

Mandates of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL GMB 2/2022
(Please use this reference in your reply)

31 March 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Working Group on Enforced or Involuntary Disappearances; 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 45/10, 45/3, 44/5 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning the alleged decision of the Amnesty Recommendation Committee of the Truth, Reparation and Reconciliation Commission (TRRC) to recommend the granting of amnesty to Mr. Sanna Sabally, who is accused of serious human rights violations that may reach the threshold of crimes against humanity.**

According to the information received:

Article 19 of the Truth, Reconciliation and Reparations Commission Act affords power to the TRRC to recommend the granting of amnesties to individuals who have fully disclosed their involvement in human rights violations and expressed remorse. Article 19 (3) exempts from this provision the acts that qualify as crimes against humanity. The Amnesty Recommendation Committee is responsible for carrying out the investigations and consultations with victims that may lead to amnesty recommendations. The President shall decide on the granting of amnesties upon reception of these recommendations.

In its final report released in December 2021, the TRRC recommended the prosecution of the Armed Forces Provisional Ruling Council (AFPRC) Junta members -including Mr. Sanna Sabally-, who were identified as perpetrators bearing the greatest responsibility for the torture, assault, beatings and extrajudicial killings of 11 Gambian National Army soldiers on 11 November 1994. They were also identified as responsible for the beatings and arbitrary detention of five private soldiers. The families of the victims have reportedly refused to forgive the perpetrators. Mr. Sanna Sabally was also found responsible for the torture of political prisoners after the 1994 coup.¹

On 16 March 2022, the TRRC approved a report by the Amnesty Recommendation Committee which allegedly recommends the granting of amnesty to Mr. Sanna Sabally, and submitted it to the Ministry of Justice for

¹ TRRC report, volume 3, pages 68-72. See also: Findings on Criminal Liability Emanating from the Truth, Reconciliation and Reparations Commission, 24 December 2021.

further consideration. Out of the 25 applications for amnesty evaluated by the TRRC, eleven were dismissed, eight were denied and five were approved, while one person was granted immunity.

The Amnesty Recommendation Committee has justified the decision to approve Mr. Sabally's amnesty on the grounds that he had been truthful during his testimony before the TRRC in 2019, and that he himself had been a victim of Yayah Jammeh's government and spent time in prison for "false crimes".

The sessions of the Amnesty Recommendation Committee lacked transparency and were not accompanied by prior consultation with the families of the direct victims or with victim-led organizations, who learnt about this decision through the media and are yet to receive copy of the amnesty policy used in considering the approval or denial of the amnesties.

We express serious concern at the alleged recommendation issued by the Truth, Reparation and Reconciliation Commission (TRRC)'s Amnesty Recommendation Committee to grant amnesty to Mr. Sanna Sabally, who has been identified by the commission itself as perpetrator of the serious human rights violations committed on 11 November 1994, and which –as part of a wider pattern of violations committed by the regime- may constitute crimes against humanity. This decision appears to be inconsistent with the TRRC Act, which precludes the granting of amnesties for crimes against humanity. It is also inconsistent with the statement issued by the TRRC that amnesty cannot be recommended for serious crimes or for violations amounting to crimes against humanity.² In this regard, we would like to recall that international human rights law impedes the use of amnesties for offences that reach the threshold of crimes against humanity, as established in the TRRC Act, as well as for all crimes under international law and gross human rights violations - such as torture, killings, enforced disappearance and sexual violence-, even if owing to their scale and context they do not amount to crimes against humanity.

We express further concern at the alleged lack of prior consultation, participation and information to victims in the assessment and development of the amnesty recommendation decision, as well as at the apparent disregard of the fact that the families of the victims of the November 1994 massacre have expressed their refusal to forgive the perpetrators.

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 our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide details about the alleged recommendation issued by the TRRC's Amnesty Recommendation Committee to grant amnesty to Mr. **Sanna Sabally** and how it complies with the legal requirements of the TRRC Act and the aforementioned international human rights standards.

² See <http://www.trrc.gm/trrc-special-committees/>

2. Please inform if the victims and the organizations representing them have been adequately informed of the TRRC's decision regarding Mr. Sanna Sabally's amnesty. Please also inform if the process leading to the TRRC's recommendation has been accompanied by prior consultation and effective participation of victims and the organizations who represent them, and whether their views have been taken into consideration. If this was not the case, please inform the reasons why.
3. Please provide information about the next steps in the decision making process regarding the amnesty recommendation in favor of Mr. Sanna Sabally and whether international human rights standards are being applied to the process and merits of the case.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

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

Fabian Salvioli
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Nils Melzer
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 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.

We would like to recall that article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), acceded to by the Gambia in 1979, guarantees the right of every individual to life and security and provides that these rights shall be protected by law and that no one shall be arbitrarily deprived of his or her life. In addition, article 7 guarantees the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Moreover, article 2 sets out the duty of States to ensure that any person whose rights were violated has an effective remedy, and that the competent authorities enforce such remedies when granted.

As established by the Human Rights Committee in its General Comment No. 31, States have an obligation to investigate and punish serious human rights violations, such as torture, extrajudicial killings and enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties (paragraph 18). Impunity for such violations can be an important element contributing to the recurrence of violations.

Furthermore, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, establishes the duty of States to undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and to ensure that those responsible for serious crimes under international law are prosecuted, tried and duly punished (principle 19). We recall that the full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations (principle 5).

We would also like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. We urge your Excellency's Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. This principle was reiterated by the Human Rights Council in Resolution 17/5 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions" (OP 4). The Council added that this includes the obligation "to identify and bring to justice those responsible ... to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions."

