



**General Assembly**

Distr.  
GENERAL

A/HRC/11/2  
27 May 2009

Original: ENGLISH

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HUMAN RIGHTS COUNCIL  
Eleventh session  
Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,  
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,  
INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the Special Rapporteur on extrajudicial, summary  
or arbitrary executions, Philip Alston\***

**Summary**

The present report details the main activities of the Special Rapporteur in 2008 and the first three months of 2009. It also examines four issues of particular importance: (a) responding to reprisals against individuals assisting the Special Rapporteur in his work; (b) upholding the prohibition against the execution of juvenile offenders; (c) the killing of witches; and (d) the use of lethal force in the process of policing public assemblies.

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\* Late submission.

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## I. INTRODUCTION

1. In the present report, the Special Rapporteur on extrajudicial, summary or arbitrary executions documents the main activities undertaken between April 2008 and March 2009 to address the grave problem of extrajudicial executions around the world.<sup>1</sup> He focuses on four issues: (a) responding to reprisals against individuals assisting the Special Rapporteur in his work; (b) upholding the prohibition against the execution of juvenile offenders; (c) the killing of witches; and (d) the use of lethal force in the process of policing public assemblies.
2. The report is submitted pursuant to Human Rights Council resolution 8/3, and takes account of information received and communications sent between 1 April 2008 and 15 March 2009.
3. An overview of the mandate, a list of the specific types of violations of the right to life upon which action is taken, and a description of the legal framework and methods of work used in implementing this mandate can be found in the first report of the current mandate holder (E/CN.4/2005/7, paras. 5-12).
4. I am grateful to the staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR) for their assistance in relation to the mandate, as well as to Sarah Knuckey, William Abresch, Hina Shamsi and Madeleine Sinclair of the Project on Extrajudicial Executions at New York University School of Law, who provided invaluable expert assistance and advice.

## II. ACTIVITIES

### A. Communications

5. The present report covers communications sent from 16 March 2008 to 15 March 2009 and replies received from 1 May 2008 to 30 April 2009. The details of my concerns and the information provided in response by Governments are reflected in considerable detail in an addendum to the report (A/HRC/11/2/Add.1), which is of crucial importance.

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<sup>1</sup> In the report, the term “extrajudicial executions” is used to refer to executions other than those carried out by the State in conformity with the law. As explained in my previous reports “[t]he terms of reference of this mandate are not best understood through efforts to define individually the terms ‘extrajudicial’, ‘summary’ or ‘arbitrary’, or to seek to categorize any given incident accordingly”. Rather, “the most productive focus is on the mandate itself, as it has evolved over the years through the various resolutions of the General Assembly”, the Commission on Human Rights and the Human Rights Council (E/CN.4/2005/7, para. 6; A/HRC/4/20, para. 1, fn. 1).

6. A brief statistical profile of the communications sent during the period under review shows that 130 communications were sent to 42 countries,<sup>2</sup> including 64 urgent appeals and 66 allegation letters. The main issues covered in the communications were the death penalty (54); deaths in custody (21); the death penalty for minors (20); excessive use of force (18); impunity (11); attacks or killings (23); armed conflict (3); and death threats (7).

7. As in previous years, the proportion of Government replies received to communications sent during the period under review is problematically low. The exact percentage figures in this regard are provided in an addendum dedicated to communications (A/HRC/11/2/Add.1).

## **B. Visits**

### **1. Visits undertaken from April 2008 to March 2009**

8. Since I last reported to the Council I have undertaken visits to Afghanistan, the United States of America and Kenya. Reports on those visits are before the Council, as are the final reports on my visits to Brazil and the Central African Republic, on which I had reported to the Council in 2008. In addition, follow-up reports on my previous missions to Guatemala and the Philippines have been submitted (A/HRC/11/2/Add.7 and Add.8).

### **2. Mission requests outstanding**

9. As at March 2009, I had made requests to 47 countries that I wished to visit, as well as to the Palestinian Authority. A visit to Colombia is scheduled for June 2009, and plans for visits to the Democratic Republic of the Congo and to Albania are being discussed. While the Palestinian Authority issued an invitation long ago, Israel has yet to respond.

10. The responses of 34 countries have ranged from complete silence, through formal acknowledgement, to acceptance in principle but without meaningful follow-up. In some cases, the relevant requests were first made over eight years ago.

11. States that have not responded affirmatively to requests for a visit are Algeria, Bangladesh, Chad, China, the Dominican Republic, Egypt, El Salvador, Ethiopia, Guinea, India, Indonesia, the Islamic Republic of Iran, Israel, Kyrgyzstan, the Laos People's Democratic Republic, Mozambique, Myanmar, Nepal, Pakistan, the Russian Federation, Saudi Arabia, Singapore, South Africa, Thailand, Timor-Leste, Togo, Trinidad and Tobago, Turkmenistan, Uganda, the United Republic of Tanzania, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam and Yemen.

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<sup>2</sup> The States are Bangladesh, Bolivia, Brazil, Cameroon, Chad, China, Colombia, the Democratic People's Republic of Korea, the Democratic Republic of the Congo, Egypt, Equatorial Guinea, Guatemala, Guyana, Honduras, India, Indonesia, the Islamic Republic of Iran, Iraq, Israel, Japan, Kenya, Kuwait, Madagascar, Mexico, Mongolia, Mozambique, the Niger, Nigeria, Pakistan, Papua New Guinea, the Philippines, the Russian Federation, Saudi Arabia, Somalia, Sri Lanka, the Sudan, the Syrian Arab Republic, the United States of America, Uzbekistan, Viet Nam, Yemen and Zimbabwe.

### III. ISSUES OF PARTICULAR IMPORTANCE

#### A. Responding to reprisals against individuals assisting the Special Rapporteur in his work

12. In March 2009, a journalist questioned the spokesperson of the Secretary-General about the protection available to individuals who had provided information to me on one of my missions.

13. The official transcript records the following exchange:

*Question:* [T]here are these reports following up on Philip Alston's report about police killings in Kenya that some 30 human rights activists and lawyers have gone into hiding because they think they're going to be killed because they cooperated with the UN on the report. Is the UN aware of it, and what's the UN going to do for people who actually worked with the UN on this report?

*Spokesperson:* This report was made to the Human Rights Council and it is a matter for the Human Rights Council to take decisions on.

*Question:* But if it's true what these people say that they're in fear of their life because they cooperate with the UN, does the Human Rights Council have any safety or security service? What's the procedure?

