

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on violence against women, its causes and consequences

REFERENCE:
AL OTH 66/2018

30 October 2018

Ms. DiCarlo,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the human rights of migrants; and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 33/30, 36/6, 35/15, 34/21 and 32/19.

In this connection, we would like to bring to your attention information we have received concerning the **arrest, enforced disappearance and extrajudicial execution of over 50 migrants from Ghana and other West African countries by Gambian security forces in The Gambia and across the border in Senegal, in July 2005.**

We wish to draw attention to information received concerning a **joint ECOWAS/United Nations fact-finding mission that was assembled in 2008 to investigate these crimes, and the lack of information regarding its findings, which reportedly were never made public.**

According to the information received:

On 22 July 2005, Gambian police forces arrested approximately 50 to 56 immigrants, including two women one of whom was pregnant, in Barra, a town facing Banjul on the opposite shore of the Gambia River. While the exact number and nationalities of the victims are unknown, it is reported that the group included approximately 44 Ghanaian nationals, 10 Nigerian nationals, two, perhaps three Ivoirian nationals, two Senegalese nationals, and two Togolese nationals.

The following individuals were among those arrested that day: [REDACTED], a Ghanaian national and the only survivor; [REDACTED]

[REDACTED] all of them Ghanaian victims; [REDACTED], from the Gambia; and [REDACTED] and [REDACTED], both Togolese nationals.

The detained migrants, as well as one Gambian national arrested later on, were killed in the course of the following week and buried near Banjul and Kanilai. As mentioned above, only one person, Mr. [REDACTED], a Ghanaian national,

survived. The bodies of eight of the migrants were found in Brufut, on the outskirts of Banjul, on 23 July 2005, one day after their arrest. No other bodies have been recovered up to now.

The migrants had set off from a beach in Saly Mbour in Senegal in a hired motorized canoe hoping to meet up with a boat that would take them to Europe. They were unable to make contact with the boat and landed in Barra on 22 July 2005, on which date “Revolution Day” was celebrated. They were arrested and taken to the Barra police station.

Prior to their arrest, the Gambian intelligence reportedly received information regarding a planned coup against the Government by mercenaries and it is speculated that they may have mistaken the migrants with them. The then President Jammeh and his ministers, the chiefs of Gambia’s security forces, and civilian dignitaries were attending a festival at the July 22 Square in Banjul. Several witnesses said that the inspector general of police at the time, Mr. Ousman Sonko - who is currently detained in Switzerland on charges of crimes against humanity - was at the ceremony and received a phone call informing him that foreigners had been apprehended. After President Jammeh was informed, he left with his security staff for his nearby compound.

Witnesses state that Mr. Sonko asked the Navy to transfer the group of detained foreigners, by vessel, from Barra to the Naval Headquarters in Banjul. The group was divided and the naval vessel *Fatima I* had to make two trips to transport them. When the detained migrants were reunited at the Navy headquarters, most of those on the first trip had been beaten and stripped of their belongings.

It is reported that at least two of the high-ranking officials, Mr. Sonko and Mr. Daba Marenah, Director of the National Intelligence Agency, called President Jammeh from the Naval Headquarters. The Head and several members of “the Junglers”, an unofficial paramilitary unit of an estimated 12 to 25 soldiers drawn from the State Guard, were also at the Naval Headquarters.

The Junglers took their name from the fact that some members had received jungle survivor training. They were also known as the “Patrol Team” because their original duties included patrolling the Gambia-Senegal border around the presidential residence in Kanilai. The State Guards from which the Junglers were drawn played a key role in protecting President Jammeh. It has been alleged that from their creation in 2003-2004, until President Jammeh’s fall in 2017, the Junglers were implicated in serious human rights violations.