In this regard, we also wish to refer your Excellency's Government to General Comment No. 36, in which the Human Rights Committee stated that investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the *Minnesota Protocol on the Investigation of a*

Potentially Unlawful Death (2016)) and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violation (CCPR/C/GC/36; para. 27).

We also refer to the Human Rights Committee's observation in the case of *Bautista de Arellana v. Colombia*, stating that the "State party is under a duty to investigate thoroughly alleged violations of human rights, and in particular forced disappearances of persons and violations of the right to life, and to prosecute criminally, try and punish those held responsible for such violations. This duty applies *a fortiori* in cases in which the perpetrators of such violations have been identified".³

As noted by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, we would like to emphasize that from a human rights perspective, the obligation to investigate and prosecute arises from the right to an effective remedy. It is also part of the right of the victim, his or her immediate family members and, in certain cases, society as a whole to know the truth. The administration of justice in the face of serious human rights violations is a central element in preventing the recurrence of such violations. Promoting a culture of impunity contributes to vicious cycles of violence.

We would also like to recall that international law sets limits to the adoption of amnesties insofar as they foster impunity and prevent States from complying with their international obligations to investigate and prosecute those responsible for gross human rights violations, as well as deny victims their right to truth, to access to justice and to request appropriate reparations. In particular, amnesties are particularly incompatible with the obligation to prosecute crimes that represent serious human rights violations, such as torture, summary executions, enforced disappearances and genocide, among others. States have a due diligence responsibility to end impunity and hold accountable the perpetrators of such serious violations.

In this regard, the updated Set of Principles reaffirms the obligation of States to take appropriate measures in respect of perpetrators of human rights violations (principle 1) and sets out restrictions on amnesties and clemency measures (principle 24). The Human Rights Committee ruled that all impediments to establishing the legal responsibility of persons who have committed serious human rights violations should be removed. In its General Comment No. 31, the Committee established that in cases where violations such as torture, summary and arbitrary deprivations of life and enforced disappearances have been committed by a public official or State agent, the States concerned may not exempt the perpetrators from their personal legal responsibility through amnesties and prior immunities (para. 18). In general comment 36, the Committee held that "Immunities and amnesties provided to perpetrators of intentional killings and to their superiors, and comparable measures leading to de facto or de jure impunity, are, as a rule, incompatible with the duty to respect and ensure the right to life, and to provide victims with an effective remedy." (para. 27).

In this context, we would also like to refer to principle 18 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which provides that Governments shall either bring persons found to have participated in extrajudicial executions to justice or cooperate to extradite any such

³ Communication No. 563/1993, U.N. Doc. CCPR/C/55/D/563/1993 (1995). para 8.6.

persons to other countries wishing to exercise jurisdiction. Furthermore, we recall that amnesties provided to perpetrators of extrajudicial killings and comparable measures leading to de facto or de jure impunity, are, as a rule, incompatible with the duty to respect and ensure the right to life, and to provide victims with an effective remedy (CCPR/C/GC/36; para. 27)

In his 2020 report on the country visit to the Gambia (A/HRC/45/45/Add.3), the Special Rapporteur on the promotion of truth, justice, reparations and guarantee of non-recurrence reminded the Government that international human rights law “impedes the use of amnesties not only for offences that reach the threshold of crimes against humanity, but also for all serious human rights violations. Among others, this includes acts of torture, murder, enforced disappearance and sexual violence, which owing to their scale and context may not amount to crimes against humanity”. He further stressed that “the Truth, Reconciliation and Reparations Commission (TRRC) should in no case recommend – nor should the President grant – amnesties that contravene these well-established international standards and warned about the risk of entrenching impunity, with the concomitant danger of undermining non-recurrence efforts, if amnesties are granted for serious human rights violations” (para.53 and 54). In this connection, he recommended that Gambia “(i) investigate and prosecute officials and members of paramilitary groups implicated in human rights violations, in accordance with international standards, and consider adopting prosecutorial strategies that ensure the effective and timely prosecution of perpetrators; and (ii) refrain from recommending or granting amnesties or pardons for serious human rights violations, as prescribed by international law” (para 101, d) and e).

Art. 18.1 of the Declaration on the Protection of All Persons from Enforced Disappearance establishes that “Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction”. Along these lines, in its 2021 follow up report to the country visit to the Gambia (A/HRC/48/57/Add.1), the Working Group on Enforced or Involuntary Disappearances noted that “crucial actions to guarantee access to justice, remedy and reparation for victims are yet to materialize” (para. 2). “The Gambia is yet to adopt a law criminalizing enforced disappearance. None of the various legal reform bills underway, including the constitutional reform, criminalize the crime of enforced disappearance in accordance with international standards. As recognized by the Government of the Gambia, in its submission to the Working Group, the absence of a law renders prosecution difficult. The current provisions of the criminal code are insufficient to address the distinctiveness and complexity of the crime of enforced disappearance” (para. 4). The Working Group further noted that “the criminalization of enforced disappearance must also embody the continuous nature of the crime, to which amnesties or immunities cannot be applied. This will allow victims to have access to justice.... The Working Group also reiterate(ed) “the importance of introducing with the codification of the crime, the various modes of criminal liability (A/HRC/39/46/Add.1, para 82i) including in relation to any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance” (para. 5).

In addition, The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has drawn particular attention to the necessity of criminalising, in national law, not only perpetrators of torture and ill-treatment, but also those whose complicity or participation in such abuse consists of superior orders,

instigation, consent or acquiescence. Moreover, criminal responsibility can also arise from deliberate or negligent omission, most notably through command or superior responsibility as reflected in article 28(a) of the Statute of the International Criminal Court and recognized in customary international criminal law. Accordingly 'a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates'.