*Spokesperson:* The Human Rights Council does not have its own security services, if that's what you're asking.<sup>3</sup>

14. The above exchange highlights a significant challenge facing the Council in relation to the country missions undertaken on its behalf by special procedures mandate holders. At one level, it goes without saying that the Council cannot provide security services, nor can it be responsible for actions taken by Governments which are acting, or failing to act, in accordance with the generally accepted rules governing this type of human rights fact-finding. At another level, however, the question serves to expose a major gap in the arrangements that the Council has put in place. It has established a system that depends heavily on the good faith cooperation of civil society and private actors in providing information, but then stands back and fails to act when those same individuals are victimized by Government agents precisely as a result of their cooperation. The irony is that although the Council, and the Commission that preceded it have regularly acknowledged the unacceptable nature of such reprisals, it almost never takes any action in response to such cases. The Council should move to remedy this gap in its procedures.

15. One of the fundamental assumptions upon which country visits by special procedures are undertaken is the principle that "[c]omplainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation". While this formulation is taken from principle 15 of the principles on the effective

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<sup>3</sup> Daily press briefing by the Office of the Spokesperson for the Secretary-General, 30 March 2009, available at [www.un.org/News/briefings/docs/2009/db090330.doc.htm](http://www.un.org/News/briefings/docs/2009/db090330.doc.htm).

prevention and investigation of extra-legal, arbitrary and summary executions (Economic and Social Council resolution 1989/65, annex), the same approach was repeatedly endorsed by the Commission on Human Rights. In its resolution 2005/9, the Commission urged Governments to refrain from all acts of intimidation or reprisal against those who availed or had availed themselves of procedures established under United Nations auspices for the protection of human rights and fundamental freedoms, or who had provided testimony or information to them. The principle is also reflected in the terms of reference for fact-finding missions by special rapporteurs/representatives of the Commission on Human Rights (E/CN.4/1998/45, appendix V), which provide that “no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings”.

16. In spite of these principles, intimidation of witnesses remains one of the most effective ways for perpetrators of extrajudicial executions and those who tolerate such practices to avoid being held accountable. If witnesses can be easily intimidated, if they and their families remain vulnerable, or if they sense that the protections offered to them cannot be relied upon, they are unlikely to testify. In reporting to the General Assembly (A/63/313, para. 12), I noted that “[t]he successful prosecution of those responsible for extrajudicial executions is difficult, if not impossible, in the absence of effective witness-protection programmes. [...] Ending impunity for killings thus requires institutionalizing measures to reduce the risks faced by witnesses who testify.” I drew attention to examples of global best practice and identified some of the key issues that needed to be addressed in the design of effective witness-protection programmes. In response, the Assembly urged States to intensify efforts to establish and implement such programmes and encouraged OHCHR to develop practical tools designed to encourage and facilitate greater attention to the protection of witnesses.<sup>4</sup>

17. Just as successful prosecution of organized crime and serious offences committed by organs of State or armed groups at the national level is difficult or impossible in the absence of effective witness-protection programmes, effective fact-finding and reporting on extrajudicial executions by my mandate is difficult, if not impossible, if persons cooperating with the mandate can be effectively intimidated by those interested in preventing them from doing so.

18. In the domestic context, the first and most important step for investigators is to take measures to avoid placing witnesses at risk. The same applies to witnesses<sup>5</sup> assisting country missions by special procedures. In preparing country visits, a considerable effort is made to assess the potential threat to possible witnesses. This involves the Special Rapporteur, OHCHR officials and other staff assisting my mandate, in consultation with the OHCHR Field Security Unit, the United Nations presence in the country, any relevant national human rights institution, and civil society organizations who are in contact with potential witnesses. Depending on the level of threat, precautionary measures regarding the locations and circumstances in which I

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<sup>4</sup> General Assembly resolution 63/182, para. 10.

<sup>5</sup> In this context, the term “witness” is used to cover all those who provide information to the Special Rapporteur, whether they be victims, eyewitnesses, victims’ family members, officials of human rights organizations or other.

meet witnesses are decided. The actual implementation of such measures (for example, selection of meeting locations or travel arrangements for witnesses) is essentially the responsibility of the United Nations field presence, national human rights institution and civil society organizations, and of the witnesses themselves. The Special Rapporteur, however, retains moral responsibility for not subjecting witnesses to unjustified risks. Occasions have arisen when I have decided not to meet a potentially very valuable witness because I could not justify the risk involved for the witness.

19. Three factors complicate the choice, adoption and implementation of precautions designed to protect witnesses. First, the financial and logistical means available to a special rapporteur for such purposes are minimal, even with the support provided by the United Nations field presence, non-governmental organizations and civil society. Special rapporteurs have no resources to set up their own witness-protection programmes, unlike States and even the ad hoc international criminal tribunals and the International Criminal Court. Second, most witnesses are likely to overestimate the ability of a special rapporteur to protect them, and might as a consequence be less cautious than they would be in cooperating with a domestic investigator. Third, as the Government of the country concerned is the host and is responsible for the security of the special rapporteur, the basic details of my travel plans within the country must be shared with the Government. This in turn implies a serious limitation on the confidentiality of any arrangements that can be made to protect the identity of witnesses becoming known.

20. I inform witnesses who might be at risk that I have no concrete means at my disposal to assist them against retaliatory measures by the authorities once I leave the country. In some cases, it will be possible for a special procedures mandate holder to ask the Government concerned to include persons at risk in the domestic witness-protection programme. During a visit in 2003 to Brazil by my predecessor, a witness who had testified to her on police death squads was killed by unknown perpetrators (having already survived one attempt on his life by a police officer).<sup>6</sup> The Government reacted immediately and offered to include all witnesses who spoke to the special rapporteur - and who agreed - to be included in a witness-protection programme.<sup>7</sup> The Special Rapporteur subsequently submitted a list of witnesses to the Federal Government.

21. The possibility of entrusting witnesses at risk to the domestic witness-protection programme is, however, an exception. Generally, there is no witness-protection programme that would be effective under the circumstances. Where such programmes do exist, they are usually run by the same authorities responsible for taking or threatening the reprisals in the first place.

22. In the absence of an effective programme, my only option is to seek clarification and assurances from the Government concerned. For example, after my mission to Kenya, I sent an urgent appeal and issued public statements in response to continuing reprisals.<sup>8</sup> Other

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<sup>6</sup> E/CN.4/2004/7/Add.3, para. 3.

<sup>7</sup> See A/63/313, paras. 17, 19 and 45.