During its visit to the Gambia in June 2017, the Working Group on Enforced or Involuntary Disappearances heard numerous allegations of illegal arrests, enforced disappearances, extrajudicial killings and torture committed by the Junglers as a means of neutralizing political dissent and terrorizing the population, under the orders of President Jammeh. Throughout the Junglers’ existence, President Jammeh was reportedly in regular communication, often daily, with its

leader, who at the time of the killings of the group of migrants was Mr. Tumbul Tamba. One former Jungler said Mr. Tamba received direct operational orders from President Jammeh and would then convene the Junglers to brief them on the operation and to communicate the president's orders. "The big man said to 'finish them,'" was how Mr. Tamba would convey orders to kill, according to a former Jungler.

On 23 July 2005, the detained migrants were divided into groups and taken by buses to several locations around Banjul, including the Junglers' unofficial headquarters, and several police stations and army barracks. The police also arrested Mr. Lamin Tunkara, a Gambian national who was working with the captain of the vessel that was to transport the migrants to Europe. His family never saw Mr. Tunkara again.

On the same day, a first group of migrants was taken from the Kanifing police station in two vehicles to Brufut, on the outskirts of Banjul. A former Jungler said that eight migrants were then executed by seven Junglers, assisted by several regular soldiers, with machetes, axes, knives, and sticks and left in the bushes near "Ghanatown" in Brufut. The migrants were handcuffed while they were slaughtered. A former police commissioner who arrived on the scene confirmed that the bodies had been badly beaten. The discovery of eight dead bodies with cuts and trauma wounds was reported in the Gambian press.

Two former Junglers said that the migrants were killed in this manner following a directive issued by President Jammeh, after the 2004 murder of journalist Deyda Hydara, ordering not to use guns in killings in the Gambia.

Two of the Ghanaian migrants in that first group reportedly managed to escape and seek refuge in Ghanatown, but they were turned over by local leaders to the police. They have not been heard from since. The other migrants, estimated about 45, were held for a longer period in several other places of detention around Banjul, apparently while further investigations were carried out.

About a week later, various Junglers rounded the remaining migrants up, taking them to the town of Kuloro where they were driven in several pickup trucks and other vehicles toward Kanilai, a town located close to the southern border with Senegal. After having crossed the border into the Casamance region of Senegal, in an operation overseen by Mr. Tamba, the Junglers' leader, two Junglers covered the heads of the migrants with plastic and shot them. As they had left Gambian territory, the Junglers were no longer bound by the directive issued by President Jammeh and could use their guns. The bodies were dumped in nearby wells, including one in an abandoned village in Senegal and another near President Jammeh's compound in Kanilai. The wells were then covered with stones. The area across the border had reportedly been used by the Junglers as a killing and dumping ground in at least two other cases.

One of the migrants who had escaped from the scene was recaptured at Kankurang near Kanilai. This individual was mutilated and killed with a cutlass by another Jungler and his dismembered body dumped in a plastic sack.

Mr. █████ said that he was loaded into the back of a white double-cabin pickup truck, along with seven other migrants. They were driven to a forest, where he jumped from the truck. He spent days wandering in the forest before he arrived at a village in Senegal where he was given some food. From there, he went to the town of Bounkiling and reported the incident to the Senegalese *gendarmerie*. He was treated at the local hospital and given money and travel papers so he could go to Dakar. There, he helped the Ghanaian embassy identify the people he had travelled with and who were believed to have been killed. Back in Ghana, he located many of the victims' families.

Reportedly, Gambian authorities refused to cooperate with several attempts made by Ghana to investigate the matter. During an August 2005 visit to the Gambia by a Ghanaian delegation led by the then-foreign minister (and now president) Nana Addo Dankwa Akufo-Addo, the Minister of Foreign Affairs of Gambia at the time suggested that the eight migrants whose bodies were found could have been victims of ritual murder. According to the delegation, President Jammeh "categorically denied any Gambian Government involvement."

The Gambian government agreed that a Ghanaian investigative team could visit the country, which it did in March 2006. According to an excerpt of the unpublished Ghanaian report printed in a Ghanaian newspaper, "[t]he Ghana team's attempt to meet with high-level Gambian officials whose functions were related to the subject matter of the team's visit, became entangled in layers of bureaucracy [...] and it became evidently clear the Gambians were not going to be faithful to their commitment to jointly investigate the subject matter."

