

# UNIVERSAL JURISDICTION:

## The duty of states to enact and implement legislation -

### Chapter Eleven (Extrajudicial executions)

A number of national courts have concluded that the prohibition of extrajudicial executions is a *jus cogens* norm.<sup>1</sup> The international community has declared that every state should bring to justice those responsible for extrajudicial executions. Principle 18 of the 1989 UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions provides:

“Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.”<sup>2</sup>

If this is not hypocrisy, then this mandatory language is strong evidence that states believe that they are obliged to prosecute or extradite any person suspected of an extrajudicial execution even in cases where the killing does not amount to a war crime, crime against humanity or genocide.

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<sup>1</sup> See, for example, *Estate of Marcos, supra*, 25 F.3d at 1475 (“The prohibition against summary execution . . . is similarly universal, definable, and obligatory.”); *Forti v. Suarez-Mason*, 672 F.Supp. 1531, 1542 (N.D. Cal. 1987), *amended*, 694 F.Supp. 707, 710-11 (N.D. Cal. 1989). These developments show the rapid evolution of attitudes, since as late as 1988 a leading authority suggested that acceptance of the universality principle over extrajudicial executions was premature. Kenneth C. Randall, *Universal Jurisdiction under International Law*, 66 Tex. L. Rev. 785, 838-839 (1988).

<sup>2</sup> UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by the UN Economic and Social Council (ECOSOC) in its Resolution 1989/65 of 24 May 1989, Principle 18 (emphasis supplied). The Principles were welcomed by the UN General Assembly in its Resolution 44/159 of 15 December 1989.

Further support for such an obligation is found in the resolution adopted by the Inter-American Commission on Human Rights on 20 October 2000 recommending to the Member States of the OAS that they “refrain from granting asylum to any person alleged to be the material or intellectual author of international crimes”, including summary executions.<sup>3</sup> The UN Commission on Human Rights has reiterated “the obligation of all Governments to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, to grant adequate compensation to the victims or their families and to adopt all necessary measures to prevent the recurrence of such executions”, without limiting that obligation to bring to justice those responsible to those suspects in its jurisdiction who were alleged to have committed such executions in its territory.<sup>4</sup>

State practice at the national level, in contrast, is still limited, in part because in most cases of extrajudicial executions, they are either part of a widespread or systematic practice of crimes that define them as the crime against humanity of murder or they are committed as war crimes during armed conflict and, therefore, perhaps, not considered necessary to be defined as separate crimes. The *United States* has expressly provided for civil liability for extrajudicial executions committed by one alien against another alien, although it has not yet provided for universal jurisdiction over extrajudicial executions as a criminal offence.<sup>5</sup> At least one state, *Guatemala* has defined extrajudicial executions as crimes under its national law. Article 132-*bis* of the Guatemala Penal Code provides that extrajudicial executions are crimes under national law.<sup>6</sup>

<sup>3</sup> Inter-American Commission on Human Rights, *Asylum and International Crimes*, 20 October 2000, obtainable from <http://www.cidh.oas.org/asylum.htm> (for the full text of this statement, see Chapter Three, Section I.C).

<sup>4</sup> UN Commission on Human Rights, Res. 2000/31 of 20 April 2000, para. 4.

<sup>5</sup> The 1992 Torture Victims Protection Act allows both foreign nationals and United States citizens to claim damages against any individual who engages in torture or extrajudicial killing under “actual or apparent authority, or under colour of law of any foreign nation”. Pub. L. 105-256, 12 March 1992, 106 Stat. 73 (28 U.S.C. § 1350 note).

<sup>6</sup> The original text in Spanish reads in full:

*“Artículo 132-bis. Ejecución Extrajudicial. Comete el delito de ejecución extrajudicial quien por orden, con autorización, apoyo o aquiescencia de autoridades del Estado, privare, en cualquier forma, de la vida a una o más personas, por motivos políticos: en igual forma comete dicho delito el funcionario o empleado público, perteneciente o no a los cuerpos de seguridad del Estado, que ordene autorice, apoye o dé la aquiescencia para la comisión de tales acciones.*

*Constituye delito de ejecución extrajudicial, la privación de la vida de una o más personas, aun cuando no medie móvil político cuando se cometa por elementos de los cuerpos de seguridad del Estado, estando en ejercicio de su cargo, cuando actúen arbitrariamente o actúen con abuso o exceso de fuerza. Igualmente cometen delito de ejecución extrajudicial, los miembros o integrantes de grupos o bandas organizadas con fines terroristas, insurgentes, subversivos o con cualquier otro fin delictivo, cuando como resultado de sus acciones resultare la muerte de una o más personas.*

*El reo de ejecución extrajudicial será sancionado con prisión de veinticinco a treinta años.*

*Se impondrá la pena de muerte en lugar de máximo de prisión, en cualesquier de los siguientes casos:*

*(a) Cuando la víctima sea menor de doce años de edad o persona mayor de sesenta años.*

*(b) Cuando por circunstancias del hecho o de la ocasión la manera de realizarlo y los móviles determinantes se revelare una mayor peligrosidad del agente.”*

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*Decreto Número 48-95 (Reformas al Código Penal, Decreto 17-73 del Congreso de la República).*