<sup>8</sup> Documented in my public statement issued at the conclusion of the visit ("Independent expert on extrajudicial executions says police killings in Kenya are systematic, widespread and

mandates have similarly sought explanations and assurances from Governments - whether orally, in letters, or through their reports - upon receiving credible allegations of such reprisals.<sup>9</sup>

23. At the end of the day, however, there will be situations in which Governments fail to respond meaningfully and the reprisals continue. In those situations, it is essential that the Council itself have a mechanism for seeking explanations from the Governments concerned and, where appropriate, expressing public concern when a Government's response is inadequate. While the Secretary-General and other actors have an important role to play in this regard, it is ultimately the responsibility of the Council, whose "eyes and ears" the special procedures are often said to be.

24. Under current arrangements, the Council receives once a year a report addressing acts of intimidation or reprisal against four categories of individuals: those cooperating with representatives of United Nations human rights bodies; those who have cooperated with United Nations human rights procedures; those who have submitted communications under established procedures; and the relatives of human rights victims. The net thus appears to be cast broadly. In his report for 2009 (A/HRC/10/36), the Secretary-General provides details of, *inter alia*, the killing of the spouse of a witness who testified under the universal periodic review process (para. 8), the incarceration of a human rights defender who had written to the United Nations (paras. 9 and 10), and soldiers threatening the staff of a non-governmental organization (paras. 11 and 12).

25. The above-mentioned report is far from comprehensive, indeed it presents only an extremely limited picture of the real situation. First, it relies almost entirely on cases publicized by mandate holders in their reports, and especially on those mentioned by the Special Rapporteur on the situation of human rights defenders. Second, cases are not reported if there are "security concerns" or the individuals concerned have opted not to have their cases made public. In instances involving threats of serious reprisals, this will often be the case. Third, reprisals against individuals for cooperating with other United Nations bodies, such as OHCHR field presences and peacekeeping operations, are not covered by the report. And finally, in the report itself, the Secretary-General acknowledges that reprisals against individuals cooperating with United Nations human rights bodies are often unreported owing to a lack of access to appropriate means of communication or fear of further reprisals (para. 7). The coverage of the report is thus very limited and its reporting seems perfunctory.

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well planned", press release, 25 February 2009) an urgent appeal I sent jointly with three other special procedures mandate holders on 13 March 2009 (which regrettably remained without a response from the Government as of one month later; see A/HRC/11/2/Add.1) and in two press releases ("UN expert on extrajudicial executions calls upon Kenyan Government to establish an independent investigation into the assassination of two prominent Kenyan human rights defenders" and "UN expert on extrajudicial executions calls on Kenya to stop the systematic intimidation of human rights defenders").

<sup>9</sup> See A/HRC/7/28/Add.2, paras. 72-74.



26. Perhaps unsurprisingly, none of the three reports submitted by the Secretary-General to the Council at its fourth, seventh and tenth sessions has generated any debate among Member States. While a few Governments have made statements in relation to specific incidents, the reporting process has not served the original purpose of bringing greater attention to the relevant problems and providing an occasion for the Council to take action. It is therefore essential that the Council and other stakeholders address this issue with urgency. Recommendations to this effect are proposed at the end of the present report.

### **B. Upholding the prohibition against the execution of juvenile offenders**

27. The prohibition against executing juvenile offenders (those who were under the age of 18 at the time of committing the relevant crime) is one of the clearest and most important of international human rights standards. It is unequivocal and admits of no exception. There is not a single Member State of the United Nations that is not a party to one of the two international treaties enshrining this norm: the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. Yet juvenile offenders continue to be sentenced to death, as evidenced by many such reports I have brought to the attention of the Governments concerned in recent years.

28. In its resolution 10/2, the Council urged States to ensure that capital punishment is not imposed for offences committed by persons under 18 years of age, and called on relevant special procedures of the Council to give special attention to such questions and to provide, wherever appropriate, specific recommendations in that regard.

29. I therefore wish to draw the Council's attention to the situation in relation to the juvenile death penalty, especially as reflected in the communications sent to Governments in the last two years.<sup>10</sup> During that period, I have addressed 33 communications to five Governments<sup>11</sup> regarding allegations that the death penalty has been imposed for a crime committed by a minor, or that the execution of a juvenile offender was imminent or had been carried out. The communications concerned 46 juvenile offenders, four of them female, the remainder male.<sup>12</sup> In six cases, it was alleged that the juvenile offender had been executed.<sup>13</sup> In the remaining cases, urgent appeals were sent in situations where reports indicated the risk of the execution of a

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<sup>10</sup> See A/HRC/8/3/Add.1 and A/HRC/11/2/Add.1.

<sup>11</sup> Those of the Islamic Republic of Iran, Pakistan, Papua New Guinea, Saudi Arabia and the Sudan. A recent Human Rights Watch report on the theme "The last holdouts: ending the juvenile death penalty in Iran, Saudi Arabia, Sudan, Pakistan and Yemen" (<http://www.hrw.org/en/reports/2008/09/10/last-holdouts>) includes Yemen but not Papua New Guinea.

<sup>12</sup> The breakdown by country is Iran (Islamic Republic of): 24 communications concerning 30 juvenile offenders; the Sudan: 4 communications concerning 10 offenders; Saudi Arabia: 3 communications concerning 4 offenders; Papua New Guinea and Pakistan: each one communication concerning one offender.

<sup>13</sup> See in A/HRC/11/2/Add.1.

juvenile offender taking place. In two cases, I was subsequently informed by the Government that the death penalty had been quashed on appeal (A/HRC/8/3/Add.1); in another case, I was subsequently informed by a source that the juvenile offender had been released (the Government did not respond to my urgent appeals in these cases). Finally, in two cases, I called the Government's attention to reports that such executions had already taken place. In neither of those cases did the Government confirm or deny the reports.

30. Unfortunately, the level of government responses to communications is particularly low in cases concerning the imposition of the death penalty against juvenile offenders. Thus, 33 communications over a two-year period have drawn only four responses, amounting to a response rate of about 12 per cent. Moreover, since February 2008, no responses to communications regarding the use of the death penalty against juvenile offenders have been received.

31. It might be asked why the Council should be especially concerned with this particular issue, when a relatively small number of juveniles have actually been executed. The answer is threefold. First, matters concerning the right to life are of fundamental importance, a fact which has consistently been recognized by the Council and its predecessor. Second, the juvenile death penalty is a negation of the essential principles of juvenile justice endorsed by a wide range of United Nations bodies and accepted by all States. Third, the credibility of the Council is called into question if it fails to respond in any way to a situation involving repeated violations of an international standard that is entirely unambiguous and universally proclaimed.

32. Based on the correspondence that I have engaged in with Governments and on the replies received, there would appear to be four possible obstacles in the way of eliminating the juvenile death penalty, not just on paper, but in practice.

33. The first obstacle seems to be a misunderstanding of the precise age at which an individual ceases to be a juvenile. Thus, for example, the Government of Saudi Arabia reported that it applies "regulations ... stipulat[ing] that a person can be held criminally responsible for acts that he commits after reaching the age of majority, which differs from one individual to another" (A/HRC/8/3/Add.1, p. 343). Similarly, article 7 (1) of the Arab Charter on Human Rights, which entered into force on 15 March 2008, provides that "Sentences of death shall not be imposed on persons under 18 years of age, unless otherwise stipulated in the laws in force at the time of the commission of the crime." While the Convention on the Rights of the Child leaves room in article 1 for the setting of an age below 18 years for specific purposes, this is not in fact the case in relation to the death penalty. To the contrary, the Convention is absolutely clear in article 37 (a) in establishing 18 years as the minimum age attained at the time of the relevant crime in order for an individual to be potentially subject to the death penalty in those jurisdictions that have retained it. Unlike other provisions of the Convention, this prohibition is not flexible when account is taken of the individual development and maturity of the offender. The Committee on the Rights of the Child has emphasized these points in relation to Saudi Arabia.<sup>14</sup> The International Covenant on Civil and Political Rights similarly admits no

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<sup>14</sup> CRC/C/SAU/CO/2, para. 32.

flexibility in terms of the minimum age. Thus, for States that are parties to the Arab Charter and to either or both of the other two international human rights treaties, the higher standard must prevail. In practice, this applies to all relevant States.

34. A second obstacle concerns disputes over the age of the individual. Contrary to previous reporting periods (for example, see A/HRC/4/20/Add.1, p. 154), none of the communications received from Governments during the reporting period disputed that the offenders sentenced to death were younger than 18 years at the time of the offence. In cases where a genuine dispute does exist, the Government is obligated to give the benefit of any doubt to the individual concerned. In other words, the inadequacy of birth registration arrangements cannot be invoked to the detriment of an individual who can reasonably contest an official claim that the age of majority had been attained at the time of the relevant offence.

35. A third obstacle, invoked especially by the State that is responsible for the great majority of the executions of juveniles, concerns the requirements of Islamic law. Thus, the main argument advanced by the Islamic Republic of Iran is that, where the death penalty is provided as retribution (*Qesas*) for murder, the “enforcement of *Qesas* depends upon the request to be made by guardians of the murder victim; and the Government is solely delegated to carry out the verdict, on behalf of the former” (A/HRC/8/3/Add.1, p. 223). The Government asserted that, as a consequence of this principle, it could not enforce the prohibition of the death penalty for juvenile offenders in cases where it is imposed as *Qesas*. On the same grounds, the Government argued that its authorities had no power to grant pardon or commutation of the death sentence in a *Qesas* case. It added that it strived “to apply mechanisms, such as the provision of financial assistance to the guardians, which might result in receiving the required consent [to the juvenile offender being pardoned] from them”. It is beyond the scope of my mandate to examine the validity of this argument in terms of Islamic law, but it is noteworthy that none of the other States in which Islamic law is applicable has seen the need to invoke this exception.

36. In terms of international law, however, it is clear, as I have indicated in response to the specific cases,<sup>15</sup> that the obligation to eliminate capital punishment for offences committed by persons below 18 years of age cannot be confined to the role played by the judicial authorities, thus permitting the parallel existence of a whole separate regime designed to satisfy additional retribution claims asserted by the victim’s family. No such additional considerations are contemplated in either article 37 (a) of the Convention on the Rights of the Child or article 6 (5) of the International Covenant on Civil and Political Rights. To permit such a separate regime, and for the State to be able to assert that it has no power over that regime, would be to comprehensively undermine the system of international human rights law. This also helps to explain why such an exemption has not been invoked by other States in an effort to facilitate the continuation of the juvenile death penalty.

37. In some States, the juvenile death penalty can be abolished by judicial decision (as in the United States of America in March 2005)<sup>16</sup> alone. In others, the actions required will be more

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<sup>15</sup> See for example the communications to the Islamic Republic of Iran and to Sudan in A/HRC/11/2/Add.1.

<sup>16</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

diverse. Whatever the means employed, the result must be that all laws that permit the execution of juvenile offenders are repealed, the judiciary must end the practice of sentencing juvenile offenders to death, and a moratorium must be placed on the execution of any individuals already sentenced under pre-existing laws. A review of current developments in the relevant jurisdictions in this regard is instructive.

38. In January 2005, the Government of the Islamic Republic of Iran informed the Committee on the Rights of the Child that all executions of persons who had committed crimes under the age of 18 had been halted. This was reiterated in a note verbale of 8 March 2005 to OHCHR, in which it explained that the ban had been incorporated into the draft bill on juvenile courts, which was before Parliament for ratification.<sup>17</sup> I have sought confirmation of the current status of the bill in eight communications, but no reply addressing this issue has been received.<sup>18</sup>

39. In the meantime, the death penalty continues to be imposed upon juveniles and to be carried out in relation to them. Reliable reports suggest that there are at least 130 juvenile offenders currently on death row in Iran. I have sent 24 communications relating to 30 different cases of juvenile offenders sentenced to death or executed, but there has been no real movement of any kind towards bringing the Islamic Republic of Iran into compliance with its obligations under international law. Since 2004, I have been requesting a visit to the country, which has issued a standing invitation to all special procedures to visit. Despite several high-level meetings in Geneva, no dates have ever been set.

40. Recent cases continue to be deeply troubling. B.Z. was found guilty of killing a man in 2005, when he was aged 16. On 14 February 2008, the Government informed me that the judicial system, on the basis of human considerations, had entered the case into conciliation process and was seriously following it with the hope for final settlement. Therefore, carrying out the penalty was not in its programme of work (A/HRC/8/3/Add.1, p. 223). B.Z. was executed in Shiraz six months later, on 26 August 2008.<sup>19</sup> Another case is that of Delara Darabi, who was convicted of murdering a relative when she was 17, in 2003. She is alleged to have confessed in an attempt to save her boyfriend who was the responsible party, but she then withdrew her confession. On 19 April 2009, she was reportedly granted a two-month stay of execution by the Head of the Judiciary, but this order was ignored and she was executed less than two weeks later, on 1 May 2009.

