

Mandate of Special Rapporteur on extrajudicial, summary or arbitrary executions

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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 concerning the death of Mr. **Christopher Allen**, a dual national of the United States of America and the United Kingdom, freelance journalist, who was killed in South Sudan while on duty. A letter expressing similar concerns is being sent to the Federal Bureau of Investigation (FBI) of the United States of America.

According to the information received:

Mr. Christopher Allen, a dual national of the United States of America and the United Kingdom, was a freelance journalist. On 26 August 2017, he was killed in South Sudan whilst covering a rebel offensive in the town of Kaya, situated on the border with Uganda, and close to the border with the Democratic Republic of Congo. Mr. Allen was said to have been embedded with "insurgent groups".

According to Ugandan news reports, Mr. Allen's death occurred during clashes between government and rebel forces, which also left eighteen South Sudanese dead¹. The Sudanese People's Liberation Army in Opposition (SPLA-IO) is reported to have issued a statement condemning the killing as a, "*monstrous and unnatural act [that] violates international humanitarian law which entitles journalists to all rights and protection during armed conflicts*"².

A spokesman for South Sudan's armed forces is reported to have said that Mr. Allen had not been accredited by the authorities to cover the conflict as a journalist, and that it was likely that he had entered the area from Uganda³.

While the circumstances of Mr. Allen's death have, reportedly, never been formally investigated, it appears that he was shot and killed by South Sudanese government soldiers. Soldiers who claim to have witnessed Mr. Allen's killing have reportedly acknowledged that it was clear that he was taking photographs at the time, but they assumed that he was a "*white Congolese rebel*", and that this is

¹ See for example: <https://www.independent.co.ug/us-reporter-18-sudanese-killed-kaya-clashes/> ; (accessed in December 2019)

² Ibid.

³ Ibid.

the reason he was allegedly shot at⁴. In this regard, it is also reported that, during the events, SPLA-IO members were allegedly wearing red headbands and military fatigues while Mr. Allen was wearing a red band on his left upper arm.

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), where he was held until 30 August 2017, before being transported back to the US, via Kampala and the UK.

The body was received on 4 September 2017 at San Diego Airport. Mr. Allen's cameras and computers then arrived in Chicago on 8 September 2017, followed by his belongings from Kampala, on 15 November 2017. His notebooks were not received. The repatriation of the body to the US was led by the US State Department and the Federal Bureau of Investigation (FBI).

No autopsy was performed until the body arrived in the US. Initially, UNMISS reportedly offered to conduct an autopsy in South Sudan. However, according to Mr. Allen's family, UNMISS afterwards decided to not proceed in this way and, in the end, no autopsy was conducted.

In the days following Mr. Allen's death, Government officials and spokespersons released a series of statements in which their accounts as to what happened changed.

Initial reports denied that Mr. Allen had been targeted due to his journalism, stating that he was one of the rebels. On 28 August 2017, the Minister of Information of South Sudan and the Government spokesperson told *Voice of America* that "*sixteen rebels, including a white rebel, were killed. The identity of that man is not known, but he was among the rebels who attacked the garrison*"⁵.

On 29 August 2017, an army spokesman claimed that Mr. Allen had entered the country illegally, with a rebel group, and so he was a legitimate target⁶.

On 30 August 2017, the same spokesperson ruled out conducting an investigation into Mr. Allen's death, on the basis that he had "*entered the country illegally*", as he had been denied legal entry in June 2017 due to his "*hostile reporting*," and so he was a "*criminal*."⁷

⁴ See <https://mg.co.za/article/2019-04-12-00-parents-of-slain-journalist-demand-justice-from-south-sudan> (accessed in December 2019)

⁵ <https://www.voanews.com/archive/south-sudan-regrets-death-american-journalist> ; (accessed in December 2019)

⁶ <https://www.voanews.com/archive/south-sudan-says-no-hint-dead-american-was-journalist> ; (accessed in December 2019)

⁷ <https://www.bloomberg.com/news/articles/2017-08-30/u-s-journalist-death-probe-ruled-out-by-south-sudan-government> ; (accessed in December 2019)

Sometime after Mr. Allen's death, some photographs of his body were posted on the internet. These photographs appeared to show Mr. Allen's body as he had fallen, but also included images of him with his trousers pulled down to expose his genitalia.

Mr. Allen's parents appealed to the US Government to make efforts to get the photographs removed and the US government made representations to the South Sudanese and Ugandan authorities to take steps to do so. A short time thereafter, the photographs were removed.

While I do not wish to prejudge the accuracy of the information above, I would like to express my utmost concern at the death of Mr. Allen, as well as at the lack of investigation thereof, while recalling that international law sets out clear provisions for the protection of journalists.

Under international human rights law, Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), respectively guarantee the right of every individual, including journalists, to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his or her life. In addition, Article 19 of the UDHR and Article 19 of the ICCPR protect the right of all individuals, including journalists, to freedom of expression.

Furthermore, under international humanitarian law, given the situation of non-international armed conflict that prevailed at the time of the reported events⁸, 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 crime⁹. While journalists will lose this protection if they directly participate in hostilities, 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 practice¹⁰. Furthermore, in situations of non-international armed conflicts, international humanitarian law makes no distinction between war correspondents and other journalists, and journalists have the same protection as other civilians¹¹.

In any event, I wish to emphasize that the prohibition of arbitrary deprivation of life, as set forth in Article 6 of the ICCPR, is non-derogable and applicable at all times. It therefore encompasses unlawful killings that may occur during the conduct of hostilities.

⁸ Report of the Commission on Human Rights in South Sudan (A/HRC/40/69): <https://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx>

⁹ 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>

¹⁰ Ibid.

¹¹ Ibid.

I also express concern at the reported publication on the internet of the photographs of Mr. Allen's dead body. International humanitarian law prescribes that the dead must be respected. Parties to a non-international armed conflicts remain bound by general international humanitarian law obligations, such as the prohibition of outrages upon personal dignity, as well as cruel and inhuman treatment.

When violations of international human rights law or humanitarian law have been allegedly committed, States are obliged to investigate the allegations effectively, promptly, thoroughly, independently and impartially and, if appropriate, to prosecute those responsible and ensure that prosecutions conform with fair trial standards¹².

Furthermore, violations of international human rights law and international humanitarian law also give rise to a right of the victims to an effective remedy, which includes the right to equal and effective access to justice and adequate, effective and prompt reparation for the harm suffered. Reparation encompasses compensation, restitution, rehabilitation, satisfaction and guarantees of non-recurrence¹³.

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 provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would 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 a detailed account of the context and circumstances which led to the death of Mr. Allen.
3. Please provide detailed information on whether any investigation has been conducted into his death and the publication of the photographs of his body on the internet.
4. If an investigation was conducted, please provide information about its findings and outcome, including any judicial proceedings undertaken or other sanctions taken against any person found responsible for this death. If no investigation was conducted, please explain why and how would this be compatible with South Sudan's international obligations

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within

¹² For more details on these criteria, also see A/HRC/15/50: <https://undocs.org/A/HRC/15/50>

¹³ Ibid. 9

60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

I may publicly express my concerns about this case as, in my view, given the protection enjoyed by journalists under international law, the wider public should be informed. The information at hand appears to be sufficiently reliable and indicates a matter warranting the most serious attention. A prompt response from the Government would be appreciated. Any expression of concern on our part will indicate that I have been in contact with your Excellency's Government's to clarify the issues in question.

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 refer your Excellency's Government 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".

Like the rest of the ICCPR, 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”¹⁴.

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”¹⁵.

¹⁴ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

¹⁵ 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