

USE OF FORCE BY LAW ENFORCEMENT OFFICIALS

This Chapter of the Handbook collects the observations and recommendations of the UN Special Rapporteur with regards to use of lethal force by law enforcement officials. It especially addresses the misperception that increased use of lethal force by law enforcement authorities is a necessary and effective response to situations of endemic criminality, and that greater respect for suspects' individual rights must necessarily come at a cost to public security. In its evaluation of several countries' efforts to reform their police institutions, this Chapter provides recommendations of best practices for police that meet the needs of both individual and public security.

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A. USE OF FORCE GUIDELINES

Report on Police Oversight Mechanisms (A/HRC/14/24/Add.8, ¶¶ 8-14):

8. While not all killings by police are unlawful, the circumstances in which the police may use lethal force are strictly circumscribed by international human rights law. In short, the police may only intentionally use lethal force where it is necessary to protect life. The relevant law has been set out in detail in previous reports by the Special Rapporteur.¹

9. Unlawful police killings are not confined to countries in particular regions, with particular political systems or lower levels of prosperity. The most common forms of police killings occur due to excessive use of force in law enforcement operations, including during attempts to arrest suspected criminals,² 24 crowd or riot control³ 25, and purported “shoot-outs” with alleged armed criminals (sometimes called “encounter killings”).⁴ Some killings are motivated by personal monetary gain: the Special Rapporteur has reported on police killings occurring at police checkpoints, where attempts at extortion can escalate into extrajudicial executions.⁵ Others occur in the context of poorly planned and unlawful policing policies and operations, for example, where police engage in heavily militarized operations without adequate safeguards or community support.⁶ In some countries, police engage in “social cleansing”, intentionally killing suspected criminals or members of poor or marginalized communities.⁷ In extreme cases, the police operate as part of a formal death squad or militia.⁸ Killings also occur as a result of torture, or the denial of life-saving treatment while the victim is in police custody.⁹ Other killings by police occur outside the context of any purported official police activity, and result from off-duty police officers acting as vigilantes or hired killers.¹⁰

10. The experience of the Special Rapporteur indicates that there are many factors in different contexts that can cause the police to unlawfully kill, rather than to arrest suspects and provide real security for citizens. Causes and enabling conditions can be historical, institutional or structural, legal, or political.

11. A lack of proper police training, particularly concerning weapons use, less than lethal measures, and training in human rights¹¹, can make police officers more likely to resort to the use of deadly force.¹² Killings can also result from the lack of appropriate weaponry or other

¹ A/61/311, paras. 33-45; E/CN.4/2006/53, paras. 44-54.

² E/CN.4/2006/53/Add.4, paras. 42-44.

³ A/HRC/11/2/Add.6, para. 72.

⁴ A/HRC/11/2/Add.1.

⁵ A/HRC/11/2/Add.3.

⁶ A/HRC/11/2/Add.2.

⁷ A/HRC/4/20/Add.2.

⁸ A/HRC/11/2/Add.6.

⁹ Amnesty International, *Killing at will: Extrajudicial executions and other unlawful killings in Nigeria* (December 2009), p. 12.

¹⁰ A/HRC/4/20/Add.2.

¹¹ In Lesotho, police reform included the reform of the police training program to include human rights training, as well as the creation of a civilian directorate of policing. Julie Berg, *Police Accountability in Southern African Commonwealth Countries* (2005), p. 16.

¹² Human Rights Watch, *Police Brutality in Urban Brazil* (April 1997); E/CN.4/2004/7/Add.3, p. 13;

equipment, especially in the riot or crowd control context.¹³ Domestic legal frameworks for the use of force which are either overly permissive, legalising the use of lethal force in instances where it is not necessary to protect life or unclear regarding the line between necessary and excessive force, similarly may make police more likely to kill.¹⁴ Poor pay for police can also lead to corruption and violent activity, including by providing an incentive for police to act as hired killers.¹⁵

12. Democratic police forces emerging from periods of violence, instability or violent dictatorship can be especially prone to continued violent tactics and policies. In particular, countries with a history of militarized police force can have high levels of police violence. The presence of a military rather than civilian ethos within a police force contributes significantly to the number of human rights violations committed by that force. The militarisation of a police force can be due to, for example, the incorporation of former rebels or members of the military into the police force as part of a peace agreement; the inheritance of a militarised police force from a colonial power; or the use of the police in quasi-military roles in countries where there is little security or respect for the rule of law.¹⁶

13. High numbers of police killings are also often seen in countries with high crime rates, and especially where there are high levels of violent or street crime, and where there are organised or semi-organised violent gangs or militias. While police forces face many challenges in insecure environments, some governments and police forces fail to prepare appropriate crime-control strategies, and instead opt to use unlawful, short-term and heavyhanded tactics against alleged criminals. Killings can also be encouraged where there is high level political or public support for violent policing. Senior police officers or officials can contribute to the number of police killings by tacitly approving of or openly encouraging them.¹⁷

14. In some contexts, institutionalised racism or ethnic discrimination can result in the use of more violence against certain groups by the police.¹⁸ In others, individuals perceived to be members of a political, religious, or ethnic rival group may be intentionally targeted by the police.¹⁹ Politicised policing often results when members of the police force have strong

A/HRC/11/2/Add.2, pp. 6-9.

¹³ Report on elections killings, A/HRC/14/24/Add.7.

¹⁴ A/61/311, para. 33; E/CN.4/2006/53; A/HRC/11/2/Add.6, para. 12.

¹⁵ A/HRC/11/2/Add.2, pp. 22-25.

¹⁶ In addition to feeding into diminished regard for the human rights of suspects and civilians, the militarisation of police forces can also pose a problem when attempting to establish some form of accountability through external oversight. Civilian oversight bodies are more likely to be strongly resisted by police forces with a militaristic tradition or culture. Andrew J. Goldsmith, "Police Accountability in Colombia", in Andrew J Goldsmith and Colleen Lewis, *Civilian Oversight of Policing* (2000), p. 189. See also Niels Uildriks and Piet van Reenen, "Human Rights Violations by Police", *Human Rights Review* (January – March 2001).

¹⁷ A/HRC/11/2/Add.6.

¹⁸ Benjamin Bowling, Coretta Phillips, Alexandra Campbell and Maria Docking, *Policing and Human Rights: Eliminating Discrimination, Xenophobia, Intolerance and the Abuse of Power from Police Work*, United Nations Research Institute for Social Development (May 2004).

¹⁹ Report on the DRC, A/HRC/14/24/Add.3.

allegiances to a particular political leader or party, and where command and control is not sufficiently independent.²⁰

2006 Report to the General Assembly (A/61/311, 5 Sept. 2006, ¶¶ 33-45):

33. One issue frequently underscored in communications that I have sent to Governments is that of the lethal use of force by law enforcement officials. My report on Nigeria provides a compelling example of what happens when the rules governing such situations are inconsistent with the fundamental principles reflected in the basic international norms, as elaborated upon in standards originally adopted on a non-binding basis.²¹ Nigeria's standing "rules for guidance in use of firearms by the police" (Police Order No. 237) authorize the use of firearms if a police officer cannot "by any other means" arrest or rearrest any person who is suspected (or has already been convicted) of an offence punishable by death or at least seven years' imprisonment. The rules which elaborate upon this provision are even more permissive. They note that any person who seeks to escape from lawful custody commits a felony warranting a seven-year sentence. As a result shooting to kill someone charged with stealing goods of negligible value would be justified if the person were alleged to be escaping from custody. The only qualification contained in the rules is that "firearms should only be used if there are no other means of effecting his arrest, and the circumstances are such that his subsequent arrest is unlikely".

34. These rules attempt to codify the principle of necessity, but completely ignore the principle of proportionality which, as we shall see below, constitute the twin pillars of international law in this area. Rather than permitting the intentional lethal use of force only "in order to protect life", these rules permit deliberate killing even to prevent the possible repetition of minor thefts. The consequences in relation to armed robbery — a capital offence in Nigeria — have been devastating. According to official statistics, 2,402 armed robbers have been killed by the police since 2000. (In 2004, one "armed robber" was killed for every six reported armed robberies.) While many of these were executions that would not have satisfied even the principle of necessity, it is the inadequacy of the rules on proportionality that makes the pretext of a fleeing armed robber available. Another example from Nigeria illuminates the human consequences of failing to properly incorporate international standards on necessity into domestic rules on the use of lethal force. In "operation fire-for-fire", a 2002 campaign against crime, the Inspector-General of Police pre-authorized police officers to fire in "very difficult situations". The result, revealed in police statistics, was that in the first 100 days, 225 suspected criminals were killed, along with 41 innocent bystanders.

35. The principles of international human rights law applicable in such contexts draw significantly upon the Code of Conduct for Law Enforcement Officials²² and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.²³ Each of these instruments has played a central role in defining the limits to the use of force by law enforcement

²⁰ Ibid.

²¹ See E/CN.4/2006/53/Add.4, paras. 18 and 43-47.

²² General Assembly resolution 34/169 of 17 December 1979.

²³ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990.

officials.²⁴ They are of special interest for two reasons. First, they were developed through intensive dialogue between law enforcement experts and human rights experts. Second, the process of their development and adoption involved a very large number of States and provides an indication of the near universal consensus on their content.²⁵ Of course, neither the consensus between law enforcement and human rights experts nor the consensus among States about the desirability of compliance with the Code of Conduct and the Basic Principles is definitive in terms of their formal legal status, and some of the provisions are clearly guidelines rather than legal dictates. However, some provisions of the Code of Conduct and the Basic Principles are rigorous applications of legal rules that States have otherwise assumed under customary or conventional international law. Among these are the instruments' core provisions on the use of force. Thus, the substance of article 3 of the Code of Conduct and principle 9 of the Basic Principles reflects binding international law.

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.²⁶

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.²⁷ 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. The typical situation would be one in which a suspect is threatening someone with a gun, apparently with the intention of shooting him, and in which the officer could expect to be shot if he attempted to arrest the gunman and bring him before a court. No reasonable interpretation of the State's obligation to respect the right to life would definitively rule out a police officer's decision to use lethal force in such a situation. As a result, due process remains the ideal against which "second best" safeguards for such situations must be measured. Necessity and proportionality are among the most fundamental of these second best safeguards.

38. The safeguards of necessity and proportionality are included in article 3 of the Code of Conduct and its commentary. Article 3 states: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." The commentary appended to this provision explains that:

"...

"(b) ... In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

²⁴ The phrase "law enforcement officials" includes all government officials exercising "police powers", sometimes including "military authorities" and "security forces" as well as police officers. (Code of Conduct, art. 1, commentary (a) and (b); Basic Principles, preamble, note).

²⁵ Nigel S. Rodley, *The Treatment of Prisoners Under International Law* (2nd ed.) (Oxford University Press, 1999), pp. 355-368, provides an overview of the development of the *Code of Conduct and Basic Principles*.

²⁶ See International Covenant on Civil and Political Rights (ICCPR), art. 6 (1).

²⁷ See E/CN.4/2005/7, paras. 65-76.

“(c) The use of firearms is considered an extreme measure. 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. ...”

39. Similarly, the Basic Principles’ most general statement on the use of lethal force, principle 9, provides that:

“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.”

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.²⁸ Indeed, force should not normally be the first resort: so far as the circumstances permit, law enforcement officials should attempt to resolve situations through non-violent means, such as persuasion and negotiation.²⁹ As expressed in the Basic Principles, “They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result”.³⁰ If it should become necessary to use force, the level of that force should be escalated as gradually as possible. While the relevant provisions of the Basic Principles are not exhaustive, they are suggestive of the course such escalation might take. As a first step, officials should attempt to “restrain or apprehend the suspected offender” without using force that carries a high risk of death — perhaps by physically seizing the suspect.³¹ If the use of firearms does prove necessary, law enforcement officials should “give a clear warning of their intent to use firearms, with sufficient time for the warning

²⁸ The issue of whether there are some situations in which an immediate recourse to lethal force may be strictly necessary in order to protect the lives of others arises in the context of so-called shoot-to-kill policies. See E/CN.4/2006/53, paras. 44-54; see also Center for Human Rights and Global Justice, *Irreversible Consequences: Racial Profiling and Lethal Force in the “War on Terror”* (New York: New York University School of Law, 2006) available at <<http://www.nyuhr.org/docs/CHRGJ%20Irreversible%20Consequences.pdf>>.

²⁹ See Basic Principles, principle 4; see also principle 20.

³⁰ *Ibid.*, principle 4.

³¹ *Code of Conduct*, art. 3, commentary (c).

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”.³² Like the escalation of force, one purpose of providing a warning is to avoid prejudging the level of resistance that will be shown. If the warning does not suffice, any use of firearms should be such as to “[m]inimize damage and injury”.³³ The furthest extreme on this continuum of force is, of course, the intentional lethal use of force. This must be resorted to only when “strictly unavoidable”.³⁴

42. Proportionality deals with the question of how much force might be permissible. More precisely, the criterion of proportionality between the force used and the legitimate objective for which it is used requires that the escalation of force be broken off when the consequences for the suspect of applying a higher level of force would “outweigh” the value of the objective.³⁵ Proportionality could be said to set the point up to which the lives and well-being of others may justify inflicting force against the suspect — and past which force would be unjustifiable and, in so far as it should result in death, a violation of the right to life. The general standard for proportionality is that the use of force must be “in proportion to the seriousness of the offence and the legitimate objectives to be achieved”.³⁶ From this general standard, other more precise standards may be derived for when particular levels of force may be used. The Basic Principles permit the intentional lethal use of force only “in order to protect life”.

43. With respect to the proportionality of other (potentially lethal) uses of firearms, principle 9 states:

“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. ...”³⁷

44. This list of objectives proportionate to the use of firearms is distinguished from the objective “to protect life” only in that it includes the disruption of some conduct that is less certain, though still likely, to cost lives. The notion of proportionality at work here is fairly simple — taking someone’s life is permitted only to protect the lives of others from him or her — but gains a measure of complexity inasmuch as use of force rules must be applicable *ex ante*. The fundamental question is of proportionality between the objectively anticipatable likelihood that

³² *Basic Principles*, principle 10.

³³ *Ibid.*, principle 5 (b); see also principle 11 (b).

³⁴ *Basic Principles*, principle 9; see also *Code of Conduct*, art. 31. The distinction drawn between the use of firearms and the intentionally lethal use of firearms stems from the recognition that any use of firearms is potentially lethal. Shots fired to warn rather than strike or to stop rather than kill cannot be relied upon not to cause death. Indeed, any use of force may result in death, whether by happenstance or due to the condition of the target. Principle 9 interprets the principle of proportionality as it applies to two points on a continuum, specifying the objectives that would be proportionate to that level of force.

³⁵ Metaphors of weighing and balancing are difficult to avoid in this context, but they risk conjuring up the idea of cost-benefit analysis. The balancing to be applied in human rights law is more in keeping with the framework used for evaluating restrictions on rights under which the reconciliation of competing values must respect “the just requirements of morality, public order and the general welfare in a democratic society” (Universal Declaration of Human Rights, art. 29 (2)).

³⁶ *Basic Principles*, principle 5 (a); see also *Code of Conduct*, art. 3, commentary (b) (see para. 38).

³⁷ See also *Code of Conduct*, art. 3, commentary (c) (see para. 38).

the use of force will result in death and the comparable anticipatable likelihood that failing to incapacitate the individual would result in the deaths of others. It must also be remembered that proportionality is a requirement additional to necessity. The principle of necessity will, thus, never justify the use of disproportionate force. If all proportionate measures have proved insufficient to apprehend a suspect, he or she must be permitted to escape.

45. It is tempting to focus on the ethical probity of law enforcement officials rather than the domestic rules regulating the use of lethal force. However, as I indicated in my first report to the Commission, in relation to respect for the right to life by military personnel, “Remedial proposals to inculcate higher ‘ethical’ standards or to develop a greater ‘moral’ sensibility [are] inadequate. Respect for human rights and humanitarian law are legally required and the relevant standards of conduct are spelled out in considerable detail. Remedial measures must be based squarely on those standards”.³⁸

Report on Mission to Kenya (A/HRC/11/2/Add.6, 26 May 2009, ¶¶ 12, 87):

12. Lethal force is also commonly used in legitimate law enforcement operations in which the police could have readily made an arrest. Some of these killings would be prevented through the provision of unambiguous guidelines on when police may use lethal force. The use of force by police is regulated by the Constitution of Kenya, the Police Act, and the Force Standing Orders.³⁹ In addition to being unclear and contradictory, these laws do not meet the requirements of international law which requires the use of force to be both necessary and proportionate, and permits intentional lethal force only where it is required to protect life.⁴⁰ The Constitution of Kenya, for example, states that there is no violation of the right to life if, *inter alia*, the death occurred as a result of reasonably justifiable force used to protect a person from violence, to defend property, to effect a lawful arrest, to prevent an escape, to suppress a riot, or to prevent the commission of a criminal offence.

[...]

87. A review of the use of force provisions in the Constitution of Kenya, the Police Act, and the Standing Force Orders should be undertaken to bring them into line with Kenya’s obligations under international law.

Report on Mission to Nigeria (E/CN.4/2006/53/Add.4, 7 January 2006, ¶¶ 43-47):

43. Despite the fact that the scourge of armed robbery plagues much of Nigeria, the label of “armed robber” is very often used to justify the jailing and/or extrajudicial execution of innocent individuals who have come to the attention of the police for reasons ranging from a refusal to pay a bribe to insulting or inconveniencing the police. The problem lies in part in the elevation of armed robbery to the level of a capital offence. This seems to have at least two perverse consequences: (1) criminals interrupted in an armed robbery have no disincentive to use arms

³⁸ See E/CN.4/2005/7, para. 54.

³⁹ Constitution of Kenya, s 71; Police Act, s 28; Criminal Procedure Code, s 21; Police Force Standing Orders, Appendix 51A.

⁴⁰ See: A/61/311, pages 12-16.

(either way it will be a capital offence); (2) the police are given a justification to shoot to kill any person who has committed a capital offence and is seeking to flee.⁴¹

44. The case of the Enugu Six⁴² is telling in that the Nigerian Civil Liberties Organisation was able to predict, with chilling accuracy, the execution of six alleged armed robbers. Tragically, the practice of summarily executing suspected criminals by the Nigeria Police is widespread and systematic. This is both illegal and counter-productive. There are no circumstances under which summary executions are legally permissible let alone justifiable. The practice is counter-productive for several reasons. Summary executions of suspects, many of whom are innocent of the crime of which they have been accused, does nothing to stem the high rate of armed robbery in Nigeria. For all the killings at the hands of the police, this rate has shown no diminution. The practice also confirms the public sense of the police as being out of control, brutal, and relatively unconcerned with protecting the public and upholding the law. Fundamentally different police tactics are thus required by law and for pragmatic reasons.

45. The key challenge is to determine when deadly force can legitimately be used against criminals. Most approaches to date seem to be inconsistent with human rights requirements. For example, in “operation fire-for-fire”, a 2002 campaign against crime, the Inspector-General of Police pre-authorized police officers to fire in “very difficult situations”. The result, revealed in police statistics, was that in the first 100 days, 225 suspected criminals were killed, along with 41 innocent by-standers.⁴³ Fortunately, this operation was terminated.

46. But the standing “rules for guidance in use of firearms by the police” are equally flawed. Police Order No. 237 provides for the use of firearms in situations where it is essential in order to protect the life of the police officer or of another person, or where necessary to prevent “serious offences against life and property” by rioters. These provisions are unexceptionable but the rules which effectively relate to “armed robbers” are formulated very differently. They authorize the use of firearms if a police officer cannot “by any other means” arrest or re-arrest any person who is suspected (or has already been convicted) of an offence punishable by death or at least seven years imprisonment. The rules which elaborate upon this provision are even more permissive. They note that any person who seeks to escape from lawful custody commits a felony warranting a seven year sentence. As a result shooting to kill someone charged with stealing goods of negligible value but alleged to be seeking to escape from custody would be justified. The only qualification contained in the rules is “firearms should only be used if there are no other means of effecting his arrest, and the circumstances are such that his subsequent arrest is unlikely”. These rules are deeply flawed. They provide close to a *carte blanche* to the police to shoot and kill at will.

47. Police Order No. 237 should be amended immediately to bring it into conformity with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The resulting

⁴¹ In order to fit this approach anyone arrested with a gun seems to be automatically classified as an armed robbery suspect. “Police Recover 35,979 Ammunitions, 1,082 Firearms”, *This Day*, 2 Jan. 2006, available at <http://www.thisdayonline.com/nview.php?id=37147>.

⁴² See notes 8-11 above.

⁴³ Amnesty International, *Security Forces in Nigeria: Serving to protect and respect human rights?* (December 2002) at p. 14.

emphasis should be on proportionality, on the use of lethal force as an absolute last resort, and only “when strictly unavoidable in order to protect life”.⁴⁴ Thus, the possible escape of an alleged robber who presents no direct threat to the lives of others, cannot justify shooting to kill.

Follow-up Report on Mission to Nigeria (A/HRC/8/3/Add.3, 14 May 2008, ¶¶ 83-84):

86. The Special Rapporteur found that the classification of armed robbery as a capital offense, together with rules authorising the police to use lethal force against a suspected armed robber seeking to escape custody, encouraged the police to label individuals as armed robbers as a pretext to justify extrajudicial executions. The Special Rapporteur recommended that Nigeria eliminate armed robbery as a capital offense and amend Police Order 237 to prohibit a shoot-to-kill response against alleged armed robbers and persons escaping police custody. These recommendations have not been implemented, and the problem continues.

87. The August 2006 killings of twelve alleged armed robbers in Abia state is emblematic. In September 2006, the Special Rapporteur wrote a letter of allegation to Nigeria with respect to the police killings of twelve alleged armed robbers. The Special Rapporteur had received credible allegations that the twelve were shown alive to journalists and others on 10 August, and that the next day their bodies were dumped outside a morgue at a government hospital, reportedly by the police. Nigeria responded to the Special Rapporteur in November 2006 by explaining that three armed robbers were killed in a shoot-out with police and the other nine subsequently died from injuries they sustained during the shoot-out. This explanation is unsatisfactory given the eyewitness accounts that twelve alleged armed robbers were paraded in police custody on August 10, strongly suggesting that they were thereafter extrajudicially executed.

88. At least 785 suspected armed robbers were killed by police in just a three month period in 2007. This level of lethal force is simply unacceptable. As the Special Rapporteur recommended in 2006, the rules regarding the use of firearms by police officers need to be amended immediately to bring them into conformity with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁴⁴ It is appropriate to quote the full text of Paragraph 9 of the Basic Principles: 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.

B. FACTUAL BACKGROUND ON KILLING BY STATE ACTORS OF “CRIMINALS”

Report on Mission to Nigeria (E.CN.4/2006/53/Add.4, 7 January 2006):

The Nigerian police force is at the same time seriously under-resourced and confronted with a high rate of violent crime. As a result, abuses including corruption, arbitrariness, torture, excessive use of force and executions are common. The problems are illustrated by two case studies: (i) the framing and killing of six innocent civilians by the Police in Apo in June 2005; (ii) the extrajudicial execution in police custody of alleged armed robbers in Enugu in January 2005. Further factual information on these cases and other lethal practices by the police can be found in the Special Rapporteur’s report on Nigeria, available [here](#).

Report on Mission to Kenya (A/HRC/11/2/Add.6, 26 May 2009):

Killings by the police are widespread. Some killings are opportunistic, reckless or personal. Many others are carefully planned. It is impossible to estimate reliably how many killings occur, because the police do not keep a centralized database. But police shootings are reported nearly every day of the week by the press. There are six primary factors which account for the frequency with which police can kill at will in Kenya: (i) official sanctioned targeted killings of suspected criminals; (ii) a dysfunctional criminal justice system incentivizes police to counter crime by killing suspected criminals, rather than arresting them; (iii) internal and external police accountability mechanisms are virtually non-existent; there is little check on, and virtually no independent investigations of, alleged police abuses; (iv) use of force laws are contradictory and overly permissive; (v) witnesses to abuse are often intimidated, and fear reporting or testifying; and (vi) the police force lacks sufficient training, discipline and professionalism. In addition to police violence more generally, the Special Rapporteur investigated extrajudicial executions occurring as part of the joint military-police operation to secure the Mt. Elgon area (where a militia group dissatisfied with land distribution engaged in a violent revolt). Further factual information on police violence can be found in the Special Rapporteur’s report on Kenya, available [here](#).

Report on Mission to Brazil (A/HRC/11/2/Add.2, 23 March 2009):

Brazil has one of the highest homicide rates in the world, with over 48,000 people killed each year. Murders by gangs, inmates, the police, death squads and hired killers regularly make headlines in Brazil and around the world. Extrajudicial executions by police occur on and off-duty, and vigilante justice is supported by a sizable proportion of the population, who fear high crime rates and who perceive that the criminal justice system is too slow to prosecute criminals effectively. Many politicians, keen to curry favour with a fearful electorate, have failed to demonstrate the political will necessary to curb executions by the police. Further factual information on extrajudicial killings by the police under the banner of “crime control” is available [here](#).

Report on Mission to Guatemala (A/HRC/4/20/Add.2, 19 February 2007):

Much of the violence plaguing Guatemala is structured by practices developed during past counter-insurgency efforts, when the country experienced decades long (1962-1996) armed confrontation between the government and revolutionary groups. Some of the practices characterizing the later phases of the counter-insurgency have re-emerged as desperate and lawless methods for “fighting crime”. The practice of “social cleansing”, for instance, reprises the practice of “selective killing”. Despite the determined efforts by some, there are diminished expectations among the population and mounting calls for *mano dura* methods to deal with crime and disorder. Further factual information on killings in the name of law enforcement in Guatemala can be found in the Special Rapporteur’s report, available at [here](#).

C. SHOOT-TO-KILL POLICIES

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/14/24, 20 May 2010, ¶¶ 33-36):

33. Killings by police and other law enforcement or security officials are frequently encountered within the mandate. They can take many forms. All too common are intentional murders in which police shoot to kill alleged criminals without resort to other appropriate measures. Instances of this approach are detailed in my reports on Brazil, Guatemala, Kenya and Nigeria. Some of the killings are carried out by individual police, others are killed by unacknowledged police “death squads”. Another major problem is the use of excessive force while arresting a suspect, or of indiscriminate force in a riot-control context. Such killings are often due to poor training, inappropriate “use of force” regulations and resource deficiencies. In countries where the security forces may be directly controlled by politicians, security officials may conduct politically motivated killings, including of political opposition members or supporters, and election-related killings. I have also investigated many killings in the context of extortion attempts or for other reasons personal to the official. In some countries, police also carry out killings while off duty, whether for “vigilante” reasons, for profit, or as part of a well-organized militia or business enterprise.

34. I have addressed in detail the applicable international legal standards relevant to the use of force by police, as well as the policies that seem most likely to reduce or contribute to unlawful police killings. In 2006 I set out the basis and content of international law on the use of lethal force by police (A/61/311, paras. 33-45). That report explained that the rules governing the use of force were built on the principles that the force must be both necessary and proportional. The intentional use of lethal force is strictly limited to circumstances where it is required to protect life. The report also underscored the importance of the principles contained in the Code of Conduct for Law Enforcement Officials, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Country reports, including those on Kenya (A/HRC/11/2/Add.6) and Nigeria (E/CN.4/2006/53/Add.4), indicate that the right to life is at grave risk in States where the use-of-force guidelines are inconsistent with these rules.

35. My 2006 report to the Commission examined “shoot-to-kill” policies in response to a number of high-profile pronouncements from officials of various Governments, authorizing police to “shoot on sight” alleged terrorists and criminals (E/CN.4/2006/53, paras. 44-54). Such dangerous official rhetoric displaces the clear legal standards on the use of lethal force which stipulate that the police may shoot to kill only when it is clear that an individual is about to kill someone (making lethal force proportionate) and there is no other available means of detaining the suspect (making lethal force necessary).

36. Country reports have addressed policing methods that offer alternatives to counterproductive, unlawful and violent policing. Examples include community policing in Nigeria, and the benefits of a sustained police presence in gang-controlled areas in Brazil. In reports on Kenya and Nigeria I addressed the need for centralized data-keeping and monitoring of police killings.

Report on Targeted Killings (A/HRC/14/24/Add.6, 28 May 2010, ¶¶ 7-8, 11, 28, 31-33,74-77):

7. Despite the frequency with which it is invoked, “targeted killing” is not a term defined under international law. Nor does it fit neatly into any particular legal framework. It came into common usage in 2000, after Israel made public a policy of “targeted killings” of alleged terrorists in the Occupied Palestinian Territories.⁴⁵ The term has also been used in other situations, such as:

- The April 2002 killing, allegedly by Russian armed forces, of “rebel warlord” Omar Ibn al Khattab in Chechnya.⁴⁶
- The November 2002 killing of alleged al Qaeda leader Ali Qaed Senyan al-Harithi and five other men in Yemen, reportedly by a CIA-operated Predator drone using a Hellfire missile.⁴⁷
- Killings in 2005 – 2008 by both Sri Lankan government forces and the opposition LTTE group of individuals identified by each side as collaborating with the other.⁴⁸
- The January 2010 killing, in an operation allegedly carried out by 18 Israeli Mossad intelligence agents, of Mahmoud al-Mahboub, a Hamas leader, at a Dubai hotel.⁴⁹ According to Dubai officials, al-Mahboub was suffocated with a pillow; officials released videotapes of those responsible, whom they alleged to be Mossad agents.⁵⁰

8. Targeted killings thus take place in a variety of contexts and may be committed by governments and their agents in times of peace as well as armed conflict, or by organized armed groups in armed conflict.⁵¹ The means and methods of killing vary, and include sniper fire, shooting at close range, missiles from helicopters, gunships, drones, the use of car bombs, and poison.⁵²

[...]

11. The phenomenon of targeted killing has been present throughout history.⁵³ In modern times, targeted killings by States have been very restricted or, to the extent that they are not, any de

⁴⁵ *Infra*, section II.B. Orna Ben-Naftali & Keren Michaeli, We Must Not Make a Scarecrow of the Law: Legal Analysis of the Israeli Policy of Targeted Killings, 36 *Cornell Int'l L.J.* 233, 234 (2003). although this report uses the common terms “terrorism” and “terrorist”, I agree with the Special rapporteur on the promotion and protection of human rights while countering terrorism that the continuing lack of a “universal, comprehensive and precise” definition of these terms hampers the protection of human rights, E/CN.4/2006/98, para. 50, and in particular, the right to life. The work of the Ad Hoc Committee established under GA Res. 51/210 to work on a draft convention on international terrorism is critical and urgent.

⁴⁶ BBC, Russia ‘Kills’ Chechen Warlord, 25 April 2002.

⁴⁷ Jane Mayer, The Predator War, *The New Yorker*, 26 Oct. 2009; Greg Miller, C.I.A. Said to Use Outsiders to Put Bombs on Drones, *LA Times*, 13 Feb. 2009.

⁴⁸ A/HRC/8/3/Add.3, para. 12.

⁴⁹ Targeted Killing in Dubai: A Mossad Operation Gone Awry?, *Der Spiegel*, 23 Feb. 2010; Ilene Prusher, Was Mossad Behind Dubai Assassination? Israel Foreign Minister Isn’t Saying, *Christian Science Monitor*, 17 Feb. 2010.

⁵⁰ Targeted Killing in Dubai: A Mossad Operation Gone Awry?, *Der Spiegel*, 23 Feb. 2010. Other examples of Israeli targeted killings include: Crimes of War Project, Case Study: The Israeli Strike Against Hamas Leader Salah Shehadeh. available at: <http://www.crimesofwar.org/print/onnews/Shehadeh-print.html>.

⁵¹ This report focuses only on killings by States and their agents because, as yet, no non-state actors have sought to justify specific “targeted killings.”

⁵² See, fns. 2-6; B’Tselem, Statistics: Fatalities, available at <http://www.btselem.org/English/Statistics/Casualties.asp>; Simon Saradzhyan, Russia’s System to Combat Terrorism and Its Application in Chechnya, in R.W. Orttung and A. Makarychev, *National*

⁵³ Nils Melzer, *Targeted Killing in International Law* (2008) at 9.

facto policy has been unofficial and usually denied, and both the justification and the killings themselves have been cloaked in secrecy.⁵⁴ When responsibility for illegal targeted killings could be credibly assigned, such killings have been condemned by the international community – including by other States alleged to practice them.⁵⁵

[...]

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.⁵⁶ 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.⁵⁷

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*).⁵⁸ The proportionality requirement limits the permissible level of force based on the threat posed by the suspect to others.⁵⁹ 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.⁶⁰

⁵⁴ According to Amnesty International, between 1976 and 1992, an elite unit of the British army killed 37 reported members of the Irish Republican Army in Northern Ireland; the United Kingdom has consistently denied conducting targeted killings. Amnesty International, *Political Killings in Northern Ireland* (1994) at 4.

⁵⁵ E.g., Press Release of the Council of the European Union, 7373/04 of March 2004 available at: <http://www.consilium.europa.eu/App/NewsRoom/loadBook.aspx?target=2004&infotarget=&max=15&bid=78&lang=EN&id=1850>; Record of Security Meeting (S/PV.4945) 19 April 2004 (condemnation of Israeli killing of Hamas leader by Russia, Pakistan, United Kingdom, Germany and Spain); Brian Whittaker & Oliver Burkeman, *Killing Probes the Frontiers of Robotics and Legality*, *Guardian*, 6 Nov. 2002 (Swedish Foreign Minister on US targeting of al-Harithi).

⁵⁶ A/61/311, paras. 33-45 (detailed discussion of “arbitrary” deprivation of life under human rights law).

⁵⁷ Code of Conduct for Law Enforcement Officials, GA Res. 34/169 of 17 December 1979 (Code of Conduct), art. 1, commentary (a) and (b); Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth U.N. Congress on Prevention of Crime and Treatment of Offenders, Havana, Cuba, Aug. 27-Sept. 7, 1990, (Basic Principles), preamble, note.

⁵⁸ A/61/311, paras. 33-45; Human Rights Committee, General Comment No. 6, HRI/GEN/1/Rev.6 (1982), para. 3; Inter-American Commission of Human Rights, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr. (2002).

⁵⁹ A/61/311, paras. 42-44.

⁶⁰ A/61/311, para. 41.

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.⁶¹ 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 life⁶² entails an obligation to exercise “due diligence” to protect the lives of individuals from attacks by criminals, including terrorists.⁶³ Lethal force under human rights law is legal if it is strictly and directly necessary to save life.

[...]

74. As discussed above, the intentional use of lethal force in the context of law enforcement is only permitted in defence of life. Thus, outside the context of armed conflict, law enforcement officials are required to be trained in, to plan for, and to take, less-than-lethal measures – including restraint, capture, and the graduated use of force – and it is only if these measures are not possible that a law enforcement killing will be legal.⁶⁴ States should ensure public disclosure of the measures taken to “strictly control and limit the circumstances” in which law enforcement officers may resort to lethal force, including the level of force used at each stage.⁶⁵ The legal framework must take into account the possibility that the threat is so imminent that graduated use of force is not possible, and ensure appropriate safeguards are in place so that the assessment of imminence is reliably made.⁶⁶

75. Although IHL does not expressly regulate the kind and degree of force that may be used against legitimate targets, it does envisage the use of less-than-lethal measures: in armed conflict, the “right of belligerents to adopt means of injuring the enemy is not unlimited”⁶⁷ and States must not inflict “harm greater than that unavoidable to achieve legitimate military objectives.”⁶⁸ The limiting principles are not controversial – States may only exercise force that is militarily necessary and consistent with the principle of humanity.⁶⁹ As the ICRC Guidance recognizes “it would defy basic notions of humanity to kill an adversary or to refrain from giving him or her an opportunity to surrender where there manifestly is no necessity for the use of lethal force.”⁷⁰

⁶¹ E/CN.4/2006/53, paras. 44-54.

⁶² ICCPR, Art. (2)(1).

⁶³ E/CN.4/2005/7, paras. 71-74.

⁶⁴ A/61/311, paras. 33-45; E/CN.4/2006/53, paras. 44-54.

⁶⁵ Human Rights Committee, *Suarez de Guerrero v. Colombia*, 1982, para. 13.

⁶⁶ A/61/311, paras. 49-51.

⁶⁷ Convention (IV) respecting the Laws and Customs of War on Land, adopted on 18 Oct. 1907, entered into force, 26 Jan. 1910 (Hague IV Regulation); AP I, art. 35(1)

⁶⁸ Nuclear Weapons, para. 78.

⁶⁹ AP I, art. 1(2); Hague IV Regulations, preamble; Geneva Convention III, art. 142; Geneva Convention IV, art. 158.

⁷⁰ ICRC Guidance at 82.

76. The position taken by the ICRC in its Guidance has been the subject of controversy. The Guidance states that, “the kind and degree of force which is permissible against persons not entitled to protection against direct attack must not exceed what is actually necessary to accomplish a legitimate military purpose in the prevailing circumstances.”⁷¹ Some critics interpret this statement as requiring the use of a law enforcement paradigm in the context of armed conflict.⁷² However, as the Guidance makes clear, it states only the uncontroversial IHL requirement that the kind and amount of force used in a military operation be limited to what is “actually necessary to accomplish a legitimate military purpose in the prevailing circumstances.”⁷³ Especially in the context of targeted killings of civilians who directly participate in hostilities, and given that IHL does not create an unrestrained right to kill,⁷⁴ the better approach is for State forces to minimize the use of lethal force to the extent feasible in the circumstances.

77. Less-than-lethal measures are especially appropriate when a State has control over the area in which a military operation is taking place,⁷⁵ when “armed forces operate against selected individuals in situations comparable to peacetime policing,”⁷⁶ and in the context of non-international armed conflict, in which rules are less clear.⁷⁷ In these situations, States should use graduated force and, where possible, capture rather than kill. Thus, rather than using drone strikes, US forces should, wherever and whenever possible, conduct arrests, or use less-than-lethal force to restrain. As the ICRC’s Guidance intended to make clear, “the international lawfulness of a particular operation involving the use of force may not always depend exclusively on IHL but, depending on the circumstances, may potentially be influenced by other applicable legal frameworks, such as human rights law and the *jus ad bellum*.”⁷⁸

2006 Report to the Commission on Human Rights (E/CN.4/2006/53, 8 March 2006, ¶¶ 44-54):

44. In recent years there have been a number of high-profile pronouncements by officials, not infrequently at the most senior level of Government, that they have given orders for the police or the military to “shoot to kill”, to “shoot on sight”, or to use the “utmost force” in response to a particular challenge to law and order. Such statements have often been made in response to perceived terrorist threats but they have also come as a response to widespread looting, to a high incidence of armed robberies, or to an epidemic of drug abuse. All too often, the background context is one in which the official concerned has been subject to severe public criticism for failing to take adequate measures to protect the population. Rather than asking whether preventive measures taken in good time, or the use of accepted policing techniques,

⁷¹ ICRC Guidance at 17 and 77.

⁷² W. Hays Parks, Part IX of the ICRC’s “Direct Participation in Hostilities” Study: No Mandate, No Expertise, and Legally Incorrect, 42 NYU J. Int’l L. and Politics 767 (2010).

⁷³ ICRC Guidance at 77.

⁷⁴ Hague IV Regulations, art. 22.

⁷⁵ Univ. Ctr. For Int’l Humanitarian Law, Report on the Expert Meeting on the Right to Life in Armed Conflict and Situations of Occupation, 1-2 Sept. 2005; at 36; Sassoli & Olson, *supra* note 109, at 614.

⁷⁶ ICRC Guidance at 80-81.

⁷⁷ Sassoli & Olson, *supra* note 109, at 611.

⁷⁸ Nils Melzer, Keeping the Balance Between Military Necessity and Humanity: A Response to Four Critiques of the ICRC’s Interpretive Guidance on the Notion of Direct Participation in Hostilities, 42 NYU J. Int’l L. and Politics, 829, 897 (2010).

appropriately reinforced if necessary, might have been sufficient to deal with the situation, the temptation is to seek to escape blame by proclaiming a crackdown on crime, zero tolerance for any individuals suspected of terrorist ambitions, or a policy of unleashing the full fury of the State to root out drug dealers, etc.

45. But the rhetoric of shoot-to-kill and its equivalents poses a deep and enduring threat to human rights-based law enforcement approaches. Much like invocations of “targeted killing”, shoot-to-kill is used to imply a new approach and to suggest that it is futile to operate inside the law in the face of terrorism. However, human rights law already permits the use of lethal force when doing so is strictly necessary to save human life. The rhetoric of shoot-to-kill serves only to displace clear legal standards with a vaguely defined licence to kill, risking confusion among law enforcement officers, endangering innocent persons, and rationalizing mistakes, while avoiding the genuinely difficult challenges that are posed by the relevant threat.

46. The use of shoot-to-kill tactics also imports, either consciously or otherwise, the language of international humanitarian law into situations which are essentially matters of law enforcement that international law requires be dealt with within the framework of human rights. The notion that the law of armed conflict is an appropriate frame of reference for a Government seeking to deal with law enforcement issues is one that must be soundly rejected. To do otherwise is tantamount to allowing Governments to declare war simultaneously on a given group and on human rights in general.

47. At its crudest, this rhetoric turns on erroneous conceptions about human rights law. There is no conflict between, for example, the human right not to be blown up by terrorists and the human right not to be arbitrarily shot by the police. Under human rights law, States must at once respect and ensure the right to life.⁷⁹ States have a legal duty to exercise “due diligence” in protecting the lives of individuals from attacks by criminals, including terrorists, armed robbers, looters, and drug dealers.⁸⁰ This may require the use of lethal force against a suspect, but only when doing so is proportionate and strictly unavoidable to prevent the loss of life.⁸¹ No derogation is permitted from the right to life,⁸² and none is needed.

48. Human rights law unconditionally prohibits the needless killing of suspected criminals, but it fully recognizes that lethal force is sometimes strictly necessary to save the lives of innocent people from lawless violence. A measure of the value human rights law places on the “inherent right to life” is provided by the prohibition of the death penalty for other than the “most serious crimes”.⁸³ For lethal force to be considered to be lawful it must be used in a situation in which it

⁷⁹ ICCPR, article 2, paragraph 1.

⁸⁰ E/CN.4/2005/7, paragraphs 71-74. *Jiménez Vaca v. Colombia*, Human Rights Committee (25 March 2002), paragraph 7.3, (“[T]he Committee points out that article 6 of the Covenant implies an obligation on the part of the State party to protect the right to life of every person within its territory and under its jurisdiction.”).

⁸¹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 9 (“In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”).

⁸² ICCPR, article 4, paragraph 2.

⁸³ *Baboeram v. Suriname*, Human Rights Committee (4 April 1985), paragraph 14, links the “most serious crimes” and use of lethal force standards.

is necessary for self-defence or the defence of another's life.⁸⁴ The State's legal framework must thus "strictly control and limit the circumstances" in which law enforcement officers may resort to lethal force.⁸⁵ In addition to being pursuant to a legitimate objective, the force employed by law enforcement officers must be strictly unavoidable for its achievement. Non-lethal tactics for capture or prevention must always be attempted if feasible. In most circumstances, law enforcement officers must give suspects the opportunity to surrender,⁸⁶ and employ a graduated resort to force.⁸⁷ However, the use of lethal force may prove strictly unavoidable when such tactics would unduly risk death or serious harm to law enforcement officers or other persons. For States to grant law enforcement officers a vaguely defined licence to shoot to kill even when other means of preventing a suspected attack are available makes the daily lives of the innocent not safer, but far more hazardous. States facing terrorist or other threats alleged to require exceptional measures should instead clarify the implications of human rights law for law enforcement officers through training and written guidance.

49. At their most sophisticated, shoot-to-kill policies overlook the role human rights standards play in preventing tragic mistakes. The training documents published by the International Association of Chiefs of Police (IACP) are representative of shoot-to-kill thinking, and at critical points they advance doctrines that undermine the right to life. Human rights law normally requires that officers provide warnings, allow the opportunity for surrender, and employ a graduated use of force before resorting to lethal measures. These requirements serve in part to distinguish dangerous criminals, who can be stopped only with deadly force, from both the deterrable and the innocent. There are, however, exceptions to the requirements of warnings and a graduated response, because there are circumstances in which an immediate recourse to lethal force is strictly necessary to prevent an even greater loss of life. In most such situations, this necessity is the result of a threat's imminence. This too serves as a safeguard. When a criminal is already in the process or visibly on the verge of using a weapon, there can be little doubt regarding the inevitability of violence if immediate recourse to lethal force is not taken. A suspected suicide bomber, however, poses somewhat different challenges. Warnings and non-lethal tactics are risky not because they might fail to prevent an already imminent act of violence but because they might, in fact, trigger an explosion either by alerting the bomber that this is his final opportunity or by directly setting off the explosive material. With these risks in mind, the

⁸⁴ In *Baumgarten v. Germany* the Human Rights Committee (31 July 2003) found that shooting persons attempting to cross the border from the Former German Democratic Republic was a violation of the right to life. ("The Committee recalls that even when used as a last resort lethal force may only be used, under article 6 of the Covenant, to meet a proportionate threat.")

