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Statement by Philip Alston

**SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY
EXECUTIONS**

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Mr. Chairman, distinguished delegates,

Introduction

No State is free of human rights violations. Thus, the challenge is to ensure that the system of accountability established by the United Nations is able to function effectively in relation to as many States as possible. I am pleased to be able to report that, over the past couple of years, a number of States have cooperated fully with the Special Rapporteur on extrajudicial executions by facilitating a visit. They include the United States of America, Brazil, Afghanistan, Colombia, Kenya, and the Democratic Republic of the Congo.

By the same token, I must also report to the General Assembly that more than two-thirds of the States to which I have addressed a request to visit have either rejected my request or simply not responded. It is particularly striking that this includes almost a quarter of the entire membership of the Human Rights Council. As of today, I have unsuccessfully requested visits in relation to 11 Council members, all of which have pledged to cooperate fully with it and its procedures. Those States are: Bangladesh, China, Egypt, India, Indonesia, Kyrgyzstan, Mexico, Pakistan, the Russian Federation, Saudi Arabia, and South Africa. Many of these requests to visit were first made many years ago. Of this group, only Mexico has indicated that it might consider a visit.

It goes without saying that this record significantly constrains my ability to effectively carry out the responsibilities entrusted to me by the Council. It also means that some of the worst alleged instances of extrajudicial executions in the world remain unexamined by the mandate. It is true that no individual State has an obligation to admit a given Special Rapporteur at a particular time. But when a wide range of large and important States does not permit United Nations scrutiny of alleged killings over a period of almost a decade, there is something badly amiss with the system.

Thematic issues

Mr. Chairman, in addition to country visits, the analysis of thematic issues is an essential part of my mandate. In the year ahead, I plan to examine in detail the legal framework relevant to the practice of “targeted killings,” as well as a range of issues relating to fact-finding that have arisen in relation to my mandate. In my current report to the General Assembly I have focused on the problem of killings by vigilantes and mobs.

Combating vigilante and mob justice killings

The report demonstrates that the problem of vigilante killings is both very widespread and often ignored by the international community. It also shows that covert or overt official involvement in, or encouragement of, vigilante killings is quite common. It recommends that States should take comprehensive efforts to ensure that they are not supporting or encouraging vigilante killings in any way, either directly or indirectly. Where the relevant senior officials do not publicly denounce any instances of vigilante killings, there is a reasonable presumption that they have failed to take the measures required of them under international human rights law. Where vigilante killings persist for a sustained period, and the relevant police or municipal authorities have failed to take measures to reduce or eliminate them, national Governments should introduce a system of penalties designed to ensure that the appropriate measures are taken. In reducing vigilante killings, the prompt investigation, prosecution, and punishment of perpetrators is crucial.

Democratic Republic of the Congo

I finished my mission to the DRC just a week and a half ago. I am pleased to be able to report that I received cooperation from the Government. Inevitably, in such a vast country and one which has experienced so many threats to its peace and security many challenges have arisen.

One particular incident encapsulates several of those challenges. I received compelling evidence in relation to killings by the Congolese army (the FARDC) of at least 50, and probably many more, civilians and the rape and abduction of some 40 women in Shalio (North Kivu) between 27-30 April 2009. About two weeks later this incident gave rise to apparent retaliation killings of at least 96 civilians by the FDLR armed group in Busurungi. This incident serves to highlight three separate issues.

The *first issue* concerns the extent to which the FARDC remains a makeshift coalition of former militia groups, too many of whom remain untrained, unreliably paid, often undisciplined, and heavily prone to violence. The *second issue* is that these forces are being fully supported by the UN mission, MONUC, pursuant to the relevant Security Council resolutions. This raises major questions as to the measures already taken, and those that still need to be taken, by MONUC to ensure that it is not implicated in the killings, rapes and other violations being committed by its partners. When I asked MONUC officials about the actions they have taken in response to allegations of FARDC abuses, I received generic assurances but far too few specifics to be able to reach any satisfactory conclusions. A full MONUC accounting of the steps it took subsequent to the Shalio massacre would be very welcome. The *third issue* concerns impunity. Immediately after my statement in Kinshasa about the Shalio massacre, the DRC's Information Minister, Lambert Mende, stated that the Government was aware of the massacre but was not prepared to take action against Lieutenant Colonel Innocent Zimulinda, the commander responsible, on the grounds that his "arrest would have had worse consequences than the crimes of which he is accused." This is the same Minister who has called human rights groups "humanitarian terrorists" and who is overseeing a process of accreditation of all journalists in the country which has already dramatically

reduced freedom of the press. This state of impunity is illustrated even more dramatically by the fact that MONUC officials have themselves indicated that they will not take steps to arrest General Bosco Ntaganda, a FARDC (former CNDP armed group) commander whose whereabouts are well known and for whom the International Criminal Court has issued an arrest warrant.

The policy of permitting impunity, under the slogan of “peace first, justice later”, must be abandoned. The United Nations should no longer support this approach. In addition, the Security Council should insist that all FARDC members be required to wear uniforms that identify their individual names and unit affiliation. This would at least remove the absolute anonymity currently enjoyed by those soldiers who loot, rape and kill at will.

Three other issues warrant mention here. The first is the need for a more concerted international campaign against the Lord’s Resistance Army. Contrary to the position of the DRC Government, the LRA continues to be very active in the DRC as well as in the region generally. The consequences in terms of killings, kidnappings, looting and large-scale displacement are horrendous.

Second, the Republican Guard should be fully integrated into the FARDC. Unless this happens, there is a strong likelihood that it will in the future become an uncontrollable and explosive obstacle in the way of free elections and democratic governance.

Third, being imprisoned in a DRC jail is often a fate worse than hell. Prison conditions must be addressed urgently. After my visit to the DRC, I am more convinced than ever that the Human Rights Council should immediately appoint a Special Rapporteur on the rights of detainees, an area that remains chronically neglected around the world.

Kenya

I visited Kenya in February 2009. I identified three major issues. The first was the police death squads that had been shown to kill hundreds of people arbitrarily and brutally. I called for the dismissal of the Police Commissioner whose responsibility was documented. He has since been relieved of his command, but promoted to another high Government post. Otherwise, there has been no serious Government investigation into the police death squads, and none of the known perpetrators have been arrested or prosecuted.

The second issue concerned torture and unlawful killings by the police and military in Mt Elgon. Again, no serious investigation has been undertaken and both groups remain in denial about the abuses.

The third issue concerned prosecutions of those responsible for the post-election violence which killed well over 1,000 persons in December 2007 and January 2008. In the absence of appropriate action by the Parliament, the ICC has announced that it has begun sustained investigations. I warmly welcome this initial move against impunity.

Colombia

I visited Colombia in June and held meetings in Bogotá, Antioquia, Santander, and Meta. The most prominent issue concerned the so-called “false positives” (*falsos positivos*) in which victims are lured under false pretenses by a “recruiter” to a remote location, killed by the military, and reported as combat killings in order to gain rewards for their killers. I found no evidence indicating that the killings had been directed from the top, but it was also clear that the claim that the killings were carried out on a small scale by a few bad apples was far from the case. The sheer number of cases, their geographic spread, and the diversity of military units implicated, indicate that these killings were carried out in a more or less systematic fashion by significant elements within the military.

The biggest challenge flowing from these killings is impunity. While important measures have been taken, there continue to be strong indications that many military judges ignore presidential directives and Constitutional Court rulings and do all in their power to thwart the transfer of clear human rights cases to the ordinary justice system. These tactics discredit both the military and ordinary justice systems and raise the very real spectre of continuing impunity.

United States of America

In June I reported to the Human Rights Council on my mission to the USA, and the Government informed the Council that it would study the report. Since that time I have heard nothing. Of the many concerns that I raised, one has grown dramatically in importance since June. It concerns the use of unmanned drones or predators to carry out targeted executions. While there may be circumstances in which the use of such techniques is consistent with applicable international law, this can only be determined in light of information about the legal basis on which particular individuals have been targeted, the measures taken to ensure conformity with the international humanitarian law principles of discrimination, proportionality, necessity and precaution, and the steps taken retrospectively to assess compliance in practice. I consider that, unless the US Government moves to answer these questions, it will increasingly be perceived as carrying out indiscriminate killings in violation of international law.

Mr Chairman, I shall be happy to answer questions on any issue relating to my mandate or my report.