**Forum:** Human Rights Commission  
**Issue:** Question of human rights violations under Extrajudicial Punishments  
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## Introduction

Extrajudicial punishment is essentially punishment carried out by the government, official bodies or a group of citizens supported by the government, without the permission of a court or legal authority. Though extrajudicial punishments are known to be prominent features of repressive governments, the governments of many large democracies also employ such methods in certain circumstances. In nations where there is political instability, armed conflict, natural disaster or other situations in which a proper judicial system is not present or cannot function, extrajudicial punishments are commonplace. In many cases extrajudicial punishments and executions occur due to lack of proper government structure or a weak judiciary.

The most prevalent and serious extrajudicial punishment is extrajudicial killing, which is usually carried out directly by the government or with their silent approval. These killings are usually masqueraded and justified as disappearances, suicides and self-defense responses and are usually committed by departments of the government, the army or police task forces.

Considering that such practices occur outside and in the absence of the judicial system, those living in conflict areas are extremely susceptible to such punishments. In Syria and other middle-Eastern countries, the political instability and frequent armed conflict has given rise to a large number of such extrajudicial punishments being carried out by both governments and rebels against civilians, humanitarian actors and journalists. Additionally, the conflicts have made it particularly difficult for any action to be taken against the perpetrators of such punishments. Considering the serious human rights violations that occur through these punishments it is of utmost relevance and importance that we find solutions to the issue.
Definition of Key Terms

Extrajudicial Punishment¹

Extrajudicial punishment is essentially punishment carried out by the government, official bodies or a group of citizens supported by the government, without the permission of a court or legal authority.

Special Rapporteur²

Special Rapporteurs are part of the UN mechanisms that take care of country specific and thematic issues. They are in charge of holding inquiries into violations and to intervene on specific issues or urgent situations. They therefore play an important role in the protection of human rights.

Arbitrary Detention³

The arrest or detention of an individual in a case in which there is no likelihood or evidence that they committed a crime against legal statute, or in which there has been no due process of law.

Forced Disappearances⁴

A forced disappearance takes place when a person is arrested, detained or abducted by the state or agents acting for the state, who then deny that the person is being held or conceal their whereabouts, placing them outside the protection of the law. Often the final fate victims of such crimes is unknown or cannot be properly verified.

Death Squads⁵

A clandestine military or paramilitary group employed to carry out political killings.

Paramilitary

A civilian force with military structure conducting armed operations against a ruling or occupying power.

Gender Identity

The term "gender identity," refers to a person's innate, deeply felt psychological identification as a man, woman or some other gender, which may or may not correspond to the sex assigned to them at birth (e.g., the sex listed on their birth certificate).

Sexual Orientation

Sexual orientation is the preferred term used when referring to an individual's physical and/or emotional attraction to the same and/or opposite gender. "Gay," "lesbian," "bisexual" and "straight" are all examples of sexual orientations. A person's sexual orientation is distinct from a person's gender identity and expression.

Extraordinary Rendition

The process by which a country seizes a person assumed to be involved in terrorist activity and then transports him or her for interrogation to a country where due process of law is unlikely to be respected.

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Background Information

Some of the earliest reports of extrajudicial killings come form the Weimar Republic in Germany. During the inter-war period as the government tried to stay in control of a factional state, they regularly used paramilitaries such as the Freikorps\(^ {10} \) to crush dissension. This led to a paramilitary culture where most political parties possessed a paramilitary that was in charge of harassing and killing important leaders of the opposition and breaking up opposition meetings.

Hitler and the Nazis, too, used their paramilitary, the Stormtroopers(SA), as a tool to eliminate of the opposition, in order to consolidate their power. The SA set up special prisons, labour camps and imprisoned their Communist and Democratic opposition on the basis of false charges, in order to intimidate and harass them.

During the Cold War, considering the tense situation and vast undercover surveillance networks, extrajudicial killings became extremely common on both sides of the conflict. Not only did the Soviet Union and it’s satellite states use secret police to arbitrarily detain and torture people suspected of sling or cindered enemies of the state, but also extrajudicial killings became common in South and Central America. Organizations like the Soviet NKVD troika and East German Stasi used extrajudicial punishments, forced disappearances and murders to prevent dissension and to terrorize civilians into remaining loyal to the state.

Throughout history, several Latin-American dictatorships have also used extrajudicial punishments to overcome opposition and to maintain power over civilians.\(^ {11} \) During the 1970s and 1980s several Latin-American countries had death squads, which were often composed of off-duty policemen. Apart from several formerly high-ranking officials in Peru and Colombia, Former Chilean dictator Augusto Pinochet too had several accusations, regarding his endeavors to use extrajudicial punishments as a means of overcoming his opposition, leveled against him.

