

Committee: Legal Committee

Issue: Extrajudicial killings in counter-terrorism operations

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Position: Co-Chair

PERSONAL INTRODUCTION

My name is Christopher Vogiatzis and I am currently a junior at Pierce - The American College of Greece. It is my honour and privilege to have been appointed to the position of a Co-Chair in the Legal Committee of the 3rd ACG MUN Conference. My MUN experience began back in the 1st ACG MUN Conference and since then I have served as a delegate, ambassador and advocate in eight conferences. MUN has become a significant part of my life and I hope I can pass on my passion for it to you. I hope you take great interest in the topics and look forward to a fruitful debate.

This Study Guide sets the foundation of your research and I do encourage you to further look into the topic yourselves. For any inquiries do not hesitate to contact me at: C.Vogiatzis@acg.edu.

Best Regards,
Christopher Vogiatzis

TOPIC INTRODUCTION

Terrorism is an issue that affects the entirety of the world and counter-terrorism operations have been successful many times in the elimination of terrorism. However, even in such operations, there can be mishaps. Regrettably, there have been many extrajudicial killings in the name of counter-terrorism and that is a topic of great importance; and more specifically one that the United Nations is trying to purge.

First and foremost, Agnes Callamard is a very significant individual in this topic. She has been appointed to the position of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, a position that will be further elaborated upon later in the study guide. It is essential, however, to keep in mind that her most important duty is to visit countries so as to ensure that the right to life is not being violated.

Moreover, one of the countries that suffer the most from this phenomenon is Kenya. In February 2009, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions conducted a visit to Kenya, so as to gather information regarding extrajudicial punishment. The



1#“Activists carry a mock coffin at the Nairobi protest”

Special Rapporteur’s report stated that police in Kenya would not hesitate to execute individuals without any judicial procedures being conducted first. Many suggestions and possible solutions were included in the report, most of which are yet to be implemented by the country. A Wajir resident on October 22, 2015, said: “No one here reports to police because

they fear for their lives... Some people have been missing for more than nine months. Some are taken for a few weeks or days for questioning and then returned, so it is a situation that disturbs every Wajir resident. People fear and keep asking themselves who the next victim will be.”¹

A good example for the aforementioned would be the story of 45-year-old Farah Ibrahim Korio. On June 29, 2015, three nameless men appeared at his door looking for him. He was not there at that time, so they threatened his wife and children in order to discover his whereabouts. When Farah was informed of this, he agreed to meet the area chief at Wajir

¹ Namwaya, Otsieno. “Deaths and Disappearances | Abuses in Counterterrorism Operations in Nairobi and in Northeastern Kenya.” Human Rights Watch, 12 July 2017, hrw.org/report/2016/07/20/deaths-and-disappearances/abuses-counterterrorism-operations-nairobi-and.

police station the next day. Upon his arrival, he discovered that these three men who were searching for him were military intelligence officers and were present in the police station as well. It is believed that Farah Ibrahim Korio is one of thirty-four people who after having been taken into custody, by security forces, vanished. All these enforced disappearances occurred during counter-terrorism operations in northeastern Kenya between 2013 and 2015 and the peoples' whereabouts still remain unknown, not to mention the eleven bodies that had been found by the year 2016. Many victims of such mistreatment in Kenya have described raids, sometimes during the night, conducted by officers without search or arrest warrants.

Pakistan is also a country that is infamous for the extrajudicial executions that take place there. The Human Rights Commission of Pakistan reported that 2,108 men and seven women had been killed in police encounters there, during the year 2015.

Lastly, it is highly claimed that a raid in Sinai, Egypt, may have been staged in order to cover up extrajudicial executions as Human Rights Watch believes that in January 2017, Egyptian internal security forces killed between four to ten men. The Interior Ministry claimed that in a house in Al-Arish, ISIS fighters were spotted thus forcing troops to raid the house when they came under fire, they returned fire, killing all ten men inside. The Ministry has named six of the dead people and went on to accuse them of participating in terrorist operations, whilst the other four men remain anonymous. An investigation was conducted and evidence such as, but not limited to, interviews with the victims' relatives indicates that some of the men were arrested months before the incident. Therefore, we easily realize that the raid could potentially be a cover-up.