In 2008, a joint ECOWAS/United Nations team was established to investigate the killings, under the leadership of former Jamaican Ambassador to the United Nations, Curtis Ward, and including jurists, Justice Albert J. Redhead of Antigua and Barbuda and Justice Ariranga G. Pillay of Mauritius. By that time, however, the Gambian government had allegedly already taken steps to destroy evidence related to the case. Different sources stated that Mr. Essa Badjie, who was appointed inspector general of police in July 2008, destroyed the diary log of the Barra police station and made a new log and backdated it. Later, after Mr. Badjie was imprisoned following a falling out with President Jammeh, he told a friend that President Jammeh personally instructed him to forge the records.

Shortly before the ECOWAS/United Nations mission arrived in Gambia, Mr. Badjie and the crime management coordinator met several of the high-ranking officials who had been involved in the case in 2005 at Police Headquarters and warned them against saying anything that would incriminate the government. The two seized and destroyed the relevant sections of the naval log books.

The ECOWAS/United Nations team mission report has never been made public nor shared with the families of the victims.

In 2009, the Gambia and Ghana signed a Memorandum of Understanding acknowledging that the Gambian government was not complicit in the killings but would make contributions to the families as a humanitarian gesture. President Jammeh said that the findings “vindicated” his government. At the time, Ghana’s Minister of Foreign Affairs, Mr. Alhaji Muhammad Mumuni, expressed scepticism about the findings, but accepted the report to bring closure to the families and restore relations between the two countries. Gambia paid US\$500,000 in compensation to Ghana, which gave 10,000 Ghana cedis (roughly US\$6,800 at 2009 rates) to each of the approximately 27 families of the victims. Six bodies were returned to Ghana. It is not confirmed, however, whether the transferred bodies were, in fact, those of the murdered Ghanaians. The remains of the other victims, estimated at least 40, have not been located, exhumed, identified or returned to their families. In addition, many of these families are not aware of the victims’ whereabouts, nor of the circumstances surrounding their disappearance and execution.

In the Memorandum of Understanding following the report, both Ghana and the Gambia pledged to pursue through all available means the arrests and prosecution of all those involved in the deaths and disappearances of the Ghanaians and other ECOWAS nationals, especially those identified as culprits in the report. However, no arrest was ever made in connection with the case.

On 27 May 2018, the Ghanaian government announced that it had tasked the Ministry of Foreign Affairs and the Attorney-General’s Office to study a request for Ghana to re-open its investigations into the case and explore the full extent of its legal and diplomatic implications, and also advise the government on the way forward. The Government of the Gambia, through their spokesperson, Mr. Demba Jawo, subsequently pledged to cooperate with any investigation that may be re-opened by Ghana. No action towards accountability appears yet to have been taken.

While we do not wish to prejudge the accuracy of the information related in this communication, we have deemed it sufficiently reliable to express our most serious concern to the authorities of The Gambia that if the facts alleged were confirmed, they would constitute serious human rights violations under international law including to the rights to life, to liberty and security of persons, of the absolute prohibition of torture, of the right to due process and fair trial if accused of an offence, and the right not to be subjected to enforced disappearance.

In relation to the establishment of responsibility for these alleged violations, we have also shared our concerns with the Government of The Gambia at the reported lack of credibility of the investigations carried out by relevant authorities. In this regard, we are further concerned that the joint ECOWAS-United Nations investigation report was never made public nor copies provided to the families of the alleged victims.

We welcome the pledges and assurances by the new Government in The Gambia to cooperate with any effort to investigate the deaths of these 50-56 persons with a view to bring full light on what happened, to bring those responsible to account, and to ensure that the right of the families to know and to adequate compensation be upheld. In this regard, we have encouraged the Government of The Gambia to do so. Similarly, we are urging any effort by the ECOWAS and the United Nations Secretariat to contribute to establish the truth about these events through the release of their joint-report and, as it is duty-bound by the UN Charter, to contribute to deliver a much delayed justice to the victims and their families.

In connection with these allegations and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites the main relevant international human rights instruments and norms pertaining to the case.

As 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 be grateful if you could provide any additional information and/or comment(s) you may have on the above-mentioned allegations, particularly as regards the joint ECOWAS/United Nations Fact-finding mission to The Gambia, and why the related report has not been made public. We also take this opportunity to formally request a copy of such report for our consideration, and for the consideration of the families of the alleged victims.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from the ECOWAS and the United Nations Department of Political Affairs will be made public via the Special Procedures communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council for its consideration.

Please accept, Ms. DiCarlo, the assurances of our highest consideration.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Felipe González Morales
Special Rapporteur on the human rights of migrants

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention 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 Convention on Civil and Political Rights (ICCPR), which came into force for the Gambia on 22 June 1979, provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. In its General Comment No. 6, the Human Rights Committee reiterated that the right to life is the supreme right from which no derogation is permitted even in time of public emergency that threatens the life of the nation. Moreover, in its General Comment No. 31 the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces. Permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13).

We would like to recall that the right to life applies to all human beings, and that Governments have a responsibility to protect this right in territories under their jurisdiction regardless of the citizenship of the persons concerned (E/CN.4/2003/3, para. 55). Moreover, the duty to protect the right to life demands that States take special measures to protect vulnerable persons and groups, including refugees and asylum seekers. This was also highlighted by the Human Rights Committee in its concluding observations on Kenya (CCPR/C/KEN/CO/3, para. 12).

We would also like to remind you of the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary or summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions as laid down in the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989. This duty to investigate is also well reflected in regional norms¹.

The duty to investigate is heightened with regard to loss of life in custody because such incidents create a presumption of arbitrary deprivation of life by State authorities. On this point, the Human Rights Committee has ruled in *Eshonov v. Uzbekistan, Communication No. 1225/2003*, that “a death in any type of custody should be regarded as prima facie a summary or arbitrary execution, and there should be thorough, prompt and impartial investigation to confirm or rebut the presumption, especially when complaints by relatives or other reliable reports suggest unnatural death.”

The *Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)*, which reiterates that the duty to investigate is an essential part of upholding the right to life, highlights that the right to know the truth extends to family members and

society, particularly given the public interest in preventing international law violations. 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 relevant details about the investigation to the victim's next of kind and make its findings public.

We would like to draw your attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance. In particular, we would like to recall the prohibition to practice, permit or tolerate enforced disappearance (article 2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (article 3); that 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); the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention, and the obligation to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest (article 10); and the obligation to maintain in every place of detention an official up-to-date register of detained persons (article 12).

In its report on Enforced Disappearances in the Context of Migration (A/HRC/36/39/Add.2), the Working Group on Enforced or Involuntary Disappearances found that there is a clear lack of sufficient and qualitative investigations related to the matter the disappearance of migrants, which provokes a clear protection gap. According to the Working Group, impunity and lack of clarification of the facts are among the factors that most affect the relatives of the disappeared. The Working Group, therefore, called on states to adequately investigate any allegation of involvement, collusion or acquiescence of State authorities in acts, which may end in the disappearance of migrants and to criminalize all acts of enforced disappearances of migrants, which should be punished by appropriate penalties, taking into account their extreme seriousness.

We also wish to draw your attention on article 9 and 10 of the Universal Declaration of Human Rights and article 9 and 14 of the ICCPR prohibiting arbitrary arrest and detention as well as on the Revised Deliberation No.5 on deprivation of liberty of migrants, stating that “[t]he right to personal liberty is fundamental and extends to all persons at all times and circumstances, including migrants and asylum seekers, irrespective of their citizenship, nationality or migratory status. Furthermore, as stated in article 13 of the Universal Declaration of Human Rights, everyone has the right to leave any country, including his own, and return to his own country. The prohibition of arbitrary detention is absolute, meaning that it is a non-derogable norm of customary international law, or jus cogens. Arbitrary detention can never be justified, including for any reason related to national emergency, maintaining public security or the large movements of immigrants or asylum seekers. This extends both to the territorial jurisdiction and effective control of a State” (A/HRC/39/45, paras. 7-8).