41. In Papua New Guinea, the legislature is reported to be considering a draft juvenile justice act that would exclude the imposition of the death penalty for juvenile offenders.<sup>20</sup>

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<sup>17</sup> A/HRC/4/20/Add.1, p. 152.

<sup>18</sup> See communications to the Islamic Republic of Iran dated 5 January 2007, 31 January 2007, 29 February 2008, 27 March 2008, 2 May 2008, 13 August 2008, 30 January 2009 and 6 March 2009.

<sup>19</sup> See the communication of 24 October 2008 to the Islamic Republic of Iran in A/HRC/11/2/Add.1.

<sup>20</sup> See the communication of 29 December 2008 to Papua New Guinea in A/HRC/11/2/Add.1.

Southern Sudan abolished the death penalty for juveniles when it adopted its Interim Constitution in 2006, but there remained at least six offenders on death row sentenced for crimes committed as minors.<sup>21</sup> The Interim National Constitution of the Sudan adopted in 2005, however, maintains an exception for “cases of retribution or *hudud*” in the prohibition of the imposition of the death penalty on a person under age 18 (art. 36 (2)). In August 2008, a counter-terrorism court in Khartoum sentenced a 17 year-old found guilty of having taken part in the Justice and Equality Movement attack against an omdurman in May 2008 to death on charges of *hiraba* (brigandage), a *hudud* offence.<sup>22</sup>

42. The execution of juvenile offenders is an affront to the fundamental principles of humane treatment and a blatant violation of international law. The insistence by one State in particular on continuing to impose and carry out such sentences thus represents a major challenge to the willingness of the Council to carry out the mandate entrusted to it.

### C. The killing of witches

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

44. While there has been a steady trickle of reports from civil society groups alleging the persecution and killing of persons accused of being witches, the problem has never been addressed systematically in the context of human rights. There is little systematic information available on the numbers of persons so accused, persecuted or killed, nor is there any detailed analysis of the dynamics and patterns of such killings, or of how the killings can be prevented. The lack of attention paid to the issue is especially true of the various United Nations human rights bodies that might have been expected to have engaged in in-depth examination. A prominent exception is the Office of the United Nations High Commissioner for Refugees (UNHCR), which acknowledges in its guidelines that women are still identified as witches in some communities and burned or stoned to death. These practices may be culturally condoned in the claimant’s community of origin but still amount to persecution.<sup>23</sup>

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<sup>21</sup> See the communication of 10 October 2008 to the Sudan in A/HRC/11/2/Add.1.

<sup>22</sup> See the communication of 23 September 2008 to the Sudan in A/HRC/11/2/Add.1.

<sup>23</sup> Guidelines on Religion-Based Refugee Claims (HCR/GIP/04/06), para. 24. See also Jill Schnoebelen (UNHCR), “Witchcraft allegations, refugee protection and human rights: a review of the evidence”, January 2009, available at [www.unhcr.org/research/RESEARCH/4981ca712.pdf](http://www.unhcr.org/research/RESEARCH/4981ca712.pdf).

## 1. Defining “witchcraft”

45. Defining witches and witchcraft is not an easy task. “Witchcraft” has denoted many different practices or beliefs at different times and in diverse cultures. In some cultures, belief in witchcraft is rare; in others, people see it as “everyday and ordinary, forming as it does an integral part of their daily lives”.<sup>24</sup> Such beliefs are not confined to any particular strata of society, whether in terms of education, income or occupation. Both the concept and the terminology also vary from one scholarly discipline to another. In Western Europe and the United States, witchcraft and the persecution of so-called witches are often associated with the witch-hunts and trials that took place there through the fifteenth and seventeenth centuries. Today, in the social sciences, and especially in the disciplines of religious studies, anthropology and ethnology, a wide range of contemporary beliefs and practices termed “witchcraft” or “sorcery” are studied around the world.

46. In the popular imagination, witchcraft is often associated with the infliction of harm on people or property through the purported exercise of supernatural powers. In sociological and anthropological terms, it can be described as a phenomenon that is invoked to explain misfortune by attributing it to the evil influence of someone, either from within or outside the community. Thus witchcraft has historically been employed to bring about “the death of some obnoxious person, or to awaken the passion of love in those who are the objects of desire, or to call up the dead, or to bring calamity or impotence upon enemies, rivals and fancied oppressors”.<sup>25</sup>

47. Alternatively, witchcraft may refer to or be associated with, for example, neo-paganism, shamanism or traditional healers. Some have emphasized its close links to moral and broader belief systems and portrayed it more benignly as providing a framework of moral agency that enables believers to make sense of otherwise seemingly inexplicable coincidences or happenings.<sup>26</sup> It is also associated with positive connotations such as healing or cleansing,<sup>27</sup> and as a means for articulating and coping with psychological problems.<sup>28</sup> In some regions, traditional communities had elders who acted as mediums in communicating with spirits from the other world and who were widely respected.<sup>29</sup>

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<sup>24</sup> See Henrietta Moore and Todd Sanders (eds), *Magical Interpretations, Material Reality: Modernity, Witchcraft and the Occult in Postcolonial Africa*, 2002.

<sup>25</sup> See “Witchcraft”, in *New Advent: Catholic Encyclopedia*, available at [www.newadvent.org/cathen/15674a.htm](http://www.newadvent.org/cathen/15674a.htm).

<sup>26</sup> See E. Evans-Pritchard, *Witchcraft Oracles and Magic among the Azande*, 1937.

<sup>27</sup> See, for example, James Howard Smith, *Bewitching Development: Witchcraft and the Reinvention of Development in Neoliberal Kenya*, 2008.

<sup>28</sup> See Roy Allen, “Anger, Anxiety and Sorcery”, in C.W. Watson and R. Ellen (eds.), *Understanding Witchcraft and Sorcery in Southeast Asia*, 1993.

<sup>29</sup> See Peter Geschiere, *Sorcellerie et politique en Afrique: La viande des autres*, 1995.

