

Mandate of Special Rapporteur on extrajudicial, summary or arbitrary executions

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Dear Mr. Wray,

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 35/15¹.

I have been informed of the murder of journalist Christopher Allen, a dual United States and United Kingdom national, whilst working in South Sudan on 26 August 2017. He was the first foreign journalist killed in South Sudan. Mr. Allen was a freelance journalist and worked for multiple newspapers and media organizations, including *Al Jazeera*, *The Telegraph*, *Vice News*, *The Toronto Star* and *The Independent*. His killing may constitute a war crime and regrettably to this day, the South Sudanese authorities have refused to conduct an investigation. I thus write to urge the Federal Bureau of Investigation to open an investigation into the killing of Mr. Allen, as mandated by Title 18, United States Code, section 2441.

Please note that a letter expressing similar concerns was sent to the Government of South Sudan.

Mr Allen was killed in the early morning of Saturday 26 August 2017 while documenting armed clashes between the Sudan People's Liberation Army in Opposition (SPLA-IO) and South Sudanese armed forces in the town of Kaya, situated on the border with Uganda and close to the border with the Democratic Republic of Congo. Mr. Allen's death seems to have occurred during an armed fight between government and rebel forces, which also left eighteen South Sudanese dead. At the time of his death, Mr. Allen has spent two weeks in South Sudan and was said to have been "embedded" with the SPLA-IO. The circumstances of Mr. Allen's death have never been formally investigated but it is reported that he would have been shot dead by South Sudanese armed forces.

Photographs taken by Mr. Allen approximately half an hour before his death provide important context of the incident. They show that Mr. Allen was not the only journalist covering the SPLA-IO. Two Reuters journalist were also present the day of his death. Further, the photographs also show that the SPLA-IO members wore clothes and markings that clearly distinguished them from the journalists. The SPLA-IO members

¹ As a Special Rapporteur, I am part of what is known as the [Special Procedures](#) of the Human Rights Council. Special Procedures, the largest body of independent experts in the UN Human Rights system, is the general name of the Council's independent fact-finding and monitoring mechanisms that address either specific country situations or thematic issues in all parts of the world. Special Procedures' experts work on a voluntary basis; they are not UN staff and do not receive a salary for their work. They are independent from any government or organization and serve in their individual capacity.

wore military fatigues and bright red headbands. A post-mortem photograph of Mr. Allen shows him wearing a blue t-shirt and jeans, as well as a red band on his left upper arm.

Lastly, the photographs show that shortly before Mr. Allen was killed, he was in front of SPLA-IO fighters taking photographs as they advanced towards him, down a track bordered by walls or buildings on both sides. The fighters were not firing their weapons and the two in the foreground had their guns pointing into the air, suggesting that at the time there was no firefight taking place. The very last photograph, thought to be taken by accident, shows what appears to be the shoulder and the back of the head of a person who is not wearing a red headband and who is bending down in the grass, away from the camera.

In its initial reports, the South Sudanese Government alleged that Mr. Allen was a rebel. On 28 August 2017, the country's Information Minister told *Voice of America* that in the incident "sixteen rebels, including a 'white rebel,' (emphasis added) were killed. The identity of that man is not known, but he was among the rebels who attacked the garrison". Soldiers interviewed by the media who claimed to have witnessed Mr. Allen's killing have acknowledged that it was clear that Mr. Allen was taking photographs at the time, but they assumed that he was a "white Congolese rebel", and that this was the reason he was allegedly shot at².

On August 29, an army spokesperson accused Mr. Allen of entering South Sudan illegally and justified his killing by saying that "*Anybody who comes attacking us with hostile forces will meet his fate.*"

On 30 August 2017, the South Sudanese Government's narrative had changed. The Information Minister stated that Mr. Allen had been accidentally killed in crossfire as government troops fought the rebels and expressed regret over the killing. The Information Minister, however, ruled out investigating Mr. Allen's death on the ground that he had entered the country illegally. The Minister claimed that the journalist had been denied legal entry into South Sudan in June 2017 due to hostile reporting. It is of note that Mr. Allen had not reported from South Sudan before his death.

Furthermore, sometime after Mr. Allen's death, photographs of his dead body had been posted on the internet. Some of these photographs include images of Mr. Allen with his trousers pulled down to expose his genitalia. The websites that posted the photographs appear to be independent of the government of South Sudan. Mr Allen's parents appealed to the United States Government to make efforts to get the photographs removed from those websites. In turn, the US government approached the South Sudanese and Ugandan authorities to take steps to do so. A short time thereafter the photographs were taken down.

