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Extrajudicial, summary or arbitrary executions

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz, submitted in accordance with Assembly resolution 75/189.

* A/77/150.
** The present report was submitted after the deadline so as to include the most recent information.

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Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz

Summary

To mark the fortieth anniversary of the establishment of the mandate on extrajudicial, summary or arbitrary executions, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz, offers a reflection from a historical perspective on the establishment of the mandate and the subsequent evolution of its working methods. He retraces the development of international standards and guidelines elaborated with the substantial contribution and support of the various mandate holders. The report also contains an analysis of the question of the death penalty from the perspective of whether it is compatible with the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment and recommendations aimed at ensuring the protection of the right to life, as guaranteed under international human rights instruments.

I. Introduction

1. The year 2022 marks the fortieth anniversary of the creation of the mandate on extrajudicial, summary or arbitrary executions, the oldest single thematic mandate among the special procedures.[1] In the present report, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tidball-Binz, reflects on the developments in the working methods of the mandate and on the evolution of standards and guidelines that have been developed with the engagement of mandate holders to promote and protect the right to life and safeguard against extrajudicial, summary or arbitrary executions. The report also contains an analysis of the question of the death penalty from the perspective of whether it is compatible with the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment and recommendations aimed at ensuring the protection of the right to life, as guaranteed under international human rights instruments.

2. The Special Rapporteur is grateful to those States, civil society organizations and other stakeholders that responded to his calls for input. The replies received informed the present report.

II. Activities of the Special Rapporteur

3. The present report covers the main activities undertaken by the Special Rapporteur from April to July 2022. Those undertaken from April 2021 to March 2022 are included in the Special Rapporteur's thematic report to the Human Rights Council.[2]

A. Communications

4. During the period under review, the Special Rapporteur issued, alone or jointly with other special procedure mandate holders, 47 communications to States and non-State actors, as well as 14 press statements.

B. Meetings and other activities

5. In April 2022, on the occasion of the opening of the 2022 academic year of the Dr. Carlos Ybar Institute of Chile, the Special Rapporteur gave a master class on forensic medicine and human rights, focusing on the role of the mandate in the development of forensic standards. On the same day, he participated in another event organized by the University of Uruguay, giving a presentation on the work of the mandate in addressing the issue of deaths in custody.

6. On 3 May, the Special Rapporteur gave a lecture to the Inter-American Association of Public Defenders, discussing the role of forensic sciences in the investigation of human rights violations.

7. Also in May, the Special Rapporteur made an academic visit to Costa Rica at the invitation of the International Institute on Race, Equality and Human Rights. During the visit, he lectured about the mandate at the University for Peace and at the

[1] Over the course of its 40-year history, the mandate has been fulfilled by S. Amos Wako (1982–1992), Bacre Waly Ndiaye (1992–1998), Asma Jahangir (1998–2004), Philip Alston (2004–2010), Christof Heyns (2010–2016), Agnes Callamard (2016–2021) and the present mandate holder.

[2] A/HRC/50/34.

diplomatic academy of the Ministry of Foreign Affairs of Costa Rica. He also held high-level meetings with the Inter-American Court of Human Rights, the Inter-American Institute of Human Rights and the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, as well as with the Centre for Justice and International Law, to discuss cooperation for the promotion and implementation of standards of shared interest, principally the Minnesota Protocol on the Investigation of Potentially Unlawful Death, at the regional level.

8. In June, the Special Rapporteur participated in a high-level dialogue on the human rights situation in Nicaragua that was organized by the Inter-American Commission on Human Rights and attended by representatives of national and international human rights organizations, international mechanisms and States.

9. Within the context of the fortieth anniversary of the establishment of the mandate, the Special Rapporteur participated in the fourteenth annual meeting of the Ibero-American Network of Forensic Medicine and Forensic Science Institutions, held in Guayaquil, Ecuador, from 27 to 29 June. Also in June, he attended the inauguration of the first International Congress of Forensic Medicine and Forensic Sciences, organized by the National Service of Forensic Medicine and Forensic Sciences of Ecuador. During both events, he gave presentations and lectured on the Minnesota Protocol.

III. Creation of the mandate

10. The General Assembly periodically addressed the question of the death penalty during the 1950s, the 1960s and the 1970s. In 1968, it unanimously adopted resolution 2393 (XXIII), emphasizing the importance of procedural safeguards around the death penalty. In 1971, it went further, affirming, in paragraph 3 of resolution 2857 (XXVI), that, in order fully to guarantee the right to life, the main objective to be pursued was that of progressively restricting the number of offences for which capital punishment might be imposed, with a view to the desirability of abolishing that punishment in all countries.

11. Meanwhile, outside of the United Nations, the early prominent international human rights non-governmental organizations (NGOs) were contemplating how to respond to what seemed to be an increasing trend of political killings. Having campaigned so effectively around the issue of political prisoners and torture, they were concerned that Governments seemed to be avoiding the potential scrutiny of detentions of political opponents, opting instead to “disappear” and kill them without any judicial process. The work carried out in this regard included effective transnational advocacy on the part of victims and their families, such as the organizations Vicaría de la Solidaridad in Chile and the Grandmothers of the Plaza de Mayo in Argentina.

12. By 1980, as the Commission on Human Rights was establishing a working group to look at disappearances, the international community had also begun to consider the issue of summary executions. The Sub-Commission on Prevention of Discrimination and Protection of Minorities had a long-standing agenda item on “disappearances and summary executions”, but both diplomatic preference and civil society strategy focused substantive debates on the death penalty (“summary or arbitrary executions”) and political killings (“extralegal executions”) in the context of the Vienna-based Committee on Crime Prevention and Control and the related quinquennial United Nations Congress on the Prevention of Crime and the Treatment of Offenders. It was at the Sixth Congress, held in 1980, that the first substantial progress towards international recognition of extralegal executions was achieved when a group of countries (Austria, Denmark, Finland, Netherlands, Norway, Sweden and Venezuela,

the host country of the Congress) sponsored a resolution on the issue, which was adopted with 74 votes in favour.[3]

13. In the resolution, the term "extralegal executions" was not defined, but "the practice of killing and executing political opponents or suspected offenders carried out by armed forces, law enforcement or other governmental agencies or by paramilitary or political groups acting with the tacit or other support of such forces or agencies" was condemned.[4]

14. Meanwhile, at its session in August and September 1981, the working group on detention of the Sub-Commission on Prevention of Discrimination and Protection of Minorities began to consider the issue of "arbitrary or summary executions" and drew up a resolution calling for the issue to be given "the most urgent consideration".[5]

15. In his opening remarks at the thirty-eighth session of the Commission on Human Rights, held in February 1982, the head of the Division of Human Rights recalled an issue which, on any account, must be considered among the most basic and fundamental questions on the human rights agenda, namely, the need to stop deliberate violations of the right to life. He asserted that the Commission's role with respect to the right to life was "to protect the human person and to prevent deliberate killings perpetrated by organized power". He highlighted the recent General Assembly resolution on summary and arbitrary executions and the attention given to the issue by the Sub-Commission.[6] He also explicitly referred to the situation in Democratic Kampuchea and the killings being carried out there under the Pol Pot regime. He further mentioned reports of mass violations in Chile, El Salvador, Equatorial Guinea, Guatemala, Iran (Islamic Republic of) and Uganda, as well as southern Africa. He also drew on the most recent annual report of the Inter-American Commission on Human Rights, in which the Commission, building upon its groundbreaking visit to Argentina in 1978, had noted an alarming number of "summary, illegal and extrajudicial executions", in most cases committed by security forces with full impunity.

16. During the ensuing debates, several States called for action against summary and arbitrary executions. A draft resolution was submitted by Denmark, which included references to the Sub-Commission resolution drawing attention to the increase in politically motivated executions deserving urgent attention, to the General Assembly resolutions and to the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The resolution calling for the appointment of a special rapporteur to examine the question of summary or arbitrary executions was adopted by the Commission on Human Rights on 11 March 1982.[7] In due course, S. Amos Wako was appointed that same year as the first mandate holder.

IV. Thematic scope

17. Beginning with his first report, Mr. Wako made it clear that the right to life would be the normative reference point for the work of the mandate.[8] He underlined that protection of the right to life entailed the protection of the individual from

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[3] Seven countries recorded their abstention: Argentina, Chile, Egypt, Ethiopia, Indonesia, Philippines and Uruguay.

[4] A/CONF.87/14/Rev.1, resolution 5, para. 1.

[5] E/CN.4/1512.

[6] E/CN.4/1982/SR.1, para. 8.

[7] Commission on Human Rights resolution 1982/29 was adopted by 33 votes to 1, with 8 abstentions. The resolution was endorsed by the Economic and Social Council in its resolution 1982/35.

[8] E/CN.4/1983/16, paras. 22–47.

unwarranted attacks by the State and that States also had an obligation to protect life against attacks by private persons.[9] He introduced definitions of “summary execution”, defined as an arbitrary deprivation of life resulting from a sentence imposed without minimum fair trial guarantees as set out in article 14 of the International Covenant on Civil and Political Rights; “arbitrary execution”, defined as a killing carried out by order of a Government or with its complicity or tolerance without judicial or legal process; and “extralegal execution”, defined as a killing committed outside a legal process.[10] In 1992, 10 years after its establishment, the mandate was renamed as that on “extrajudicial, summary or arbitrary executions” in Commission on Human Rights resolution 1992/72.

18. In his 1993 report, the subsequent mandate holder, Bacre Waly Ndiaye, provided a normative framework for the implementation of the mandate, noting that the Special Rapporteur should handle all violations of the right to life as established under international human rights instruments[11] and identifying the following issues as requiring consideration: the question of the death penalty; deaths in custody; deaths resulting from use of force by law enforcement officials; violations of the right to life during armed conflicts; issues of (non-)refoulement; acts of genocide; and the rights of victims.[12]

19. In 2002, the subsequent mandate holder, Asma Jahangir, articulated the scope of the mandate to include the following situations: (a) genocide; (b) violations of the right to life during armed conflict; (c) deaths due to attacks or killings by State security forces, or by private forces cooperating with or tolerated by the State; (d) deaths due to the use of force by law enforcement officials inconsistent with the principles of necessity and proportionality; (e) deaths in custody due to torture, neglect or use of force, or life-threatening conditions of detention; (f) death threats and fear of imminent extrajudicial executions; (g) expulsion, refoulement or return of persons to a country or a place where their lives would be in danger, as well as the prevention of persons seeking asylum from leaving a country where their lives would be in danger; (h) deaths due to acts of omission on the part of the authorities or their failure to take preventive measures; (i) breach of the obligation to investigate alleged violations of the right to life and to bring those responsible to justice; (j) breach of the obligation to provide adequate compensation to victims of violations of the right to life; and (k) violations of the right to life in connection with the death penalty.[13]

20. Another important contribution made by Ms. Jahangir was the inclusion within the scope of the mandate of gender-based violence, including honour killings, which would later be further elaborated by another mandate holder, Agnes Callamard.[14] The current mandate holder plans to continue this focus with a report on femicide investigations.

21. Philip Alston framed the mandate in the following terms:

> Although the title of my mandate may seem complex, it should be simply understood as including any killing that violates international human rights or humanitarian law. This may include unlawful killings by the police, deaths in military or civilian custody, killings of civilians in armed conflict in violation of humanitarian law, and patterns of killings by private individuals which are not adequately investigated and prosecuted by the authorities.[15]

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[9] Ibid., para. 65.

[10] Ibid., para. 66.

[11] E/CN.4/1993/46, para. 42.

[12] Ibid.

[13] E/CN.4/2002/74, para. 8. For subsequent use as a taxonomy of circumstances in which the mandate holder generally takes action, see, for example, E/CN.4/2005/7, para. 8.

[14] A/HRC/35/23, paras. 50–78.

[15] A/HRC/11/2/Add.5, para. 3.

22. Christof Heyns described the “normative core of the mandate” as being the right to life, articulating what he described as the “protect life” principle, namely, that a deprivation of life could not be justified on any other basis than that it was required to save life.[16]

V. Developing normative points of reference

23. By the time of the establishment of the mandate, there was already a modest patchwork of normative guidance concerning the protection of the right to life, beyond the articulation of the right in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Geneva Conventions of 12 August 1949 and their Protocols. Soft law was also in place, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted in 1957 (and again in 1977), the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in 1975, and, perhaps most immediately useful to the mandate, the Code of Conduct for Law Enforcement Officials, adopted in 1979.

24. The first decade of the mandate’s existence, however, would witness the adoption of key pillars that would guide its work up to the present day. The mandate holders have remained involved in updating this normative guidance ever since.

A. Safeguards concerning the death penalty

25. In his first report, Mr. Wako noted that, given the irreversible consequences of infringing upon the right to life, international law had laid down stringent procedural safeguards to ensure that the issuance of a death penalty or the taking away of a person’s life was not done lightly.[17] He elaborated upon the safeguards set forth in the International Covenant on Civil and Political Rights and regional human rights conventions, particularly with regard to fair trial standards.[18] Subsequently, in his second report, he stressed that the crimes for which the death penalty could be imposed were “the most serious” ones, while expressing concern that it was instead applied “for a whole range of other offences which might be regarded as relatively minor”.[19]

26. In the light of the section on the death penalty contained in the present report, it is worth noting in particular that Mr. Wako also underlined that “throughout the process leading to capital punishment and in all aspects thereof, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment applies”.[20]

27. In these two reports, Mr. Wako addressed all the issues taken up in the safeguards guaranteeing protection of the rights of those facing the death penalty. When adopting the safeguards, the Committee on Crime Prevention and Control acknowledged the importance of the work of the Commission on Human Rights and the two reports already produced by Mr. Wako.[21]

28. Once the safeguards had been adopted, Mr. Wako welcomed their contribution to the elaboration of the concept of summary or arbitrary executions, noting that they

[16] A/71/372, para. 22.
[17] E/CN.4/1983/16, para. 22.
[18] Ibid., paras. 22 (a)–(i).
[19] E/CN.4/1984/29, para. 39.
[20] Ibid., para. 23.
[21] E/1984/16, para. 105.

would serve as criteria for ascertaining whether an execution was of a summary or arbitrary nature.[22]

B. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

29. The historical record is not clear about what role the Special Rapporteur played in the process of developing the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which were ultimately adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana in August and September 1990.