⁸⁵ *Baboeram v. Suriname*, Human Rights Committee (4 April 1985), paragraph 14.

⁸⁶ *Suárez de Guerrero v. Colombia*, Human Rights Committee (31 March 1982), paragraph 13.2, ("the police action was apparently taken without warning to the victims and without giving them any opportunity to surrender to the police patrol or to offer any explanation of their presence or intentions"). Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 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").

⁸⁷ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 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").

IACP guidelines advise law enforcement officers, in some circumstances, to shoot to kill without warnings, without attempts at non-lethal tactics, and without an imminent threat. This strips the use of lethal force of its usual safeguards - without providing any alternative safeguards.

50. It is essential to account for the legal implications of the limited information officers will almost invariably have. The training documents refer constantly to “suspected suicide bombers”, but they neglect to emphasize the high level of certainty required before lethal force is lawful. Unless intelligence is strong enough to permit interdiction before a suicide bombing operation begins, the burden will often fall on individual officers to evaluate whether a given person is a suicide bomber. The IACP’s approach relies extensively on profiles of suicide bombers. Persons with freshly shaved beards, signs of drug use, tightly held backpacks, etc., are suggested as “among the most obvious signs” of possible suicide bombers. However, the scarcity of actual bombers relative to other people exhibiting these characteristics is such as to ensure that false alarms will predominate. No one has claimed that meeting a profile alone is sufficient to permit the use of lethal force, but insofar as law enforcement tactics often preclude warning suspected bombers, it is difficult to see how an officer is to either confirm or disconfirm his or her initial suspicions. Under human rights law, suspicion is not enough to justify a resort to lethal force. There is no legal basis for shooting to kill for any reason other than near certainty that to do otherwise will lead to loss of life.

51. States that employ shoot-to-kill policies for dealing with suicide bombers must develop legal frameworks to properly incorporate intelligence information and analysis into both the operational planning and post-incident accountability phases of State responsibility. If there is a solid factual basis for believing that a suspect is a suicide bomber capable of detonating his explosive if challenged, and if, to the extent possible, that information has been evaluated by persons with appropriate experience and expertise, the immediate use of lethal force may be justified. However, States employing shoot-to-kill procedures must ensure that only such solid information, combined with the adoption of appropriate procedural safeguards, will lead to the use of lethal force.

52. In addition to the legal arguments, it should also be noted that the consequences of mistakenly killing innocent persons on the basis of shoot-to-kill policies are potentially highly counter-productive. They include a loss of public confidence in the police, damage to community relations where a particular community has, in effect, been targeted, and an undermining of the willingness of members of the relevant community to cooperate with the security services in the future.

53. The multiple phases of State responsibility implicated necessitate broad terms of reference for post-incident investigations by States and a broad ambit for inquiries by the Special Rapporteur. The question of State responsibility under human rights law encompasses but goes beyond the question of whether the officer who fired shots thereby incurred criminal responsibility. This is well-illustrated by the case of *McCann and Others v. United Kingdom*.⁸⁸ Members of the United Kingdom’s Special Air Service (SAS) shot and killed several members of the Irish Republican Army (IRA). They had been given the - erroneous - information that one of the IRA members possessed a push-button detonator for a car bomb. In light of that

⁸⁸ European Court of Human Rights, App. No. 18984/91 (27 September 1995).

information, the European Court of Human Rights did not contest their decisions that it was “absolutely necessary” to kill them when they made motions consistent with reaching for a detonator.

54. However, the Court also held that the authorities controlling the operation had been careless in collecting and analysing intelligence and had, thus, violated the victims’ right to life by communicating with certainty to the soldiers that there was such a car bomb and detonator. In order for the Special Rapporteur to respond effectively to the information he receives, States must cooperate in providing information on the earlier phases of State conduct - such as the legal and regulatory framework governing the use of lethal force, the training provided to law enforcement officers, the planning of operations, and the use of intelligence - as well as on the facts of the incident itself. States employing shoot-to-kill policies must accept the implications of shooting based on intelligence information on the requirement that States’ publicly investigate deaths and prosecute perpetrators where appropriate. Investigations and trials may require the disclosure of some intelligence information. To withhold such information would be to replace public accountability with unverifiable assertions of legality by the Government, inverting the very idea of due process.

Report on Mission to Kenya (A/HRC/11/2/Add.6, 26 May 2009, ¶¶ 3, 12):

3. Kenya is a party to both the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples’ Rights. International law prohibits the “arbitrary deprivation of life”,⁸⁹ and obligates governments to both “respect and ensure” the right to life.⁹⁰ Thus, governments themselves must desist from unlawful killings, and must protect their people from killings by others.⁹¹ In order to save lives, lethal force may be used by law enforcement officers, as long as it satisfies the twin safeguards of necessity and proportionality.⁹² Thus, police officers may shoot to kill only when it is clear that an individual is about to kill someone (making lethal force proportionate) and there is no other available means of detaining him or her (making lethal force necessary).⁹³

[...]

12. Lethal force is also commonly used in legitimate law enforcement operations in which the police could have readily made an arrest. Some of these killings would be prevented through the provision of unambiguous guidelines on when police may use lethal force. The use of force by police is regulated by the Constitution of Kenya, the Police Act, and the Force Standing Orders.⁹⁴ In addition to being unclear and contradictory, these laws do not meet the requirements

⁸⁹ ICCPR, Art 6(1); ACHPR, Art 4.

⁹⁰ ICCPR, Art 2(1).

⁹¹ The obligation to protect is also mandated in Kenyan domestic law: Police Act, s 14; Criminal Procedure Code, s 62.

⁹² I have discussed the principles of necessity and proportionality, including on their elaboration in the UN Code of Conduct for Law Enforcement Officials and in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in a report to the General Assembly, A/61/311, paras. 33-45.

⁹³ A/61/311, paras. 33-45; see also Basic Principles, Principle 9; Code of Conduct, art. 3.

⁹⁴ Constitution of Kenya, s 71; Police Act, s 28; Criminal Procedure Code, s 21; Police Force Standing Orders, Appendix 51A.

of international law which requires the use of force to be both necessary and proportionate, and permits intentional lethal force only where it is required to protect life.⁹⁵ The Constitution of Kenya, for example, states that there is no violation of the right to life if, *inter alia*, the death occurred as a result of reasonably justifiable force used to protect a person from violence, to defend property, to effect a lawful arrest, to prevent an escape, to suppress a riot, or to prevent the commission of a criminal offence.

Follow-up Report on Mission to Nigeria (A/HRC/8/3/Add.3, 14 May 2008, ¶¶ 86-87):

86. The Special Rapporteur found that the classification of armed robbery as a capital offense, together with rules authorising the police to use lethal force against a suspected armed robber seeking to escape custody, encouraged the police to label individuals as armed robbers as a pretext to justify extrajudicial executions. The Special Rapporteur recommended that Nigeria eliminate armed robbery as a capital offense and amend Police Order 237 to prohibit a shoot-to-kill response against alleged armed robbers and persons escaping police custody. These recommendations have not been implemented, and the problem continues.

87. The August 2006 killings of twelve alleged armed robbers in Abia state is emblematic. In September 2006, the Special Rapporteur wrote a letter of allegation to Nigeria with respect to the police killings of twelve alleged armed robbers. The Special Rapporteur had received credible allegations that the twelve were shown alive to journalists and others on 10 August, and that the next day their bodies were dumped outside a morgue at a government hospital, reportedly by the police. Nigeria responded to the Special Rapporteur in November 2006 by explaining that three armed robbers were killed in a shoot-out with police and the other nine subsequently died from injuries they sustained during the shoot-out. This explanation is unsatisfactory given the eyewitness accounts that twelve alleged armed robbers were paraded in police custody on August 10, strongly suggesting that they were thereafter extrajudicially executed. 88. At least 785 suspected armed robbers were killed by police in just a three month period in 2007. This level of lethal force is simply unacceptable. As the Special Rapporteur recommended in 2006, the rules regarding the use of firearms by police officers need to be amended immediately to bring them into conformity with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁹⁵ See: A/61/311, pages 12-16.

D. POLICE DEATH SQUADS

Report on Mission to Colombia (A/HRC/14/24, 31 March 2010, ¶¶ 10-12, 16-28):

10. The phenomenon of so-called “false positives” (*falsos positivos*) — unlawful killings of civilians, staged by the security forces to look like lawful killings in combat of guerrillas or criminals — are well known to Colombians.⁹⁶ While there are examples of such cases going back to the 1980s, the evidence indicates that they began occurring with a disturbing frequency across Colombia from 2004.

11. The factual dynamics of these cases are well-documented, and it is necessary here only to outline the general patterns common throughout the country’s departments. In some cases, civilian victims are lured under false pretences — usually with the promise of a job — by a paid “recruiter” (a civilian, demobilized armed group member or former soldier) to a remote location. Once there, victims are killed by members of the military, often within a matter of hours or days of when they were last seen by family members. In other cases, the security forces remove victims from their homes or pick them up on patrol or at a roadblock. Victims may also be identified to military members as guerrillas or criminals by “informers”, often in exchange for a monetary reward. Once these victims are killed, the military, with varying degrees of sophistication, then sets up the scene to make it appear like a lawful combat killing. This can involve: placing weapons in the hands of victims; firing weapons from victims’ hands; changing their clothes to combat fatigues or other clothing associated with guerrillas; and putting combat boots on victims’ feet. The victims are reported by the military and in the press as guerrillas or criminals killed in combat.

Victims are often buried without first being identified (*nombre desconocido*) and some are buried in communal graves. Meanwhile, victims’ families search desperately — sometimes for many months — for their loved ones. When family members discover what happened and take steps to seek justice, such as reporting a case to officials or discussing the case with the press, they often face intimidation and threats. Some have been killed.

12. That there have been such cases in Colombia is not in dispute. At issue is the number killed, the continuing nature of the phenomenon, the extent to which the State has sanctioned the killings, the motivations and causes, and whether the Government is taking sufficient steps in response.

[...]

16. From at least as early as 2007, the Government began to take a number of steps to confront the issue of these killings. After the publicity surrounding the Soacha killings, additional significant and specific steps were taken. Measures (analysed further below) have included: disciplinary sanctions, including the dismissal of 3 generals and 24 other soldiers; increased cooperation with the International Committee of the Red Cross and the United Nations with respect to monitoring; the installation of operational legal advisors in military units to advise on

⁹⁶ Members of the military also often refer to false positives as “legalizations” (*legalizaciones*), denoting a killing that has been made to appear lawful.

specific military operations; increased oversight of payments to informers; the creation of a temporary special commission to investigate operations (the “Suarez report”); appointment of delegated inspectors to army divisions; the introduction of the requirement that deaths in combat be investigated first by judicial police (Directive No. 19); modifying award criteria (Directive No. 142) and military unit performance criteria (Directive No. 300-28); the creation of a specialized unit in the *Fiscalía* to deal with alleged extrajudicial executions; and the requirement that military criminal judges transfer cases to the civilian justice system.⁹⁷16 In 2009, the Ministry of Defence also issued Directive No. 208, which lays out 15 measures intended to implement the Ministry’s human rights and humanitarian law policies throughout the Armed Forces and strengthen internal command, control, training and evaluation systems.

17. These steps appear to have led to a significant reduction in the allegations made of extrajudicial executions committed by the military since the Soacha scandal in late 2008. The Human Rights and International Humanitarian Law Observatory had received no allegations of unlawful killings in 2009 at the time of my visit in June 2009. The *Fiscalía* received denunciations of six cases of alleged unlawful killings by the security forces after the Soacha killings, each of which was still under investigation at the time of my visit. Nongovernmental organizations reported fewer than 10 new allegations. It is important to stress that it is still too early to confirm the extent or nature of a drop in allegations. Past experience in Colombia shows that many cases remain unreported for long periods of time due to witness fear, lack of knowledge about how to make complaints and navigate the justice system, and significant communication and geographic impediments to making complaints.

18. Furthermore, despite these good faith efforts by the Government to reduce killings, there are real gaps between the policies as they exist on paper and the practice on the ground, especially with respect to impunity for past killings. As explained below, the situation in the regions I visited is significantly less positive than the formal steps alone would indicate.

19. Unlawful killings by the military are the result of a set of complex factors, which have both motivated individuals to commit killings, and fostered an environment in which such killings have been able to occur with general impunity.

1. Pressure to “show results”

20. Many expert and experienced interlocutors — including those in the military — confirmed to me that there was pressure in military units to “show results” and demonstrate that the military was continuing to gain ground against guerrillas and criminals. While senior Government officials disputed this and emphasized that killing civilians does not increase security, it is clear that within the military, success was often equated with enemy “kill counts” – the number of FARC members and others killed in combat.

⁹⁷ See Ministry of Defence, “Comprehensive Human Rights and IHL Policy” (2008); Ministry of Defence, *Protecting Rights – Actions and outcomes of the National Security Forces in the protection of human rights 2002–2008* (2009); Ministry of National Defence, *Avances en el cumplimiento de las 15 medidas adoptadas por el ministerio de defensa nacional (noviembre 2008–mayo 2009)* (2009).

21. As security in Colombia began to improve from 2002, and as guerrillas retreated from populated areas, some military units found it more difficult to engage in combat. In such areas, some units were motivated to falsify combat kills. In other areas, the guerrillas were perceived by soldiers to be particularly dangerous and soldiers were reluctant to engage them in combat. It was “easier” to murder civilians. In still other areas, there are links between the military and drug traffickers and other organized criminal groups. Local military units do not want to engage in combat with the illegal groups with which they are cooperating, so killing civilians falsely alleged to be part of these groups make military units appear to be taking action.⁹⁸17

22. Within this general culture, it has been very difficult for individual soldiers who wanted to speak out against abuses to do so. Some who spoke out have been forced to relocate for their own safety.

2. Rewards and incentives for killings

23. There is much public confusion about rewards and incentives for killings by military forces. It is difficult to obtain clear and accurate information, including from the Government. Some critics have argued that members of the military receive monetary rewards for killing guerrillas and other personal benefits (holidays, medals and promotions). Critics also attack the payment by the Government of money to informers who provide information leading to the killing or capturing of guerrillas.

(i) Rewards to civilians for information

24. The Government does provide rewards to those who provide information on guerrilla and criminal activity. The rewards policy is set out in Directive No. 29 (2005) (no longer in effect), Directive No. 02 (2008) and Directive No. 01 (2009), each of which is confidential, although copies of Directive No. 29 have been widely circulated.⁹⁹18 Although these rewards have been heavily criticized in Colombia, monetary rewards to civilians for providing information leading to, for example, the capture of wanted criminals, are common in many countries and are not problematic per se. What should be at issue is whether there is sufficient oversight and transparency with respect to payments. It is of significant concern that the rewards may provide a ready source of money for members of the military to pay “recruiters” to assist with the commission of *falsos positivos*.

25. The Government informed me that the directives are all essentially similar, although the newer ones make the system of controls more explicit.¹⁰⁰19 According to information provided

⁹⁸ A number of killings also appear to be efforts at “social cleansing” – killings of suspected criminals, drug users and other “undesirables”. In such cases, victims are presented as killed in combat; the social cleansing motive overlaps with pressure to produce results.

⁹⁹ Ministry of Defence, Permanent Ministerial Directive No. 29 (2005) provides for payment of rewards to those who provide “timely and truthful information ... [that leads to, for example] the capture of overthrow in combat of leaders of Illegal Armed Groups”; provides up to 5,000 million pesos for information about top leaders. I could not obtain copies of the new Directive No. 1 (2009), which the Government told me was restricted.

¹⁰⁰ The Government provided information on each of the directives. Directive No. 29 provides for rewards for information leading to the capture or death of leaders of illegal organizations or drug trafficking groups. It specifies precise amounts, creates a technical committee for follow-up on payments and creates a payment procedure. For

by the Government, rewards cannot be paid to public servants (such as soldiers) and can only be paid for information leading to clear operational results and following approval by a technical follow-up or central committee.¹⁰¹20 The new directives set out controls and checks that would make it difficult for money to be paid to recruiters for *falsos positivos*.

26. However, other sources of payment in the form of “confidential expenses” (*gastos reservados*)¹⁰²21 and commanders’ discretionary funds are of serious concern. In fact, in its written comments to me, the Government conceded that there is more discretion for officers in distributing confidential expenses and that there “could be problems there”.¹⁰³22 One military commander told me that he has a US\$ 2,000 monthly fund, a discretionary fund which he could use to, for example, pay small rewards to informers. Such funds, along with informal funds gained through criminal activity, are the more likely source of payments to recruiters (who are generally paid small amounts of a few hundred dollars or less).

(ii) *Rewards to military for killings*

27. Significantly, members of the military have also been provided various incentives to kill, including vacation time, medals and promotions. I asked the Government for information on the type and quantity of incentives provided to members of the security forces since 2002, but was not given that information. My investigations did reveal that some incentives are relatively informal and unregulated and differ from unit to unit. One soldier, for example, explained how a killing by his unit would be rewarded with 15 days’ vacation. When important holidays approached, he stated, soldiers would attempt to “earn” vacation time. However, a commander from another unit said he would not reward his soldiers with time off, because he believed this could potentially distort their professional judgement.

28. The Government has taken some steps to address these possible distortions. It informed me that demobilizations and captures were now “worth more” than combat killings in evaluating the performance of a military unit.¹⁰⁴23 In addition, since Directive No. 142 (2008), demobilizations

payment to be made, supporting documents must be provided to the committee. Directive No. 2 strengthens the control system, makes clear that payments cannot be made to Government officials, increases the requirements for documents that must be provided to obtain payment and provides that in certain cases money cannot be offered without prior intelligence department approval. Directive No. 1 further reduces the discretion of the military units, creates rewards for demobilization and rescuing kidnapped victims and provides that unit commanders cannot offer rewards at any level without prior coordination with their intelligence department.

¹⁰¹ The Technical Follow-up Committee is composed of the Minister of Defence or his delegate, the intelligence chiefs of the Armed Forces and the National Police, and the *Fiscalía*’s Technical Investigation Unit. The Central Committee is composed of the intelligence chiefs, analysts and administrative officials.

¹⁰² According to the Government, confidential expenses are intended to finance intelligence activities, counter-intelligence, criminal investigations and the protection of witnesses and informants.

¹⁰³ I asked for, but was not provided, information on the amounts, nature, or purpose of funds paid out to informants under the confidential expenses or other funds.

¹⁰⁴ An excerpt from Ministry of Defence, Military Forces General Command, Permanent Guidelines 300- 28 (2007) states: “the Military Forces General Command, through the Force Commands and Joint Commands, provides as of this date that to measure operating results it shall privilege the collective and individual demobilizations over any capture, and shall favour captures over deaths in combat; giving greater value to the deaths in combat when dealing with heads of illegal groups”.

and captures have been incorporated as part of the criteria for the award of a bravery medal (*medalla Al Valor*) or a public order medal (*medalla de Orden Público*).

Report on Mission to Kenya (A/HRC/11/2/Add.6, 26 May 2009, ¶¶ 9-17):

9. The Government has a clear obligation to protect citizens from Mungiki and other criminal violence, while respecting human rights, including the right to life. Suspects should be arrested, charged, tried and punished accordingly. In a context of violent criminality, police will inevitably be required to use force on occasion, and sometimes lethal force in order to protect life. The police, including the Police Commissioner, assured me that there have been no unlawful police killings. However, as I detail below, the evidence is compelling that the police respond - frequently - with unlawful force: murdering, rather than arresting suspects. Further, investigations by police are so deficient and compromised that claims by the police that all killings are lawful are inherently unreliable and unsustainable.

10. During my mission, I received compelling evidence that death squads - including one called *Kwekwe* - exist within the police force in Kenya, and that these squads were set-up to eliminate the Mungiki and other high-profile suspected criminals, upon the orders of senior police officials. Detailed evidence was provided by civil society investigations,¹⁰⁵ witnesses to the squad's activities, survivors of attempted killings, family members of deceased or disappeared victims, and victim autopsy reports indicating shots at close range and back entry wounds. A further key component of this evidence is the now public testimony of a police whistleblower, who recorded his statement in July 2008, before he was murdered while in hiding in October 2008. His account provides, in precise and often excruciating, detail the composition and operations of the death squad in which he was a part, and the circumstances of the murder of 67 persons between February 2007 and July 2008. Together, this evidence implicates the Commissioner of Police, and senior police officials from the Criminal Investigation Division, Special Crime Unit, and the Criminal Intelligence Unit. From this large amount of testimony, it is possible to set-out in detail the operations of the death squads:

- The suspected Mungiki or other criminal suspects appear to nearly always be known and individually targeted by police in advance. The police carrying out the operations (those driving the vehicles and committing the murders) are generally ordered by senior police to pick up a specified individual at a particular location (often his home, workplace, or a road on which he is believed to be traveling).¹⁰⁶
- While most suspects are individually targeted, police will generally also detain others who may be accompanying the target at the time of arrest.
- Very often, the initial detention is witnessed by family members, co-workers, or bystanders.¹⁰⁷ In one well-known case, a man was actually photographed by a member of the press while being arrested.¹⁰⁸
- Some suspects are murdered at the location of arrest. They are generally ordered by the police to lie down on the ground and are then shot. Police then attempt to set the crime

¹⁰⁵ E.g., KNCHR, *The Cry of Blood: Report on Extra-Judicial Killings and Disappearances* (September 2008).

¹⁰⁶ E.g. Appendix II: Case 6, Case 7, Case 8, Case 9.

¹⁰⁷ Appendix II: Case 4, Case 7, Case 8, Case 11, Case 13.

¹⁰⁸ Appendix II: Case 3.

scene to look like a “shoot out” occurred between criminals and police - weapons will be placed next to the bodies of the suspect, and fired into the air to give the appearance of an exchange of fire. Such victims are often taken to the mortuary by the police.¹⁰⁹ In other cases, the suspects are not immediately murdered, but are taken from the site of initial detention in generally unmarked police vehicles or private vehicles.¹¹⁰ The squads frequently work in convoys of 2-5 vehicles.