Following Mr. Allen's death, his body was taken by South Sudanese forces to a facility controlled by the United Nations Mission in South Sudan (UNMISS). Initially, UNMISS offered to conduct an autopsy in South Sudan but chose not to do so for

² See <https://mg.co.za/article/2019-04-12-00-parents-of-slain-journalist-demand-justice-from-south-sudan> (accessed in December 2019)

unreported reasons. On 30 August 2017, Mr. Allen's body was transported back to the US with the aid of the United States State Department and the Federal Bureau of Investigation. The body was received on 4 September 2017 at San Diego Airport. Mr. Allen's cameras and computers then arrived in the US on 8 September, followed by his belongings on 15 November 2017. His notebooks were not received.

Mr. Allen's autopsy was performed in the US. According to the autopsy report, Mr. Allen was shot five times from the left including once in the head, twice in the neck, once in his right thigh and once in his lower left leg. The shots did not appear to be at close range and Mr. Allen's wounds were most likely inflicted by a "long-range firearm discharge," but the report was unable to determine the exact distance.

A journalist who investigated Mr. Allen's death obtained a copy of the autopsy report and had it reviewed by experts who said that they could not exclude the possibility that Mr. Allen was targeted. Two international experts who saw the report said that the consistency of the trajectory of the wounds raise questions about whether his death was accidental. A forensic pathologist who read the autopsy report said that although not conclusive, the bullet patterns particularly those in the neck and head raise concerns.

The South Sudanese authorities have not taken any steps to investigate Mr. Allen's killing. In September 2019, Mr. Allen's family and legal team have called upon the Commission on Human Rights in South Sudan to investigate the aftermath of Mr. Allen's killing, and to provide the family with a timeline and any relevant documents or correspondence. There has been no reply to date.

It should be noted that Mr. Allen is one of nine journalists who had been killed since the beginning of the brutal civil war in South Sudan. So far, the sole example of a prosecution and conviction for the killing of a journalist in the country was in relation to the 2016 Terrain Hotel incident when South Sudanese soldiers executed one journalist and gang raped foreign aid workers. President Salva Kiir has expressly threatened to kill journalists who work "against the country."³

While I do not wish to prejudge the accuracy of the information above, I am concerned that the circumstances of Mr. Allen's killing and the refusal to investigate it raises concern as to whether he was intentionally killed. Should it be confirmed that he was deliberately killed, while acting as a journalist, this would contravene the right of every individual to life, as set out in article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant for Civil and Political Rights (ICCPR), ratified by South Sudan in June 2019. The killing may also constitute a violation of Article 3 common to the four Geneva Conventions of 1949 and a war crime.

At the time of this killing, the situation in South Sudan amounted to a non-international armed conflict (NIAC). Both international humanitarian law and human

³ South Sudanese President Salva Kiir threatens to kill journalists: <https://cpj.org/2015/08/south-sudanese-president-salva-kiir-threatens-to-k.php> (accessed in January 2020); or South Sudan president 'threatens to kill journalists': <https://eagle.co.ug/2015/08/18/south-sudan-president-threatens-to-kill-journalists.html> (accessed in January 2020).

rights law apply in this context. Whether a particular killing is legal is determined by the applicable *lex specialis*. The circumstances of the case would suggest that the killing of Mr. Allen should be assessed on the basis of common article 3 of the Geneva Convention and customary international law, according to which civilians may not be made the object of an attack unless, and for such time as, they take a direct part in hostilities. The principle of distinction constitutes one of the cardinal principles of targeting under IHL. Where there is doubt as to whether a person is a civilian or is taking a direct part in hostilities, civilian status must be presumed. In its Interpretive Guidance on Direct Participation in Hostilities, the ICRC has taken the view that ‘civilians’ protected from direct attack in a NIAC are all those who are neither members of a State’s armed forces nor members of organized armed groups. The latter are defined as ‘individuals whose continuous function it is to take a direct part in hostilities.’

In a non-international armed conflict, journalists are entitled to all the protections afforded to civilians in times of conflict. An intentional attack against civilians, including journalists, therefore constitutes a war crime⁴. While journalists will lose this protection if they directly participate in hostilities and for as long as they take direct part, participation does not include such activities as conducting interviews with civilians or combatants, taking still or moving pictures, making audio recordings or any of the other usual tasks involved in journalistic practice⁵. Furthermore, international humanitarian law makes no distinction between war correspondents and other journalists, and journalists have the same protection as other civilians⁶.

The prevalent interpretation of civilian status in the context of the international law applicable to a non-international armed conflict would thus suggest that Mr. Allen may have been targeted in the performance of his journalistic duties. Although the possibility of a crossfire death, or the possibility that the shooter mistook Mr. Allen for a member of the SPLA-IO, or the possibility that Mr Allen’s camera was mistaken for a weapon cannot be conclusively excluded, the media accounts of South Sudanese soldiers who witnessed the incident and photos Mr. Allen took shortly before he was killed support none of these possibilities. This is corroborated by the opinions of the international experts and forensic pathologists who after reviewing Mr. Allen’s autopsy supported the possibility that Mr. Allen was the subject of a targeted shooting.