The above mentioned are bold examples of the situation in many countries and how serious it can be. Extrajudicial killings are a violation of the right to life and need to be brought to an end promptly.

DEFINITION OF KEY TERMS

Extrajudicial

The word extrajudicial is used to describe any actions that are done without addressing the legal system and getting its permission first. On that note, it can also describe a decision not taken in a court of law².

Extrajudicial Killing

Seeing as the word extrajudicial means something done without using the official legal system, the phrase extrajudicial killing is simple to decipher. Extrajudicial killing is an execution that had not been authorized by the judgment of a court³.

² EXTRAJUDICIAL | Meaning in the Cambridge English Dictionary, dictionary.cambridge.org/dictionary/english/extrajudicial.

Enforced Disappearance

Enforced disappearance is the literal vanishing of an individual, when state officials or other individuals acting with state consent, capture them and then refuse to reveal where they are being kept. Victims of such disappearances are often never seen again since an enforced disappearance can often lead to an extrajudicial killing⁴.

Terrorism

It is thought-provoking that there is not a universally agreed definition for this term, however, a common definition of the word exists. In order to describe an action as terrorism, the following three elements are required: Firstly, the perpetration of a crime, or threatening to commit one. Secondly, the intent to spread fear among the population by creating public danger or trying to pressure an authority into doing (or not doing) something. Lastly, the act needs to involve a transnational element⁵.

Counter-terrorism operations

These are political or military actions that are meant to prevent or eliminate all forms of terrorism in a country⁶.

Political Assassination

This term describes the murder of a political figure for political or ideological reasons, with motives ranging from money and power to military purposes⁷.

Special Rapporteur

This position is appointed by the Human Rights Council. Special Rapporteurs are independent experts on particular human rights issues; they examine and report back on countries. Special Rapporteurs are appointed to serve for three years, however, their mandate can be extended to six years⁸.

BACKGROUND INFORMATION

³ Extrajudicial Killing Law and Legal Definition | USLegal, Inc, [definitions.uslegal.com/e/extrajudicial-killing/](https://www.uslegal.com/e/extrajudicial-killing/).

⁴ Everything You Need to Know about Enforced Disappearances and Human Rights, [amnesty.org/en/what-we-do/disappearances/](https://www.amnesty.org/en/what-we-do/disappearances/).

⁵ Counter-Terrorism Module 4 Key Issues: Defining Terrorism, [katharina.kiener-manu unodc.org/e4j/en/terrorism/module-4/key-issues/defining-terrorism.html](https://www.unodc.org/e4j/en/terrorism/module-4/key-issues/defining-terrorism.html).

⁶ "Counterterrorism | Definition of Counterterrorism in English by Oxford Dictionaries." Oxford Dictionaries | English, en.oxforddictionaries.com/definition/counterterrorism.

⁷ Legal, US, and Inc. Legal. Assassination Law and Legal Definition | USLegal, Inc. [definitions.uslegal.com/a/assassination/](https://www.uslegal.com/a/assassination/).

⁸ OHCHR | Special Rapporteur on Privacy. [ohchr.org/en/issues/privacy/sr/pages/srprivacyindex.aspx](https://www.ohchr.org/en/issues/privacy/sr/pages/srprivacyindex.aspx)

"No one shall be arbitrarily deprived of his life."