In recent times many countries both liberal democracies and oppressive regimes have used extrajudicial punishments as a means of exterminating enemies of the state and as a weapon in the war on terror. In India special police units, carry out “encounter killings”\(^ {12} \) of elusive criminals and


underworld kingpins. In the DPRK reports, activists and the opposition to the regime are subdued by forced disappearances and arbitrary detention.

Extradjudicial punishments are also a violation of several human rights treaties that condone the use of punishment and execution without the prior trial of a competent court. Several countries where extradjudicial punishments occur have even ratified these treaties\(^\text{13}\) but continue to violate their terms. Articles 6, 7&8 of the International Covenant on Civil and Political Rights\(^\text{14}\) explicitly states that the death sentence must be used only for the most serious crimes and punishments must not be delivered without the proceedings of a competent court. The Universal Declaration of Human Rights, one of the most fundamental resolutions on international human rights, also condemns the use of cruel and unjust punishments and arbitrary executions.

In recent times, largely due to the Special Rapporteur, awareness about extradjudicial killings has increased. Many member nations are attempting to curb the use of such punishments. However very little concrete international law exists on the issue as a result of which some nations continue such activity due to lack of repercussions and regulations.

Despite general international law condemning the activities involved in extradjudicial punishments many countries, even those with fully functional judicial systems, still carry out such violent actions because of their perceived necessity and acceptability in certain situations.

**Major Countries and Organizations Involved**

**United States of America**

The United States of America has long had one of the most systematic programs of extradjudicial punishments largely through the Central Intelligence Agency. After the September 11 terrorist attacks the United States of America has increasingly begun to use extradjudicial punishments and arbitrary detentions as a part of their “War on Terror” against supposed enemies of the state.


An extremely common practice of the CIA is “extraordinary rendition”\(^{15}\) where suspected tourists and criminals are transported to jails in countries known for torture and interrogation techniques that subvert the due legal process. Those accused and suspected of terrorist activities are sent to third party states like Egypt, Jordan, Morocco, and Uzbekistan or to covert overseas prisons run by the CIA referred to as “black sites.”\(^{16}\) Additionally, the government has been accused of carrying out extrajudicial punishments against prisoners at Guantanamo Bay and other jail facilities, without legal sanction. CIA case officer Bob Baer claimed, “if you want a serious interrogation, you send a prisoner to Jordan. If you want them to be tortured, you send them to Syria. If you want someone to disappear—never to see them again—you send them to Egypt.”\(^{17}\)

Considering the grave nature of many other such accusations against the United States of America, several countries, including France and Germany, have begun investigations into such claims.

Though the American government under Obama claims to be investigating into such reports and attempting to reduce its use of such punishments, reports of such happenings continue to surface. The USA has often used it’s “War on Terror” as a justification for these actions, and probably believes that such punishments are justified in many cases, Deciding which cases are justified seems to be open to interpretation in the United States of America where the government seems unlikely to stop its extrajudicial punishment program in the near future.

**Philippines\(^{18}\)**

The Philippines is a multi-party democracy with an elected president and an active judiciary and legislature. However, military and police forces frequently abuse their law enforcement status to commit serious human rights violations against civilians. Apart from the law enforcement, several

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opposition paramilitaries have also been accused of serious abuses against civilians. There are also a high number of attacks on leftist activists and community workers.

- **Crimes against journalists:** These not only include murders of investigative journalists but also frequent physical assault and verbal harassment by men sent by local politicians.

- **Attacks on Environmentalists:** Activists opposing mining and energy operations continue to face attack. The particularly famous killing of Italian priest Father Tentorio, an advocate of tribal rights and an opponent of mining in the Cotabato province in October 2011 allegedly carried out by Bagani paramilitaries under military control, where no arrests were made.

- **Paramilitaries:** Though the Government has promised to reduce the number of paramilitaries controlled by political parties/individuals, it is reluctant to abolish those controlled by the military and state police. As a result paramilitary squads continue to terrorise opposition and carry out executions of their “enemies.”

- **Government Opposition organizations engaging in extrajudicial punishments as intimidation tactics:** New People’s Army (communist), Moro- Islamic Liberation Front, Abu Sayyaf are all armed opposition forces with large paramilitaries, that frequently commit violations against citizens.

  The Philippines has begun to make many positive changes and introduce safeguards against such punishments. They seem extremely open to adopting new methods and suggestions from other to combat the problem in their country. However the real challenge for them is to bring under control the paramilitaries and opposition groups who continue to carry out such activities.

**People’s Republic of China**

The People’s Republic of China is a communist state headed by an elected president. The PRC has had a long record of both judicial and extrajudicial punishments. Additionally, it is alleged that many accused criminals and in many cases political and social activists, are subject to arbitrary detention and torture. Additionally, the PRC is well known for its tactic of forced disappearances of people deemed enemies of the state.

Previously, the government of China had in place a policy of “re-education through labour”\(^\text{19}\) where police could sentence petty criminals to 4 years of confinement without due processes in courts. Despite abolishing the policy, the government continues to extra judicially detain and punish

individuals in “black jails” and drug rehabilitation centres. More often than not these measures are being used against political and religious dissidents and since there is no law pertaining to the extrajudicial jails, detainees are at a greater risk of human rights violations.

Officials also use a tactic called “ruanjin” or “soft detention” by harassing and maintaining constant surveillance on several political activists already released from prison. One of China’s most prominent activists, Chen Guangcheng was confined on his farm in such a manner in 2011. Apart from constant harassment, surveillance and intimidation, visitors to his house were sometimes physically assaulted.

Considering the nature of the PRC’s government, they seem unlikely to agree to greater transparency in regards to issues involving extrajudicial punishments. Involvement by UN bodies or other member nations may not be acceptable to the PRC who seem to be employing extrajudicial punishments quite often at their own discretion.

**Syrian Arab Republic**

The Syrian Arab Republic is currently a republic under the authoritarian rule of President Bashar-al-Assad who was approved for his second term as president in 2007, by popular referendum. Ever since the Syrian civil war turned into an increasingly bloody armed conflict in 2012 both pro-Assad groups and rebel troops such as the Free Syria Army using extrajudicial executions and punishments to further their purposes. Government forces and the shabeeha (pro-government militia) torture detainees and commit extrajudicial killing in areas under their control, while rebel forces frequently use kidnapping, torture and executions to intimidate the opposition.

Enforced disappearances and murders of journalists and activists is also quite common especially cases where both forces wish to conceal certain information from the international community. A large number of local political activists have also been arbitrarily detained and subjected to violent beatings, electrocution and humiliation.

In many areas the government also carries out such punishments to intimidate locals in rebel strongholds caused them to leave and thereby singling out the opposition and also decreasing their local support base.

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**Other Nations where extrajudicial punishments are Prevalent:**

- Bangladesh
- Burundi
- Colombia
- Commonwealth of independent States (States of the former Soviet Union)- Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan and Ukraine.
- Democratic People’s Republic of Korea
- India
- Indonesia
- Jamaica
- Nigeria
- Papua New Guinea
- Peru

**Relevant UN Action**

In order to eradicate extrajudicial punishments the United Nations investigates the cases of extrajudicial punishments, responds immediately to reports of such activity, negotiates and discuss the violations with the country’s government, and employs suitable international legal procedure and human rights protection.

**Special Rapporteur**

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<http://www2.ohchr.org/english/issues/executions/>. 
In March 1982 the ECOSOC created a mandate for and appointed a Special Rapporteur on the issue of extrajudicial, summary and arbitrary executions. The mandate of the Special Rapporteur covers all countries, regardless of whether a state has ratified the relevant conventions. The Human Rights Council, in its resolution 8/3, requested the Special Rapporteur, in carrying out his mandate

(a) To continue to examine situations of extrajudicial, summary or arbitrary executions in all circumstances and for whatever reason, and to submit his or her findings on an annual basis, together with conclusions and recommendations, to the Council and the General Assembly, and to draw the attention of the Council to serious situations of extrajudicial, summary or arbitrary executions that warrant immediate attention or where early action might prevent further deterioration;

(b) To continue to draw the attention of the High Commissioner for Human Rights to serious situations of extrajudicial, summary or arbitrary executions that warrant immediate attention or where early action might prevent further deterioration;

(c) To respond effectively to information which comes before him or her, in particular when an extrajudicial, summary or arbitrary execution is imminent or threatened or when such an execution has occurred;

(d) To enhance further his or her dialogue with Governments, as well as to follow up on recommendations made in reports after visits to particular countries;

(e) To continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto;

(f) To apply a gender perspective in his or her work.

In carrying out his/her mandate, the Special Rapporteur:

(a) Transmits urgent appeals to States in cases that evince a fear of imminent extrajudicial, summary or arbitrary executions and transmitting alleged cases of extrajudicial, summary or arbitrary executions to concerned Governments in the form of case summaries;

(b) Undertakes fact-finding country visits;

(c) Submits annual reports on activities the mandate and methods of work to the Commission and the General Assembly.
Resolutions/Reports

- Extrajudicial, summary or arbitrary executions, 9 November 2012 (A/C.3/67/L.36)
- Extrajudicial, summary or arbitrary executions, 15 March 2013 (A/RES/67/168)
- The Special Rapporteur submits reports on the situation in various specific cases to the Human Rights Commission
- Annual reports regarding the ongoing work of the Rapporteur are also presented to the Commission and the General Assembly

Despite the presence of a Special Rapporteur to deal with extrajudicial killings they still continue. This is primarily due to the fact that the Special Rapporteur primarily works on the issue conflict situations. Considering the fact that extrajudicial killings are equally common in nations with a fully functional government, which seem to be getting overlooked.