Most importantly, the questions regarding the circumstances of his killing suggest that it should be the object of a proper impartial investigation.

South Sudan has an obligation to investigate Mr. Allen’s killing under international and international humanitarian law. The claim that Mr. Allen was killed accidentally or that he entered South Sudan unlawfully, does not void this obligation. In this connection, please also refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and

⁴ The safety of journalists, Report of the Office of the United Nations High Commissioner for Human Rights (A/HRC/24/23): <https://undocs.org/A/HRC/24/23>

⁵ Ibid.

⁶ Ibid.

standards relevant to the present case. Despite this, for some two years, South Sudan has failed to conduct any investigation into the alleged war crime.

On 29 August 2019, Mr Allen's family requested the US Federal Bureau of Investigation International Human Rights Unit (IHRU) to open its own criminal investigation on the grounds that Mr. Allen's killing was in violation of Title 18, United States Code, section 2441 (war crimes). The War Crimes Act of 1996, as amended, makes it a criminal offense to commit certain violations of the law of war when such offenses are committed by or against U.S. nationals or Armed Service members. Mr. Allen was the victim of what may amount to a murder under common article 3 of the Geneva Convention.

This letter is in support of this demand. It is my view that, in the absence of a proper investigation by South Sudan authorities, and in view of the demonstrated unwillingness of the South Sudanese authorities to abide by their international obligation to investigate, the IHRU is the appropriate investigative organ to open its own criminal investigation. I understand that the FBI has not to date conducted an investigation into the question of whether war crimes were committed in this case, despite its involvement since the death in August 2017. Given the information provided above, I submit that it is clear that there is reasonable cause to suspect that there has been a grave violation of international law and domestic US law in this case.

"Impunity for attacks and violence against journalists constitutes one of the greatest challenges to the safety of journalists, and that ensuring accountability for crimes committed against journalists is a key element in preventing future attacks." (A/HRC/33/L.6). To many around the world, the United States is a symbol of press freedom and an FBI investigation into the circumstances of Mr. Allen's killing could be a needed example to the world that no one should get away with the murder of a journalist. Just as importantly, to Mr. Allen's parents who reside in the US, an FBI investigation will constitute a crucial path towards truth and closure over their son's grief.

I would appreciate receiving a response on whether the FBI will investigate Mr. Allen's killing, and in the negative, an explanation as to why not, 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 may consider to publicly expressing my concerns as in my view, the information at hand, which appears to be reliable, indicates a matter warranting serious attention. Given the far reaching human rights implications involved in these allegations for the protection of journalists, I believe that the wider public should be informed. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Mr. Wray, 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 refer to Article 3 of the Universal Declaration of Human Rights which states that “Everyone has the right to life, liberty and security of person”. Article 19 of the UDHR establishes that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

Article 6 (1) of the International Covenant on Civil and Political Rights provides that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. Article 19 of the ICCPR establishes

that “Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

Article 6 continues to apply also in situations of armed conflict to which the rules of international humanitarian law are applicable, including to the conduct of hostilities. While rules of international humanitarian law may be relevant for the interpretation and application of Article 6 when the situation calls for their application, both spheres of law are complementary, not mutually exclusive. (...) [P]ractices inconsistent with international humanitarian law, entailing a risk to the lives of civilians and other persons protected by international humanitarian law, including the targeting of civilians (...) [and the] failure to apply the principles of precaution and proportionality (...) would also violate Article 6 of the Covenant. States (...) must investigate alleged or suspected violations of Article 6 in situations of armed conflict in accordance with the relevant international standards.

Common Article 3 to the four Geneva Conventions of 1949 provides that: “In the case of armed conflict not of an international character, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: 1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria; 2) To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (...)

Article 13 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), provides that: “The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities”.

In relation to the duty to investigate, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly on 16 December 2005, state that the “obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: ... (b) Investigate violations effectively, promptly, thoroughly and impartially

and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law”⁷.

The Minnesota Protocol on the Investigation of Potentially Unlawful Death further provides that “Where, during the conduct of hostilities, it appears that casualties have resulted from an attack, a post-operation assessment should be conducted to establish the facts, including the accuracy of the targeting. Where there are reasonable grounds to suspect that a war crime was committed, the State must conduct a full investigation and prosecute those who are responsible. Where any death is suspected or alleged to have resulted from a violation of international humanitarian law that would not amount to a war crime, and where an investigation (“official inquiry”) into the death is not specifically required under international humanitarian law, at a minimum further inquiry is necessary. In any event, where evidence of unlawful conduct is identified, a full investigation should be conducted”⁸

⁷ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

⁸ Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), paras. 20 – 22: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf