

Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE:
AL USA 29/2017

22 December 2017

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolution 35/15.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the lethal shooting by a Salt Lake City police officer of Patrick Harmon, an African-American male aged 50, on 13 August 2017.**

I would request that you direct this letter on my behalf to the relevant authorities in the State of Utah and Salt Lake County (SLC), specifically to SLC District Attorney Sim Gill, SLC Mayor Ben McAdams, Sheriff Rosie Rivera of the Unified Police Department, Chief Mike Brown of the Salt Lake City Police Department, and Governor of Utah, Gary Herbert. In addition, in light of the involvement of the United States Department of Justice, I request that you direct this letter on my behalf to Attorney General Jeff Sessions and Acting Assistant Attorney General John Gore.

According to the information received:

On 13 August 2017, at around 10.20 p.m., a Salt Lake City Police Department Officer saw Mr. Patrick Harmon ride his bicycle across six lanes of traffic on State Street. The officer also noticed that Mr. Harmon did not have a rear tail light on his bicycle. He proceeded to stop Mr. Harmon and asked him for identification, and the spelling of his last name. Mr. Harmon quietly spelled his name and the officer asked for clarification multiple times. The officer then turned to his car and Mr. Harmon told him that he may find a warrant related to a felony charge. The officer called for backup on his radio, and two more officers soon arrived. After the arrival of the officers, it was confirmed that Mr. Harmon had two outstanding arrest warrants.

The officers told Mr. Harmon that he would be arrested for his outstanding warrants. At this point, video footage from body cameras worn by the police officers show that Mr. Harmon was crying and distraught. He pleaded the officers not to arrest him. A police officer instructed Mr. Harmon to take off his back pack and put his hands behind his back. Mr. Harmon obliged, but as the officer was about to handcuff him, Mr. Harmon attempted to flee.

Mr. Harmon faced away from the officers as he fled. One of the officers drew his stun gun. A second officer drew his gun, screamed "I'll fucking shoot you" and

moments after discharged his gun three times at Mr. Harmon, hitting him in his right upper thigh, buttocks and right arm, and causing Mr. Harmon to collapse to the ground. Simultaneously with one officer discharging his weapon, the second officer used a stun gun on Mr. Harmon.

Immediately following the shooting, one officer announced over the radio that shots were fired and requested medical assistance. Mr. Harmon, laying on the ground facedown and groaning in apparent pain, was then handcuffed. Only after that, did the officers attempt to treat his wounds. Soon after, Mr. Harmon was transported to a hospital, where he later died as a result from the gunshot wounds.

On 4 October 2017, the District Attorney for the Salt Lake County District Office announced that the use of lethal force against Mr. Harmon on 13 August 2017, was justified to protect the officers' lives. According to the District Attorney, as Mr. Harmon fled, he threatened to cut police officers and then turned and faced them with a knife.

The District Attorney made his conclusions after reviewing body cam footage from the police officers present at the scene. This footage was released by the District Attorney. However, it is not clear if the District Attorney released all of the footage from the body cams of all of the three police officers present at the scene. Additionally, the report of the District Attorney does not indicate that Mr. Harmon's family or those who knew him were interviewed during the investigation.

The released body cams footage, as summarized above, contradicts the District Attorney's and the Salt Lake Police Department's narratives. Most importantly, even if Mr. Harmon had a knife, it does not appear from the videos that he posed an imminent threat to the officers that could not be addressed through non-lethal means.

The United States Federal Bureau of Investigation (FBI) investigated the killing of Mr. Harmon, per the request of the District Attorney. The FBI, relying solely on the investigation performed by the District Attorney and the Medical Examiner's reports, determined that the actions of the police officers did not constitute a prosecutable violation of the federal criminal civil rights statutes. Furthermore, the US Department of Justice (DOJ) Civil Rights Division reportedly refused to investigate the incident. Thus, neither the FBI nor the DOJ conducted an independent investigation into the killing of Mr. Patrick Harmon.

Without prejudging the accuracy of the information made available to me, I would like to express serious concern at what appears to be the arbitrary deprivation of Mr. Patrick Harmon's life, in contravention of article 6(1) of the International Convention on Civil and Political Rights (ICCPR), ratified by the United States of America on 8 June 1992.

The above allegations raise a number of concerns regarding the use of lethal force by police against Mr. Harmon, in particular whether it complied with the principles of necessity and proportionality. There were three police officers present during Mr. Harmon's arrest, and at least one was armed with a stun gun. Mr. Harmon did not threaten the police and at the time he was shot, was attempting to flee. Even if he did have a knife as alleged, it is questionable whether the use of lethal force was necessary under the circumstances described. This is particularly the case, as stun guns were available, one of which, as shown in the video of the incident, was used as swiftly and simultaneously with a firearm.

I am further concerned that the family did not have access to the bodycam footage until some 50 days after the incident took place. The District Attorney also did not interview Mr. Harmon's family or those close to him, who could have helped shed some light on Mr. Harmon's character and likelihood of violent behavior.

Lastly, I am concerned that the United States Federal Bureau of Investigation and Department of Justice undertook no independent review of the facts and relied instead on the evidence provided by the local authorities, thereby depriving the public of a completely independent investigation. At a minimum, it must be clear that all available evidence has been forwarded to the FBI, not just materials selected by the local authorities, and that members of the public have had the opportunity to review and supplement the record. These gaps make me question the thoroughness of the investigation of Mr. Harman's death.

I would like to reiterate that for the public to have faith in the investigation, it must have access to all documents, testimonies and photos showing how the evidence was collected. In this context, I would like to highlight two issues needing clarification, namely whether Mr. Harmon threatened officers with a knife and whether he was turning towards officers or turning away to run. Therefore, all photos and videos, both taken during and after the shooting occurred, in the collection of evidence must be identified and released so as to ensure public confidence in the conclusions reached. However, in this case it is not clear whether all relevant body cam footage has yet been made available. In this context, I support the issuance of the mayoral executive order on 17 October 2017 that obliges Salt Lake City authorities to release police body camera footage ten business days after an officer uses force that injures or kills someone.

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

As it is my responsibility, under the mandate entrusted to me by the United Nations Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations and considerations concerning the following points. I direct these questions to both the Department of Justice and to the State and local authorities, all of whom have found the killing to be justifiable:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the accuracy of the above-mentioned allegations, specifically, on the imminent threat to life that was alleged and why forms of non-lethal force were either not resorted to, or were deemed insufficient.
3. Please indicate whether all evidence been released to the court and public, including all body cam videos in their original form and all stills. If not, please provide the legal basis for delaying the release of the videos. Please also indicate whether all witness statements and other evidence, including photos, have been released. If not, please provide the legal basis for withholding this evidence.
4. Please explain on what basis federal officials decided not to conduct their own independent investigation into all the relevant evidence and not just that presented by the District attorney; in this decision making process, please explain how they sought to determine whether they had received all relevant evidence.
5. Please indicate whether any penal, disciplinary or administrative sanctions have been imposed on the police officers involved in the above-mentioned case, including during the period when the District Attorney was conducting its investigation. Independent of the conclusions by the State and the federal government on the justifiability of the killing of Mr. Harmon, has either entity provided or suggested additional training to the officers involved to ensure that only non-lethal force is used absent an imminent threat to life?
6. Please indicate what broader steps, if any, are being taken to address issues of use of excessive force by police officers, including measures to comply with the principles and rules pertaining to necessity and proportionality.
7. Please provide information on the directives issued by your Excellency's Government, both at state and federal levels, to law-enforcement personnel concerning the precise circumstances in which the use of lethal force is authorized. Please indicate as well how these measures comply with the Governments' international legal obligations arising from the International Covenant on Civil and Political Rights, as well as the requirements of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
8. Please provide information on any measures taken by your Excellency's Government aimed at improving the reporting of all instances of use of

lethal force by police officers and ensuring that all such reported cases are effectively investigated

I would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

I am considering to publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications for the enjoyment of the right to life of the above-mentioned allegations. Any public statement on my part will indicate that I have been in contact with your Excellency's Government's to seek clarification of the issue in question.

While awaiting a reply, I 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.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Article 6(1) of the International Covenant for Civil and Political Rights (ICCPR), which the United States of America ratified on 8 June 1992, provides that no one shall be arbitrarily deprived of his or her life. The obligations imposed by article 6(1) of the ICCPR apply to all State parties, including federal and local police forces. This principle is reflected in article 50 of the ICCPR, which provides that "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions."

I also wish to draw your Excellency's Government's attention to article 3 of the UN Code of Conduct for Law Enforcement Officials, which states that "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." This obligation is also reflected in Principle 14 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and clearly stipulates that law enforcement officials may not use firearms, unless it is for self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and only when less extreme measures are insufficient to achieve these objectives. In this regard, it should be stressed that fleeing from arrest is not justification for the use of lethal force.

Additionally, Principle 9 permits the intentional lethal use of firearms only when it is strictly unavoidable in order to protect life. Medical assistance must also be provided as soon as possible when necessary. The need and importance of complying with these Principles in relation to the use of lethal force by police in the United States were reiterated by the Human Rights Committee in 2014 (see CCPR/C/USA/CO/4).

I also would like to remind your Excellency's Government that international human rights law imposes an obligation on States to investigate alleged violations of the right to life "promptly, thoroughly and effectively through independent and impartial bodies" as laid down in the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (see CCPR/C/21/Rev.1/Add.13, para. 15) and the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016). The Protocol also stresses that family members have the right to "seek and obtain information on the causes of a killing and to learn the truth about the circumstances, events and causes that led to it." Therefore, absent a compelling need to protect the public interest or the legal rights of the victims and their families, the State party must disclose all relevant details about the investigation to the victim's next of kind and make all evidence and its findings public.