30. Mr. Wako included the Basic Principles as an annex to his 1991 report, with a recommendation that Governments "review national laws and regulations, as well as the practice of judicial authorities" with a view to securing effective implementation of all the standards underpinning the mandate, but in particular that most recent instrument.[23] The following year, he included a section on "deaths due to the use of force by law enforcement officers" in his annual report.[24]

31. The adoption of the Basic Principles also changed the way in which Mr. Wako addressed the question of the use of force. Whereas he had previously relied on article 3 of the Code of Conduct for Law Enforcement Officials and its commentary, stating that law enforcement officials were permitted to use force only when strictly necessary and to the extent required for the performance of their duty, subsequent to the adoption of the Basic Principles he was able to make a clearer reference to the need for proportionality, citing Basic Principles 4, 5, 9 and 10, which he noted were "based on the fundamental principle that the amount of force used should be in proportion to the objectives to be achieved".[25]

C. Principles and best practices for investigations

32. Since the inception of his tenure, Mr. Wako stressed that the question of investigations would be central to the work of the mandate holder and emphasized the need for minimum standards in that regard. This was in line with evolving human rights practice.

33. During the 1980s, forensic science became increasingly important in the investigation of human rights violations, as shown in particular by the pioneering work of the NGOs Grandmothers of the Plaza de Mayo and the Argentine Forensic Anthropology Team.[26]

34. In his 1986 report, Mr. Wako stressed that any standard for the investigation of suspicious deaths should include the conduct of adequate autopsies and the provision that their results should be made public. He further asserted that a death in any type

[22] E/CN.4/1985/17, para. 24. In its written contribution, Advocates for Human Rights detailed how these safeguards, along with several subsequent reports of the mandate holder, fulfilled this valuable role.

[23] E/CN.4/1991/36, para. 598 (a).

[24] E/CN.4/1992/30, para. 29.

[25] Contrast the summary of the communication with India in E/CN.4/1991/36, para. 208, with the summary of the communication with Burundi in E/CN.4/1992/30, para. 86.

[26] See Luis Fondebrider, "Reflections on the scientific documentation of human rights violations" *International Review of the Red Cross*, No. 848 (2002); Robert Kirschner and Kari Hannibal, "The application of the forensic sciences to human rights investigations", *Medicine and Law*, vol. 13 (1994); and Roxana Ferllini, ed., *Forensic Archaeology and Human Rights Violations* (Springfield, Illinois, Charles C. Thomas Publisher, 2007).

of custody should be considered, prima facie, as a summary or arbitrary execution and that appropriate investigations should immediately be conducted to confirm or rebut that presumption.[27]

35. In the same year, the Economic and Social Council adopted resolution 1986/10 in which it requested the Committee on Crime Prevention and Control to consider arbitrary executions during its tenth session "with a view to elaborating principles on the effective prevention and investigation of such practices". In parallel, and on the basis of the work of the Special Rapporteur, the Commission on Human Rights recommended in its resolution 1987/57 that international organizations make "a concerted effort to draft international standards designed to ensure proper investigation by appropriate authorities into all cases of suspicious death, including provisions for adequate autopsy".

36. The same Vienna-based process that had led the early discussions around the creation of the mandate had subsequently turned attention to normative questions around the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. The Principles were adopted by the Committee on Crime Prevention and Control, as the Economic and Social Council had requested, during its 1988 session and were then adopted by the Council itself in its resolution 1989/65 and by the General Assembly later the following year.

37. Celebrating "a milestone for his mandate" in his subsequent report, Mr. Wako noted that, since the Principles reflected the Special Rapporteur's ideas and views in sufficient detail, he would be able to refer to them without any reservation when examining alleged incidents of summary or arbitrary executions. In what would become a common refrain of the mandate – that the failure to investigate a potential violation of the right to life amounted in itself to a violation of the right – he added that any Government's practice that failed to reach the standards set out in the Principles might be regarded as an indication of the Government's responsibility, even if no government officials were found to be directly involved in the acts of summary or arbitrary execution.[28]

38. Meanwhile, a parallel process was convened by a group of civil society organizations coordinated by the Minnesota Lawyers' International Human Rights Committee with a view to producing a manual or protocol to guide the implementation of the Principles under the guidance of the Special Rapporteur.

39. In May 1990, the Committee on Crime Prevention and Control noted the adoption of the Principles and called on States to implement them effectively. Eventually, in May 1991, the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs (the forerunner of the United Nations Office on Drugs and Crime (UNODC)) published the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which quickly became the universal gold standard for forensic investigations into potentially unlawful deaths, now known as the Minnesota Protocol on the Investigation of Potentially Unlawful Death.

40. Mr. Ndiaye celebrated the finalization of the Manual as "a document of major importance for guaranteeing the right to life" and urged all Governments to incorporate the procedures contained therein into national legislation and practice, as well as into training programmes for law enforcement officials.[29]

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[27] E/CN.4/1986/21, para. 209.

[28] E/CN.4/1990/22, para. 463.

[29] E/CN.4/1993/46, para. 66.

41. Since the adoption of these standards, the mandate holders have continued to periodically provide guidance on the conduct of investigations. For example, in 2010, Mr. Alston issued a report on police oversight bodies, stressing that, in order to play their essential role in ensuring accountability, both internal and external oversight mechanisms must be given the necessary powers and resources.[30]

42. From 2014 to 2016, conscious of the need to accommodate 25 years of developments of legal standards and forensic good practice contained therein, Mr. Heyns convened an expert process to produce an updated, revised version of the Manual, published by the United Nations as the Minnesota Protocol on the Investigation of Potentially Unlawful Death.[31] The work was undertaken by two expert drafting groups (one of which was chaired by the current mandate holder) and reviewed by an extensive advisory panel (which included former mandate holders Mr. Ndiaye, Ms. Jahangir and Mr. Alston).[32]

43. In his most recent report to the Human Rights Council, the current Special Rapporteur explored the ways in which the Minnesota Protocol, in its revised form, had been reflected in medico-legal practice around the world. He considered that the capacity of States to investigate all potentially unlawful deaths, as required under international law, was too often hindered, and he called upon the international community to step up efforts to improve medico-legal death investigation systems worldwide.[33]

44. The implication of the revised Minnesota Protocol for the protection of the dead and the investigation of burial sites, an issue that was highlighted by Ms. Callamard in her report to the General Assembly in 2020,[34] has been partly addressed in the Bournemouth Protocol on Mass Grave Protection and Investigation.[35] The current Special Rapporteur plans to build upon this work to further develop guidance, from the perspective of the mandate, on the protection of bodies and human remains of victims of unlawful killings.[36]

45. Another process that began around the same time was the development of the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement. This guidance was issued in response to the growing use of "less-lethal" weapons in the policing of assemblies (highlighted, for example, in the joint report that the Special Rapporteur had undertaken to draft from 2014 to 2016 on the management of assemblies) and to wider concerns about the burden of injuries (including fatal injuries) arising from the use of such weapons in other contexts. Moreover, identifying the fact that the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials encouraged the development and procurement of such weapons by law enforcement officials without providing clear normative guidance on their use, Mr. Heyns recommended to the Human Rights Council that the Office of the United Nations High Commissioner for Human Rights (OHCHR) convene an expert group to develop such a document. With the continued involvement of both Mr. Heyns and his successor, Ms. Callamard, OHCHR collaborated with the Geneva Academy of International Humanitarian Law and Human Rights to convene an expert drafting group of more than 50 experts in law

[30] A/HRC/14/24/Add.8.