- Once detained, the suspect is most often held irregularly, and no record of the detention is made in the police Occurrence Book. Some suspects will be taken to police stations, or moved between multiple stations. Others are held in vehicles for a number of hours. Once family members realize that their relative was arrested or is missing, they generally embark on a search of police stations.¹¹¹ Family members usually report obstruction or intimidation from officials in this process.
- In some cases, the police demand a ransom from the detainee, or call the relatives and demand a ransom upon threat of death to the detainee. In many cases, payment of the ransom is sufficient to obtain the detainee’s release. Some victims have been detained and forced to pay ransoms on multiple occasions. Others have paid the ransom, but were then followed by police and subsequently murdered.¹¹²
- Those suspects who are murdered in locations other than the site of initial detention are generally eventually taken in vehicles to a remote area, such a forest or farmland. Many of these individuals are interrogated and tortured for a number of hours. Those who are suspected Mungiki are asked about their role in the Mungiki sect, and for the names and details of other Mungiki members or leaders.¹¹³
- During the detention or interrogation period, there is often communication via mobile phone between the interrogating officers, and senior officers at headquarters or police stations. In at least one case, the interrogations were tape-recorded, and played back via phone to senior police.¹¹⁴
- Those suspects taken to remote areas are typically killed through strangulation, or by being beaten to death by pangas (machetes), rungas (sticks), or other means. Their bodies are generally left in the forest or farm area, and found by local residents.¹¹⁵ Many victims are last seen by witnesses or family members being arrested by police, but are never found.¹¹⁶

11. Evidence presented to me indicates that these targeted and planned death squad killings are only the tip of the iceberg of police killings in Kenya. In addition to the death squad killings described above, I received detailed information on a wide range of circumstances in which unlawful killings have taken place. Sometimes, the police kill in the context of a bribery or extortion attempt. Some incidents appear to be motivated by purely private reasons (such as a

¹⁰⁹ Appendix II: Case 3.

¹¹⁰ Appendix II: Case 6, Case 7, Case 9.

¹¹¹ Appendix II: Case 3, Case 7, Case 11, Case 13.

¹¹² Appendix II: Case 4, Case 5, Case 6.

¹¹³ Appendix II: Case 7.

¹¹⁴ Appendix II: Case 7.

¹¹⁵ Appendix II: Case 6, Case 7, Case 9.

¹¹⁶ Appendix II: Case 4, Case 8, Case 13.

personal dispute).¹¹⁷ In others, the evidence suggests that the police were shooting indiscriminately or recklessly.¹¹⁸

12. Lethal force is also commonly used in legitimate law enforcement operations in which the police could have readily made an arrest. Some of these killings would be prevented through the provision of unambiguous guidelines on when police may use lethal force. The use of force by police is regulated by the Constitution of Kenya, the Police Act, and the Force Standing Orders.¹¹⁹ In addition to being unclear and contradictory, these laws do not meet the requirements of international law which requires the use of force to be both necessary and proportionate, and permits intentional lethal force only where it is required to protect life.¹²⁰ The Constitution of Kenya, for example, states that there is no violation of the right to life if, *inter alia*, the death occurred as a result of reasonably justifiable force used to protect a person from violence, to defend property, to effect a lawful arrest, to prevent an escape, to suppress a riot, or to prevent the commission of a criminal offence.

Official response to allegations

13. Some Government officials stated that if killings occurred, they were committed infrequently and by “rogue” officers. To their credit, a small number of Government officials did acknowledge the magnitude of the killings. But senior police officials were unwilling to acknowledge the problem at all: in essence, their response was one of denial, stone-walling, and obfuscation. In the provinces, my efforts were stymied by blanket denials by police, the provision of partial or inconclusive data, or by referring me back to police headquarters in Nairobi. The official police account of any killing is generally predictable: the suspect was an armed criminal, there was a “shoot-out”, and the police reacted with appropriate force. Senior police flatly denied to me any knowledge of the *Kwekwe* death squad. And yet its existence was confirmed in Parliament by the Minister of State for Provincial Administration and Internal Security, Professor George Saitoti.¹²¹

14. On the first day of my mission I provided the Police Commissioner with a short list of issues on which I sought information. At the end of the mission, I received a written response. It largely refused to provide even basic information. For instance, the initial response to my request for the numbers of police employed in Kenya was, “not immediately available”. A subsequent response also declined to provide the information for national security reasons, but suggested a population to police ratio of 1:800.

15. During my mission, the police stated that they could not tell me how many people were killed by the police (whether in self-defence or otherwise), because there was no centralized

¹¹⁷ Appendix II: Case 1.

¹¹⁸ Appendix II: Case 2.

¹¹⁹ Constitution of Kenya, s 71; Police Act, s 28; Criminal Procedure Code, s 21; Police Force Standing Orders, Appendix 51A.

¹²⁰ See: A/61/311, pages 12-16.

¹²¹ National Assembly of Kenya, Official Report, 12 February 2009, p 27: The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): “Mr. Speaker, Sir, I would also like to say that there is a body called *Kwekwe* Squad that has been talked about here. We had that body and I would like to inform this House that, instructions were given out for its disbanding.”

data-keeping or monitoring; rather, records were kept in the inquest file register maintained at each police station. My press statement at the conclusion of my mission noted that this was simply unacceptable. Following my mission, I have been informed by the Government that the committee reviewing police standing operation procedures has been directed to draft a regulation establishing an updated database at police headquarters on all killings by police. I welcome this positive development.

16. In other respects, however, the police response to my visit has consisted of continued denials of all wrongdoing, ad hominem attacks against me, and apparent police involvement in the broad daylight assassination of two human rights defenders with whom I met. Rather than in any way addressing the substance of the allegations contained in my initial statement, some police officials have sought to structure public debate so that criticisms of police actions are equated with condoning criminal activity. In this way, the police have tried to position civil society - and also my own reporting - as aligned with the interests of criminal organizations. This in turn sets up the police to launch further attacks against the Mungiki and others, while failing to take any steps to address the real issues. Efforts to monitor and reform policing so that it is carried out with respect for human rights do not mean being “soft” on crime. Security policies only truly provide security if the rights of all - victims, the general public, police, and criminals - are respected. The violent police response to crime has done nothing to promote security. Innocent bystanders have been shot by police, the public has lost faith that the police force can protect them, and the police have undertaken few if any measures to investigate and prosecute those Mungiki and other criminals who continue to terrorize and extort private citizens.

17. Criminals should be arrested, not taken to a forest and tortured to death. In Kenya, members of criminal organisations - because of their regular intimidation of residents - are easily identifiable. This was repeatedly noted by witnesses to Mungiki violence and matatu drivers. If the police were serious about crime control, they would be able to locate and arrest suspects. Unfortunately, in many Mungiki controlled areas, police profit from criminal control by accepting bribes to permit continued Mungiki control. And in cases reported directly to me in the presence of the police, when called to respond to Mungiki extortion police officers have taken no action against the criminals, but instead exploited for themselves the opportunity to extort the public.

Report on Mission to Brazil (A/HRC/11/2/Add.2, 23 March 2009, ¶¶ 5, 30-40):

5. Members of the police forces too often contribute to the problem of extrajudicial executions rather than to its solution. In part, there is a significant problem with on-duty police using excessive force and committing extrajudicial executions in illegal and counterproductive efforts to combat crime. But there is also a problem with off-duty police themselves forming criminal organizations which also engage in killings.

[...]

30. In addition to killings by on-duty police, there are a significant number of groups throughout Brazil, composed largely of off-duty government agents who engage in a range of criminal activities, including extrajudicial executions. Some of these groups (militias or para-policing

operations) are similar to gangs in that they seek to control entire favelas through extortion and the use of force. Others (death squads, extermination groups) act as vigilantes, using executions as an off-duty “crime control” technique, or act as hired killers to supplement their low salaries.

Second jobs and corruption: a pathway to organized crime

31. Participation in organized criminal groups should be seen as the most extreme end of a continuum of illegal police actions that begins with corruption and the holding of second jobs. It is openly acknowledged by senior Government officials, police, and police commanders that the prohibited practice of police working second jobs¹²² - primarily as security guards - is widespread.

32. While efforts are being made in Pernambuco, in São Paulo and Rio de Janeiro, it was clear to me that nothing at all was being done to address this problem.¹²³ In fact, the head of a military battalion in Rio de Janeiro frankly admitted to me that he not only knew that his officers were taking illegal second jobs, but that he encouraged them to do so.¹²⁴ The motivation for working second jobs is straightforward: police are very poorly paid.¹²⁵ Working a second job is also facilitated by the policing shift structure in which police may work for 12 to 24 hours, and then take 24 hours to several days off. Unregulated private security jobs, especially in the context of high rates of organized crime and violence, means that working as a security guard can easily involve police using force in their second job, or being hired to “collect” money for an employer, or to protect an illegal gambling or trafficking racket. A telling statistic is that, in Rio de Janeiro in 2007, nearly four times as many police were killed while off-duty as while on-duty.¹²⁶ The evidence I saw pointed not to the explanation proffered by some security officials to the effect that police are targeted because of their on-duty activities, but rather to the conclusion that they are killed because of the dangerous and often illegal nature of their second jobs.

33. Many police are also engaged in corruption and extortion to varying degrees.¹²⁷ Corruption and second jobs cause harm in themselves, but high-level tolerance of them also contributes to a

¹²² The relevant regulations are state-specific. In Rio de Janeiro, it is a disciplinary infraction for a member of the Military Police to have other paid employment. *Regulamento Disciplinar da Polícia Militar do Estado do Rio De Janeiro*, Decreto No. 6.579 (5 March 1983), Art. 14(1); Annex I, para. 120.

¹²³ In Pernambuco, the Governor told me that when he took office in January 2007, he discovered that the police were overly entangled with private interests and that there were even written contracts between police and shopping centers and stores to provide security. His Government was taking steps to break these contracts.

¹²⁴ In Rio de Janeiro, the numbers of police disciplined for holding second jobs is virtually nil: 2005 - 1 corporal arrested; 2006 - 3 corporals, 4 privates, and 1 sergeant reprimanded; 2007 - 1 inspector of police suspended.

¹²⁵ Rio de Janeiro Military Police have the lowest rate of police pay in the country. In 2006, entry-level Military Police in Rio de Janeiro received just \$ 718 Reais per month (approximately \$ 450 USD). The Federal Government has in part attempted to address low remuneration by offering training scholarships (Bolsa Formação) to qualifying police earning under \$ 1,400 Reais per month.

¹²⁶ According to official statistics, in the state of Rio de Janeiro, in 2007, 119 members of the police were killed while off-duty while 32 were killed while on-duty. (In 2006, the numbers were 93 off-duty and 29 on-duty.) See: Rio de Janeiro, Public Security Institute (Instituto de Segurança Pública), 19 March 2008.

¹²⁷ In Pernambuco, I was given detailed information about the relationship between police and gangs in a number of communities. In one favela, every weekend police would come to the community to collect money from the traffickers. The leader of each gang generally has a number of “directors” in charge of the different types of trafficked drugs. The police would come to negotiate with “directors” (who in turn negotiate with their leader) on payments. Refusals to pay the police are met with death threats and murder. The weapons and drugs confiscated by

culture of impunity in which police know they can operate outside the law. Importantly, it also creates a context in which police can choose to collaborate or compete with organized crime groups, thereby increasing the likelihood that police will become involved in militia and death squad activity.

Militias and para-policing

34. As reported to me by police investigators, public prosecutors, civil society, and residents of militia-controlled areas, militias are groups composed of police, ex-police, firefighters, prison guards, and private citizens, who attempt to “take over” geographical areas, and engage in extra-state “policing”. Like gangs, their motivations for such control are often economic - militias extort shop owners, and control the supply of gas, cable and transport services. Militias also seek to justify their control by contending that they are “protecting” residents from violent gangs and traffickers. However, for residents, rule under a militia is often just as violent and insecure as rule under a gang. Militias extrajudicially execute suspected traffickers while forcing them out of the area, execute other suspected criminals, intimidate residents, and threaten and kill those who speak out against the militia or are perceived to have allegiances to other groups vying for control.

35. Militias operate throughout Brazil but have become a particular problem in Rio de Janeiro over the last 3 years, where it is estimated that approximately 92 of the 500 Rio de Janeiro city favelas are now controlled by such groups. In particular, I received detailed information on the militia activities in the Kelson’s community, a neighborhood of 6,000. My sources included long-term residents, local NGOs, Civil Police responsible for investigating the Kelson’s militia, and the head of the Military Police battalion from which 4 police militia members had been arrested. For many years prior to 2006, the area was dominated by the drug traffickers from the Red Command gang (*Comando Vermelho*). In November 2006, a militia involving men from the 14th, 16th and 22nd Military Police battalions invaded Kelson’s using police vehicles and equipment, and expelled the gang. The militia “policed” the area 24 hours a day, and extorted local businesses, restricted the ability of independent local shops to sell gasoline (only militia-run shops could do so), and required bus owners to pay the militia 600 Reais per week.

36. Jorge da Silva Siqueira Neto, who residents and police informed me had been installed as President of the Kelson’s Residents’ Association with militia cooperation, subsequently fell out with the militia and was expelled from the area. He then made public denunciations against the militia, which were covered by the press on 29 August 2007. The next day, police arrested certain police who Jorge had accused of belonging to the militia. They were released from administrative detention within several days. On 1 September 2007, with the militia’s control undermined, the gang attempted to retake control of the area, but was kept out by police after heavy fighting. Jorge was kidnapped and murdered on 7 September 2007. Civil Police investigating the militia informed me that 6 members of the Military Police had been arrested for militia involvement, and a further 13 arrest warrants had been issued for non-police militia members. They stated that their investigations were ongoing but near completion. The head of

police are regularly fed back into the trafficking system. Police “arrest” traffickers for the purposes of making money - demanding a bribe in return for the criminal’s freedom. When the gangs do not have sufficient funds to pay for one of their members, the gangs collect small sums from each resident to pay the police fee.

the Military Police battalion told me that they were re-establishing control of the area, that police corruption and militia involvement by police in his battalion had already been investigated, and that the guilty officers had been arrested. However, I received credible accounts from residents and NGOs working in Kelson's that on 8 October 2007, some members of the Military Police received payments from the Red Command gang, allowing them to re-enter the community and that, at the time of my mission, the gang continued to operate in Kelson's.

37. Each time the control of the community changes hands, residents' lives are endangered. Those residents aligned with the group that was previously in control live in fear of retaliation from the new group, or are forced to leave.¹²⁸ The constant shifting of control makes it nearly impossible for residents to act in a way that will keep them safe in the present as well as when control changes hands in the future.

Death squads and extermination groups

38. Death squads, extermination groups, and vigilante groups are groups formed by police and others whose purpose is to kill, primarily for profit.¹²⁹ Such groups sometimes also justify their actions as an extralegal "crime-fighting" tool. In circumstances where the groups are hired for profit, those who hire them are sometimes members of other criminal organizations, traffickers, or corrupt politicians, seeking to control a perceived threat, gain an advantage over a rival group, or exact revenge. Killers are also hired by those who believe that the police and the criminal justice system are unable to effectively combat crime, and so "vigilante justice" is necessary when they, or a family member, have been the victim of a crime.

39. The public prosecution service in Pernambuco estimated that approximately 70% of the homicides in Pernambuco are committed by death squads. A federal parliamentary commission of inquiry found that extermination groups are mostly composed of Government agents (police and prison guards), and that 80% of the crimes caused by extermination groups involve police or ex-police.¹³⁰ The Governor of Pernambuco also told me that his Government is aware that members of the Military Police are involved in most death squads. As the commission of inquiry report notes, it is police who have the power, information, resources, weapons, and training to most effectively run such groups.¹³¹ The Pernambuco Government, which took office in 2007,

¹²⁸ I was informed that since the militia first took control, approximately 35 families (200-250 people) have been forced to abandon their homes and leave the area.

¹²⁹ In Pernambuco, hired killers earn \$ 1,000 to \$ 5,000 Reais per killing.

¹³⁰ *Relatório Final da Comissão Parlamentar de Inquérito do Extermínio no Nordeste*. Criada por meio do Requerimento nº 019/2003 - destinada a "Investigar a ação criminosa das milícias privadas e dos grupos de extermínio em toda a região nordeste" - (CPI - extermínio no nordeste), p. 25.

¹³¹ As the commission of inquiry's report explains: "The extermination groups are composed mostly of government agents - civil and military police, penitentiary agents, in short, by personnel that are very powerful and possess the information, arms and circumstances to act. However, their composition varies: ex-police expelled from the corps owing to their participation in illegal activities; police on active-duty who use these groups as a means to augment their salaries; individuals contracted as private security; groups that participate in criminal organizations linked to drug-trafficking and other illegal activities; and groups that do not maintain specific relationships with organized crime but that exercise control over particular areas with the excuse of guaranteeing the 'security' of its residents - this type is very common in the outlying neighborhoods in the big cities. There are also organizations that contract with cowboys." *Relatório Final da Comissão Parlamentar de Inquérito do Extermínio no Nordeste*. Criada por

appears committed to ending this phenomenon and has undertaken a number of promising initiatives.¹³²

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. The Pastoral Land Commission reports on average approximately 40 murders per year of landless workers.¹³³ In the state of Pará alone, over 770 landless workers and other human rights defenders have been killed since 1971.¹³⁴ These killings generally occur in retribution for the activism of landless workers or during violent evictions from land settled by landless workers.¹³⁵ The *Conselho Indigenista Missionário* (CIMI) informed me that they estimate that about 10 summary executions of indigenous persons occur each year.¹³⁶ 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

meio do Requerimento nº 019/2003 - destinada a "Investigar a ação criminosa das milícias privadas e dos grupos de extermínio em toda a região nordeste" - (CPI – extermínio no nordeste), pp. 25-26.

¹³² Working with Federal Police and drawing on information gathered by a new integrated intelligence unit within the Public Security Secretariat, police arrested 197 people for death squad involvement during 2007. (During my visit, 34 people (police, lawyers, businessmen) were arrested and charged with participating in death squads, killing 35 people during the previous 5 month period, and suspected of killing several hundred victims over the years. One of the death squad groups was led by a former member of the Military Police. In April 2007, members of another death squad were arrested in Pernambuco, and charged with killing 200 people.) In addition, many police were suspended from duties during 2007, and charges were also laid against senior members of the Civil Police. (In 2007, 600 Military Police were expelled, and 16 Civil Police expelled.) Police now receive a bonus for every weapon they confiscate, and over 6,000 were confiscated in 2007. Pay rates, and health and education services for police have also been increased, and training for intelligence techniques has been provided. These efforts in Pernambuco need to continue, and other states should pursue similar initiatives.

¹³³ See Comissão Pastoral da Terra, "Assassinatos" at www.cptnac.com.br. In 2007, the most recent year for which there are homicide statistics, the number of homicides (28) was lower than the previous years' averages. (However, in 2007, the number of states in which murders took place increased from 8 to 14).

¹³⁴ Comissão Pastoral da Terra, Justiça Global, Terra de Direitos, "Violação dos direitos Humanos na Amazônia: Conflito e Violência na Fronteira Paraense" (November 2005), p. 33.

¹³⁵ For example, I received reports that on 21 October 2007, a few weeks prior to my visit, an armed militia group shot and killed Valmir Mota de Oliveira (42 years old), a leader of the *Movimento dos Trabalhadores Rurais Sem Terra* (MST), at the Via Campesina encampment at the GMO field of Syngenta Seeds, Santa Tereza do Oeste, Paraná. Five other farmers were also shot and seriously wounded. The MST leaders had been threatened for the previous 6 months by the militia, who were believed to have been employed by Syngenta.

¹³⁶ These killings either occur in the context of disputes over land that has already been demarcated to indigenous groups pursuant to the requirements of Article 231 of the 1988 Constitution, but on which others trespass for the purposes of resource exploitation, or the killings occur over land which is not yet demarcated but which an indigenous group chooses to begin to reclaim. The National Foundation for Indians (*Fundação Nacional do Índio*, FUNAI)

has responsibility for indigenous policies, and policing of indigenous areas is largely the responsibility of the Federal Police. I was told by NGOs and indigenous representatives that Federal Police presence was often non-existent or minimal. In indigenous areas known to have serious land conflicts, Federal Police presence should be increased, and police who work in and near indigenous areas should receive specialist training to sensitize them to the land issues and indigenous culture.

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.

E. HUMAN RIGHTS TRAINING FOR POLICE

Report on Mission to Central African Republic (A/HRC/11/2/Add.3, May 2009, ¶¶ 68-78):

68. In conjunction with the reform of the justice system, it is crucial to reform the security sector - including the FACA, the GP, the gendarmerie, and the police - and regain the trust of the population. While the population, especially in the north, rightly distrusts the current armed forces in light of their past conduct, they desperately want the presence of security forces that can protect them from bandits and lawlessness.

69. Most interlocutors were fundamentally pessimistic with respect to whether the Government had the will to implement the necessary transformation. One foreign soldier who had helped train the FACA at various points throughout the past 20 years said that he had witnessed zero progress in terms of tactical competence or of respecting the rule of law. While this is sobering, it is encouraging that interlocutors did believe that change is possible if the international community eschews “quick fixes” in favour of a long-term strategy and commitment.

70. A seminar on security sector reform held in Bangui in April 2008 was a significant step forward. It brought together members of civil society and Government to discuss wide-ranging reforms. The detailed timetables for reforms to each institution that were developed provide a promising basis for future efforts. However, while reform efforts must focus on precise measures, the big picture must always be kept in mind as those steps are taken. Reforms must result in security forces that can both ensure and respect human rights. In what follows, the key lessons learned during the mission are outlined.

Principles to guide human rights-based reform of the security sector

71. It is necessary to start by recognizing that, while the steps taken by the President to reduce abuses were positive, change that is rooted in a single individual’s words cannot be expected to endure. Reforms must be institutionalized. This requires that decision-making based on personal relationships be replaced with decision-making based on stable institutional structures.

72. First, there is a fundamental problem with the very concept of a GP (*Garde Présidentielle* one of the divisions of the army of the Central African Republic (FACA)). These problems are compounded by the fact that the GP takes orders from the President rather than through the regular chain-of-command and is recruited through an ad hoc process.

73. As long as a single individual is permitted to control what amounts to a private army, there will always be a danger that large-scale abuses will recommence as quickly as they were brought to an end. Moreover, the pattern in which each new president remakes this critical component of the security sector in his own image will continue, meaning that every transition will threaten to undo all previous efforts at reform. Nevertheless, it must be candidly acknowledged that the GP will not be permanently eliminated until incoming presidents feel that they can rely on the existing FACA and do not need to form ad hoc units to ensure their regime’s survival. This suggests that an element of sequencing is pragmatically reasonable. As the FACA is reformed, the elimination of the GP will be facilitated. There is not, however, anything inevitable about this

progression. An end to the use of the GP for any purpose other than the President's close protection must be treated as a key aim of security sector reform, and donors should link the issues.

74. The limited efficacy of formal legal proscription in making permanent the elimination of an institution that emerges and re-emerges in conjunction with regime transitions must also be acknowledged. Again, there is no perfect solution, but a starting point would be for civil society groups to prioritize this issue and promote a non-partisan understanding that new presidents must accept the existing security forces rather than "supplementing" them - and that the security forces must support whomever is president. Entrenching a new societal norm will not be easy, but the country's history provides ample evidence of why such a norm is necessary.

