

**Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

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18 May 2016

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 27/1, 25/2, 24/5, 26/12 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning excessive use of force by Police Intervention Unit officers, as well as disappearances, torture and ill-treatment, in at least one case resulting in death, by National Intelligence agents against peaceful protesters.

According to the information received:

Mr. **Solo Sandeng** was a senior figure and the National Organizing Secretary of the United Democratic Party (UDP), Gambia's main opposition party.

On Thursday 14 April 2016 in the early afternoon, a peaceful anti-government demonstration was held at the Westfield junction, in Serrekunda, the Gambia, in advance of the December presidential elections. Mr. Sandeng was leading the protest that aimed at requesting electoral reforms and the resignation of the President.

Around 3 in the afternoon, the Police Intervention Unit officers arrived in great numbers dispersing the crowd by using excessive force, including physical violence, tear gas and gunshots. Plain clothed security personnel in a pick-up vehicle, believed to be National Intelligence Officers, also joined the police intervention unit and assisted with the arrests.

Eyewitnesses reported that Mr. Sandeng was brought to the National Intelligence Agency headquarters, where allegedly he died shortly after arrival.

After the arrest, it has not been possible to confirm the whereabouts of Mr. Sandeng and the other arrested protesters. Thus, the exact time and causes of the assumed death are unknown. Family members have tried to gain information from the police as well as from the Miles II prison, where the protesters may be detained, but have been denied the information.

Allegedly, Mr. Sandeng died under police custody caused by torture.

On Saturday 16 April 2016, members of the United Democratic Party organised new demonstrations to demand justice for Mr. Sandeng's death in police custody and the release of other members of the party. Police officers intervened, using tear gas, to end the protest and indiscriminately arrested protesters and bystanders, including at least five United Democratic Party executive members.

On Wednesday 20 April 2016, the leader of the United Democratic Party and 18 other United Democratic Party members appeared in court and were charged with six counts ("intent to breach peace and provoke others to do the same", "riot", "assembling without permit", "incitement of violence", "riotously interfering with vehicles", "holding procession without permit" and "disobeying an order to disperse an unlawful procession"). Their lawyers requested bail which was deferred to 21 April 2016, and their cases were adjourned to 27 April 2016.

The total number of arrested people, their whereabouts and their health conditions remains unknown. It is reported that at least 50 persons were arrested during the demonstrations on 14 and 16 April 2016, including other senior members of the United Democratic Party. During interrogations, National Intelligence agents have allegedly inflicted injuries on several of these protesters, including rape of female members of the United Democratic Party.

This information cannot be verified, as there is no access to the detention facilities and the bodies of the alleged dead victims have not been released or returned to their families.

Reportedly, returning after the peaceful demonstration on Saturday 16 April 2016, family members of Mr. Sandeng found Police Intervention Unit officers in blue navy uniforms waiting in front of the family house. The family went into hiding, and was informed that the Police Intervention Unit was looking for them.

While hiding, a family member received a phone call. The caller said: "You are Solo Sandeng's family and we know you", adding "we are determined to wipe you out". A few days later, the family managed to flee the country.

Grave concern is expressed at the alleged death in police custody of Mr. Solo Sandeng, the excessive use of force by Police Intervention Unit officers against peaceful protesters, and the disappearances, torture and ill-treatment of demonstrators taken into custody by National Intelligence agents. Serious concern is also expressed at the alleged death threats against Mr. Sandeng's family. Further concern is expressed at the broader effect that these measures have on the Gambian society as a whole, in particular their deterrent effect on the exercise of the rights to freedom of expression, peaceful assembly and association, and the right to peacefully take part in public affairs.

While we do not wish to prejudge the accuracy of these allegations, they indicate a prima facie violation of the rights of every individual to life and security, to peaceful assembly and expression, as well as the rights not to be arbitrarily deprived of one's life and not to be subject to torture as set forth, inter alia, in articles 3, 5, 9, 19, 20(1) and 21 of the Universal Declaration of Human Rights (UDHR); 6(1), 7, 9, 19 and 21, 22 and 25 of the International Covenant on Civil and Political Rights (ICCPR); articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and articles 4, 5, 6, 10 and 11 of the African Charter on Human and Peoples' Rights (Banjul Charter).