[31] This process, in collaboration with OHCHR, gave effect to recommendations contained in Commission on Human Rights resolutions 1998/36, 2000/32, 2003/33 and 2005/26.

[32] For a full discussion of the process of revising the Minnesota Protocol, see Christof Heyns and others, "Investigating potentially unlawful death under international law: the 2016 Minnesota Protocol", *The International Lawyer*, vol. 52, No. 1 (2019).

[33] A/HRC/50/34.

[34] A/75/384.

[35] Melanie Klinkner and Ellie Smith, *The Bournemouth Protocol on Mass Grave Protection and Investigation* (Bournemouth, United Kingdom, Bournemouth University, 2020).

[36] A/76/264, paras. 48–53.

enforcement, weapons law, police training and human rights, who met in consultations from 2017 to 2019.

46. The guidance produced and ultimately published by OHCHR was designed to build upon existing standards, such as the Basic Principles. It makes clear the necessary safeguards that must surround any procurement, testing or use of less-lethal weapons and underlines the importance of specific training on their use; it also describes the particular risk factors associated with different kinds of weapons, outlining circumstances of potentially lawful use and providing examples of weapons or applications that would clearly be unlawful.

47. These more recent normative developments have included a great richness of comparative good practice, which can starkly illustrate the extent of the implementation gap between existing international standards and current levels of national practice in many contexts. A central – albeit often underused – capacity-building role of the mandate holder is to provide technical assistance to States to help them to overcome this implementation gap. The current Special Rapporteur reiterates that he stands ready to support and assist States and other actors in their efforts to adequately respond to human rights concerns while strengthening the protection of human rights at the national level.

48. These developments also illustrate the value of the collaboration that the mandate holders have forged with academia over the years for irreplaceable scientific and scholarly research, including most recently with Monash University and with the Geneva Academy of International Humanitarian Law and Human Rights.

VI. Notable practical contributions of the mandate

A. Croatia

49. Responding to the grave situation of human rights in the former Yugoslavia, the Commission on Human Rights adopted a resolution in which it called on Mr. Ndiaye, along with several other special procedure mandate holders, to conduct visits to a number of countries in the region in late 1992, as what became known as the Mazowiecki Commission.

50. These visits were carried out shortly after the finalization of the Minnesota Protocol, which was of particular importance because the team supporting the Special Rapporteur included forensic investigators and medico-legal experts – including the current Special Rapporteur on extrajudicial, summary or arbitrary executions – who were able to field test the Protocol during their investigations.[37] Their findings later contributed to the decision of the international community to establish the International Tribunal for the Former Yugoslavia.

51. Mr. Ndiaye, in his own report, highlighted the role that extrajudicial executions could play when implementing a policy of “ethnic cleansing” and gave an early warning about the risk of such killings happening elsewhere in the region.

B. Rwanda

52. Mr. Ndiaye conducted a country visit to Rwanda from 8 to 17 April 1993. In his report, he raised the alarm about the reported killing of a large number of civilians, including political opponents; about the role of local media in instigating violence;

[37] Morris Tidball-Binz, “Forensic investigation of alleged war crime near Vukovar”, *The Lancet*, vol. 341, No. 6 (March 1993).

and about the risk of spillover effects in Burundi. Sadly, his early warnings and recommendations remained largely unheeded by the international community.

C. Sri Lanka

53. Mr. Alston visited Sri Lanka in 2005 and reported on violations and abuses of human rights law and international humanitarian law by both parties to the conflict.[38]

54. Following the end of the conflict, video footage showing alleged extrajudicial executions perpetrated by Sri Lankan troops became publicly available and was aired by a British broadcaster, Channel 4. After sending a formal communication about the footage, which was rejected as fake by the Government of Sri Lanka, Mr. Alston undertook his own investigation,[39] which confirmed that the images were consistent with real shootings.[40]

55. In November 2010, after Mr. Heyns had taken over the mandate, Channel 4 shared another five minutes of footage, this time showing the faces of some of the officers involved in the shootings. Following his further investigation, Mr. Heyns concluded that the shootings shown amounted to war crimes perpetrated by the Sri Lankan army.[41]

D. More recent ad hoc investigations into specific incidents

56. In recent years, the mandate holders have undertaken several high-profile inquiries into specific cases of unlawful killings.

57. In January 2019, Ms. Callamard conducted a human rights inquiry into the killing of a Saudi Arabian journalist, Jamal Khashoggi, assisted by human rights and forensic experts.

58. The inquiry found credible evidence warranting further investigation of the individual liability of high-level Saudi Arabian officials, noting that among the purposes of the search for justice and accountability in such cases was the identification of those who, in the context of the commission of a violation, had abused, or failed to fulfil, the responsibilities of their position of authority. The inquiry also raised questions concerning the failure of the Government of Turkey to protect, including by carrying out an effective and thorough investigation.[42]

59. The following year, in her report to the Human Rights Council, Ms. Callamard addressed the case of the killing of an Iranian general, Qasem Soleimani, in the light of relevant international law, including in relation to the use of armed drones.[43]

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[38] E/CN.4/2006/53/Add.5.

[39] For a general discussion of the Sri Lankan investigations of both Mr. Alston and Mr. Heyns, see Thomas Probert, "The role of the UN Human Rights Council special procedures in protecting the right to life in armed conflicts" in *By All Means Necessary: Protecting Civilians and Preventing Mass Atrocities in Africa*, Dan Kuwali and Frans Viljoen, eds. (Pretoria, Pretoria University Law Press, 2017).

[40] Philip Alston, "Technical note prepared by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Philip Alston, in relation to the authenticity of the 'Channel 4 videotape'", paper prepared for OHCHR, January 2010.

[41] A/HRC/17/28/Add.1, appendix.

[42] A/HRC/41/36, para. 8.

[43] A/HRC/44/38, para. 64.

E. Engagement with United Nations bodies and other human rights mechanisms

60. In addition to their regular activities, at times mandate holders have also been asked by the Commission on Human Rights or the Human Rights Council to participate in ad hoc investigations. The Mazowiecki Commission, discussed above, was an early example of this, as were Ms. Jahangir's participation in a joint mission to East Timor in 1999 and Mr. Heyns' appointment to the independent investigation on Burundi carried out pursuant to Human Rights Council resolution S-24/1 in 2016.

61. The mission to East Timor was conducted pursuant to a resolution of a special session of the Commission on Human Rights (the fourth such special session in its history) held in late September 1999, at which the Commission, inter alia, had requested that a range of mandate holders conduct visits to the country.[44] Arrangements were made for the Special Rapporteur to conduct a joint visit alongside the Special Rapporteur on the question of torture and the Special Rapporteur on violence against women, its causes and consequences, in early November.[45] During the visit, the Special Rapporteurs met with victims and witnesses of horrendous violence, stressed the need for effective investigations and emphasized that, if substantial progress was not made in the coming months, the Security Council should consider the establishment of further investigative mechanisms, including potentially an international criminal tribunal.[46]

62. The independent investigation on Burundi carried out pursuant to Human Rights Council resolution S-24/1 was likewise mandated at a special session of the Council, when the United Nations High Commissioner for Human Rights was requested to organize, on the most expeditious basis possible, a mission by existing independent experts to undertake an investigation, to engage with the authorities of Burundi and to ensure the complementarity and coordination of efforts with other United Nations and African Union actions. Two Special Rapporteurs (Mr. Heyns and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence) were appointed alongside a member of the African Commission on Human and Peoples' Rights. The independent experts found abundant evidence of gross human rights violations and human rights abuses[47] and sounded the alarm to the international community on the resulting potential threat to peace and security in the region.

63. On at least two occasions, the Special Rapporteurs engaged with the Security Council on the human rights situation in specific countries. Ms. Jahangir briefed the Council on the situation in Afghanistan in November 2002 and, more recently, Ms. Callamard briefed the Council on the situation in Iraq in February 2018.

64. The mandate holders also had opportunities to engage with other United Nations bodies, as was the case when Mr. Heyns briefed the State parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, in May 2014, on issues relating to lethal autonomous weapons.

65. The mandate holders also established a working relationship with UNODC in Vienna. As detailed above, the United Nations Congress on Crime Prevention and Criminal Justice (formerly the United Nations Congress on the Prevention of Crime and the Treatment of Offenders) was instrumental in the process leading up to the creation of the mandate and in developing some of its core instruments. In more recent years, the Special Rapporteur has collaborated with UNODC in the revision of the

[44] Commission for Human Rights resolution 1999/S-4/1.
[45] A/54/660.
[46] Ibid., para. 74.
[47] A/HRC/33/37.

Minnesota Protocol and the development of the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement. The Special Rapporteur also provided inputs to the Global Study on Homicide published by UNODC and received valuable contributions from UNODC for the preparation of his most recent report to the Human Rights Council.[48]

66. Over the past decade, the mandate holders have endeavoured to collaborate productively with regional human rights mechanisms. Mr. Heyns, for example, was among the drafters of the Addis Ababa road map, aimed at strengthening collaboration and synergies between the special procedure mandate holders and the African Commission on Human and Peoples' Rights.[49] He then specifically collaborated closely with the analogous mechanism of the African Commission, including during the adoption of its General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), which has become an important normative reference point in Africa and beyond.

67. Engagement has also been sought with the Intergovernmental Commission on Human Rights of the Association of Southeast Asian Nations, a consultative body of the Association, particularly on issues relating to the death penalty.[50]

68. More recently, the Special Rapporteur has been working to forge stronger technical working relations with the Inter-American Court of Human Rights, including for the promotion and implementation of standards developed by the mandate holders, such as the Minnesota Protocol.

VII. Imposition of the death penalty and its impact

69. In 2012, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, argued that a new approach was needed, as there was evidence of an evolving standard to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture, which was developing into a norm of customary law, if it had not already done so.[51]

70. Ten years later, in the present report the Special Rapporteur on extrajudicial, summary or arbitrary executions revisits death penalty practices using the lens of torture. He also stresses that the impact of the death penalty goes beyond the individuals sentenced to death. He therefore extends the analysis to families, who are often neglected and invisible bearers of pain and harm caused by the punishment of death.

71. When preparing the present report, the Special Rapporteur sought contributions from Member States, international and regional organizations, national human rights institutions, NGOs, and communities and other stakeholders.[52] He is grateful to all those who responded.[53]

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[48] A/HRC/50/34.

[49] See OHCHR, "Dialogue between special procedures mandate-holders of the UN Human Rights Council and the African Commission on Human and Peoples' Rights", available at www.ohchr.org/sites/default/files/Documents/HRBodies/SP/SP_UNHRC_ACHPRRoad_Map.pdf.

[50] For example, at the human rights dialogue held by the Intergovernmental Commission in Jakarta in 2014, from which the idea of a thematic study emerged. See A/69/265, para. 52.

[51] A/67/279, para. 74.

[52] The present report was written with the support of Eleos Justice – a collaboration between the Capital Punishment and Justice Project and the Faculty of Law at Monash University in Australia.

[53] A total of 27 submissions were received. They can be found at www.ohchr.org/en/calls-for-input/calls-input/call-input-imposition-death-penalty-and-its-impact.

A. Conditions on death row and methods of execution[54]

1. Anguish of waiting for execution

72. Scholars have argued that psychological torture is an inherent feature of capital punishment. The death penalty causes the individual on death row to "anticipate physical harm for an appreciable period of time", and the individual is "helpless to prevent that harm", both of which are essential elements of psychological torture.[55] Indeed, anticipation by individuals of their execution has, in some cases, led to self-harm and suicide and other health challenges, including heart disease and strokes.[56] While the anguish of awaiting one's execution is in itself undeniable, different practices by countries produce unique dimensions to that anguish. In some countries, individuals on death row are notified of their execution only a few hours in advance; in others, individuals may face imminent executions multiple times, as the victim's family has the power to grant a pardon or reopen blood money negotiations at any time.[57]

2. Harsh conditions on death row

73. Individuals await their execution in conditions that can be dehumanizing, and certain conditions on death row, such as solitary confinement, may, depending on the circumstances, constitute torture.[58] In 1999, the Committee against Torture, for instance, found that the sensorial deprivation and the almost total prohibition of communication imposed on some detainees held in a maximum security detention centre caused persistent and unjustified suffering to them that amounted to torture.[59] Many of the submissions received in response to the call for input documented individuals on death row being held in solitary confinement for from 21 to 23 hours a day and, in some cases, with minimal to no lighting and limited access to fresh air.[60]

74. Overcrowding is a common problem in detention facilities worldwide, often resulting in the aggravation of other problems affecting the human rights of those deprived of liberty, including those on death row. Examples include: being detained in an eight-by-ten-foot cell, shared by up to 10 prisoners for 22 hours a day, while the remaining hours are spent walking handcuffed around the prison; a lack of toilets in cells and denial of medical assistance, resulting in the spread of infectious diseases; and overcrowding leading to poor security measures, evidenced by the continued

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[54] The present report is focused on the post-sentence impact of the death penalty. While it is beyond the scope of the report, torture can be carried out before an individual receives a death sentence; numerous submissions were made concerning the treatment of individuals being accused of a capital offence, including a lack of access to legal representation and the use of torture and ill-treatment to elicit forced confessions.

[55] John D. Bessler, "Torture and trauma: why the death penalty is wrong and should be strictly prohibited by American and international law", *Washburn Law Journal*, vol. 58 (2019).

[56] Submission by Harm Reduction International, para. (c) (iii).

[57] Joint submission by CrimeInfo and Eleos Justice, sect. 4; submission by Abdorrahman Boroumand Center for Human Rights in Iran, p. 1.

[58] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has defined solitary confinement as "the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day". Prolonged solitary confinement refers to "any period of solitary confinement in excess of 15 days", because at that point "some of the harmful psychological effects of isolation can become irreversible". See A/66/268, para. 26.

[59] A/56/44, para. 186.

[60] Joint submission by the Anti-Death Penalty Asia Network, the Capital Punishment Justice Project and Eleos Justice, para. 1.1; submission by Harm Reduction International, para. (c) (i); joint submission by CrimeInfo and Eleos Justice, sect. 1; submission by Odhikar, p. 3; and submission by the Texas after Violence Project, para. 2.

acquisition of sharp weapons in correctional facilities.[61] One submission also included a report of the use of shackles on hands and feet at all times on individuals on death row.[62] The long-term exposure of those held on death row to such conditions amounts to cruel, inhuman and degrading treatment.

75. The mental health impact on individuals on death row, often exacerbated by a lack of mental health care and services, is also of concern. A study on the psychological consequences of death row found that the majority of those interviewed had at least one mental illness, which could be attributed to the conditions of death row incarceration.[63] Similarly, another study found a significant number of death row prisoners reporting feelings of anxiety, depression and sadness; some reported self-harm and attempted suicide.[64]

3. Death row phenomenon: length of time spent on death row

76. The "death row phenomenon" – the emotional distress suffered by prisoners on death row – has been recognized by the Human Rights Committee and other bodies at the international, regional and national levels. Depending on the circumstances, including the length of time spent on death row, this may amount to torture or other cruel, inhuman or degrading treatment or punishment.[65] This concept "entered the mainstream of human rights vocabulary"[66] with the 1989 judgment of the European Court of Human Rights in *Soering v. the United Kingdom*. The Court held that, having regard to the period of time inmates would in average spend on death row (from six to eight years), as practised in the State of Virginia of the United States of America, and the extreme conditions of such detention regime, including the ever-present and mounting anguish of awaiting execution of the death penalty, as well as to the personal circumstances of the applicant, especially his age and mental state at the time of the offence, the applicant's extradition to the United States would expose him to a real risk of treatment going beyond the threshold set in article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

77. In 1993, the Judicial Committee of the Privy Council of the United Kingdom of Great Britain and Northern Ireland took the approach that the length of time on death row could be the sole factor in constituting cruel or inhuman punishment. The case of *Pratt and Morgan v. Jamaica* created a presumption that spending more than five years on death row met the criteria necessary for a finding of death row phenomenon. The reasoning was that the national appeals process should take approximately two years, and an appeal to an international body should take approximately 18 months. By combining the two and adding an appropriate amount of time for reasonable delay, the court was able to come up with a timetable of five years.[67] On the basis of this ruling, some scholars have argued that delay in execution alone is enough to support a finding of death row phenomenon.[68] Submissions received by the Special Rapporteur

[61] Submission by Harm Reduction International, para. (c) (ii); and submission by Lembaga Bantuan Hukum Masyarakat, para. 2.

[62] Submission by the Rights Practice, p. 2.

[63] Project 39A, *Deathworthy: A Mental Health Perspective of the Death Penalty* (Delhi, National Law University, 2021).

[64] Human Rights Commission of Sri Lanka, "Prison study by the Human Rights Commission of Sri Lanka" (2020).

[65] A/HRC/36/27, para. 3.

[66] William A. Schabas, *The Death Penalty as Cruel Treatment and Torture: Capital Punishment Challenged in the World's Courts* (Boston, Northeastern University Press, 1996), p. 115.

[67] See A/67/279, para. 46.

[68] E.g. Caycie D. Bradford, "Waiting to die, dying to live: an account of the death row phenomenon from a legal viewpoint", *Interdisciplinary Journal of Human Rights Law*, vol. 77, No. 84 (2010).

highlighted delays in execution beyond the five years stipulated in *Pratt and Morgan v. Jamaica*; the longest reported was an average of 22 years.[69]

78. According to Mr. Méndez, prolonged delay is, however, only one cause of the death row phenomenon. The above-mentioned approach risks conveying a message to States that they should carry out a capital sentence as expeditiously as possible after it is imposed. However, the extreme anguish suffered by those awaiting an execution inevitably marked by pain and suffering cannot be overcome by a swift justice system, which, in addition, might carry the risk of lacking adequate procedural guarantees to prevent the execution of the innocent.[70]

4. Methods of execution

79. The Human Rights Committee, in its general comment No. 36 (2018) on the right to life, clarified that the following methods of execution were contrary to the prohibition of torture or cruel, inhuman or degrading treatment or punishment contained in article 7 of the International Covenant on Civil and Political Rights: stoning; injection of untested lethal drugs; gas chambers; burning and burying alive; and public executions, as well as "other painful and humiliating methods of execution".[71] At the regional level, in certain cases, the following methods of execution were found to constitute cruel, inhuman or degrading treatment or punishment: gas asphyxiation, because asphyxiation by cyanide gas might take more than 10 minutes;[72] stoning;[73] hanging;[74] firing squad;[75] beheading; and lethal injection.

80. Lethal injection has led to the highest percentage of botched executions.[76] There have been reports that it causes excruciating pain and prolonged suffering, which could amount to torture.[77] Autopsies of those executed by lethal injection found evidence of pulmonary oedema in most cases. This indicates that those executed experienced physical and emotional pain, as if they were drowning or asphyxiating, and they no doubt experienced panic. A United States federal district court ruled in 2018 that pulmonary oedema, as shown in those autopsies, reached the Supreme Court standard for cruel and unusual punishment, equating lethal injection to the "torture tactic known as waterboarding".[78]

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[69] Submission by the Texas after Violence Project, para. 1; joint submission by CrimeInfo and Eleos Justice, para. 1; and submission by Odhikar, p. 4.

[70] A/67/279.

[71] Human Rights Committee general comment No. 36, para. 40. This was reiterated the following year by the Human Rights Council in A/HRC/42/28, para. 16.

[72] *Charles Chitat Ng v. Canada* (CCPR/C/49/D/469/1991), para. 16.4; and A/HRC/42/28.

[73] European Court of Human Rights, *Jabari v. Turkey*, No. 40035/98, paras. 33–42; and Commission on Human Rights resolution 2003/67. See also Commission on Human Rights resolutions 2004/67 and 2005/59; CCPR/C/SDN/CO/5, para. 30; and CCPR/C/MRT/CO/2, para. 25.

[74] High Court of the United Republic of Tanzania, *Republic v. Mbushuu alias Dominic Mnyaroje and Kalai Sangula*, 1994 TZHC 7, 22 June 1994; African Court on Human and Peoples' Rights, *Ally Rajabu and others v. United Republic of Tanzania*, No. 007/2015, para. 119; and A/HRC/19/61/Add.3, para. 109.

[75] A/67/279, para. 40; Inter-American Commission on Human Rights, *Roberto Girón and Pedro Castillo Mendoza v. Guatemala*, No. 76/17, Case 11.686, paras. 111–118.

[76] Death Penalty Information Center, "Botched executions", available at https://deathpenaltyinfo.org/executions/botched-executions.

[77] CAT/C/USA/CO/2, para. 31; CAT/C/USA/CO/3-5, para. 25; Inter-American Commission on Human Rights, *Russell Bucklew v. United States*, No. 71/18, Case 12.958, para. 78; A/HRC/45/20, para. 45; and A/HRC/42/28, para. 15.

[78] National Public Radio, "Gasping for air: autopsies reveal troubling effects of lethal injection", 21 September 2020.

5. Impact of the death penalty on families

81. Families of individuals on death row are often invisible bearers of pain and harm caused by the punishment of death. While the present report is focused on families of individuals on death row, in no sense is it intended to reduce recognition of the similar pain suffered by the families of murder victims, including grief, trauma and financial loss.[79] The treatment of families of murder victims, on the one hand, and of families of those on death row, on the other, cannot be regarded as a zero-sum game. More consideration can and should be given to both groups.

6. Contact with families

82. In its resolution 30/5, the Human Rights Council recalled that secret executions or those with short or no prior warning added to the suffering of the persons sentenced to death, as well as of other affected persons, and called upon States to ensure that children whose parents or parental caregivers were on death row, the inmates themselves, their families and their legal representatives were provided, in advance, with adequate information about a pending execution, its date, time and location, to allow a last visit or communication with the convicted person and the return of the body to the family for burial, or to provide information about where the body was located, unless that was not in the best interests of the child.[80]

83. Some countries have started to recognize the importance of paying attention to the families of those facing capital punishment. For example, the Supreme Court of India laid down guidelines to be followed prior to execution, including sufficient prior notice to individuals and their family members of the date and time of execution, to enable the individual to prepare mentally and to meet their family for one last time.[81] However, in some other countries, Governments deny families their right to family visits; where family visits are allowed, visiting conditions prohibit physical contact from trial to execution; and in some countries, no rules exist requiring families and legal representatives to be informed prior to execution.[82] Secrecy surrounding the death penalty deprives families of information about the imminent execution of their loved one and therefore of any opportunity to prepare for it. The Special Rapporteur was made aware of instances where families were not informed of the date, place or method of execution and sometimes learned of the execution days after it had been carried out, only through media or calls from fellow detainees.[83]

7. Treatment of bodies post-execution

84. Reporting on the importance of proper treatment and memorialization of mass graves, Ms. Callamard, the former mandate holder, described graves as spaces of intimate sorrow for those whose loved ones were interred there.[84] While much has been written on the imposition of the death penalty, little attention has been paid to the treatment of the bodies of the executed and the impact that it has on their families.

85. Generally, families receive the body of the person executed. However, in some countries, families are deprived of opportunities to bury their dead. There have been reported cases of authorities carrying out the burial without the family's knowledge

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[79] Susan F. Sharp, *Hidden Victims: The Effects of the Death Penalty on Families of the Accused* (New Brunswick, New Jersey, Rutgers University Press, 2005), pp. 10–11.

[80] See A/HRC/48/29, para. 9.

[81] Submission by Project 39A, para. 4.

[82] Submission by the Texas after Violence Project, para. 3; submission by the European Saudi Organization for Human Rights, para. 2; joint submission by the Anti-Death Penalty Asia Network, the Capital Punishment Justice Project and Eleos Justice, para. 2; and submission by the Taiwan Alliance to End the Death Penalty, para. 15.

[83] Submission by the European Saudi Organization for Human Rights, para. 5.

[84] A/75/384, para. 3.

and cases of authorities imposing conditions on the way in which the bodies are buried or putting pressure on families not to hold a funeral, especially when dissidents, activists or minorities have been executed.[85]

86. Not being able to see the bodies of their loved ones post-execution has led to families expressing long-lasting fears that their loved ones may have been subjected to forced organ harvesting.[86]

8. Threats, stigma and economic impact

87. Most submissions received by the Special Rapporteur highlighted the lack of support provided to families of individuals on death row.[87] Instead of support, they detailed the stigma associated with being a family member of an individual on death row, including cases where children of such individuals faced discrimination when seeking employment.[88] Many individuals on death row come from impoverished backgrounds, and their arrest, incarceration and execution compound the financial hardship suffered by their families. Indeed, many submissions received by the Special Rapporteur highlighted that the sentencing to death of the breadwinner rendered the family economically vulnerable by reducing the family income, further pushing the families into impoverishment and debt.[89]

B. Concluding remarks

88. Governments that retain the death penalty must comply with rigorous conditions imposed by international human rights norms and standards, which would make it "almost impossible to carry out the death penalty without violating the prohibition of torture and other cruel, inhuman or degrading treatment or punishment".[90] On the basis of the submissions received and the research carried out in this area, the Special Rapporteur comes to the same conclusion that Mr. Méndez reached 10 years ago: the death penalty as currently practised renders it tantamount to torture.

89. The question that remains unanswered is whether the death penalty per se amounts to torture. Ten years ago, when Mr. Méndez pointed out the emergence of a customary norm prohibiting the death penalty under all circumstances, 97 countries had abolished the death penalty; today, the number has increased to 108 countries.[91] The steady move away from the death penalty is irrefutable.

90. Subsequently, in his 2015 supplement to his quinquennial report on capital punishment, the Secretary-General concluded that the death penalty had no place in the twenty-first century, stating that, in the light of the evolution of international human rights law and jurisprudence and State practice, the imposition of the death penalty was incompatible with fundamental tenets of human rights, in particular

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[85] Submission by Abdorrahman Boroumand Center for Human Rights in Iran, p. 5; submission by Iran Human Rights, p. 7; and submission by the European Saudi Organization for Human Rights, para. 7.

[86] Submission by the Rights Practice, p. 6.

[87] Submission by the Taiwan Alliance to End the Death Penalty, para. 13; joint submission by CrimeInfo and Eleos Justice, sect. 2; and submission by the European Saudi Organization for Human Rights, para. 2.

[88] Submission by Project 39A, p. 10; submission by Ambika Satkunanathan, sect. 3; and submission by the Taiwan Alliance to End the Death Penalty, para. 12.

[89] Submission by Ambika Satkunanathan, sect. 3; submission by the Abdorrahman Boroumand Center for Human Rights in Iran, pp. 2–3; submission by Project 39A, pp. 7–8; submission by Odhikar, p. 3; and submission by the Rights Practice, p. 4.

[90] A/HRC/36/27, para. 16.

[91] Amnesty International, "Death penalty", available at www.amnesty.org/en/what-we-do/death-penalty/.

human dignity, the right to life and the prohibition of torture or other cruel, inhuman or degrading treatment or punishment.[92]

91. From an international law perspective, the two frameworks of the right to life and the prohibition of torture have certainly contributed to restricting the scope of the death penalty.[93] However, they have also created a conundrum in equating the death penalty with torture because of the explicit reference to the death penalty as an exception to the right to life in treaties.[94]

92. The absurdity created by the absolute prohibition of torture on the one hand and the restriction of the death penalty falling short of prohibition on the other is succinctly expressed by William Schabas, as follows:

> If you were to connect someone to electrodes and put jolts of electricity through them to get a confession, that would be torture and a violation of article 7 [of the International Covenant on Civil and Political Rights], unless you turned up the current enough to kill them, which would be okay. That is the paradox of dealing with the death penalty.[95]

93. Beyond the doctrinal analysis of treaties, and beyond the shrinking number of retentionist States clinging on to this lethal sentence as a legitimate form of criminal punishment, the idea that the death penalty does not constitute torture simply lacks persuasion. The Special Rapporteur therefore considers there to be an urgent and imperative need to resolve such legal uncertainty and calls upon the international community to address this contradiction. Lastly, the present report also sheds light on the treatment of the bodies of the executed and the impact that the death penalty has on their families. Individuals on death row live under dehumanizing conditions followed by a painful death. Families experience stigma, financial hardship and a lack of social support well beyond execution. Information about how the bodies of the executed are treated is significant not only for transparency surrounding the method of execution, but also for the proper memorialization of the executed, while secrecy in this regard further traumatizes the bereaved families. When we recognize the broader impact of the death penalty on families, their pain further undermines the legitimacy of the death penalty.

VIII. Conclusion

94. **The history of this mandate provides a case study for the role that can be played by special procedure mandate holders in casting light on priority issues for the international community, both as a singular voice and as a convening authority for a wider range of technical expertise. Over the 40 years of its existence, a growing corpus of normative guidance has been produced by various international bodies, and the mandate holders have played an important role in inspiring and drafting some of it, in particular for the prevention and investigation of unlawful killings and for helping with their promotion and effective implementation.**

95. **At this juncture, it might be said that this is a mandate for which there is overwhelming normative consensus about the questions of principle and widespread public commitment to implement those norms in national legislation.**

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[92] A/HRC/30/18, para. 55.

[93] A/HRC/36/27; A/HRC/10/44; and A/HRC/19/61/Add.4.

[94] William Schabas, "International law and the abolition of the death penalty", in *Comparative Capital Punishment*, Carol S. Steiker and Jordan M. Steiker, eds. (Cheltenham, United Kingdom, and Northampton, United States, Edward Elgar Publishing, 2019).

[95] Monash Faculty of Law and the Capital Punishment Justice Project, "Eleos Justice: in conversation with Professor William Schabas", video, 15 July 2021, available at www.monash.edu/law/events/archive/conversation-series-with-william-schabas.

Below the surface, however, there remains an implementation gap that still requires a concerted effort on the part of the international community, States, civil society, academia and the private sector to make effective the absolute and universal prohibition of unlawful killings and the duty to protect the right to life. As part of that effort, the work of independent investigations and implementation of preventive measures must be empowered both through the adoption of appropriate legal regimes and through adequate resourcing.

96. **The stark reality of extrajudicial, summary or arbitrary executions continues to be brought to the Special Rapporteur's attention from around the globe and on a daily basis. This range of current and potential emerging challenges, the prevalence of unlawful killings around the world and the complexity of investigating them make the mandate as relevant today as when it was created.**

IX. Recommendations

97. **On the basis of this historical review of the 40-year history of the mandate, the Special Rapporteur wishes to formulate the below recommendations.**

A. To international organizations

98. **Given the salience of the issues considered under the mandate, and the extent to which they can often have direct implications for peace and security, further opportunities should be facilitated for engagement between the Special Rapporteur and the Security Council.**

99. **United Nations agencies should collaborate with the mandate holder to help to fill the implementation gap between the rich normative guidance on the investigation and prevention of unlawful killings and the shortcomings and deficiencies of national practice. OHCHR and resident coordinators can play a key role in identifying opportunities and support concrete initiatives for such technical assistance through their field presences.**

100. **Regional human rights bodies should consider making greater use of the mandate's core normative documents, and especially those more recently adopted, such as the revised Minnesota Protocol or the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement.**

B. To Member States

101. **The mandate holder stands ready to provide technical assistance to Member States to build their own capacity, to revise or create national legislation regulating the use of force by State actors and to create effective and reliable investigative mechanisms to help to ensure the effective investigation and prevention of unlawful killings, in line with international human rights standards and forensic best practices. When formulating the resolution renewing the mandate, States should consider establishing the provision of such assistance as a core working method and supplying adequate resourcing to facilitate the same.**

102. **States should update the training curricula for its agents mandated to use force, so as to bring them into line with international standards.**

103. **States should establish and provide adequate resources for independent investigative mechanisms, including medico-legal death investigation systems, to**

monitor the use of force by State officials and to conduct effective investigations into potentially unlawful deaths, in accordance with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the Minnesota Protocol, developed with the substantive contribution of the mandate holder.

104. **States should promote and support international cooperation and the sharing of best practices concerning medico-legal investigations, including by means of South-South cooperation.**

C. To civil society organizations

105. **The mandate holder continues to rely on active collaboration with civil society, and the Special Rapporteur encourages civil society organizations to continue their invaluable engagement with the mandate holder, both on issues of thematic concern and on specific cases and country situations.**

106. **Where possible, civil society organizations should step up their role of monitoring role the implementation of standards and recommendations from the mandate holder, to help to identify, document and address failures in their effective implementation.**

D. To academia

107. **Institutions of higher learning should consider creating or enriching specialized educational programmes and research (including through partnerships) on the mandate holder's work, standards and recommendations, at the local, regional and international levels.**

108. **Academic institutions should also consider the potential for projects aimed at understanding the nature of the implementation gap. The mandate holder stands ready to collaborate with such initiatives, as has recently been pioneered with respect to the review of global medico-legal practices undertaken at Monash University.**

E. To the private sector

109. **Businesses should be guided by the standards developed by the mandate holder while ensuring that they respect human rights, including the right to life, and should consider contributing to capacity-building efforts for the prevention and investigation of potentially unlawful deaths.**

F. On the death penalty

110. **The Special Rapporteur urges States, intergovernmental organizations, academia and NGOs to contribute multidisciplinary research on the question of whether, in the present day, the death penalty can be considered compatible per se with the absolute prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment; on the so-called death row phenomenon; and on the overall negative impact that the death penalty may have on the human rights of the family members of those sentenced to death and awaiting execution.**