75. Second, a regular chain-of-command should be established and enforced. Every operation should be conducted pursuant to a written order signed by the legally designated commander. Personal ties must not be permitted to subvert this chain-of-command. Soldiers who refuse the lawful orders of their commanders, who order military activities outside the proper chain-of-command, or who follow such irregularly issued orders should be disciplined. The importance of this was brought home during meetings with the GP. According to senior GP officials, the GP command had not signed the orders for all of Lt. Ngaïkossé's missions, and thus was not responsible for any unauthorized missions. The GP had apparently taken no measures to investigate or control these irregular missions by Lt. Ngaïkossé.

76. Soldiers should also be instructed that they have an obligation to disobey manifestly illegal orders and be sufficiently well-educated in international law to recognize these orders. In this respect, recent steps to establish an international humanitarian law unit in the military are encouraging. It should be kept in mind that training must be regularly reinforced, and that it will not achieve its objectives without an effective military justice system to punish violations.

77. Third, the principle that the security sector is accountable to the State and its people rather than to any single individual or regime should be entrenched. As a reflection of this principle and in furtherance of its implementation, the security forces should consult closely with local populations in need of protection in the north-west to guide operations responding to banditry. For a territorial army to provide protection requires a close relationship with the people, in addition to more general reforms in operational performance and respect for human rights.

78. These lessons suggest that donors should continue to provide assistance to increase the effectiveness of the security sector and that this assistance should be accompanied by efforts to provide strong human rights training, ensure effective monitoring of the military and police, and promote respect for human rights.

Follow-up Report on Mission to Nigeria (A/HRC/8/3/Add.3, 14 May 2008, ¶¶ 83-84):

89. The Special Rapporteur reported in 2006 that police kill with near complete impunity. Corruption was also found to be widespread, with police regularly using road checkpoints to extort money from motorists. There was no functioning police accountability system to investigate, prosecute and punish police for these offences. The Special Rapporteur recommended

that an independent review be conducted with a view to establishing an effective system of accountability. He also recommended that police pay be greatly improved to reduce the temptation for police to engage in corruption, and that police checkpoints be abolished immediately.

90. Promisingly, subsequent to the Special Rapporteur's report, Nigeria established several committees to address this issue. They made comprehensive findings and recommendations concerning the urgent need for police reform. In addition, in November 2007, Nigeria announced a partnership with the British government to reorganize the Nigerian Police Force, with an emphasis on preventing misuse and abuse of authority by police officers. Nigeria also announced, in December 2007, that the salary rates for the least paid police would be increased from N10,000 to N26,000 in 2008.

91. Unfortunately, the checkpoints that symbolize rampant corruption in Nigeria are still widespread, despite official proclamations to eliminate them. These checkpoints are largely used for extortion purposes alone, without any attempt to search vehicles or prevent crime. Improved salaries for police is one part of the systemic reform required to address police corruption and a culture of impunity. These developments are welcome, but Nigeria needs to ensure that the recommendations issued by the committees on police reform are carefully considered, that checkpoints are in fact abolished, and that structural reforms to the system of police accountability are introduced.

F. POLICING GANG-CONTROLLED AREAS

Report on Mission to Brazil (A/HRC/11/2/Add.2, 23 March 2009, ¶¶ 7-8, 16-29, 77-81):

7. Policing in Brazil takes place within a context of significant organized crime, gang control of entire communities, drug and weapons trafficking, and high levels of violent street crime.¹³⁷ Gangs and traffickers have become so powerful that in large cities such as Rio de Janeiro, São Paulo and Recife, they exercise control over favelas, threatening and extorting residents and businesses, imposing their own “laws”, and requiring residents to protect them from police. Gangs engage in lethal violence against enemy factions, making everyday security for favela residents volatile. In some areas of Rio de Janeiro, gang control is so absolute, and legitimate state presence so absent, that police can only enter under threat of armed confrontation with traffickers. In São Paulo, one gang, First Command of the Capital (*Primeiro Comando da Capital*, PCC) was able to bring the state to a standstill in May 2006, organizing prison riots, attacks and murders across the state. The May 2006 violence caused widespread fear across Brazil, and drew international attention to the country’s need for more effective crime control.

8. Brazil has notoriously high homicide rates. Homicide is the leading cause of death for persons aged 15 to 44 years, and the victims are overwhelmingly young, male, black, and poor. Between 1980 and 2002, the homicide rate (per 100,000 residents) nearly tripled - to a peak in 2002 of 30.4. The figures dropped slightly the following years, to 28.3 in 2004, 27 in 2005, and 25 in 2006, but remain well above the world average.¹³⁸ Nationwide, nearly 70% of murders involve firearms. In response, Brazil passed stricter gun control laws in 2003,¹³⁹ which have been credited with reducing firearm deaths in the subsequent years.¹⁴⁰

¹³⁷ For example, rates of robberies per 100,000 have also been rising steadily in Rio de Janeiro since 1991, (under 600 per 100,000 in 1991, to over 1,200 per 100,000 in 2006).

¹³⁸ The World Health Organisation estimated that in 2000 the world homicide rate was 8.8 per 100,000: World Health Organization, *World Report on Violence and Health* (2002), p. 10. (This rate excluded war-related deaths).

¹³⁹ Disarmament Statute, Law No 10, 826/03. The law made it an offence to carry a gun without a permit, raised the age to 25 at which a permit could be obtained, and required all guns to be registered.

¹⁴⁰ The homicide rates for Rio de Janeiro, 40.7 in 2006, and Pernambuco, 53 in 2005, are markedly higher than the national average. (It is important to note that official homicide statistics do not include all deaths. In Rio de Janeiro, for example, on-duty killings by on-duty police officers are not included in the state “homicide” rates. If they were, the homicide rates in Rio de Janeiro and Pernambuco (where such killings are included) would be on par with each other: Governo do Estado de Pernambuco, Secretaria de Defesa Social, Gerência de Análise Criminal e Estatística, Relatório No 366/2007/GACE/SDS-PE, “Informações Sobre Violência Envolvendo Policiais em Pernambuco”, Recife, 30 de novembro de 2007, p. 4. The number of persons who have “disappeared” is also not included in the homicide statistics. In Rio de Janeiro, 4,562 persons were recorded to have disappeared in 2006. While some of these people are doubtless alive, a significant proportion were presumably killed and their bodies disposed of.)

In contrast, the homicide rate in São Paulo has fallen over the last 6 years by over 50%. (The reported homicides in São Paulo are as follows: 2000 (12,638); 2001 (12,475); 2002 (11,854); 2003 (10,953); 2004 (8,753); 2005 (7,076); 2006 (6,057.) See Government of São Paulo, “Resposta à ONU - Homicídio doloso”, p. 2.) Senior Government officials and civil society have attributed this reduction to a number of factors. One of these is increased investment in police intelligence and resulting increased arrests. (To September 2007, for example, there were 77,000 arrests, 10,000 more than the same period in the prior year. The state invested in a communications network to link Military and Civil Police information, a geographic information system so that crimes could be tracked by area, criminal photographs database, computer software linking police report information with bank records, telephone records, and residence.) Another factor is new gun control legislation. (In São Paulo, confiscations of illegal weapons rose from 6,539 in the first quarter of 1996 to 11,670 in 1999. From 2003-2004, firearm deaths dropped by 19% in São

[...]

16. Senior state Government officials and law enforcement authorities in Rio de Janeiro discuss policing as a “war” against gangs and drug traffickers. During 2007 and early 2008, police mounted a number of large-scale operations involving hundreds of men supported by armoured vehicles and attack helicopters, to “invade” and take back favelas controlled by gangs.¹⁴¹ One of these operations, the police invasion of the Complexo do Alemão area of Rio de Janeiro on 27 June 2007, illustrates why such an approach might be tempting in theory but in practice is murderous and self-defeating.

17. The absence of the state in favelas like the Complexo¹⁴² has allowed gangs to take over neighborhoods, acting as what some refer to as a “parallel state power” - controlling or providing basic services such as transport, gas and cable, hosting festivals and parties, taxing residents, and punishing rule-breakers. Gang violence is often motivated by economic interests. If a monopoly on criminal activity and a near monopoly on violence can be established within a particular area, an organization can: (a) effectively demand protection fees from businesses and “taxes” from residents; (b) prevent residents from informing the police of their activities, and thereby safely hide themselves, drugs, and ammunition; and (c) impose on the residents any other rules that will facilitate their criminal activities. The Red Command (*Comando Vermelho*) gang has controlled the Complexo for many years, and is an unusually extreme case of the substitution of gang control for legitimate government authority. The rules set by the gang are repressive, and their enforcement brutal - punishment for residents can involve being incinerated in what is known as the “microwave”.

18. In an attempt to take back the Complexo from gang control, on 27 June 2007, the state Government mounted a large-scale invasion of the area, involving 1,280 Civil and Military Police and 170 National Public Security Force (FNSP)¹⁴³ members. The invasion began in the morning, led by members of the Special Police Operations Battalion¹⁴⁴ in armoured vehicles. Other Civil and Military Police followed, while police attempted to remove barriers – concrete pipes, abandoned cars, etc. - that had been placed at key entrances to the neighbourhood. The

Paulo.) Other factors include Government and civil society investment in social programs and services to communities; reduction of bar opening hours; retraining for police; and increased use of alternative justice measures. While the trend is promising, São Paulo’s homicide rate still remains well above early 1990s levels.

¹⁴¹ The state of Rio de Janeiro reported to me that 4 large-scale operations were mounted in 2007 (numbers of police involved in each operation were: 120; 230; 460; 1,280). In total, 6 police were wounded in the 4 operations, and 2 killed. A total of 36 residents were killed, 78 wounded, and 36 traffickers arrested.

¹⁴² Like many favelas, the Complexo has largely been left without state services, a fact frankly acknowledged to me by representatives from the state Government. For a population of 180,000, the Complexo has only three city schools, 60 teachers, and three health centres. Just 13 public officials work there. There are no government-run cultural institutions, no police stations and no community policing programs. The absence of the state is brought into sharp relief when one compares these numbers with those of other Rio de Janeiro areas. In the municipality of Japeri for example, although it has just 96,200 residents, there are 10 health centres, 27 city schools, 1,918 public officials, and 1,092 teachers. (Governo do Rio de Janeiro, “Programa de Urbanização de Favelas” (November, 2007).)

¹⁴³ The *Força Nacional de Segurança Pública* (FNSP) was created by presidential decree 5.289 on 29 November 2004. The National Secretariat for Public Security, which is part of the federal Ministry of Justice, is responsible for coordinating the force, which is composed of police from around the country, and which can only be deployed in a state at the express request of that state’s governor.

¹⁴⁴ The *Batalhão de Operações Policiais Especiais* (BOPE) are an elite battalion of the Military Police.

area is composed of 17 favelas spread across steep hills, and police attempted to take the higher ground, eventually occupying approximately 60% of the area. But police moved slowly through the area over the course of the day - the Secretary for Public Security told me that in the first four hours they were only able to move forward 400 metres due to barriers and confrontation. Residents with whom I spoke described hearing gun shots and observing the gradual approach of police to their own streets. Many told me that they were unable to leave their homes all day for fear of being caught in the shooting. Meanwhile, the FNSP forces had assumed positions on the edges of the favela to act as a “suffocation” force, responsible for preventing gang members from escaping the favela and for preventing gangs from neighboring areas entering and joining the fight. At the time of my visit, the FNSP continued to maintain checkpoints on the perimeter, but the only law enforcement presence within the community consisted of a few small outposts of members of the Military Police.

19. I questioned the Rio de Janeiro Secretary of Public Security and senior members of the Civil and Military Police as to the purpose of this huge confrontation. I was informed that the Complexo was one of 19 centres of criminality in Rio de Janeiro, a place from which drugs and guns were distributed to gang members operating in other neighborhoods. The primary motivation was said to be to seize those arms and drugs, and to arrest key gang members. A secondary motivation was to open the way for the establishment of government services to the community. Other sources suggested that a possible motivation may have been to capture key gang members who were reportedly meeting in the Complexo that morning; or that the operation was designed to ensure safety ahead of the Pan-American Games, which opened two weeks later. I asked numerous state Government officials and police why the neighborhood was invaded at that particular time, but I was simply told that “intelligence” dictated the timing and manner of the operation.

20. In evaluating the operation in Complexo do Alemão, two questions stand out. First, what were the crime prevention benefits of the operation - did the operation in fact seize weapons and drugs, arrest gang leaders, and open the community to state services? Second, did the operation harm the community’s residents? These questions are especially important because most state Government officials with whom I spoke in Rio de Janeiro considered the operation a success, and a model for future police action.¹⁴⁵

21. In fact, from a crime control perspective, the operation was a failure. Police confiscated 2 machine guns, 6 handguns, 3 rifles, 1 sub-machine gun, 2,000 cartridges, 300 kilograms of

¹⁴⁵ In fact, after my visit, I was informed of a number of other large-scale police operations involving deaths. On 30 January 2008, an operation was mounted in Jacarezinho and Mangureira neighborhoods, and involved approximately 200 police, two helicopters and two armoured cars. Six people were killed, six arrested, and a small amount of drugs and weapons were seized. On April 3 2008, an operation took place in the Coréia and Vila Aliança favelas. Two hundred police were used, supported by armored vehicles and one helicopter. Eleven civilians were killed, including three killed from shots fired from the helicopter. Seven suspected criminals were arrested. Another large scale operation took place on 15 April 2008, by 180 police in the Vila Cruzeiro and other favelas in the Complexo da Penha area. Nine civilians were killed, and 7 bystanders wounded by stray bullets. Fourteen men were arrested. After this operation, military police commander Colonel Marcus Jardim was reported in the press as comparing the dead men to insects: “The [police are] the best remedy against dengue. Not a single fly resists ... it’s the best social bug spray” (“Ação do Bope deixa 9 mortos e 7 feridos”, *O Estado do S. Paulo*, 16 April 2008). Security Secretary of Rio de Janeiro, Mr José Beltrame was reported as stating that the two April operations were a success (“Operação na Vila Cruzeiro termina com nove mortos, seis feridos e 14 presos”, *O Globo*, 15 April 2008).

drugs, and unspecified amount of explosives. Thus there were more people killed than guns confiscated. And the day after the operation, there was only a *de minimis* police presence inside the favela. The gang was still there and still in control. It is not surprising that a one-day long, large, slow sweep through a neighborhood long neglected by the state failed to result in significant arrests or seizures, much less in the end of gang control. Large operations over large areas are difficult to keep secret in advance and are immediately exposed as they enter a community. This gives criminals great opportunity to escape, along with their weapons and drugs. The combined effects of poor intelligence - which was inevitable given the absence of a police presence in the area - and enormous advance warning to the members of criminal organizations are obvious in the paucity of arrests and the failure to seize large quantities of firearms or drugs.¹⁴⁶

22. Nineteen were killed and at least 9 wounded during the 8 hour operation. All 19 deaths were recorded as “resistance” deaths.¹⁴⁷ But there is compelling evidence that at least some of those killed were extrajudicially executed. I received credible accounts from residents and family members of victims that victims were shot in the back whilst walking away from police, or dragged out of homes unarmed and executed, or disarmed and then shot in the head. Residents and families also testified that police invaded their homes, threatened them, damaged and stole property, and were physically abusive. Some of those subsequently independently investigating allegations of police abuse - including members of the Brazilian Bar Association¹⁴⁸ as well as victims’ families - reported receiving death threats and warnings to cease their investigations.¹⁴⁹

23. Two independent studies strongly support the witness and victims’ families accounts of executions. One was by the Human Rights Commission of the Brazilian Bar Association (Rio de Janeiro division)¹⁵⁰ and the other by experts appointed by the Human Rights Special Secretary of

¹⁴⁶ The state of Rio de Janeiro reported that the total drug and weapons confiscated for all 4 large-scale operations in 2007 were: 107 weapons (including anti-aircraft machine guns, pistols); 43 explosive devices; 20,016 ammunition cartridges; 2,730 kg of cannabis; 441 kg of cocaine. And more broadly, despite the aggressive state-wide policies and a dramatic rise in the numbers of people killed in 2007 by police in Rio de Janeiro (25.1% more than in 2006), there was a 5.7% reduction in drug seizures, a 16.9% reduction in arms confiscations by police, and a 13.2% reduction in arrests from 2006 to 2007. (Rio de Janeiro, Public Security Institute (Instituto de Segurança Pública), 19 March 2008. The numbers reported by the State of Rio de Janeiro are: drug seizures (10,793 in 2006; 10,176 in 2007); arms confiscations (13,312 in 2006; 11,062 in 2007); arrests (16,543 in 2006; 14,355 in 2007).)

¹⁴⁷ The numbers of killings by police registered as “*autos de resistência*” in Rio de Janeiro has risen sharply since 1997: 1997 (300), 1998 (397), 1999 (289), 2000 (427), 2001 (592), 2002 (900), 2003 (1195), 2004 (983), 2005 (1098), 2006 (1063), 2007 (1,330).

¹⁴⁸ See Ordem dos Advogados do Brasil, Seção do Rio de Janeiro, Comissão de Direitos Humanos e Acesso à Justiça, *Notitia Criminis*, Exmo. Sr. Dr. Sub-Procurador Geral de Direitos Humanos do Ministério Público do Estado do Rio de Janeiro.

¹⁴⁹ Since my visit, I have also learned that prominent human rights activist and lawyer João Tancredo (who has been working on behalf of some of the families of Complexo do Alemão victims) survived an assassination attempt on 19 January 2008. The bullet-proof car he was traveling in was shot at four times when he returning home from a meeting with the parents of victims of alleged police violence in the Furquim Mendes favela.

¹⁵⁰ See Ordem dos Advogados do Brasil, Seção do Rio de Janeiro, Comissão de Direitos Humanos e Acesso à Justiça, *Notitia Criminis*, Exmo. Sr. Dr. Sub-Procurador Geral de Direitos Humanos do Ministério Público do Estado do Rio de Janeiro; and “Expert Report on the Complexo do Alemão Affair: Expert Opinion on the Reports of Corpse Examinations issued by the Legal Medicine Institute (IML), as a result of the 19 deaths at the “Complexo do Alemão” on June 27, 2007” (10 July 2007).

the Federal Government.¹⁵¹ Both found that the original autopsy reports contained serious deficiencies and had not been carried out in accordance with international standards.¹⁵²

24. The expert reports found strong evidence of extrajudicial executions. Of 19 killed, 14 showed signs of 25 gunshot entry wounds in the back of their bodies. Six victims showed signs of 8 entry wounds in the head and face. Five victims showed signs of point-blank shots.¹⁵³ This information, together with the high number of shots per victim (over 3), the fact that different guns were used to shoot the same victim, and analysis of the sequence and trajectory of shots, led the experts to infer that a number of the victims had been executed. But, given the many deficiencies in the original forensic analysis, both reports stated that it was impossible to conclude definitively whether the victims were executed.

25. I asked Rio de Janeiro officials to respond to these findings. They attacked the experts' credentials, and told me that the experts lacked the constitutional authority to carry out such investigations. I requested, but did not receive, a scientifically based state response to the experts' report. I also asked the responsible Civil Police what investigations had been carried out to ascertain whether each killing was in fact the result of justifiable and necessary use of force. But they were unable to provide me with any evidence that they had conducted serious investigations into any of the killings. In fact, I was told that they assume that Military Police officers registering a resistance case are telling the truth. The principal response I was given was that each of the 19 deceased had criminal records. It is difficult to understand how this could have been known by the police when they killed the individuals. Moreover, the claims were firmly denied by families of several victims, including that of a 14 year old boy, David Souza de Lima, who was shot 4 times in the back. The assertion by police of victims' criminality is an extremely telling and worrying "justification" for killings. A victim's criminal record says absolutely nothing about whether they were killed in self-defence, or whether the police used justifiable force. The appropriate response to a criminal act is arrest, not execution.

26. The degree to which the killing of "criminals" is tolerated and even publicly encouraged by high level Government officials goes a long way to explaining why the numbers of killings by police are so high, and why they are so inadequately investigated. Current Secretary for Public Security José Mariano Beltrame commented that, while police did their best to avoid casualties, one could not "make an omelet without breaking some eggs".¹⁵⁴ Such public statements, and the

¹⁵¹ Presidência da República, Secretaria Especial dos Direitos Humanos, Comissão Permanente de Combate à Tortura e à Violência Institucional, "Encaminha relatório sobre mortes violentas no Morro do Alemão" (14 November de 2007) and "Relatório Técnico Visita de Cooperação Técnica - Rio de Janeiro (RJ) Julho de 2007".

¹⁵² Especially the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (1989). The original reports were poorly prepared, and failed to describe injuries adequately. The victims had arrived at the forensics institute naked. Thus their clothing could not be examined nor gun powder analysis carried out. X-rays had not been taken to locate the bullets still in victims' bodies, and the crime scenes were not preserved.

¹⁵³ A "tattooing" or "stippling" effect on the skin around a bullet entry wound is caused by gunpowder residue on the skin, and can be used to analyse the muzzle to target distance.

¹⁵⁴ Bia Barbosa, "OEA recebe denúncia contra megaoperação no Complexo do Alemão", Carta Mayor, 25 July 2007. These views have considerable public support, because many people have little faith in the normal work of the police and other components of the criminal justice system. Fifty percent of Brazilians state that they do not even report crimes to the police because it would be a "waste of time". (See William C Prillaman, "Crime, Democracy, and Development in Latin America", Centre for Strategic and International Studies, Policy Papers on the Americas,

military-style methods used in mega-operations, have led favela residents to become increasingly cynical about the police. The view that police operations are planned for the very purpose of killing poor, black, young men is surprisingly mainstream. The official rhetoric of “war”, the acquisition of military hardware, and violent police symbols only make these views more broadly acceptable.¹⁵⁵

Policing gang controlled areas: lessons learned from the Complexo do Alemão operation

27. The large operations of 2007 were ineffective in most respects. They endangered the residents of the communities in which the operations took place, failed to contribute to dismantling criminal organizations, and had a very limited effect on the quantity of drugs, weapons, and other contraband in the city or state at large. Given the striking failure of the “war” approach, the primary motivation for such policies seems to be the state Government’s wish to appear “tough on crime”. Some senior police officers, parliamentarians, and civil society advocates are highly critical of this “war” approach to policing. But they have largely been silenced by apparently strong middle class approval of confrontation tactics. Fortunately, more effective and less militaristic policing in Rio de Janeiro is possible.