48. Older scholarship tended to emphasize the pitfalls of taking the meaning and significance attached to the term “witchcraft” in any given context and seeking to transpose it to other settings.<sup>30</sup> More recently, however, comparative studies have become much more common.<sup>31</sup> Ronald Hutton, for example, has identified five characteristics generally shared by those who believe in witches and witchcraft across different cultures and time periods: (a) witches use non-physical means to cause misfortune or injury to others; (b) harm is usually caused to neighbours or kin rather than strangers; (c) strong social disapproval follows, in part because of the element of secrecy and in part because their motives are not wealth or prestige but malice and spite; (d) witches work within long-standing traditions, rather than in one-time only contexts; and (e) other humans can resist witches through persuasion, non-physical means (counter-magic), or deterrence including through corporal punishment, exile, fines or execution.<sup>32</sup>

## **2. Human rights, extrajudicial executions and witchcraft**

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

(a) The killing of accused witches was reported as a significant phenomenon in the Central African Republic. Articles 162 and 162 bis of the country’s criminal code indicate that a person convicted of “witchcraft” (*charalatinisme* and *sorcellerie*) can face capital punishment, a prison sentence or fine. While the death penalty does not appear to have been used recently for this purpose, there were many reports of individuals being killed by private citizens or sometimes by the army after having been accused of witchcraft;<sup>33</sup>

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<sup>30</sup> Malcolm Crick, *Explorations in Language and Meaning: Toward a Semantic Anthropology* (1976).

<sup>31</sup> Ashforth has argued that, while witchcraft is not indicative of any single belief system, there may be a broadly applicable witchcraft paradigm. Adam Ashforth, “AIDS, Witchcraft and the Problem of Power in Post-Apartheid South Africa”, Institute for Advanced Study, paper No. 10, May 2001, available at [www.sss.ias.edu/publications/papers/paperten.pdf](http://www.sss.ias.edu/publications/papers/paperten.pdf).

<sup>32</sup> Ronald Hutton, “Anthropological and historical approaches to witchcraft: potential for a new collaboration?”, *Historical Journal* (2004), 413.

<sup>33</sup> See A/HRC/11/2/Add.3.

(b) In the context of the universal periodic review, issues have arisen about the fight against traditional practices such as sorcery and infanticide of the so-called “witch children” in Gabon,<sup>34</sup> and about the psychological trauma, physical harm, social exclusion and impoverishment suffered by alleged witches in Burkina Faso;<sup>35</sup>

(c) The Committee on the Elimination of All Forms of Discrimination against Women considered problems relating to the persecution of witches on a number of occasions. With regard to India, in 2007, the Committee noted its concern about the practice of witch-hunting, which it characterized as an extreme form of violence against women (CEDAW/C/IND/CO/3). It recommended that the State party adopt appropriate measures to eliminate the practice, to prosecute and punish those involved, and provide for rehabilitation of, and compensation to, victimized women. It also linked the issue to the struggle for control over land by recommending that the necessary measures be identified on the basis of an analysis of such causes. In 2002, the Special Rapporteur on violence against women, its causes and consequences, also drew attention to these problems in India, Nepal and South Africa;<sup>36</sup>

(d) In examining the report on Ghana, the Committee received information alleging that some 2,000 witches and their dependents were confined in five different camps.<sup>37</sup> A member of the State party delegation acknowledged the existence of the camps, but said that their character had changed over the years. She called for community sensitization, especially of the chiefs, before laws could be enacted and warned that the persecution of witches could [otherwise] turn into an underground practice.<sup>38</sup> The Committee subsequently expressed its concern about the persistence of the belief in witchcraft and the subjection of women in witch camps to violence. It called for the elimination of these practices through legislative action and education and awareness-raising campaigns.<sup>39</sup> After a visit to Ghana, the Special Rapporteur on violence against women called upon the Government to demystify the beliefs around witchcraft and sorcery and criminalize acts of undue accusations of persons of causing harm through the use of supernatural powers;<sup>40</sup>

(e) The Committee has received estimates of up to 1,000 witches being killed annually in the United Republic of Tanzania;<sup>41</sup>

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<sup>34</sup> See [www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights7May2008am.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights7May2008am.aspx).

<sup>35</sup> A/HRC/WG.6/3/BFA/3, para. 12.

<sup>36</sup> E/CN.4/2002/83, paras. 45-48.

<sup>37</sup> CEDAW/C/SR.741 (B), para. 19. Other estimates are closer to 5,000.

<sup>38</sup> Ibid., para. 23.

<sup>39</sup> A/61/38 (2006), paras. 232-33.

<sup>40</sup> A/HRC/7/6/Add.3, para. 93.

<sup>41</sup> [www2.ohchr.org/english/bodies/cedaw/docs/ngos/HAITanzania41.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/HAITanzania41.pdf), p. 7.



(f) In 1998, the Committee recommended further research into the prevalence of witch burning in South Africa, and called for the prohibition and eradication of such practices.<sup>42</sup> The South African Truth and Reconciliation Commission granted amnesty to 33 individuals accused of killing alleged witches.<sup>43</sup> In relation to Mozambique, the Committee expressed concern about the situation of older women, who were subject to accusations of witchcraft, and urged the State party to challenge such traditional views;<sup>44</sup>

(g) With regard to Angola, in 2004, the Committee on the Rights of the Child called for immediate action to eliminate the mistreatment of children accused of witchcraft, including by prosecuting the perpetrators of this mistreatment and intensive education campaigns that involve local leaders.<sup>45</sup> The same issue was taken up in almost identical terms four years later by the Committee on Economic, Social and Cultural Rights;<sup>46</sup>

(h) The role of witch doctors has also been raised. In Mali, the traditional practice of giving a girl in marriage to a witch doctor for religious reasons still persists;<sup>47</sup> in the United Republic of Tanzania, concern has been raised about the practice of hunting down and murdering albinos so that their body parts can be used by witch doctors;<sup>48</sup>

(i) In Papua New Guinea, provincial police commanders in two highlands provinces, Eastern Highlands and Chimbu, reportedly told journalists that there had been more than 50 sorcery-related killings in their provinces in 2008. Other independent sources estimate that there have been up to 500 attacks against women accused of practising witchcraft that have resulted in torture and murder;<sup>49</sup>

(j) In the Democratic Republic of the Congo, civil society reports suggest that most of the 25,000 to 50,000 children living on the streets of Kinshasa are there because they have been accused of witchcraft and rejected by their families. In 2009, the Committee on the Rights of the

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<sup>42</sup> *Official Records of the General Assembly, Fifty-third Session, Supplement No. 38* (A/53/38/Rev.1), para. 134. This was probably a response to the report of the Commission of Inquiry into Witchcraft Violence and Ritual Murder in the Northern Province (1995), chaired by Professor N.V. Ralushai.

<sup>43</sup> <http://www.info.gov.za/speeches/2000/000615110p1005.htm>.

