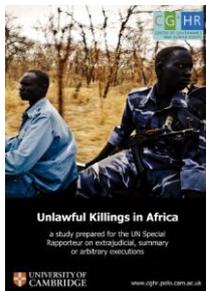


Unlawful Killings in Africa

a study prepared for the UN Special Rapporteur on extrajudicial, summary or arbitrary executions

Executive Summary



This study presents the work of a Research Team convened by the Centre of Governance and Human Rights (CGHR) at the University of Cambridge. This team was tasked with surveying events and reporting from the African continent germane to the mandate of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, a mandate focused upon violations of the right to life contrary to international law. This mandate, together with the framing of the right to life itself, establishes a category of violations that will here be referred to as “unlawful killings”.

While there are many organisations monitoring and reporting on killings both globally and with particular African focus, most do so with an objective frame of reference, namely violence. The purpose of this report is to narrow that focus to the (international) legal frame of unlawful killing. This is undertaken with a view to increasing attention to the right to life, but also as a means of assisting the Special Rapporteur in prioritisation over the coming years.

Since the international human rights framework, of which this mandate is part, speaks primarily to states or state-like actors and not to private individuals—the category of unlawful killings does not include every act of killing, however illegal in domestic law.

However this is not to say that the international legal definition of an unlawful killing cannot accommodate killings which are not perpetrated by a state actor. The state’s dual obligation both to respect and to protect the right to life places certain types of killing by non-state actors within the scope of the mandate and therefore of this study. *Unlawful Killings in Africa* draws attention to the fact that both the level of state control (direct and indirect) over the act of killing *and* the scale of the incidence of the killing can be relevant to determining whether that loss of life can be regarded as unlawful from the perspective of the international human rights system.

Associated with this is the problem of impunity: a prevailing climate within a particular state or part of a state which takes hold when a particular form of violation is allowed to continue without state response. While not every case of a high incidence of killing necessarily implies a culture of impunity, it would suggest that the state’s chosen response is ineffective and ought to be supplemented or revised. One of the clear conclusions of this report is that, because of the irreversible nature of a violation of the right to life, the state’s protection role must very often be primarily through the means of strong accountability mechanisms.

This study therefore employs a working definition along the following lines: “*killings threatened or committed either with explicit or implicit official sanction, or within a context of impunity, which bring into question the state’s upholding of its obligations to respect and to protect the right to life.*”

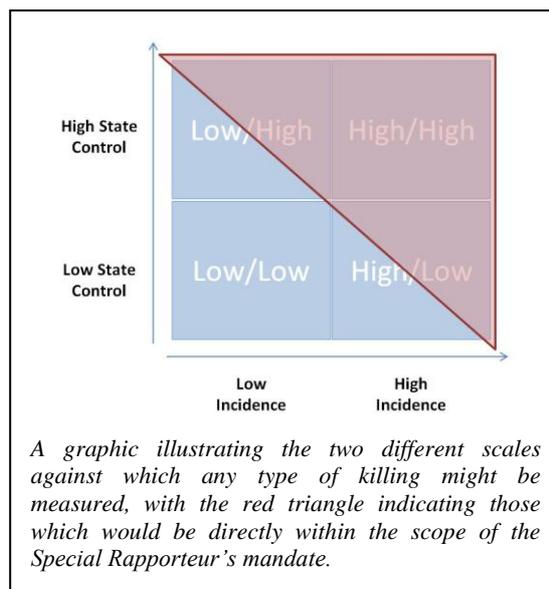
Unlawful Killings in Africa adapts from the OECD a variant of its “Armed Violence Lens” – and examines issues of violence across the continent through two dualities. First, there is the victim/perpetrator classification, which orientates a certain type of killing around a particular group of the general population. Second, there is the interaction of social norms and structural factors, which highlights certain features of the normative landscape or pertinent structural pressures which might cause particular types of killing, or limit the state’s capacity to respond.

The report is broken down into eight substantive sections each of which address a particular type of killing. Each includes a geographic survey, highlighting those states in which that type of killing is recognised to be a particular concern, or in some cases conducting a comprehensive continental overview. There then follows an analysis of particular victims and perpetrators, followed by description of relevant structural factors or social norms. Each section concludes with a brief suggestion of “best practices”.

In the section on **Excessive Use of Force**, the report details deaths that occur both in the context of the policing of mass demonstrations and during the routine work of the police in arresting suspects (including counter-terrorism operations). The survey demonstrates that the use of force surrounding demonstrations is a pervasive threat across the continent, not only in the North African states during the so-called Arab Spring. The victims tend to be young and politically engaged. The structural causes of the demonstrations themselves should be considered, but the cause of unlawful killing in the context of demonstrations can be attributed largely to the resources and training of the security forces, as well as, in some instances, failures of command structures. The attitude of the state toward political dissent is obviously also relevant. In recent years there has been a good deal of exchange between those working on the right to peaceful assembly and those working on the right to life.

The survey of deaths caused by police action during arrest or at other times draws attention to the number of individuals (usually men, often young men) who are killed by police officers often with no investigation or accountability. It highlighted the particular threat posed by special task forces, which can operate outside ordinary command hierarchies. This section of the report also includes what information is available with respect to custodial deaths – a serious problem in Africa and one which also touches upon the issue of conditions of detention. It is also a problem, taking place often far from the public eye, which may well be underreported in many states.