28. An acceptable policing strategy cannot ignore or discount the need to protect individuals living within the communities controlled by criminal organizations. A clear lesson from the Complexo operation is that police operations to remove a criminal organization from a particular area must be followed by a sustained police presence. If the police withdraw, many of the very same gang members will return, as operations are unlikely to arrest the entirety of the local criminal organization. Even if the operation did arrest all or most of the gang members within that community, failure to maintain a police presence will permit members of the gang from other areas, or members of other gangs, to move in. If control returns to the gangs, the operation is likely to have left residents in great danger. One of the key reasons that people are killed by criminal organizations is that they are believed to be collaborating with the police or rival gangs. In many communities in Brazil, being labeled a “snitch” is tantamount to being sentenced to death. When one gang controls a community over time, its residents at least know the rules and

Volume XIV, Study 6 (June 2003), p. 9. A Brazilian Judges’ Association surveys show that citizens lack faith in the judiciary and consider it corrupt, slow, and mysterious. (AMB, Pesquisa qualitativa “Imagem do Poder Judiciário”, Brasília, 2004, p. 61.) In a context of soaring crime rates, widespread citizen fear and insecurity, lack of faith in the police, and lack of trust in the judicial system, it is perhaps not surprising that many Brazilians support “tough” law and order approaches and the extrajudicial execution of suspected criminals: a 2002 Rio de Janeiro survey found that 47% supported the killing of murderers and thieves by police. See William C. Prillaman, “Crime, Democracy, and Development in Latin America”, Centre for Strategic and International Studies, Policy Papers on the Americas, Volume XIV, Study 6 (June 2003), p. 14.

¹⁵⁵ In 2002, police acquired a military-style armoured vehicle, known colloquially as the *caveirão*, or “big skull”, so named because the BOPE’s emblem - a skull impaled on a sword, backed by two pistols - is displayed on the side of the vehicle. It can carry 12 armed officers, and has a modified turret and rows of firing positions along each side of the vehicle. By 2006, Rio had 10 of the vehicles. The vehicle is equipped with loudspeakers, and I received testimony from favela residents and civil society that police used the loudspeakers to threaten residents. The *caveirão* causes significant fear in the community. Given the intensity of criminal violence in Rio de Janeiro, armoured vehicles may be useful policing tools in the short-term since police should not be required to work at undue risk to their own lives. Armoured vehicles - when used properly - can improve police safety. However, their use should be restricted to circumstances in which it is indispensable in order to protect the lives of police. To reduce abuse their use should be monitored, and each deployment carefully recorded with audio and visual equipment installed on the inside and outside of the vehicle.

how to act to survive. But when control changes hands, the residents face an impossible challenge: they must conduct themselves in a manner that will not be perceived as resistant to the current group's control (which will likely result in death today), but they must also conduct themselves in a manner that will not be perceived as collaborating with that group when control subsequently swings to another group (which would likely result in death tomorrow). The police should not gratuitously inflict this further punishment on the residents already so unfortunate as to have their communities be controlled by criminal organizations.

29. By attempting to re-establish government control over a large area almost instantaneously, large-scale operations are not only too ambitious but contain the seeds of their own failure. Police dashing through a community are unable to develop a sufficient understanding of the local criminal structures as to be able to reliably identify and arrest the organization's members. This is certainly the case when the level of government presence and thus of reliable intelligence was previously very low, as in the Complexo. This ignorance engenders fear and frustration and is likely to lead some policemen and units to commit acts of indiscriminate violence.

[...]

[Recommendations:]

77. State Governors, Secretaries for Public Security, and Police Chiefs and Commanders should take the lead to make publicly clear that there will be zero tolerance for the use of excessive force and the execution of suspected criminals by police.

78. The State Government of Rio de Janeiro should eschew large-scale, or "mega", operations in favor of systematic and planned progress in reasserting a sustained police presence and government authority in gang-controlled areas. Present policies are killing large numbers of people, alienating those whose support is needed for potential success, wasting precious resources, and failing to achieve the stated objectives. Designing policing strategies solely with electoral objectives in mind does a disservice to the police, the communities affected, and society at large.

79. The use of armoured vehicles should be monitored by equipping them with audio and visual recording equipment. The results should be regularly monitored in cooperation with community groups.

80. In the longer term the Government should work towards abolishing the separate system of military police.

81. The federal Government should implement more effective measures to tie state funding to compliance with measures aimed at reducing the incidence of extrajudicial executions by police.

Follow-up report on Brazil (A/HRC/14/24/Add.4, 28 May 2010, ¶¶ 19-23):

19. In 2007, the Special Rapporteur documented unlawful killings committed during brief large-scale police operations involving hundreds of police, armoured vehicles and attack helicopters

“invading” favelas. These brief “war”-like operations, while appropriately aimed at dismantling gang control of favelas and promoting security for residents, have proven to be both ineffective and counterproductive. Confiscations of drugs and arms and arrests of gang members are often minimal, and because police forces withdraw quickly, the gangs simply re-establish themselves and punish residents who were seen as helping the police. One of the best-known examples was the Complexo do Alemão operation in June 2007. Despite the use of over 1,400 police, the operation was a failure from a crime-control perspective, and resulted in the deaths of 19 people.¹⁵⁶

20. The Special Rapporteur detailed in his original report the reasons for the failure of such operations, and recommended that the Government eschew large-scale “mega” operations in favour of a planned and sustained police presence, coordinated with the provision of social services.¹⁵⁷

21. Since the Special Rapporteur’s mission, the Rio de Janeiro Government has introduced Unidades de Polícia Pacificadora (UPPs, “Pacifying Police Units”) into a small number of favelas in the city of Rio de Janeiro. These units are a sustained police presence in each favela, and aim to re-take control from gangs, and promote security in the long term. The UPP experiment is currently under way in seven favelas.¹⁵⁸ The officers deployed are given special training, including human rights training, and increased salaries. The Rio de Janeiro Government plans to have some 3,500 police in 15 UPPs by the end of 2010, and intends to ultimately extend UPPs to 100 favelas, at a rate of at least 10 new favelas per year.

22. This new strategy is largely to be commended. Where it has been implemented, it represents a significant departure from the “war” approach of the brief, large-scale, violent operations. The UPP approach avoids the “shoot-out” scenarios that so often result from rapid, heavily armed police incursions into the favelas. According to information provided to the Special Rapporteur, for those favelas under UPPs, the Government has made real progress in preventing gangs from re-asserting their presence. There is also strong evidence to date of community support for the UPPs.¹⁵⁹ Residents have reported that they feel safer, and that relationships with police have improved. In some areas, there have also been improvements to the provision of basic services.

23. Notwithstanding these positive developments, concerns have been expressed about the way in which the UPPs have been conducted. The government language used to describe UPPs is heavily laced with warlike terminology – they “invade” a favela, and maintain an “occupation”. Some civil society members expressed concerns that this policy will continue to criminalize favela residents who will be living under de facto militarized police control. There has been concern about harassment of residents, through increased searches and seizures, and heavy police

¹⁵⁶ A/HRC/11/2/Add.2, paras. 27-29.

¹⁵⁷ Ibid., para. 78.

¹⁵⁸ The most recent to be “occupied” was Providência, in Rio de Janeiro’s city centre. “UPP arrives at Brazil’s oldest Favela,” UPP Repórter, 23 March 2010.

¹⁵⁹ A 2010 poll by the Brazilian Institute of Social Research found that 93 per cent of people resident in UPP areas feel safer. According to that poll, 70 per cent of residents of communities without UPP would like to have UPP.

Another study, by the Getúlio Vargas Foundation, indicated that 66 per cent of those surveyed in 2009 in the Santa Marta and Cidade de Deus favelas approved of the UPP.

“UPP: I want one too!” UPP Repórter, 23 February 2010.

control over the daily lives of residents, including by banning popular music concerts and funk dance parties. Some interlocutors also expressed concern that the promised social services, including those related to education, health, and sports activities, were slow to be implemented, and that residents' associations were not always consulted on social projects. The Government must ensure that its retaking of favelas includes both improved security for residents, as well as the provision of basic services that residents have for decades been denied. In addition, independent reviews of the UPPs should take place, to provide an unbiased account of their successes, and areas where improvement is needed.

G. KILLINGS BY POLICE IN THE CONTEXT OF EXTORTION

Report on Mission to Central African Republic (A/HRC/11/2/Add.3, May 2009, ¶¶ 44-46):

44. In addition to the killings documented above in the context of the armed conflict, the Special Rapporteur received many credible accounts of extrajudicial executions committed by State officials in the course of their regular law and order functions, as well as for a range of personal and corrupt ends.

45. First, deaths in police or FACA/GP custody appear to be widespread. One Government official stated frankly that the torture and murder of arrested suspects was “routine”. By way of example, he recounted in detail two cases in which he witnessed how FACA soldiers tortured to death persons in their custody in 2007. The official feared, at best, inaction, and at worst, retaliation, if he reported these cases. Representatives of civil society in Bossangoa reported a number of killings by law enforcement officials in which the circumstances were contested, but no real investigation followed any of the deaths.

46. Second, there are many cases of killings in the context of efforts by the security forces to extort money from the public at legal and illegal checkpoints and elsewhere. In Bangui, the Special Rapporteur received testimony on three individuals who were allegedly killed by the GP in December 2006. The GP, in front of large number of witnesses, pulled the men from a bus, seeking to extort the money that one of the men had earned that day by selling his produce at a market. Other witnesses then saw the men taken to a nearby GP base. During the night, witnesses heard shots, and the following day, the GP bragged that they had “killed them”. Lawyers for the families of the deceased men sought to have the incident investigated and the suspects tried for murder by lodging official complaints in December 2006. But nothing was done by the State. During the Special Rapporteur’s visit, one of these lawyers had gone to court to once again ask about the progress of the case. He was told that the file could not be found.

Follow-up report to Central African Republic (A/HRC/14/24/Add.5, 28 May 2010, ¶ 14):

14. In addition, FACA soldiers, primarily those at roadblocks and checkpoints along roads, continue to routinely engage in thefts and harassment of civilians. In combination with rampant banditry, FACA makes it difficult for civilians to travel the roads without fear. It does not appear that steps have been taken to address this serious issue.

Report on Mission to Nigeria (E.CN.4/2006/53/Add.4, 7 January 2006, ¶¶ 8-14, 48-49):

8. The Abuja Police reported that on 8 June 2005 in the Apo district of Abuja five young male traders and a female student¹⁶⁰ were arrested on suspicion of armed robbery, taken to the Garki police station, and subsequently killed while trying to escape. The dead robbers were photographed with their weapons, a post-mortem was conducted as required, death certificates were issued after examination by a doctor, and the bodies were buried. When challenges to this story first emerged the Federal Capital Territory Police Commissioner, Emmanuel Adebayo,

¹⁶⁰ The victims were: Anthony Nwokike, Chinedu Meniru, Ifeanyi Ozor, Ozor, Issac Ekene, Paul Ogonna and Augustina Arebu. Their ages ranged between 20 and 28.

publicly affirmed these details. The case looked very typical of many reported by the police in Nigeria.

9. Unfortunately for the police, however, one of the “robbers” had managed to phone a relative from the police station and reported that the six had been involved in an altercation in a pub with a police officer. Their car had subsequently been ambushed by other police who were called in, they had all been badly beaten, and they were taken to the police station. Family members immediately sought their release but were unable to pay the bribe of 5000 Nairas (\$40) demanded by the police. Several of them were executed a few hours later. Another managed to escape but was recaptured and brutally killed by the police. In fact, no post-mortems were carried out, death certificates were not completed by a medical officer, and the bodies were hastily buried in a common grave.

10. The news of the killings spread rapidly. Rioters ransacked the Apo police station and demanded an investigation. The relatively new Acting Inspector-General of Police convened an internal investigation. But he also took the unprecedented and commendable step of making its proceedings public. Two further elements compounded the horror story that was to emerge. One police officer who took part in the killings allegedly provided the victims’ relatives with information on what really happened. He died of “tonsillitis” the day before he was supposed to give evidence to the inquiry. He was subsequently deemed to have been poisoned by two of his colleagues. Meanwhile, the Divisional Police Office in charge of the Garki police station on the fateful night “escaped” from detention.¹⁶¹

11. In the course of the inquiry one police officer and the photographer on duty that night confirmed that the youths had been killed in cold blood. It was subsequently revealed that the “robbers” alleged weapons had been in police storage until they were removed by a police officer shortly before the incident. As a result of the inquiry ten police officers were arrested.

12. On 27 June 2005, one day after the Special Rapporteur arrived in Abuja, the President unprecedentedly appointed a Federal judicial commission of enquiry.¹⁶² In December 2005 the Government paid compensation of 3 million Naira to the relatives of each of the six.

13. If the Apo 6 were an isolated incident it would be a tragedy and a case of a few bad apples within the police force. Unfortunately, many of the ingredients - the false labelling of people as armed robbers, the shooting, the fraudulent placement of weapons, the attempted extortion of the victims’ families, the contempt for post mortem procedures, the falsified death certificates, and the flight of an accused senior police officer - are all too familiar occurrences.

14. Thus the Apo 6 killings were not an aberration. The Government response, however, was noteworthy in four important respects: the Inspector-General of Police was responsive to

¹⁶¹ “Blood chilling tales”, *Newswatch*, July 11, 2005.

¹⁶² A leading NGO, Access to Justice, implied that the inquiry had been set up partly because of the Special Rapporteur’s visit in order to show the Government in a good light (“to launder the ... Government’s very disappointing record” in response to executions). Apo Police Killings: Federal Government’s Indulgent Attitude to Extrajudicial Killings Produced the Apo Killings, available at http://www.humanrightsigeria.org/siteneews/news/news_item.asp?NewsID=22.

protests; the internal police inquiry was public; a judicial inquiry was established; and compensation was paid. These elements need to become routine in the future.

[...]

48. No person can feel safe driving at night in Nigeria and there are regular reports of horrendous attacks by bandits on cars, buses and trucks on roads throughout the country, even in daylight. The result is strong public support for a significant police presence on the roads. The paradox is that the major highway “service” provided by the police consists of the erection of roadblocks or checkpoints, euphemistically known as “nipping points”. In fact, these are used primarily for the purposes of extorting money from motorists and some even see them as a necessary means by which police officers can ensure a subsistence income. But to dismiss the widespread abuse of checkpoints as a minor inconvenience or fact of life, as many of the Special Rapporteur’s interlocutors suggested, is to ignore three deeply corrosive effects: (i) checkpoints provide the occasion for a large number of extra-judicial executions by police;¹⁶³ (ii) checkpoint abuses have deeply alienated the general public; and (iii) the economic consequences are enormous.¹⁶⁴

49. Despite orders by the President, the Inspector-General of Police, and other authorities the practice continues largely unabated. Police figures undermine claims made by some that checkpoints are needed to catch armed robbers, or stem the flow of illegal arms.¹⁶⁵

Follow-up Report on Mission to Nigeria (A/HRC/8/3/Add.3, 14 May 2008, ¶¶ 89-91):

89. The Special Rapporteur reported in 2006 that police kill with near complete impunity. Corruption was also found to be widespread, with police regularly using road checkpoints to extort money from motorists. There was no functioning police accountability system to investigate, prosecute and punish police for these offences. The Special Rapporteur recommended that an independent review be conducted with a view to establishing an effective system of accountability. He also recommended that police pay be greatly improved to reduce the temptation for police to engage in corruption, and that police checkpoints be abolished immediately.

90. Promisingly, subsequent to the Special Rapporteur’s report, Nigeria established several committees to address this issue. They made comprehensive findings and recommendations concerning the urgent need for police reform. In addition, in November 2007, Nigeria announced a partnership with the British government to reorganize the Nigerian Police Force, with an emphasis on preventing misuse and abuse of authority by police officers. Nigeria also

¹⁶³ The Centre for Law Enforcement Education estimates that the police kill one in 20 motorists who refuse to pay a bribe at a checkpoint. A communication submitted to the African Commission on Human and Peoples’ Rights by Access to Justice, provides details of various such cases.

¹⁶⁴ Thus one traditional leader has characterized checkpoints as a major impediment to commerce with neighbouring states and a phenomenon which “portrays us as a nation at war”. Oba Akran of Badagry, “Too Many Checkpoints Portray us as a Nation at War”, *Security and Safety*, Issue 65, 2005, p. 13 at p.15. According to another commentator, the practice is “killing the commercial psyche and energy of the people”. W.A. Johnson, “A Memo to Mr Ehindero”, *Security and Safety*, Issue 65, 2005, p.3.

¹⁶⁵ Between 2000-2004, in a country awash with arms, only 3,180 weapons were recovered at checkpoints, and no armed robbers seem to have been captured in this way. See note 12 above (police letter of 2 July).

announced, in December 2007, that the salary rates for the least paid police would be increased from N10,000 to N26,000 in 2008.

91. Unfortunately, the checkpoints that symbolize rampant corruption in Nigeria are still widespread, despite official proclamations to eliminate them. These checkpoints are largely used for extortion purposes alone, without any attempt to search vehicles or prevent crime. Improved salaries for police is one part of the systemic reform required to address police corruption and a culture of impunity. These developments are welcome, but Nigeria needs to ensure that the recommendations issued by the committees on police reform are carefully considered, that checkpoints are in fact abolished, and that structural reforms to the system of police accountability are introduced.

H. COMMUNITY POLICING

Report on Mission to Nigeria (E.CN.4/2006/53/Add.4, 7 January 2006, ¶¶ 78-99, 107):

78. With the end of military rule large businesses, including oil companies and banks, as well as the rich, turned to private security to fill the vacuum of authority. For the poor, vigilantes were seen as a way to make-up for inadequate, ineffectual and often malign policing. For politicians, armed volunteer groups offered a means of intimidating opponents and rewarding supporters. While “vigilante” groups play a major role in Nigeria, definitional issues are crucial to understanding the situation. The term covers a wide spectrum of groups ranging from community policing through problematic ethnic-based vigilantes, to state-sponsored or supported gangs. Because many of the groups have been openly or covertly supported by State officials, they cannot be considered classical non-state actors. The right of citizen arrest is often invoked to justify the groups’ activities.¹⁶⁶

79. Among the most violent have been those established to defend commercial interests in urban areas. While they may carry out some “policing”, they also undertake debt collection, crime protection, extortion and armed enforcement services. The Bakassi Boys for example, is a group active mainly in Abia, Anambra and Imo states that has been responsible for many extrajudicial executions, often carried out publicly. They patrol the streets in heavily armed gangs, arrest suspects, determine guilt on the spot and exact punishment, which may involve beating, “fining”, detaining, torturing or killing the victim. The Bakassi Boys are tacitly supported by state governments and one has accorded them official recognition.¹⁶⁷

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

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

82. The rise of vigilante groups has especially problematic consequences for women since such groups are overwhelmingly male-dominated. As a result, gender stereotypes are both reinforced and enforced, and women are often subjected to various forms of gender-based violence. This

¹⁶⁶ Section 14(1) of the Nigerian Criminal Procedure Act provides that “...Any private person arresting any other person without a warrant shall without unnecessary delay make over the person so arrested to a police officer, or in absence of a police officer shall take such person to the nearest police station.” This limited power of arrest is far exceeded by many vigilante groups who have even established their own detention centers.

¹⁶⁷ *The Anambra State Vigilante Service Act No. 9, 2000.*

consequence is exacerbated by the support given to the groups by state governments. In Kano, the relationship between the Hisbah and the Government is very close and the Governor of Bayelsa told the Special Rapporteur that he has recruited some 420 vigilantes who play a law enforcement role and are paid a salary far in excess of that earned by junior police officers. Whatever the justifications offered, the potential for manipulation of such groups by politicians is immense.

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

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

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

99. There are good reasons why policing is a federal responsibility. By the same token State authorities use this as an excuse to insist that there is nothing they can do to change police behaviour. In practice State Governors do exercise a measure of control over the police and the local Police Commissioner is an important part of the State executive. But the permission of the IGP or the President is required to direct the police to take any particular action. Moreover, since the States lack any independent investigative capacity they are almost entirely dependent upon the police to investigate. When the issue is alleged police misconduct such a system is neither viable nor convincing. One State DPP suggested that in such cases “the facts are systematically concealed and the files submitted to the DPP are wholly inadequate to base a prosecution”. As in South Africa, consideration needs to be given to developing community policing which is responsible to local communities, without undermining ultimate federal control.

[...]

107.(a) The corruption and unreliability of the police force provides a convenient excuse for efforts to marginalize it: use of the military for policing, hiring “supernumary” police by oil

companies, and support of vigilantes gangs. But these developments further undermine the community standing of the police and make reforms even less likely. The police, at all levels, must begin to see that it is in their own interests to clean up their act. The recently launched Community Policing Initiative has huge potential to obviate the need for vigilantes and to link the police to local communities. It should be greatly expanded;

(b) Tackling the vigilante problem is especially urgent. The Federal Government should prepare and publish an authoritative inventory of all vigilante groups enjoying any form of official support and playing any role whatsoever in law enforcement. Each state Government concerned should promulgate rules regulating the activities of such groups. And the relevant authorities must investigate and prosecute any illegal vigilante activities involving torture, detention or executions.

Follow-up Report on Mission to Nigeria (A/HRC/8/3/Add.3, 14 May 2008, ¶¶ 92-98):

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

93. This problem became manifest with disastrous consequences during the April 2007 elections. The estimated 300 deaths associated with the election period have been attributed to gangs hired by politicians to ensure their election. These gangs were reportedly paid, armed and promised favors by political sponsors in exchange for intimidating voters and opposition supporters. The gangs have continued their violence after the election because they became empowered by their sponsorship and, in some circumstances, believe their promised political favors have not been forthcoming. The police were largely unwilling to investigate killings by the criminal organizations, and no one has been held to account for the extrajudicial executions associated with Nigeria’s 2007 elections.

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

95. The gang violence in Port Harcourt prompted Nigeria to undertake a military intervention in August 2007. As many as 40 people died in a single day as the Nigerian military reportedly shot

at gang members from helicopters. Measures have not been taken to address the root cause of the gang violence; the politicians who sponsored these gangs have not been held accountable. Gangs continue to wreak havoc in the Niger Delta by killing each other, bystanders, and those who confront them. In September 2007, two local chiefs in the Niger Delta community of Ogbogoro were reportedly executed by the gangs whose authority they challenged.