(International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on December 16, 1966)

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

The creation of this position signified the United Nation's effort to tackle this issue. The Human Rights Council established the mandate on summary and arbitrary executions in its resolution 1982/35 of 7 May 1982. The Special Rapporteur, right now, is Dr. Agnes Callamard, a highly qualified individual. She is the Director of Columbia University Global Freedom of Expression, while also being the special Adviser of Lee Bollinger, President of Colombia University. She has a great career in human rights and humanitarian work. She spent nine years as the Executive Director of Article 19, founded and led the current CHS Alliance and lastly, served as the Chef de Cabinet for the Secretary General of Amnesty International and as Amnesty International's Research-Policy Coordinator. She has conducted human rights investigations in over thirty countries, whilst publishing documents on human and women's rights, freedom of expression, refugee movements and the methodology of human rights investigation. She has even participated in the making of volumes on the monitoring of political killings, excessive use of force and torture and sexual violence in armed conflicts. She was appointed this position on August 1, 2016.

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#2 "Agnes Callamard (center), Special Rapporteur on extrajudicial, summary or arbitrary executions delivering a speech on Jamal Khashoggi's death"

Information is often brought to the Special Rapporteur concerning cases of alleged extrajudicial executions and after receiving this information she has to examine it and analyze it. If the allegations stand, then they are transmitted to the Government concerned. If after examination there is any possibility for murder, she immediately transmits urgent appeals to the Government at hand, so as to prevent any deaths. Visiting the countries under question, there can be first-hand knowledge of the situation at this certain area and the Special Rapporteur can write an appropriate report and properly make suggestions and recommendations in order to improve the situation adapted to each country's reality.

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The murder of Willie Kimani

Mr. Willie Kimani was a human rights lawyer based in Nairobi; he had worked with the organization International Justice Mission, he was affiliated with the Law Society of Kenya and he was also a board member of Right Promotion Protection.

While travelling back home from Court, on June 23, 2016, Mr. Kimani went missing. With him were his client, Mr. Josephat Mwenda and their taxi driver, Mr. Joseph Muiruri. On July 1, 2016, the bodies of the three men were found in the Ol-Donyo Sabuk River, all the way in Machakos Country. The autopsies proved that before being murdered, the three men had to suffer torture and extreme violence. They had been hit with blunt objects on the head and strangled. The client, Mr. Mwenda appeared to have suffered more than the two other men.

The year before the incident Mr. Mwenda had filed a complaint with the Independent Policing Oversight Agency, regarding violations that had been carried out against him by an officer. On April 10, 2015, while riding a motorcycle with a friend, he was stopped by two AP officers dressed in civilian clothes. One of the officers shot him in the arm; which resulted in him being taken to the hospital under police custody. He proceeded in filing a complaint against the police and was later charged with “being in possession of narcotic drugs,” “gambling in a public space,” and “resisting arrest”⁹. After the incident, Mr. Mwenda faced multiple acts of harassment. For example, on December 13, 2015, the officer who had shot him picked him up at his house and took him to the Mlolongo Police Station, where he charged him with six forged charges. It is feared that his murder is related to the aforementioned.

On July 2, 2016, it was confirmed that three Administration Police officers, namely Frederick Leliman, Stephen Chebulet and Sylvia Wanjikuwere, were being held and were thought to be responsible for the murders. They appeared in Court on July 4, 2016, and it was ordered that they were detained for two more weeks, as investigations continued. However, this is not the first time something similar to this happens. Kenya, as mentioned before, is a country infamous for extrajudicial killings.

The murder of Jamal Khashoggi

Over the course of his life, Jamal Khashoggi became quite a successful journalist. He had written many opinion columns in the Washington Post and served as the deputy editor-in-chief of the newspaper Arab News. He also spent short periods of time in Afghanistan, in the 1980s, where he followed the rise of Osama bin Laden. His criticism of the Saudi government may have been the reason as to why he was murdered.

The last time he was seen was on September 28, 2016, when he was entering the Saudi consulate in Turkey. Before entering the building, he felt the need to give his fiancée two

⁹ “Kenya: Extrajudicial Killing of Human Rights Lawyer Willie Kimani, Together with His Client and Their Taxi Driver.” Worldwide Movement for Human Rights, 14 July 2016, <https://www.fidh.org/en/issues/human-rights-defenders/kenya-extrajudicial-killing-of-human-rights-lawyer-willie-kimani>

phones and ask her to call an adviser to Turkish President Recep Tayyip Erdogan if he didn't make it back. She actually stayed outside, waiting for him for more than ten hours.