We respectfully urge your Excellency's Government to take all steps necessary to safeguard the rights of the persons detained and to ensure prompt, thorough, independent and impartial investigations into the aforementioned allegations of death, torture and disappearances; and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations. Moreover, in light of the upcoming presidential election period, we call on your Excellency's Government to guarantee basic human rights and fundamental freedoms, including the rights to freedom of peaceful assembly and expression.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the fate or whereabouts of all the individuals allegedly arrested by State authorities during or in the context of the events described above
3. Please provide information on the legal grounds for the arrests and continued detention of any person arrested in connection with these events,

and the details of any charges brought against them and related judicial proceedings;

4. Please provide the details, and where available, the results of any investigation, including judicial medical, carried out into the alleged death and acts of torture and enforced disappearances. If no inquiries have taken place, or if they have been inconclusive, please explain why. Please provide details of any autopsies carried out to the deceased bodies.
5. In the case Mr. Solo Sandeng died in the custody of the authorities that arrested, detained or interrogated him please provide information on the measures taken to return his body to his family.
6. Should an investigation have been launched into the aforementioned death, please provide detailed information about the composition, procedures and status of the authority in charge of such investigation and how it complies with international standards of impartiality, effectiveness and independence. Please confirm if these events are being investigated exclusively by civil authorities, to the extent that human rights violations committed by security forces against civilians fall within the jurisdiction of the civil courts.
7. Please indicate which steps, if any, have been taken to ensure the physical and psychological integrity of all the persons arrested and detained in connection with these events and of their relatives.
8. Please indicate whether compensation has been provided to the families and / or next of kin of the victims.
9. Please explain what measures have been taken to ensure that political activists, supporters and sympathizers, including members of the opposition, in the Gambia can carry out their peaceful and legitimate activities, and exercise their human rights to freedom of opinion, expression, assembly, association, and their right to participate in the political life of the country without fear of harassment, stigmatization, violence or criminalization of any kind.

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.

We respectfully wish to notify your Excellency's Government that we may publicly express our concerns in the near future. In this case, a press release would

indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

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.

Houria Es-Slami  
Chairperson-Rapporteur of the Working Group on Enforced or Involuntary  
Disappearances

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Maina Kiai  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Christof Heyns  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to article 3 of the Universal Declaration of Human Rights (UDHR) and 6 of the International Covenant on Civil and Political rights (ICCPR), acceded by the Gambia on 22 March 1979, which guarantee the right of every individual to life, security and not to be arbitrarily deprived of life.

Moreover, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified, *inter alia*, in article 7 of the ICCPR, and in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), signed by The Gambia on 23 October 1985.

We would like to draw the attention of your Excellency's Government to the Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provide that 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. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated, including giving a clear warning of the intent to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (principle 9).

The compilation of practical recommendations for the proper management of assemblies (A/HRC/31/66) recalls that the use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality (para. 57). These principles apply to the use of all force, including potentially lethal force. Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary) (para. 59). Furthermore, firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (para 60).

With regards to the treatment of persons in custody or detention the UN Basic Principles establish that law enforcement officials should only use force when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened. In addition, Firearms should only be used in self-defence or

in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention.

Moreover, we would like remind your Excellency's Government of articles 19, 21 and 22 of the ICCPR, guaranteeing the right to freedom of opinion and expression, and the right to peaceful assembly and association, respectively. Any limitation to these rights must meet the strict tests of necessity and proportionality. The 2014 report of the previous Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression recalled the responsibility of States to ensure an environment in which a diverse range of opinions and ideas can be freely and openly expressed and debated, including those that are of a critical and dissenting kind (A/HRC/26/30).

We would also like to draw the attention of your Excellency's Government to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which reminds States that it is their obligation of States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline as well as to take measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.

We would further like to refer to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association that underlines that States have positive obligations towards these rights: "to take positive measures to establish and maintain an enabling environment" and "to actively protect peaceful assemblies." (A/HRC/20/27, Para. 33 and 63).

We would also like draw the attention of your Excellency's Government to the Declaration on the Protection of all Persons from Enforced Disappearance. In particular that no State shall practise, permit or tolerate enforced disappearance (article 2.1), no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7), that any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention (article 10.1) and that accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned (article 10.2).

We would like to draw the attention of your Excellency's Government to paragraph 8a of Human Rights Council Resolution 16/23, which reminds States that, "intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture".