected by law; no one shall be arbitrarily deprived of his or her life.

Swaziland (Article 15)

15.(1) A person shall not be deprived of life intentionally save in the execution of the sentence of a court in respect of a criminal offence under the law of Swaziland of which that person has been convicted.

(2) The death penalty shall not be mandatory.

(3) A sentence of life imprisonment shall not be less than twenty five years.

(4) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are mentioned in this subsection, a person shall not be regarded as having been deprived of life in contravention of this section if death results from use of force to such extent as is reasonably justifiable and proportionate in the circumstances of the case -

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a serious criminal offence.

(5) Abortion is unlawful but may be allowed -

- (a) on medical or therapeutic grounds including where a doctor certifies that –
 - (i) continued pregnancy will endanger the life or constitute a serious threat to the physical health of the woman;
 - (ii) continued pregnancy will constitute a serious threat to the mental health of the woman;
 - (iii) there is serious risk that the child will suffer from physical or mental defect of such a nature that the child will be irreparably seriously handicapped;
- (b) where the pregnancy resulted from rape, incest or unlawful sexual intercourse with a mentally retarded female; or
- (c) on such other grounds as Parliament may prescribe.

Tanzania (Article 14)

14. Every person has the right to live and to the protection of his life by the society in accordance with law.

Togo (Article 13)

13. The State has the obligation to ensure the physical and mental integrity, life and safety of everyone living in the country. No one shall be arbitrarily deprived of his or her life or freedom.

Tunisia (Article 22)

22. The right to life is sacred and shall not be prejudiced except in extreme cases regulated by law.

Uganda (Article 22)

22.(1) No person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect of a criminal offence under the laws of Uganda and the conviction and sentence have been confirmed by the highest appellate court.

(2) No person has the right to terminate the life of an unborn child except as may be authorised by law.

Zambia (Article 12)

12.(1) A person shall not be deprived of his life intentionally except in execution of the sentence of a court in respect of a criminal offence under the law in force in Zambia of which he has been convicted.

(2) A person shall not deprive an unborn child of life by termination of pregnancy except in accordance with the conditions laid down by an Act of Parliament for that purpose.

(3) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this Article if he dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case-

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection, mutiny or if he dies as a result of a lawful act of war; or
- (d) in order to prevent the commission by that person of a criminal offence.

Zimbabwe (Article 12)

12.(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of subsection (1) if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable in the circumstances of the case —

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny or of dispersing an unlawful gathering; or
- (d) in order to prevent the commission by that person of a criminal offence;

or if he dies as the result of a lawful act of war.

(3) It shall be sufficient justification for the purposes of subsection (2) in any case to which that subsection applies if it is shown that the force used did not exceed that which might lawfully have been used in the circumstances of that case under the law in force immediately before the appointed day.



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