<sup>44</sup> CEDAW/C/MOZ/CO/2, paras. 42-43.

<sup>45</sup> CRC/C/15/Add.246, paras. 30-31.

<sup>46</sup> E/C.12/AGO/CO/3, para. 25.

<sup>47</sup> CEDAW/C/MLI/2-5.

<sup>48</sup> [www.un.org/durbanreview2009/story22.shtml](http://www.un.org/durbanreview2009/story22.shtml).

<sup>49</sup> Amnesty International, "Increasing sorcery-related killings in Papua New Guinea", 11 February 2009.

Child expressed concern that a large number of children are labelled as witches and consequently suffer serious stigmatization. It observed that violence against children accused of witchcraft was increasing, and that children were being kept as prisoners in religious buildings where they were exposed to torture and ill-treatment or even killed under the pretext of exorcism. The Committee called for effective measures to prevent children from being accused of witchcraft, including through continuing and strengthening public awareness-raising activities, particularly directed at parents and religious leaders and by addressing the root causes, inter alia, poverty. It also recommended legislative and other measures to criminalize making accusations against children of witchcraft, efforts to prosecute those responsible for violence and ill-treatment against alleged child witches, and programmes to promote the recovery and reintegration of child victims;<sup>50</sup>

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

(l) In Nepal, various groups have also reported the persistence of traditional beliefs about witchcraft that largely concern elderly women and widows in rural areas. Exorcism ceremonies involve the public beating and abuse of suspected witches by shamans or village elders. It has been reported that the existing law is inadequate to prevent these abuses and that no system is in place to provide compensation for those persecuted;<sup>51</sup>

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

(n) In Saudi Arabia, in 2006, a woman was sentenced to death for witchcraft, recourse to supernatural beings (*jinn*) and the slaughter of animals. The conviction is said to have been based solely on statements by individuals claiming to have been bewitched.<sup>52</sup>

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

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<sup>50</sup> CRC/C/COD/CO/2, paras. 78-79.

<sup>51</sup> United States Department of State, "Nepal", in 2008 Country Reports on Human Rights Practices (2009), available at [www.state.gov/g/drl/rls/hrrpt/2008/sca/119138.htm](http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119138.htm).

<sup>52</sup> Human Rights Watch, "Saudi Arabia: halt woman's execution for 'Witchcraft'", 14 February 2008, available at: [www.unhcr.org/refworld/docid/47b5aa1a1a.html](http://www.unhcr.org/refworld/docid/47b5aa1a1a.html).

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

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

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

54. In 1998, in South Africa, a national conference on witchcraft violence called for the repeal of the Witchcraft Suppression Act of 1957, in part because it could in fact be fuelling witchcraft violence. It called for new legislation to adopt a pragmatic approach acknowledging the belief in witchcraft and the possibility that some forms are benign. It called for clear definitions of “witch”, “wizard” and “witchcraft”, and an emphasis on conciliation and mediation.<sup>54</sup> Other studies, however, have highlighted the inherent contradictions between a judicial approach that “objectifies *sorcellerie* as always evil and hence to be completely eradicated” and local discourse on witchcraft, which views it more positively “as a special force that can be used for various ends”.<sup>55</sup>

55. Commentators are sceptical of the value of judicial approaches in many settings: “Where cases of witchcraft have entered the formal judicial system in Africa, the results have generally not been salutary for the health of that system or the cause of justice.”<sup>56</sup> The available evidence from human rights sources also counsels against the criminalization of witchcraft. The first

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<sup>53</sup> Herman Slaats and Karen Portier, “Sorcery and the law in modern Indonesia”, in C.W. Watson and Roy Ellen (eds.), *Understanding Witchcraft and Sorcery in Southeast Asia*, 1993.

<sup>54</sup> Commission on Gender Equality, “Thohoyandou Declaration on ending witchcraft violence”, available at [www.cge.org.za/backup/userfiles/documents/national\\_conf\\_witchcraft1998.pdf](http://www.cge.org.za/backup/userfiles/documents/national_conf_witchcraft1998.pdf), p. vii.

<sup>55</sup> Peter Geschiere, *The Modernity of Witchcraft: Politics and the Occult in Postcolonial Africa*, 1997, p. 171.

<sup>56</sup> Adam Ashforth, *Witchcraft, Violence and Democracy in South Africa*, 2005.

reason relates to the difficulty of defining with any accuracy the conduct being proscribed. The second is the difficulty of ensuring respect for other rights, including cultural rights and freedom of speech and religion in such contexts. In the vast majority of cases examined, the offence has been defined in a vague and open-ended manner, which lends itself almost unavoidably to abuse. The vaguely defined elements of the “crime” can easily operate to permit those with a personal grudge or enmity to accuse others of having practised witchcraft. A third reason is empirical evidence, which shows that, in most instances, the criminalization of witchcraft is interpreted as legitimizing the punishment of accused witches in vigilante-like fashion, with no regard for the specific details of the alleged conduct, no due process protections being accorded to the accused, and no evidentiary burdens being met. Instead, there is usually a flagrantly discriminatory approach that results in the singling out of those who are simply “different”, feared or disliked. The accused witches are then often killed by vigilantes or mobs.

56. Even in States that have detailed laws providing for the punishment of witches, the law does not always explicitly address penalties for the persecution or killing of witches. Where it does, it sometimes permits the defence to invoke witchcraft as an extenuating circumstance warranting a lesser sentence. Where Governments identify genuinely abusive practices on the part of those accused of witchcraft, the challenge is to identify which criminal laws have been violated by the conduct and not to use the nebulous, catch-all label of “witchcraft”. Similarly, those who live in fear of witches should be educated and sanctioned to act within the law and on the basis of a criminal code that respects human rights when taking measures against those whom they believe to be engaging in harmful acts. In such circumstances, it is wholly unacceptable to invoke a subjective and highly manipulable accusation of witchcraft as the basis for either arbitrary private acts of violence or for Government-sponsored or tolerated acts of violence.

57. For present purposes, the most important point is to ensure that all killings of alleged witches are treated as murder and investigated, prosecuted and punished accordingly. In most of the cited problem situations, the Governments concerned have not been accused of playing an active part in the persecution or killings of witches. There are, however, questions as to whether they have met their due diligence obligations to prevent such killings. These require Governments to take all available measures to prevent such crimes and prosecute and punish perpetrators, including private actors.<sup>57</sup> Indeed, there is an interesting historical parallel with anti-lynching statutes in the United States, which were proposed in response to the almost 5,000 lynchings reported between 1882 and 1968. They were explicitly designed to go beyond the simple criminalization of the murder involved, and provided severe penalties for State or municipal officials who failed to take reasonable steps to prevent a lynching. In addition, any county in which a lynching occurred would have to compensate the victim’s family.<sup>58</sup>

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<sup>57</sup> This would include religious groups that designate children as witches, leading to stigmatization and persecution.