Not all use of force by the state is employed in circumstances where a certain amount of force might legitimately be used. In the section on **Political Killings**, the report discussed both targeted political assassinations and the particular phenomenon of election-related violence. In both cases the line between this and the discriminatory application of excessive force by law enforcement personnel can be blurred. It is shown that in some instance this politicisation of violence can become cyclical. This form of violence can be particularly prevalent around the time of elections, and so a separate section of the study is dedicated to that context. This section demonstrates the extent to which the incumbents’ asymmetric control of security personnel leads to the disproportionate victimisation of opposition supporters. However it also demonstrates that many victims are not in fact active supporters of opposition candidates but instead are perceived as such on the grounds of an identity group. This section of the report also suggests that the extreme centralisation of power in many African states, and



the exclusionary nature of politics, may be structural cause of these killings, as it increases the incentives for violence, with elections construed as zero-sum games.

There are a small group of states on the African continent which still apply the death penalty for certain crimes. While statistically accounting for only a small number of deaths on a yearly basis, the very direct state control over these deaths, and the symbolic pertinence of the state deliberately taking life, makes it germane. The section on the **Arbitrary Application of the Death Penalty** discusses various concerns among which are the imposition of death sentences on civilians by military tribunals and the imposition of death sentences from crimes which do not meet the threshold of “most serious”. This section also presents statistics regarding the number of people actually executed over the last seven years. It touches upon factors of victimisation such as poverty, and structural debates such as that concerning deterrence and crime rates which are far from unique to the African context.

The report then turns to address those killings committed by non-state actors, whether private individuals or small groups, or larger, more co-ordinated organisations like private companies or organised criminal gangs. The section on **Conditioned Homicide** addresses a number of violent phenomena conditioned by social or cultural influences. These include infanticide, baby-dumping, witch-killing, ritual killings, the targeting of persons with albinism, honour killings and discriminatory hate crime.

It is in these contexts that the nexus between scale of incidence and level of state control becomes most relevant. The geographic surveys within this section demonstrate that the scale of incidence of such killings can vary widely across the continent. From type to type, the victimisation and structural and normative determinates also differ. The state’s responses however (established in the various “best practices” sections) can predominantly be grouped into “promotional” and “punitive”: ensuring that such killings are understood to be violations of a fundamental human rights, and where the killings continue, that the perpetrators are found and prosecuted to the fullest extent. It is only if the state is failing in one or both of these endeavours, in the face of a manifest pattern of killing (the high scale of incidence qualification) that the state might be understood to be failing in its responsibility to protect and ensure the right to life.

The following two sections examine those killing’s that are perpetrated by larger, and more organised groups. These **Mass Actor Killings** and **Organised Actor Killings** are not necessarily conditioned by the same social or cultural norms, but engage a state responsibility by virtue of the semi-organised nature of the perpetrator. The state cannot exercise the full responsibilities of a state, including the protection of the right to life, if it tolerates (or in some cases informally condones) the behaviour of such groups. These sections address killings by informally organised groups such as vigilante gangs as well as those by private security companies and criminal organisations (such as pirates and traffickers)

The final two sections of the report address killings that might be committed by state or non-state actors but which can be categorised either by the character of the victim or by the context in which they take place. In both cases, there is a heightened *a priori* threat to the right to life, thus demanding greater focus upon the state’s obligations. The first examined the **Targeted Killing of Vulnerable Groups**—including journalists, human rights defenders, and humanitarian aid workers. These are groups whose vulnerability is determined by their profession, whereas those vulnerable groups defined by some kind of real or imagined identity are discussed above under discriminatory hate crime.

Finally the Report addresses **Unlawful Killings in Armed Conflict and Ungoverned Spaces**. In this section the primary focus is on the targeting of civilians during armed conflict (or intercommunal strife), but also addresses situations of insecurity where the state cannot claim a monopoly on force and thereby a protection of the right to life.

It is important to re-emphasise that none of the forms of unlawful killing detailed above are in some way unique to Africa. These are problems which the Special Rapporteur encounters throughout the world. However there is a need for a more holistic view of the problem on the continent. While the research presented in this study is derivative (no events are reported here which have not been reported somewhere else), the net has deliberately been cast wide so as to capture the broad variety of actors working in this field, and so as to centralise information. The lack of official record-keeping with respect to life and death across Africa means that unlawful killings may well be under-reported.

While *Unlawful Killings in Africa* represents the findings and conclusions of a Research Team, it is at the same time both a trial and a call for further work. It is a trial in that, as is demonstrated in the Introduction, no single group is bringing together reporting on the right to life in an holistic way. By examining the problem in the round on a continent where it is widely perceived to be under threat this report offers a first draft of a systematised analysis of the phenomenon of unlawful killings.

It has proved that adopting a lens through which killings are considered both by their proximity to a state actor and through their scale of incidence can be a helpful way in which to assess violations of the right to life relevant to the mandate of the Special Rapporteur. The taxonomy upon which it is based is not perfect: in the concluding section, on the continuation of the work, these shortcomings are discussed and possible revisions contemplated. The report represents a call for further work, which in certain respect will hopefully be taken up by a new project, an Unlawful Killings Unit based at the Centre for Human Rights in Pretoria, with which CGHR will actively be collaborating over the coming years.

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