More importantly, the current UN discussions and relevant resolutions are regarding extrajudicial killings, specifically, and fail to acknowledge the myriad of other extrajudicial punishments that also occur. Lack of discussion on the issue ensures that nations continue to carry out such measures simply because there is a lack of international framework that condemns such actions.

Possible Solutions

The first and most obvious step in developing solutions is to consider the key problems regarding the issue. Some, but not all of which are:

1. Lack of methods for collecting information about extrajudicial punishments, due to reasons such as but not limited to; unwillingness to report such actions for fear of retribution, witness intimidation, subversion of such cases due to the ascendancy of bodies/individuals delivering such punishments.

2. The attempts, of nations where extrajudicial punishments is unacceptable, to conduct such punishments overseas, in other member nations, where these extrajudicial actions are overlooked.

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3. Extrajudicial punishments on the basis of gender identity and sexual orientation by certain social and cultural groups.

4. The use of extrajudicial punishments as a weapon in the war against terrorism, by punishing/executing people deemed 'suspicious' by governments, with a special concern regarding its misuse and overuse.

5. The prevalence of such extrajudicial measures being employed in nations facing political unrest, where the judicial system is dysfunctional. This is an extremely pressing problem considering the situation in the Middle East, in countries such as Syria, and the high possibility that during such times governments and other political groups are likely to use extrajudicial methods of punishments due to the lack of proper judicial frameworks.

Due to the ambiguity regarding the issue delegates must establish a succinct definition of what cases constitute “extrajudicial punishments" and come up with a framework to identify and investigate cases in which such activity has taken place. Delegates must consider possible, dependable channels through which information can be transferred to the necessary regulatory authorities and the manner in which these bodies should act in order to determine a suitable course of action to deal with the issue. Concurrently delegates must pay special attention to cases in which such punishments are carried out overseas in nations where regulations are particularly lax against such activity, as these are particularly difficult to identify and take action against.

Delegates must also recognise the concerns of nations that believe extrajudicial punishments are justified against individuals who pose a threat to their nation and/or to international peace and use this as grounds for carrying out such punishments. Delegates must decide the extent to which such claims are reasonable and what must be done in such cases. In doing so delegates must first establish whether there should be partial or complete prohibition of extrajudicial punishments and suggesting and defining cases, if applicable, in which cases such punishments may be acceptable and employed as a last resort. Alternately delegates may decide to advocate means through which such cases may be processed though the judiciary.

Considering that a major problem with identifying and prosecuting cases of extrajudicial punishments is witness intimidation and in certain cases execution it is advised that delegates consider a UN monitored mechanism of witness protection. Delegates must decide consider where the accountability for the witness protection programme lies and whether national governments and judiciary, the international community, or non-governmental bodies should be responsible for witnesses in such cases.

Another challenge within the issue is the lack of methods to prosecute government officials and bodies carrying out extrajudicial punishments and executions, due to the transcendence of their position. Delegates must consider an international judicial framework to try government or non-government actors
in such special cases, outside the already existing courts since they too are no longer impartial. Delegates must also consider what must be done to countries where such

The most important issue that delegates must keep in mind is the lack of UN involvement in extrajudicial punishments outside of executions. It is imperative that delegates come up with solutions that recognize the distinctions between types of extrajudicial punishments, such as arbitrary detention, harassment, death threats and executions. They must determine the gravity of each type of punishment and decide suitable measures that need to be taken against each. Delegates may suggest solutions, such as extending the mandate of the Special Rapporteur on extrajudicial, summary and arbitrary executions to include other forms of extrajudicial punishments, that ensure that other forms of extrajudicial punishments are also condemned by UN member nations and that action be taken against states violating the norms against such activity.

Considering the relatively little progress that has taken place in the UN regarding frameworks for dealing with extrajudicial punishment delegates are encouraged to create solutions that are not only logical but also consider case-to-case variations within the issue and come up with solutions that cover a breadth of the topic area

Bibliography


**Appendices**

I. Important organisations and Regulatory Bodies:

1. Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions
2. Amnesty International
3. ECOSOC (Economic and Social Council)
4. CIA (Central Intelligence Agency)
5. Human Rights Watch
6. Commission on Crime Prevention and Criminal Justice (CCPCJ)

II. Some useful Links:

1. For a full list of UN documents (reports, resolutions and letters) regarding the issue: [http://ap.ohchr.org/documents/dpage_e.aspx?m=96](http://ap.ohchr.org/documents/dpage_e.aspx?m=96)


4. Human Rights Watch reports on individual cases: [http://www.hrw.org](http://www.hrw.org)