<sup>58</sup> See George C. Rable, “The South and the politics of anti-lynching legislation, 1920-1940”, 51 *Journal of Southern History*, 1985.

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

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

#### **D. The use of lethal force in the process of policing public assemblies**

60. The use of lethal force by law-enforcement officials<sup>59</sup> is an issue that arises frequently in my communications with Governments.<sup>60</sup> While challenges arise in diverse contexts, the policing of assemblies seems to be especially problematic. A survey of the communications sent between 2005 and 2008 reveals the ubiquitous nature of this issue. These communications consistently raise certain underlying issues, including the lack or inadequacy of laws and regulations governing the use of force by police; general rules or training for law enforcement on the dispersal of assemblies; specific instructions and/or guidance given to law enforcement dispersing assemblies; non-lethal incapacitating weapons for law enforcement; investigations and judicial or other inquiries into allegations of misconduct; disciplinary actions or prosecutions; penal or administrative sanctions; reparations or compensation for victims or their families; and public accountability in terms of the publication of results of investigations.

61. To be sure, the challenges involved in policing assemblies are complex. Balancing the need to maintain order with the need to respect the right to life, freedom of expression and the right to assemble peacefully presents a unique set of difficulties for States. It is proposed that a detailed study be undertaken to identify the principal problems experienced in relation to policing assemblies in the past and to recommend best practices that might be taken into account by Governments in the future. These challenges deserve more sustained analysis than they have received to date within the international human rights regime.

#### **1. The international human rights framework**

62. Article 6 of the International Covenant on Civil and Political Rights provides that no one should be arbitrarily deprived of his or her life. Article 3 of the Code of Conduct for Law Enforcement Officials,<sup>61</sup> and principle 9 of the Basic Principles on the Use of Force and

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<sup>59</sup> The term “law-enforcement officials” includes all Government officials exercising “police powers”, and sometimes includes “military authorities”, “security forces” and police officers.

<sup>60</sup> A/61/311, paras. 33-45.

<sup>61</sup> General Assembly resolution 34/169.

Firearms by Law Enforcement Officials,<sup>62</sup> though not in and of themselves binding law, provide an authoritative and convincing interpretation of the limits the prohibition on arbitrary deprivation of life places on the conduct of law-enforcement forces. The Basic Principles also provide further and more specific guidance on the use of force in the context of policing assemblies.<sup>63</sup> These principles derive from the interaction between the right to peaceful assembly and the right to life.

63. The principles contained in the various international obligations should in turn be reflected in the policy and operational documents adopted at the national level. While States retain significant discretion in the specific approach they adopt, international human rights law points in the direction of a range of measures which should be adopted in this regard. They include: (a) the implementation of a legal framework designed to ensure both effective law enforcement and respect for human rights, including the right to peaceful assembly; (b) the provision of training for law-enforcement personnel focusing on both theory and practice; (c) operational policies and procedures to assist and guide law enforcement in controlling assemblies within the legal framework; and (d) disciplinary and other sanctions designed to promote compliance. The combination of measures ensuring the best possible balance will vary according to the structure of policing and other factors from one State to another.

## **2. The need for a set of best practices**

64. The Basic Principles provide an indispensable guide to the main issues that need to be addressed if a State is to respect and ensure the right of individuals not to be arbitrarily deprived of their lives.<sup>64</sup> The Basic Principles do not, however, provide the sort of operational guidance which would be of great assistance to police forces and Governments in designing and implementing their policies for dealing with such situations. In order to shed systematic light on these issues, I propose to survey existing practices for the policing of assemblies by law-enforcement officials, including consultation with relevant stakeholders, with a view to identifying a set of best practices that might provide assistance and guidance in relation to such activities.

65. Potential areas of study might include training of law-enforcement officials; planning for assemblies; the use of intelligence in policing assemblies; operational policies; intervention by law-enforcement, including use of force, dispersal, stop and search, detention and arrest; post-incident debriefing; the use of legal support; and liability and accountability. I plan to present the results of this research to the Council in the course of 2010.

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<sup>62</sup> Adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, from 27 August to 7 September 1990.

<sup>63</sup> The Basic Principles distinguish between lawful and unlawful assemblies. A further distinction is made between unlawful non-violent assemblies and unlawful violent assemblies.

<sup>64</sup> International Covenant on Civil and Political Rights, arts. 2 and 6.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

##### **A. Reprisals against persons cooperating with special procedures**

66. Intimidation of, or retaliation against, those cooperating with special procedures mandate holders is a problem that threatens the very foundations of the Council's work in protecting human rights. Urgent measures are needed to respond to any such reported incidents. The following steps should be taken:

(a) The Council should urge Governments, United Nations field presences and special procedures mandate holders to give particular attention to the protection of persons who have cooperated with a mandate holder;

(b) Given the need to be able to respond promptly and meaningfully to any reports of serious or continuing harassment, the Council should define appropriate mechanisms to make representations to the Government concerned in a timely and effective manner and to monitor situations;

(c) Civil society organizations and States through their diplomatic missions should continue to enhance arrangements to provide financial and other assistance to individuals who are at risk, including, where necessary, providing assistance in relocation to a secure place;

(d) The Coordination Committee for Special Procedures should pursue this issue following an exchange of views among mandate holders at their annual meeting.

##### **B. Execution of juvenile offenders**

67. The prohibition on executing juvenile offenders is a clear and very important violation of international human rights standards. It is being openly and systematically flouted in one Member State, in violation of that State's treaty obligations. In its resolution 10/2, the Council urged all States to ensure that the practice was eliminated and requested special procedures mandate holders to make specific recommendations in this regard, including proposals for advisory services and technical assistance measures. The President of the Council should designate a member of the Council Bureau to seek to visit the Islamic Republic of Iran to engage in consultations with all stakeholders with a view to identifying appropriate measures that can be taken to bring an immediate halt to the sentencing and execution of juvenile offenders.

##### **C. The killing of witches**

68. The Council should acknowledge that it is entirely unacceptable for individuals accused of witchcraft to be killed, including through extrajudicial processes. It should call upon Governments to ensure that all such killings are treated as murder and investigated, prosecuted and punished accordingly.

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