Saudi Arabia spent two weeks denying giving any information regarding Mr. Khashoggi's death. They even claimed that the journalist left the consulate an hour later from when he entered. On October 20, however, State Television reported that the journalist had indeed been murdered there. Saudi officials gave many conflicting explanations of what happened whereas the Turkish government insists that he was tortured and strangled. Lastly, it is also supported that this killing had been planned in advance.

MAJOR COUNTRIES AND ORGANIZATIONS INVOLVED

Egypt

Dozens of extrajudicial killings have been reported in Egypt, most of which happened under suspicious circumstances, during the arrest of Islamists. The possibly staged raid in Sinai is a great example of such actions. Just as mentioned in the Topic Introduction, Egyptian security forces, after killing ten men, staged a counter-terrorism raid, in order to cover-up the murders. Investigations indicated otherwise, with lawyers and relatives of three of the killed men, all stating that these men had been arrested three to four months before the alleged raid took place. However, the Interior Ministry claimed that these men (six of whom are yet to be named) were in a house in which the security forces had tracked down ISIS fighters, thus conducted the raid. In the words of Joe Stork, deputy Middle East and North Africa director: "These apparent extrajudicial killings reveal total impunity for Egypt's security forces in the Sinai Peninsula under President Abdel Fattah al-Sisi's counterterrorism policies. Prosecutors need to conduct a full and transparent investigation to get to the bottom of what appear to be grave abuses."¹⁰



#3 "Commandos stealthily approaching a building"

India

In India, the situation seems even worse, with the perpetrators often being shielded and protected after committing extrajudicial murders. An example of this is the shooting of six people by soldiers on March 5, 2018. It was claimed that these men were involved in terrorism, by being either militants or "overground workers"¹¹. It was said that they failed to stop at a

¹⁰ "Egypt: Possible Extrajudicial Killings in Sinai." Human Rights Watch, 16 Mar. 2017, [hrw.org/news/2017/03/16/egypt-possible-extrajudicial-killings-sinai](https://www.hrw.org/news/2017/03/16/egypt-possible-extrajudicial-killings-sinai).

¹¹ "Overground workers" is a term used to describe civilians who provide support to armed groups.

checkpoint and opened fire; therefore the soldiers had acted in self-defence. Protests on this broke out, with the protestors saying that four of those men were not militants, but victims of either a staged encounter or an arbitrary shooting, thus they demanded an investigation.

Iraq

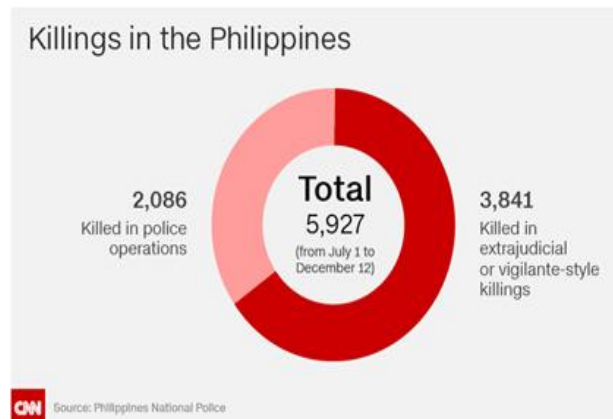
Twenty-six bodies have been found in government-held areas. Fifteen of these men were killed by government security forces because they had raised suspicion of Islamic State affiliation. It has been said that some of the men were extrajudicially executed by government security forces, after being held in custody. A foreign journalist said that a Sunni Popular Mobilization unit was responsible for the murder of twenty-five men that were in their custody.

Kenya

It takes nothing more than mere suspicions for Kenyan police to execute someone. This is the exact definition of an extrajudicial killing; there is no room for doubt. The people that are killed do not face any charges and most importantly: have not been tried. On September 6, 2018, Abdullahi Hassan, Amnesty International Researcher for Somalia wrote an article concerning the Mathare Social Justice Centre. Quoted from his article: “The names of some of the victims are displayed on boards and on the walls of their office as a stark reminder of the extent of the violations people from this neighbourhood have suffered at the hands of police who are meant to protect them.” There has even been a visit conducted by the Special Rapporteur so as to help. During the visit, it was discovered that extrajudicial executions were not uncommon and although the Special Rapporteur made many useful suggestions and recommendations for the combating of the issue, the situation there still remains disordered.

Philippines

It is undeniable that throughout Rodrigo Duterte’s presidency, the number of extrajudicial killings has risen. He himself has admitted to authorizing such executions, referring to it as his “only sin”. This, of course, contradicts previously made statements, where it was said that such acts were not state-sponsored.



#4 “An analysis of the 5,927 deaths linked to the War on Drugs in the Philippines.”

Amnesty International

Amnesty International has participated a lot in efforts to tackle this issue. Through articles and reports, it has managed to raise awareness on many issues around the globe, whilst providing logical, realistic and achievable solutions to the problems. When it published the “14-

Point Program for the Prevention of Extrajudicial Executions”¹² it touched upon some very good solutions that are worth mentioning. In summary, in point 1 it reminds that all countries should demonstrate their opposition to extrajudicial executions, in point 2 refers to the maintaining of strict chain-of-command control and in point 3 the restrains of use of force. There are eleven more points listed, all of which seem very effective. Recently, in June 2018, the organization published a report titled “Don’t bother, just let him die”¹³, referring to the lack of justice in West Papua. Through the report, it is made clear that impunity has made violations of human rights possible, without the danger of being prosecuted.

TIMELINE OF EVENTS

Date	Description of event
December 10, 1948	The adaptation of the Universal Declaration of Human Rights by the United Nations General Assembly.
December 16, 1966	The United Nations General Assembly adopts The International Covenant on Civil and Political Rights
December 10, 1984	The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is drafted.
February 16, 2009 – February 25, 2009	The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions visits Kenya, with a purpose to look into extrajudicial executions. Sadly, such incidents were discovered and noted.
June 23, 2016	A human rights lawyer, Mr. Willie Kimani is extrajudicially murdered after attending court, in a case involving an officer. He was killed while travelling back home. With him, his client, Mr.

¹²14-Point Program for the Prevention of Extrajudicial Executions, Amnesty International, Amnesty International, <https://www.amnesty.org/download/Documents/192000/pol350021993en.pdf>

¹³ Centre, ICP Documentation. Amnesty International Publishes New Report on Extra-Judicial Killings and Impunity in West Papua. 1 July 2018, humanrightspapua.org/news/28-2018/331-amnesty-international-publishes-new-report-on-extra-judicial-killings-and-impunity-in-west-papua.

	Josephat Mwenda and the taxi driver, Mr. Joseph Muiruri were also killed.
July 7, 2016	The “Philippine Daily Inquirer” publishes a “Kill List”, which leads to murders related to the anti-drug war.
August 30, 2016	Thirteen Kenyan and global human rights organizations request the Kenyan government to establish a commission that will investigate all enforced disappearances in the country.
September 28, 2018	The president of the Philippines, Rodrigo Duterte admits that extrajudicial killings have taken place on his watch, referring to this as his “only sin”.
October 2, 2018	Jamal Khashoggi, journalist and critic of the Saudi government is murdered. His killing took place into the country’s consulate in Istanbul.

RELEVANT RESOLUTIONS, TREATIES AND EVENTS

There are many documents regarding the fundamental right to life. Seeing as the right to life is the main one that is being violated through extrajudicial killings, such documents ought to be listed.

The Universal Declaration of Human Rights (1948)

The document, although it does not create any obligations for member-states, acknowledges that fundamental human rights are to be protected. Article 3 gives the most general recognition of the right to life: “Everyone has the right to life, liberty and security of person”. Perhaps, if the declaration had more of an obligatory aspect, article 3 would be respected by countries. In countries where people are too afraid to go to the authorities to report an enforced disappearance, the right to life seems ignored.

The International Covenant on Civil and Political Rights (1966)

Here the inherent right of every person to life is recognized. It states that it is a right that "shall be protected by law" and that "no one shall be arbitrarily deprived of life". It also states that political instability or any sort of public emergency does not justify any deprivation of the right to life.

These two documents are of great importance to this topic, but similar qualities can also be found in documents such as: The European Convention on Human Rights (1950), The American Convention on Human Rights (1969), The African Charter on Human and Peoples' Rights (1981).

The Convention Against Torture (1984)

A cornerstone convention while discussing this topic is the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or commonly known as the Convention Against Torture. In most cases, extrajudicial killings can meet the definition of torture, according to Article 1. Closely related to the Convention against Torture is the Committee Against Torture, which has been very active on this issue.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

As analysed before the Human Rights Council, in an attempt to solve this issue, created the position of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. It is the Special Rapporteur's obligation to report on such situations to the Human Rights Council and the United Nations General Assembly.

What's more, the Human Rights Council's resolution (35/15) has primarily urged the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions to continue monitoring suspicious situations of extrajudicial executions and to always submit his or her findings, alongside notes and recommendations, to the Human Rights Council and the United Nations General Assembly. It was also requested that they must respond to information sent their way, especially when there have been suspicions or threats.

Amnesty International has also been trying to tackle the issue, mainly by accurate suggestions and recommendations. Good examples of this are points 3 and 13 made in Amnesty International's "14-Point Program for the Prevention of Extrajudicial Executions"¹⁴, which state that: "Governments should ensure that law enforcement officials use force only when strictly necessary and only to the minimum extent required under the circumstances. Lethal force should not be used except when strictly unavoidable in order to protect life" and "All governments should ratify international treaties containing safeguards and remedies against extrajudicial executions, including the International Covenant on Civil and Political

¹⁴ 14-Point Program for the Prevention of Extrajudicial Executions, Amnesty International, Amnesty International <https://www.amnesty.org/download/Documents/192000/pol350021993en.pdf>

Rights and its first Optional Protocol which provides for individual complaints. Governments should ensure full implementation of the relevant provisions of these and other international instruments, including the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, and comply with the recommendations of intergovernmental organizations concerning these abuses.”

POSSIBLE SOLUTIONS

First of all, the Member States that are able to do so, should take their own effective measures against extrajudicial executions. Every State is obliged to look into any cases that seem problematic or suspicious.

Furthermore, raising awareness through education and campaigns. For example, the articles and reports of Amnesty International have played a great part in the elimination of extrajudicial killings. Civilians should be informed of the issue and their power should not be underestimated.

Hopefully, the Special Rapporteur shall continue to examine cases of extrajudicial executions and report them, but also have a dialogue with governments as they should also fully cooperate, support each other.



#5 "UN rights expert plans to probe Philippine killings"

What should be implemented so as to eradicate this issue would be the enforcement of a stronger legislative system, with stricter punishments for whoever breaks the law. It can not be stressed enough that impunity stands in the way of justice. People who commit extrajudicial killings should be held accountable for their actions.

Something which would also contribute is the resumption of peace talks with organizations and groups such as the Communist Party of the Philippines, the New People's Army and the National Democratic Front (provided that there would be a bilateral ceasefire) which will offer very useful solutions to this issue, most probably to each Government individually.

Lastly, if larger conflicts such as the war on drugs were resolved, then it would be easier to focus on this issue and eliminate extrajudicial killings. Problems such as these are often what trigger such events. This is eventually self-evident when considering the number of murders and other violent incidents caused -directly or indirectly- by the War of Drugs in the Philippines.

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