

Mandates of the Special Rapporteur on the human rights of migrants and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: AL
USA 9/2015:

7 May 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 26/19, and 26/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the allegations of summary executions of **Antonio Zambrano-Montes, Ernesto Javier Canepa Diaz** and a 31-years-old man, all Mexican nationals killed by the police in February 2015 in the United States.

According to the information received:

In February 2015, three Mexican nationals were killed by the police in the United States as a result of a disproportionate use of firearms.

On 10 February 2015, three police officers killed Antonio Zambrano-Montes, an irregular migrant from Mexico, in Pasco, Washington. His death was caught in a video that has spread around the internet. The video footage appears to show that Mr. Zambrano-Montes was hurling a rock at officers over a police car stopped in the middle of the intersection, and an officer was firing with a Taser in response. When Mr. Zambrano-Montes ran across the intersection, three officers pursued him. After a short chase, Mr. Zambrano-Montes stopped and appeared to pivot toward the officers raising his hands. The police officers then opened fire repeatedly on him and he fell to the ground. The three officers had their guns raised, but it was unclear if all of them had fired at Mr. Zambrano-Montes or how many times he had been struck. On 13 February, officers leading the criminal investigations confirmed that Mr. Zambrano-Montes was not carrying a firearm or knife when he was shot dead.

On 20 February 2015, police officer reportedly killed a 31-years-old Mexican immigrant, in the City of Grapevine, Texas. The victim was trying to escape the

police because of his irregular situation in the United States. Video footage from the camera installed in front of the police car recorded that after a short car chase, the man got out of his car with his arms raised on the head and walked slowly forward the police officer who ordered him to stay in his place. Seconds after, the police opened fire on the victim who subsequently died in hospital.

On 27 February 2015, three police officers killed Ernesto Javier Canepa Diaz, a Mexican immigrant in Santa Ana California during a robbery investigation. Mr Diaz whose car matched with the description of a stolen car, allegedly refused to cooperate. The police then engaged in a fight with him that ended with his shooting. It is reported that the district attorney is investigating the incident and that the officers involved in the killing were placed on administrative leave.

Concern is expressed about the circumstances of these killings, which appear to result from an excessive use of force by the police. Our concern is heightened by the fact that the victims appear to have been shot while they did not carry out any arms or pose any threats to the police when the latter opened fire on them.

While we do not wish to prejudge the accuracy of these allegations, we would like to stress your Excellency's obligation to act with due diligence under international human rights law to investigate the case and hold accountable the perpetrators. We call for an independent and impartial investigation into the three cases and for effective steps to be taken to prevent and sanction any excessive use of force by the police against any person, including migrants, legal or illegal, in the United States,

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide the full details of any investigation and prosecution which may have been undertaken in these three cases, and of any sanction, penal, disciplinary or administrative that may have been imposed on the alleged perpetrators.
3. Please indicate any remedial action taken vis-à-vis the victims or their families.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

François Crépeau
Special Rapporteur on the human rights of migrants

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to article 3 of the Universal Declaration of Human Rights and article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), acceded to by the United States on 8 Jun 1992, which provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life.

The Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), though not binding, provide an authoritative interpretation of the limits on the conduct of law enforcement forces. According to these instruments, law enforcement officials may only use force when it is strictly necessary and only to the extent required, for the performance of their duties. The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means. Force used must be proportionate to the legitimate objective to be achieved.

The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, (resolution 1989/65 Economic and Social Council) recall States' duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions. They also provide for the effective protection through judicial or other means of individuals and groups who are in danger of extra-legal, arbitrary or summary executions. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.