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

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

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

I. USE OF FORCE DURING RIOTS; CROWD CONTROL

Report on Mission to Kenya (A/HRC/11/2/Add.6, 26 May 2009, ¶¶ 12, 70-72):

12. Lethal force is also commonly used in legitimate law enforcement operations in which the police could have readily made an arrest. Some of these killings would be prevented through the provision of unambiguous guidelines on when police may use lethal force. The use of force by police is regulated by the Constitution of Kenya, the Police Act, and the Force Standing Orders.¹⁶⁸ In addition to being unclear and contradictory, these laws do not meet the requirements of international law which requires the use of force to be both necessary and proportionate, and permits intentional lethal force only where it is required to protect life.¹⁶⁹ The Constitution of Kenya, for example, states that there is no violation of the right to life if, *inter alia*, the death occurred as a result of reasonably justifiable force used to protect a person from violence, to defend property, to effect a lawful arrest, to prevent an escape, to suppress a riot, or to prevent the commission of a criminal offence.

[...]

70. The town of Eldoret in the Rift Valley was one of the first sites of post-election violence, with attacks initially directed at the Kikuyu population. Much of the anti-Kikuyu violence appears to have been intended to push them out of the province: many were threatened and told to leave the area, and their homes and businesses were destroyed. Attackers formed groups of fifteen plus individuals, and specifically targeted Kikuyu homes or villages.¹⁷⁰ Other groups patrolled public areas, and used ID cards to identify Kikuyu persons.¹⁷¹ In some areas, significantly larger groups (of up to 2,000) formed - armed with machetes, bows and arrows, projectiles filled with petrol - and created road blocks and carried out large-scale attacks.

71. Provincial level officials in the Rift Valley were largely in denial about the findings of the Waki Commission. The Commission found that police planning was scant, and that they were “poorly prepared”. When I asked the officials for their response to this, they admitted that they could not handle the violence that erupted, but argued nevertheless that they were prepared. Worryingly, they stated that there had been no serious changes to policing or planning in response to the PEV. In terms of accountability, I was assured that many PEV complaints had been registered, and that they were at various stages of the criminal justice system. When I asked about police conduct, I was first told that no inquests into police misconduct had been opened, and that no complaints had been received. I was subsequently told that there had been some cases, and that the information would be provided to me. It never was.

¹⁶⁸ Constitution of Kenya, s 71; Police Act, s 28; Criminal Procedure Code, s 21; Police Force Standing Orders, Appendix 51A.

¹⁶⁹ See: A/61/311, pages 12-16.

¹⁷⁰ The well-known church massacre in Kiambaa (a small town near Eldoret) is one example of the egregious nature of these attacks. See Appendix II: Case 29, Case 31, Case 33, Case 36.

¹⁷¹ Appendix II: Case 32.

72. In Nyanza, I attempted to find out what investigations had been conducted by police into the many reports of police killings committed during the PEV.¹⁷² The Waki Commission found that the police indiscriminately used live ammunition, and that over half of the gunshot victims had wounds from the back (calling into question what threat to life they could have presented at the time of the shooting). Nyanza provincial police officials said to me that they had recorded 82 cases of individuals killed by bullet wounds during the PEV. When I asked them for information about the progress of these investigations, and for their assessment of the appropriateness of the use of force in each case, they were able to tell me nothing, beyond the basic fact that they had conducted investigations, and that 60 files had been sent to the Attorney-General for assessment. In comparison, they showed me extensive documentary evidence of the looting that occurred in the PEV period. After my visit, I was provided additional materials by the Attorney-General, which indicated that *one* trial was currently on-going of a police officer who shot and killed two youths following riots in Kisumu.

Communications to and from Governments (China) (A/HRC/11/2/Add.1, 29 May 2009, pp. 39-42):

On 10 March 2008, demonstrations led by monks were organised demanding greater freedom of religion and the release of monks detained since October 2007. It is reported that 300 monks from Drepung Monastery, near Lhasa, proceeded with a peaceful march towards the Potala Palace when they were stopped by the police. It is believed that around 60 monks suspected to be the leaders of the protest were arrested by the Public Security Bureau (PSB).

[...]

On the same day, about 350 people, including 137 monks from Lhutsang Monastery in the Tibetan area of Amdo in Mangra County, organised a protest in front of the Mangra County Assembly Hall where a government-sponsored show was taking place. The protest was stopped by the People's Armed Police. A number of arrests took place during the disruption of the protest, but no information on the whereabouts of the arrested monks has been received.

Reports indicate that on 11 March, 500 to 600 monks from the Sera Monastery called for the release of the monks arrested the day before and began a march towards Lhasa, but were met on the way by approximately 2,000 armed police. The crowd was reportedly dispersed with tear-gas. A number of monks were detained and then released. On 11 March, the police surrounded and sealed off Ditsa Monastery in Hualong County in Qinghai Province after the monks held a protest.

On 14 March, violent incidents were reported in Lhasa as tension escalated between hundreds of demonstrators and police forces. Gunfire was heard in the streets, and shops and cars were set on fire. Allegations that a significant number of Tibetans and Han and Hui Chinese have been killed during the demonstrations have been received. Monks from Ganden and Reting monasteries joined the demonstrations, and the two monasteries were later sealed off by police. A number of monks from Sera Monastery started a hunger strike to protest against the sealing off of

¹⁷² For individual cases of police shootings, see Appendix II: Case 37, Case 38, Case 39, Case 40. In none of these cases did the police follow-up with the complainants.

monasteries and the detention of monks. Reports indicate that, in particular since 14 March, the wave of demonstrations by monks and lay people has spread in the whole Tibet Autonomous Region and in neighbouring provinces. These demonstrations have reportedly sometimes been violently repressed, in many cases leading to arrests of demonstrators. Allegations were received that since 14 March, the People's Liberation Army has been patrolling the streets of Lhasa.

On 15 March, shooting was reported inside the compound of Tashi Lhunpo Monastery in Shigatse, and at least 40 lay people demonstrating around the monastery were arrested. The next day, monks trying to escape the Kirti Monastery in Amdo in the Sichuan Province, which had been sealed off by the military, have allegedly been shot at; tear-gas was reportedly used on the demonstrators supporting the monks outside the monastery, and many demonstrators were severely beaten by the police. The police is then alleged to have shot into the crowd, killing and injuring a considerable but unconfirmed number of people.

[...]

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

[...]

In this connection we would like to refer Your Excellency's Government to the fundamental principle set forth in Article 3 of the Universal Declaration of Human Rights which provides that every individual has the right to life and security of the person. I would also note the relevance in such situations of the UN Basic Principles on the Use of Force and Firearms by Law Officials. Principle 4 provides that, "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." Furthermore, Principle 5 provides that, "Whenever the 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 object 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 and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment."

J. POLICE RECORDING AND TRACKING OF POLICE KILLINGS

Report on Mission to Kenya (A/HRC/11/2/Add.6, 26 May 2009, ¶¶ 13-15, 25-27):

13. Some Government officials stated that if killings occurred, they were committed infrequently and by “rogue” officers. To their credit, a small number of Government officials did acknowledge the magnitude of the killings. But senior police officials were unwilling to acknowledge the problem at all: in essence, their response was one of denial, stone-walling, and obfuscation. In the provinces, my efforts were stymied by blanket denials by police, the provision of partial or inconclusive data, or by referring me back to police headquarters in Nairobi. The official police account of any killing is generally predictable: the suspect was an armed criminal, there was a “shoot-out”, and the police reacted with appropriate force. Senior police flatly denied to me any knowledge of the *Kwekwe* death squad. And yet its existence was confirmed in Parliament by the Minister of State for Provincial Administration and Internal Security, Professor George Saitoti.¹⁷³

14. On the first day of my mission I provided the Police Commissioner with a short list of issues on which I sought information. At the end of the mission, I received a written response. It largely refused to provide even basic information. For instance, the initial response to my request for the numbers of police employed in Kenya was, “not immediately available”. A subsequent response also declined to provide the information for national security reasons, but suggested a population to police ratio of 1:800.

15. During my mission, the police stated that they could not tell me how many people were killed by the police (whether in self-defence or otherwise), because there was no centralized data-keeping or monitoring; rather, records were kept in the inquest file register maintained at each police station. My press statement at the conclusion of my mission noted that this was simply unacceptable. Following my mission, I have been informed by the Government that the committee reviewing police standing operation procedures has been directed to draft a regulation establishing an updated database at police headquarters on all killings by police. I welcome this positive development.

[...]

25. Police investigations of murders are generally inadequate, due in large part to resource, training, and capacity constraints. But investigations are especially poor when the police themselves are implicated in a death. The cause of this is in part institutional: there is no independent internal affairs unit within the police force. Such cases are generally investigated by the Criminal Investigations Division (CID) - the division responsible for all complex or serious investigations. But the problem is also one of will: those at the top of the force lack the determination to investigate themselves, or the will to institute the reforms that would improve transparency and accountability.

¹⁷³ National Assembly of Kenya, Official Report, 12 February 2009, p 27: The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): “Mr. Speaker, Sir, I would also like to say that there is a body called *Kwekwe* Squad that has been talked about here. We had that body and I would like to inform this House that, instructions were given out for its disbanding.”

26. The police response to the KNCHR's report on extrajudicial executions is a typical example of police unwillingness to conduct serious investigations. The police report on the KNCHR investigations challenges the investigative capacity and skill of the KNCHR, criticizes the KNCHR for reporting the allegations to the President of Kenya and the UN, and concludes that there was "no" evidence of police complicity in the killings.¹⁷⁴ A similar response was given in response to the KNCHR's public release of the whistleblower testimony in February 2009. The police issued a statement challenging the reputation of the whistleblower, questioning why the KNCHR released the statement when it did, questioning the KNCHR's commitment to human rights, and intimating that KNCHR officers receive payments from the Mungiki.¹⁷⁵

27. During my visit, police officials throughout the country blocked my attempts to find detailed information on investigations and inquests. For instance, the response to my written request for the number of inquiries opened by the police in response to complaints received against the police, was simply to state that every "action against a police officer is preceded by an inquiry file which is guided by the following regulations", and then to quote the law. Nevertheless, particularly damning evidence of the quality of police investigations is revealed in communications between the police and the Attorney-General. The Attorney-General provided me a significant volume of correspondence between his office and police headquarters with respect to various cases in which police were alleged to have killed. The correspondence consisted of repeated letters from the Attorney-General directing the police to charge certain individuals or to conduct further investigations. In one matter, two police officers opened fire at a group of youths on 31 December 2001. One person was killed, and three were seriously wounded. In March 2002, the police forwarded the investigation file to the Attorney-General. In May 2002, the Attorney-General directed the police to charge two police officers with murder and unlawful wounding, once certain gaps in investigations were remedied. After a number of months and reminder letters from the Attorney-General, the two policemen were eventually charged. However, a Magistrate dismissed the murder case because of a lack of evidence. The police had failed to conduct the additional investigations requested. In another murder case, the Attorney-General, through the DPP, sent letters to no avail in April, June, August, and September 2008, and January 2009 requesting the police to conduct further investigations so that a trial could proceed.

Report on Mission to Nigeria (E.CN.4/2006/53/Add.4, 7 January 2006, ¶¶ 89-91, 103, 105):

89. Only the Police are authorized to investigate killings, even where the principal suspects are police officers. But the police service is so under-funded that the family of the deceased are often requested to fund any investigation, an expense which is well beyond the capacity of most Nigerians. Notions such as sealing off a crime scene or allocating the best officers to investigate a particular crime are foreign to a force for whom the phrase "police investigation" has become an oxymoron. There is no tradition of systematic forensic investigation in Nigeria, there is a

¹⁷⁴ "Kenya Police Preliminary Report by a Board of Inquiry to Investigate the Alleged Execution and Disappearance of Persons", sent to the KNCHR by the Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service on 17 March 2008.

¹⁷⁵ Constitution of Kenya, s 71; Police Act, s 28; Criminal Procedure Code, s 21; Police Force Standing Orders, Appendix 51A.

single ballistics in the entire country, only one police laboratory, and no fingerprint database. The result, unsurprisingly, is that the police rely heavily upon confessions which, on one estimate, are the basis for 60 per cent of prosecutions. The temptation to “extract” a confession by all available means seems hard to resist.

Coroner’s inquiries

90. The Nigeria Police informed the Special Rapporteur that “[c]oronial inquiries [have] been conducted in all relevant cases, however records are not available ...”.¹⁷⁶ According to virtually every other source, however, coroners are an endangered species and inquiries a rarity. It is unsurprising that the records are unavailable.

91. In practice, unspecialized magistrates act as coroners. It is commonplace for pathologists to sign reports without examining the body and when police killings are involved, there is often no signature.

[...]

103. *Commissions of inquiry*

Inquiries are often used for whitewashing purposes. One State Attorney-General could recall no case of prosecutions following such an inquiry. Their main purpose, he observed, was to facilitate a “cooling of the political temperature”.

(a) The only slightly delayed publication of the report of the Apo 6 inquiry is exemplary and this should become standard practice. To that end the Federal Government should legislate to require the publication within six months of all commission of inquiry reports relevant to extrajudicial executions. In cases of non-publication a specific national security exemption should need to be invoked, and justified;

(b) The full report of the Apo 6 inquiry should be made public immediately.

105. *Executions and accountability*

(a) There are no systematic police statistics recording extrajudicial executions.¹⁷⁷ An annual register should be published and strong disciplinary measures applied to those who fail to report fully, promptly and accurately all deaths at the hands of police;

(b) Professionally staffed and well equipped forensic laboratories should be established in key regional centres without delay;

(c) Armed robbery per se should be removed as a capital offence which warrants a shoot-to-kill response. Its current classification has pernicious effects far beyond any benefits that result. The

¹⁷⁶ Figures provided by the Inspector-General of Police, 2 July 2005. While the police would suggest that all of the deceased were killed in “shootouts”, the figures provided did not reflect the actual circumstances of the various shootings.

¹⁷⁷ The Inspector-General of Police confirmed that no statistics were kept in relation to extrajudicial executions. See note 12 above.

rules regarding the use of firearms by police officers (Police Order No. 237) should be amended immediately as recommended above.

Follow-up Report on Mission to Nigeria (A/HRC/8/3/Add.3, 14 May 2008, ¶¶ 83-84):

83. The Special Rapporteur documented in his 2006 report the high rates of extrajudicial killings by Nigerian police, and their use of arbitrary and unnecessary force. Precise information on the numbers of those killed by police was impossible to obtain because Nigeria does not keep systematic statistics recording extrajudicial executions by police. The Special Rapporteur thus recommended that Nigeria publish an annual register of police killings, and that strong disciplinary measures be applied to those who fail to report fully, promptly and accurately all deaths at the hands of police.

84. No progress has been made on this recommendation. When numbers of killings are released, they fail to adequately record relevant information. For instance, in November 2007, the National Chief of Police stated that 785 suspected armed robbers died in encounters with police in the three months prior to the announcement. It is not known how many other people died in custody, or how many were killed in legitimate self-defence or after the proportionate and necessary use of force, or how many were simply murdered by the police. As it stands, the released statistics on police killings simply seek to justify any such killings as legitimate acts against “armed robbers”.

Report on Mission to Brazil (A/HRC/11/2/Add.2, 23 March 2009, ¶¶ 49-60, 69-75, 84-90):

49. The Civil Police have primary responsibility for homicide investigations. This is true whether the suspected perpetrator is a private citizen or a member of either police force. The Civil Police then refer the case to the Public Prosecutor’s Office, which may initiate criminal proceedings. In homicide cases, it is a jury that pronounces the verdict and the judge who decides on the sentence. Two other institutions help to ensure the quality of the investigation and the integrity of the subsequent process. A state Institute of Forensic Medicine may support the investigation by conducting an autopsy. And witness protection programs may be used to prevent suspects from intimidating witnesses.

50. While each of these institutions performs well some of the time, obtaining a conviction requires them all to work well at the same time, and this happens infrequently. For example, in Rio de Janeiro and São Paulo, only about 10% of homicides end up being tried in the courts; in Pernambuco the rate is about 3%. Of the 10% tried in São Paulo, it is estimated that about half are actually convicted. These rates are even lower for cases implicating police.

Criminal investigations by the civil police

51. I received many allegations that Civil Police investigations, particularly of killings by police, are often grossly inadequate. I was informed by prosecutors that police investigations are often not recorded properly, and sometimes the only evidence would be a crime scene description and a police statement. The use of DNA and ballistics evidence is rare and technical and human resources are lacking.

52. These problems are exacerbated when the case is one in which members of the Military Police report the killing as a “resistance” death. As detailed above in Part III (C) a strong *esprit-de-corps* results in Civil Police poorly investigating such cases.¹⁷⁸ I was repeatedly told by Civil Police that when a resistance case occurs, they assume that the Military Police were dealing with criminals, and acting in self-defence.

53. I was also given examples of police negligently or intentionally allowing cases to sit in police precincts, without passing them to prosecutors. For example, in Pernambuco, prosecutors found 2,000 cases where files had been left in police precincts and not passed on to the prosecution service. The files had been left for over 20 years - well past the period of prescription - so prosecutions are now impossible.

Forensic evidence and State institutes of forensic medicine

54. The state Institutes of Forensic Medicine in Brazil suffer from a lack of basic resources and are not sufficiently independent from police.¹⁷⁹ For example, in Rio de Janeiro, the independent expert reports on the deaths during the Complexo do Alemão operation found, upon reviewing the relevant autopsy reports prepared by the state institutes, that they were grossly deficient: basic x-ray, blood, and gun powder analysis had simply not been carried out. 55. The use of forensic evidence is critical in some cases, especially when there are no witnesses or when those that exist are afraid to testify. For these reasons, forensic evidence is especially important in killings alleged by the police to have been proportionate responses to “resistance”. The only testimony available may be that of the police officer responsible for the shooting, but where reliable physical evidence is available, it may nevertheless be possible to determine that a particular shooting was an extrajudicial execution.

56. Presently, in most states, the Institute of Forensic Medicine is responsible to the state Public Security Secretariat. Given that Institutes of Forensic Medicine are intended to provide expert advice rather than to carry out government policy, their institutional autonomy and independence and the tenure of their staff should be guaranteed. Doing so would, moreover, ensure that their reports on police killings would be - and appear to be - impartial, expert determinations.

Public Prosecutor’s Office

57. The Public Prosecutor’s Office (*Ministério Público*) is a widely-respected institution in Brazil, and I was told of many examples of prosecutors who had taken action to hold to account offending police officers. The independence of the Public Prosecutor’s Office from both the executive and the judiciary is provided by the Constitution, and the employment guarantees

¹⁷⁸ Although the Civil Police and Military Police are independent institutions, members of the respective forces in a given area will routinely cooperate on ordinary cases. The relationships that develop can impede effective investigations implicating the Military Police. This problem is ameliorated when a specialized Civil Police unit with broader geographical coverage, such as the Department of Homicides and Protection of the Person (Departamento de Homicídios e Proteção à Pessoa (DHPP)) in São Paulo, takes over a case involving a killing by police.

¹⁷⁹ Positively, Brazil invested \$ 12,000,000 Reais in 2007 in equipment. However, there remains a serious lack of basic resources in many state institutes.

provided to individual prosecutors ensure that they have a high-level of independence in practice.¹⁸⁰

58. In areas in which progress has been made against police impunity, prosecutors have generally played a key role both in pursuing criminal proceedings and ensuring evidence gathering. In some instances, prosecutors have cooperated closely with Civil Police investigations; in others, prosecutors have re-interviewed witnesses and gathered evidence on their own initiative.

59. In practice, the prosecutors' investigative role has often been discouraged by Civil Police and impeded by legal controversy over prosecutorial powers. First, Civil Police show little awareness of the value of consulting with prosecutors to make sure that the evidence they are gathering will suffice to sustain criminal charges. For this reason, they seldom inform prosecutors until they reach a stage at which the law requires them to do so. This will typically not be until 30 days after the crime took place, by when the crime scene will almost certainly be destroyed, bodies are likely to have been buried, and witnesses may have fled. Second, some have challenged the legal power of prosecutors to gather evidence, arguing that only the Civil Police have the right to conduct investigations. While this argument appears to be motivated more by institutional jealousies than constitutional analysis, the courts have not provided a definitive answer, meaning that prosecutors who gather evidence cannot be certain that it will prove admissible at trial.

60. From the perspective of combating impunity for violations of the right to life, it would be a significant step forward if Civil Police routinely consulted with prosecutors from the beginning of homicide investigations. Moreover - while it goes without saying that the Civil Police will and should remain the main institution carrying out criminal investigations - in cases in which the police are implicated, prosecutors should routinely conduct their own independent inquiries to ensure the appearance and reality of justice. The practice of the Public Prosecutor's Office in São Paulo of having all "resistance" cases handled by a specialist prosecutor is notable in this regard.

[...]

69. In each state, the Military Police and the Civil Police each have an Internal Affairs Department (*Corregedoria*) responsible for conducting administrative proceedings and recommending disciplinary sanctions. (In some states, the two police forces share a single Internal Affairs Department.) In the case of a crime, such as homicide, this internal affairs process will run in parallel to the criminal investigation. However, few police are sanctioned or disciplined, even for serious crimes. And many police accused of serious crimes not only remain free from detention during the course of an investigation but remain on active duty. This permits police to intimidate witnesses and increases community perceptions that impunity exists for police murderers, in turn decreasing the willingness of witnesses to report crimes.

70. According to prosecutors and other informed interlocutors, the quality of work done by Internal Affairs Departments varies widely. Some conduct careful investigations and recommend appropriate sanctions. Others uncritically accept the accounts given by implicated police or

¹⁸⁰ It is also worth noting that the Public Prosecutor's Office has a broad range of other, non-prosecutorial powers and responsibilities with respect to protecting individual rights and exercising external control over police activities: Constitution of Brazil, Arts. 127-129.

simply stall the process. When the new government took office in Pernambuco they found over 300 proceedings against police stalled in Internal Affairs - waiting for the head of department to authorize the continuance of proceedings.

71. One factor contributing to poor performance is that Internal Affairs Departments are not independent of the police chain of command. Thus their effectiveness largely depends on the individual head of department. Reforms are, however, complicated. After all, the principal role of an internal affairs service is to ensure the accountability of police to their chain of command. Nevertheless, such departments should conduct investigations and recommend sanctions in an autonomous and professional manner. Various interlocutors proposed a separate career path for those working in internal affairs. Presently, officers can work in internal affairs investigating allegations of police misconduct and then return to work alongside the officers whom they had previously investigated. Clear procedures and time limits for investigations should also be followed. Another key step would be for the disciplinary sanctions recommended by internal affairs services, including recommendations of expulsion which require the governor's consent to take effect, be fully accessible to Ombudsman Offices and made public by them.

72. In addition, those police implicated in crimes constituting extrajudicial executions must be removed from active duty for the entire period of all internal affairs and criminal investigations.¹⁸¹

73. Police Ombudsman Offices (*Ouvidorias*) are a relatively new institution in Brazil - the first was set up in 1995 in São Paulo.¹⁸² Their precise role and powers differ slightly between the states, but in general they are empowered to receive complaints about police from the public, and may forward complaints to police Internal Affairs Departments or the Public Prosecutor's Office. They can also monitor ongoing police investigations and provide information to the public on the progress of investigations.¹⁸³

74. The existence of Ombudsman Offices has made it possible for many people to make complaints about police behavior who otherwise would not have done so for fear of having to report such complaints directly to police.¹⁸⁴ However, the effectiveness of these offices is hampered by their lack of independence, resources, and investigative powers. Ombudsman Offices are unable to conduct their own investigations and thus rely almost entirely on information provided by the internal affairs services of the police. Both factors undermine the ability of Ombudsman Offices to provide genuinely *external* oversight.

¹⁸¹ Principle 15, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

¹⁸² Decree n° 39,900, of 1 January 1995; Complementary Law n° 826, of 20 June 1997. There are now ombudsmen in 14 states, including Rio de Janeiro and Pernambuco.

¹⁸³ For example, the Ombudsman in São Paulo has been tracking 54 (at least 11 with suspected police involvement) cases involving 89 victims of crimes from May 2006 in which the perpetrator was unknown, and making public the progress of police investigations into each killing.

¹⁸⁴ In São Paulo, the Ombudsman received 3668 complaints in 2006. Of these, 476 concerned murders, of which 20% implicated the Civil Police and 68% implicated the Military Police (with the residual implicating either or both). A number of states have also created telephone hotlines (*disque-denúncia*), which have made it easier for anonymous complaints to be made. In São Paulo, for instance, 34% of complaints received in 2006 were made by telephone, with another 15% made by email. The existence of the hotline has also played an important role in information gathering on death squads in Pernambuco.

75. Efforts to strengthen the institution of the Ombudsman should keep in mind its place within the overall system of police accountability. It does not need more teeth: The Public Prosecutor's Office already has the power to prosecute police and, more broadly, to "exercise external control over police conduct".¹⁸⁵ But to provide *external* accountability, it should report directly to the governor rather than to the state secretary of public security.¹⁸⁶ In addition, it needs to be better equipped to gather its own information on individual cases and on broad trends and patterns of police abuse. And to provide external *accountability* it does need to better communicate the information it gathers to the general public.

[...]

84. Systems for tracking the use of firearms should be established in all states, and where some procedures already exist, they must be improved, and the Government must ensure they are followed. The weapon and the quantity of ammunition provided to each policeman should be recorded, and every bullet should regularly be accounted for. Every instance in which a policeman fires his or her weapon should be investigated by internal affairs and recorded in a database. This database should be accessible by police Ombudsman Offices and used by police chiefs and commanders to identify police in need of closer supervision.

85. The current practice of classifying police killings as "acts of resistance" or "resistance followed by death" provides a *carte blanche* for police killing and must be abolished. Without prejudicing the outcome of criminal trials, such killings should be included in each state's homicide statistics.

86. The federal Secretariat for Human Rights should keep a detailed database of human rights violations by police.

87. The integrity of work by the internal affairs services of the police should be ensured by:

(a) Establishing a separate career path for those working in internal affairs;

(b) Establishing clear procedures and time limits for investigations;

(c) Making all information regarding investigations and recommended disciplinary sanctions freely accessible to Ombudsman Offices.

88. In cases involving police killings and other allegations of serious abuse, internal affairs services should publicly provide information on the status of individual cases, including the measures recommended to police chiefs and commanders.

¹⁸⁵ Constitution of Brazil, Art. 129(VII).

¹⁸⁶ Additional measures for further ensuring the independence of Ombudsman Offices recommended by the parliamentary commission of inquiry into extermination groups in the Northeast should also be given careful consideration. See *Relatório Final da Comissão Parlamentar de Inquérito do Extermínio no Nordeste*. Criada por meio do Requerimento nº 019/2003 - destinada a "Investigar a ação criminosa das milícias privadas e dos grupos de extermínio em toda a região nordeste" - (CPI - extermínio no nordeste), pp. 565-566.

89. Police under investigation for crimes constituting extrajudicial executions should be removed from active duty.

90. Offices of police Ombudsman, as they exist in most states, should be reformed so as to be better able to provide external oversight:

(a) They should report directly to the state governor rather than to the state secretary of public security;

(b) They should be provided with the resources and legal powers necessary to reduce dependence on information from the internal affairs services of the police forces;

(c) They should issue regular public reports providing accessible information on patterns of police abuse and on the effectiveness of disciplinary and criminal proceedings. This information should be compiled so as to enable meaningful comparisons across time and geographical areas;

(d) In order for them to provide more reliable information on the strengths and weaknesses of existing policing strategies in terms of both respecting and protecting rights, they should be provided resources to conduct or commission surveys on citizen experiences with crime and the police.

Follow-up report on Mission to Brazil (A/HRC/14/24/Add.4, 28 May 2010, ¶¶ 13-18):

13. One of the most significant issues at the time of the Special Rapporteur's visit was the way in which police classified and registered killings. It is standard practice across Brazil for the police to label killings they commit as "resistance" killings.¹⁸⁷ The classification indicates that a person was killed while committing the crime of resisting arrest or disobeying other lawful orders of police. It is intended to signify that the police used lawful (necessary and proportionate) lethal force against a suspect.

14. However, during his 2007 visit, the Special Rapporteur gathered strong evidence that many of these killings were, in fact, unlawful killings, and that the practical effect of the "resistance" classification was to prejudice and limit objective follow-up inquiries into killings by police. He recommended that reducing unlawful killings by the police must start with abolishing this classification, and that police killings should be registered in the same way as any other killings and thoroughly investigated.

15. The submission from the Government to the Special Rapporteur for this follow-up report states that the federal Government is committed to working with relevant institutions to "combat" the practice of classifying police killings in this manner, that reducing police killings was a "fundamental objective" of the Government, and indicated that it intended to conduct a

¹⁸⁷ The terminology differs from region to region. In São Paulo, the term used is *resistência seguida de morte* (resistance followed by death). In Rio de Janeiro, the term is *autos de resistência* (acts of resistance).

performance review with the Rio de Janeiro Government of the police with regard to such cases.¹⁸⁸ These are very welcome announcements.

16. In 2010, however, the police continue to register cases as “resistance” killings. In São Paulo, such cases have actually increased since 2007. Government statistics record 543 “resistance” cases in 2009, 397 in 2008, and 401 in 2007.¹⁸⁹ In Rio de Janeiro, government numbers indicate a decrease from 1,330 resistance killings in 2007 to 1,048 in 2009. In an interview reported in January 2009, the State Security Secretary of Rio de Janeiro, José Beltrame stated that police killings fell from around 80 per month at the start of 2008, to 36 in September 2008. He was quoted as saying, “There’s been a big fall – show that to Mr Alston.”¹⁹⁰ While the dramatic recorded fall from January 2008 to August and September 2008 was a significant positive development, the monthly “resistance” rate jumped back up to the prior numbers in the following months. In October 2008, for example, there were 74 “resistance” deaths, in January 2009 there were 94, in June 2009 there were 107, and in January 2010 there were 77. In fact, after October 2008, the monthly rate never fell below 71 killings per month.

17. Some concerns have been expressed about the integrity of Rio de Janeiro Government statistics on resistance killings, and homicides more generally. Evidence suggests that incidents are being classified under different statistical categories in order to demonstrate a reduction in, for example, the homicide rate. Whether or not there has been an intentional manipulation of the statistics, the allegations highlight the need for independent statistics gathering. The Government should ensure that the statistics agency remains independent of the Security Secretariat, which currently oversees police statistics. An independent statistics agency should have access to police records in order to independently oversee the gathering of vital statistics regarding the police killings and the types of categorizations used to explain the incidents.

18. In the preparation of this report, the Special Rapporteur was provided with credible evidence that many of the reported “resistance” killings continued in fact to be unlawful killings covered up by the police. In one recent study, an examination of autopsy and police reports indicated that at least 51 “resistance” killings were in fact unlawful killings.¹⁹¹ In 17 of those cases, there was evidence of point blank shots to the head, contradicting the police claim that the victims had been killed in “shootouts”. The Special Rapporteur was provided evidence of the various methods by which police attempted to cover up their killings, including by disrupting crime scenes and taking deceased victims to hospital for “treatment”.¹⁹² The very disproportionate numbers of killings by and of police also suggest that claims of shootouts may often be false. In 2009, for example, Rio de Janeiro recorded 1,048 resistance killings, and 31 on-duty police killed. This is a ratio of 34:1, far greater than would normally be expected if police were shooting in self-defence in “confrontations” with armed criminals. The study provided to the

¹⁸⁸ Information provided by Brazil to the Special Rapporteur in the preparation of this follow-up report, paras. 34-35.

¹⁸⁹ Information provided by Brazil to the Special Rapporteur in the preparation of this follow-up report, paras. 34-35.

¹⁹⁰ Stuart Grudgings and Rodrigo Viga Gaier, “Interview – Expanding Rio slums seen worsening crime risks”, Reuters, 12 January 2009.

¹⁹¹ Human Rights Watch, *Lethal Force: Police Violence and Public Security in Rio de Janeiro and São Paulo* (December 2009).

¹⁹² Idem.

Special Rapporteur compares police killings between Rio de Janeiro, São Paulo, South Africa, and the United States of America. Particularly concerning is comparative data on the number of police killings compared to the general homicide rate. According to this study, for every 100 homicides in 2008, the Rio de Janeiro police killed 19.89 people. The São Paulo police killed 8.46. The rates in South Africa (2.58) and the United States of America (2.62) were dramatically lower.¹⁹³

Report on Mission to the United States of America (A/HRC/11/2/Add.5, 28 May 2009, ¶¶ 33-37):

33. Data on deaths in custody in federal and state prisons and jails are compiled by the Bureau of Justice Statistics (BJS) of the Department of Justice (DOJ).¹⁹⁴ These data cover homicides (generally by other inmates), suicides, and other causes and show generally that there has been a significant decline in deaths both in jails and prisons.¹⁹⁵ The data do not separate out deaths caused by guards, however, so it is impossible to estimate the rate of such deaths or to assess whether the trends in this regard are similarly encouraging.¹⁹⁶ The Government also compiles three sources of data on law enforcement killings outside detention centers, the most comprehensive and reliable of which is likely BJS's data on "arrest-related killings."¹⁹⁷ The number of arrest-related killings has not changed dramatically over the past 30 years.¹⁹⁸

¹⁹³ Ibid., p. 33. Further cause for concern comes from a comparison of the number of arrests to that of police killings. In the United States of America, police arrested 37,751 people for every one person they killed. In Rio de Janeiro, the police arrested 23 people for every one person killed; in São Paulo, the rate was 348. Ibid., p. 34.

¹⁹⁴ The state-level data are gathered pursuant to the Death in Custody Reporting Act of 2000 (Public Law 106-297), but this provides only a weak financial incentive for compliance, and there is no law inducing federal institutions to provide data. However, while the program is essentially voluntary, compliance with reporting "requirements" is extremely high. According to the officials with whom I spoke, out of roughly 3,100 state jail jurisdictions, no more than 10 or so fail to report in any given year, and all state prisons have reported throughout.

¹⁹⁵ The data show that while the homicide rate in jails has remained fairly stable at 3-5 per 100,000 inmates, the homicide rate in state prisons has plummeted from 54 per 100,000 in 1980 to 4 per 100,000 in 2006. Data on homicides and suicides in state jails and prisons are from BJS, "Suicide and Homicide in State Prisons and Local Jails" (August 2005) and "Deaths in Custody Statistical Tables" available at <http://www.ojp.usdoj.gov/bjs/dcrp/dictabs.htm>. The suicide rate in jails also fell from 129 per 100,000 in 1983 to 38 per 100,000 in 2005. The suicide rate in state prisons was 34 per 100,000 in 1980 and had fallen to 17 per 100,000 in 2006. In the federal prison system, over a one-year period in 1999-2000, there were approximately 3 homicides and 12 suicides per 100,000 inmates. BJS, "Census of State and Federal Correctional Facilities, 2000" (August 2003).

¹⁹⁶ Officials stated that cases involving "positional asphyxiation" during cell extraction will generally end up in the "accidental" category even though some of the deaths in this category will constitute unlawful killings by guards. However, even if all such killings are so classified, this would permit one only to determine that there are somewhere between 0 and 3 unlawful killings by correctional officials per 100,000 inmates.

¹⁹⁷ BJS is mandated to gather data from states on the death of "any person who is in process of arrest", which BJS interprets to include "[a]ll deaths of persons in the physical custody or under the physical restraint of law enforcement officers" and "all deaths resulting from use of force by law enforcement officers". In addition to the statistics on "arrest-related deaths" gathered by the BJS, statistics on "justifiable homicides" by police are gathered by the FBI, and statistics on "deaths by legal intervention" are gathered by the National Center for Health Statistics of the Centers for Disease Control and Prevention (CDC). BJS, "Arrest-Related Deaths in the United States, 2003-2005" (October 2007). According to BJS data, there were 703 arrest-related deaths in 2005, of which 364 were homicides (justified or unjustified) by law enforcement officers. BJS, "Arrest-Related Deaths in the United States, 2003-2005" (October 2007).

¹⁹⁸ BJS, "Trends in justifiable homicide by police and citizens" available at <http://www.ojp.usdoj.gov/bjs/homicide/tables/justifys.htm>. Note that these data are for "justifiable homicides" as

34. Generally, police killings are investigated by a police department's internal affairs unit and prosecuted by the local district attorney. However, in cases involving the "willful" violation of constitutional rights, the Federal Bureau of Investigations (FBI) may investigate, and the Civil Rights Division of the federal Department of Justice may prosecute.¹⁹⁹ Statistics on the total number of prosecutions and convictions in such cases are not available, but it is clear that the number of prosecutions is small and the number of convictions smaller still. Because there are no statistics on killings that involved the use of excessive force, it is difficult to evaluate whether the low conviction rate reflects impunity for abuse or whether the use of lethal force is limited and disciplined.

35. Two measures that would improve transparency and analysis are: (1) enhanced use of technology to record police conduct, and (2) adapting existing data collection efforts to be more comprehensive and to play an "early warning" and "hot spot identification" role for unlawful killings by law enforcement officers.

36. Both prosecutors and plaintiffs' counsel emphasized the importance of increased use of video and audio recording equipment in police cars, jails, and prisons. These recordings have helped build cases that would otherwise be impossible to prove. At the same time, the presence of recording equipment deters many law enforcement officers from using excessive force. The primary limits to the effectiveness of recording are that it is not sufficiently widespread and that tapes too often "disappear." Additional federal funding and incentives would address the first problem. Measures to safeguard tapes include: increasing the penalties for tape destruction; establishing a presumption in civil litigation that the destruction of a tape indicates liability; and, making it technically impossible for individual officers to access the tapes.

37. Data collection by the Government on deaths related to law enforcement activities serves to create an historical record that is useful, *inter alia*, in assessing long-term trends. It is quite unhelpful, however, in providing "early warning" of emerging problems, whether at the national level or in particular jurisdictions. Indeed, most of the available statistics are three years out of date. Officials explained that one cause of delay is the need to obtain local medical examiners certificates on the cause of death in each case. While such efforts are commendable, and the resulting impulse to delay the release of data understandable, BJS should consider adopting working methods that better accommodate the need for timely as well as accurate data. One possibility would be to adopt the approach used for economic indicators, which are released rapidly but are then subsequently revised as more information is gathered.²⁰⁰

compiled by the FBI. These data are likely to be undercounts because three states and the federal Government did not report to BJS, and the law enforcement agencies concerned were often the principal sources of information.

¹⁹⁹ 18 U.S.C. § 242 makes it a federal crime for a Government official to willfully deprive someone of a constitutional or statutory right; 18 U.S.C. § 241 makes it a federal crime for a Government official to conspire to accomplish the same.

²⁰⁰ As an illustrative example, see Eugene P. Seskin and Shelly Smith, "Annual Revision of the National Income and Product: Accounts Annual Estimates for 2004-2006; Quarterly Estimates for 2004:I-2007:I", *Survey of Current Business* (August 2007), which provides revisions by the Bureau of Economic Analysis of the U.S. Department of Commerce to previously released economic statistics. The authors explain that "these estimates incorporated newly available source data that are more complete, more detailed, and otherwise more reliable than those that were previously incorporated."

K. TARGETED KILLING BY LAW ENFORCEMENT OFFICIALS

Report on Targeted Killings (A/HRC/14/24/Add.6, 28 May 2010, ¶¶ 7-8, 31-33, 74):

7. Despite the frequency with which it is invoked, “targeted killing” is not a term defined under international law. Nor does it fit neatly into any particular legal framework. It came into common usage in 2000, after Israel made public a policy of “targeted killings” of alleged terrorists in the Occupied Palestinian Territories.²⁰¹ The term has also been used in other situations, such as:

- The April 2002 killing, allegedly by Russian armed forces, of “rebel warlord” Omar Ibn al Khattab in Chechnya.²⁰²
- The November 2002 killing of alleged al Qaeda leader Ali Qaed Senyan al-Harithi and five other men in Yemen, reportedly by a CIA-operated Predator drone using a Hellfire missile.²⁰³
- Killings in 2005 – 2008 by both Sri Lankan government forces and the opposition LTTE group of individuals identified by each side as collaborating with the other.²⁰⁴
- The January 2010 killing, in an operation allegedly carried out by 18 Israeli Mossad intelligence agents, of Mahmoud al-Mahboubh, a Hamas leader, at a Dubai hotel.²⁰⁵

According to Dubai officials, al-Mahboubh was suffocated with a pillow; officials released videotapes of those responsible, whom they alleged to be Mossad agents.²⁰⁶

8. Targeted killings thus take place in a variety of contexts and may be committed by governments and their agents in times of peace as well as armed conflict, or by organized armed groups in armed conflict.²⁰⁷ The means and methods of killing vary, and include sniper fire, shooting at close range, missiles from helicopters, gunships, drones, the use of car bombs, and poison.²⁰⁸

[...]

²⁰¹ *Infra*, section II.B. Orna Ben-Naftali & Keren Michaeli, We Must Not Make a Scarecrow of the Law: Legal Analysis of the Israeli Policy of Targeted Killings, 36 *Cornell Int'l L.J.* 233, 234 (2003). although this report uses the common terms “terrorism” and “terrorist”, I agree with the Special rapporteur on the promotion and protection of human rights while countering terrorism that the continuing lack of a “universal, comprehensive and precise” definition of these terms hampers the protection of human rights, E/CN.4/2006/98, para. 50, and in particular, the right to life. The work of the Ad Hoc Committee established under GA Res. 51/210 to work on a draft convention on international terrorism is critical and urgent.

²⁰² BBC, Russia ‘Kills’ Chechen Warlord, 25 April 2002.

²⁰³ Jane Mayer, The Predator War, *The New Yorker*, 26 Oct. 2009; Greg Miller, C.I.A. Said to Use Outsiders to Put Bombs on Drones, *LA Times*, 13 Feb. 2009.

²⁰⁴ A/HRC/8/3/Add.3, para. 12.

²⁰⁵ Targeted Killing in Dubai: A Mossad Operation Gone Awry?, *Der Spiegel*, 23 Feb. 2010; Ilene Prusher, Was Mossad Behind Dubai Assassination? Israel Foreign Minister Isn’t Saying, *Christian Science Monitor*, 17 Feb. 2010.

²⁰⁶ Targeted Killing in Dubai: A Mossad Operation Gone Awry?, *Der Spiegel*, 23 Feb. 2010. Other examples of Israeli targeted killings include: Crimes of War Project, Case Study: The Israeli Strike Against Hamas Leader Salah Shehadeh. available at: <http://www.crimesofwar.org/print/onnews/Shehadeh-print.html>.

²⁰⁷ This report focuses only on killings by States and their agents because, as yet, no non-state actors have sought to justify specific “targeted killings.”

²⁰⁸ See, fns. 2-6; B’Tselem, Statistics: Fatalities, available at <http://www.btselem.org/English/Statistics/Casualties.asp>; Simon Saradzhyan, Russia’s System to Combat Terrorism and Its Application in Chechnya, in R.W. Orttung and A. Makarychev, *National*

Outside the context of armed conflict

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.²⁰⁹

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*).²¹⁰ The proportionality requirement limits the permissible level of force based on the threat posed by the suspect to others.²¹¹ 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.²¹²

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.²¹³ 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 life²¹⁴ entails an obligation to exercise “due diligence” to protect the lives of individuals from attacks by criminals, including terrorists.²¹⁵ Lethal force under human rights law is legal if it is strictly and directly necessary to save life.

[...]

74. As discussed above, the intentional use of lethal force in the context of law enforcement is only permitted in defence of life. Thus, outside the context of armed conflict, law enforcement

²⁰⁹ Code of Conduct for Law Enforcement Officials, GA Res. 34/169 of 17 December 1979 (Code of Conduct), art. 1, commentary (a) and (b); Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth U.N. Congress on Prevention of Crime and Treatment of Offenders, Havana, Cuba, Aug. 27-Sept. 7, 1990, (Basic Principles), preamble, note.

²¹⁰ A/61/311, paras. 33-45; Human Rights Committee, General Comment No. 6, HRI/GEN/1/Rev.6 (1982), para. 3; Inter-American Commission of Human Rights, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr. (2002).

²¹¹ A/61/311, paras. 42-44.

²¹² A/61/311, para. 41.

²¹³ E/CN.4/2006/53, paras. 44-54.

²¹⁴ ICCPR, Art. (2)(1).

²¹⁵ E/CN.4/2005/7, paras. 71-74.

officials are required to be trained in, to plan for, and to take, less-than-lethal measures – including restraint, capture, and the graduated use of force – and it is only if these measures are not possible that a law enforcement killing will be legal.²¹⁶ States should ensure public disclosure of the measures taken to “strictly control and limit the circumstances” in which law enforcement officers may resort to lethal force, including the level of force used at each stage.²¹⁷ The legal framework must take into account the possibility that the threat is so imminent that graduated use of force is not possible, and ensure appropriate safeguards are in place so that the assessment of imminence is reliably made.²¹⁸

²¹⁶ Sec. Co. Res. 611 of 25 April 1988 (condemning as an act of illegal aggression Israel’s killing in Tunisia of Khalil al-Wazir for violating Tunisian territory); Robert Pear, *US Assails P.L.O. Aide’s Killing As ‘Act of Political Assassination*, *NY Times*, 18 April 1988 (condemned by US State Department as “political assassination”).

²¹⁷ UN Charter, art. 51.

²¹⁸ UN Charter, art. 2(4).