

COMMONWEALTH HUMAN RIGHTS INITIATIVE, AFRICA OFFICE
SUBMISSION ON HUMAN RIGHTS CASE IN THE GAMBIA

Introduction

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international, non-governmental organisation established in 1987 with a mandate to ensure the practical realisation of human rights in the countries of the Commonwealth. It is headquartered in New Delhi, India with an office in London and the Africa Office in Ghana. CHRI was granted Special Consultative Status with the Economic and Social Council of the United Nations in July 2005, CHRI is also accredited to the Commonwealth and also holds Observer Status with the African Commission on Human and Peoples' Rights since 2002.

This is an individual submission on the Republic of The Gambia, which is scheduled for review under the Universal Periodic Review (UPR) Process in February 2010. It is made pursuant to UN General Assembly Resolution 60/251, and further supported by UN Human Rights Council Resolution 5/1, on guidelines for the preparation of information under the UPR.

Submission

The submission is in respect to a specific human rights case concerning approximately 50 emigrants who were victims of extra-judicial murders and disappearances that took place in the territory of The Gambia in July 2005 and have to date, received no redress. The facts of this incident are as follows;

In July, 2005, there was an attempt to traffic about 56 Africans, including about 44 Ghanaians, 10 Nigerians, 2 Senegalese, 1 Togolese, 1 Congolese and 1 Ivorian from Senegal to Europe. On their journey, these emigrants were intercepted in Gambian territory by Gambian security and naval authorities on the Gambian coast, specifically at the Barra beach, where they were arrested by the Gambian security agents and illegally detained at the Barra police station without according them due process.

They were later divided into groups and taken to Banjul and held for several days without charge. One of the police stations they were detained in includes the Bondoom police station. Evidence gathered from the testimony of Martin Kyere, one of the survivors from Ghana, is that they were not told why they had been arrested and still being detained during their interrogation. He also learnt whilst in detention that they were being held by the Gambian national security.

According to news reports and the testimony of Martin Kyere, some of the men were allegedly murdered with machetes, knives, guns, axes and other sharp objects, their bodies were dumped in various locations in the Gambia. These bodies have not been discovered. Eight bodies were however discovered, and six of these have been identified as Ghanaians.

This information was corroborated by testimony of the victims' families in Ghana. On October 12th and 13th, 2007, the CHRI conducted a fact-finding mission to Berekum, Brong Ahafo region, and Kumasi, Ashanti region in Ghana to meet with the families of the victims.

We met over 40 relatives of the victims and they testified to the fact that they lost contact with their family members after mid-July, 2005.

After reports of the killings and or disappearances emerged, both Ghanaian and Gambian authorities expressed regret towards the incident and agreed to conduct joint investigations into the matter. An investigative team made up of high ranking officials from both Governments was tasked to investigate the circumstances that led to the disappearances and deaths of the reported migrants. The team's efforts to unravel the facts behind this case were later frustrated by the Gambian authorities' unwillingness to cooperate with the terms of the investigations as earlier agreed. A report later issued by a Gambian top official implicated top-level security officers in the Gambia Government and President Yahya Jammeh for ordering the atrocities on a mistaken belief that the emigrants were coup-plotters.

A decision was made by the Ghana government in December 2006 to unilaterally conclude investigations without the assistance of the Gambian authorities. The Commonwealth Human Rights Initiative inquired from the Ghana authorities on the status of the investigations and was informed in a letter dated 18th October, 2007, by the then Minister of Foreign Affairs in Ghana, that the investigations by the Ghana government had been completed although no further details were provided to the public.

CHRI made extended attempts to seek the intervention of influential monitoring organs with moral and political authority over both the Gambia and Ghana governments to demand their cooperation in conducting thorough investigations on this case. In December 2007, we officially filed a complaint on this matter with the African Commission on Human and People's Rights, which seized the matter in its 44th Ordinary Session in November 2008.¹ We also sent a communication to the United Nations Human Rights Council, working group of communications and received a response noting that the Council would continue to examine this matter at its session in October 2008.² We have received no report on the outcome of the Council's conclusions to date.

At the ECOWAS level, we were informed that following a meeting held between the then president of Ghana and Vice –president of the Gambia, a joint ECOWAS and United nations technical team in collaboration with the two governments was set up to investigate the incident on 14th August, 2008 . The expert fact-finding committee, after eight months of investigations, submitted its final report to the UN and ECOWAS on 3rd April, 2009. The report found inter alia that the victims were tricked into believing that were would be trafficked to Europe, and that it was a scam.

The Report also found that the daily diaries and daily logs of both the Banjul and Bondoom police station confirmed the presence, period of detention and subsequent release of two groups of individuals at each of the respective facilities during the period.

While the report found out that there were some 'rogue elements' within the Gambian security services that were to blame for the deaths and disappearances of the Ghanaian, it found that the state of the Gambia and its leadership were not to blame in any way for the unfortunate incident.

¹ Letter from African Commission, dated 9 June 2008.

² Letter from United Nations Human Rights Council , dated 25 April 2008.

The panel however concluded that the government of the Gambia is responsible for the protection of the human rights of all persons in its territory, and therefore liable for the incident, regardless of whether the violations were committed de jure or de facto.

CHRI was later dismayed to discover that without any consultation with interested civil society groups or the families of the victims; both the Ghana and Gambia governments signed a Memorandum of Understanding (MOU) in response to the Report of the Joint United Nations ECOWAS fact finding mission issued to them in Sirte, Libya, on 2nd July, 2009. In the MOU, the two governments acknowledged that the Gambian government is not directly or indirectly implicit in the deaths of disappearances of the Ghanaians, but it has, nevertheless, agreed to make contributions to the families of the Ghanaians found dead in its territory in conformity with African traditional values. The governments also pledged to pursue all available means to arrest and prosecute all those involved in the deaths and disappearances of the Ghanaians concerned and ECOWAS citizens.

CHRI has expressed disagreement with the bilateral terms reached between the two governments on this matter on the basis that they constitute an infringement of the victims' right to justice and their right to receive full and effective reparations for the atrocities suffered during the incident. The UN human rights principles relating to the right to a remedy for victims of violations of international human rights law obligate states to ensure that victims of serious human rights violations receive justice, an integral part of which includes the obligation to investigate the crimes in question. The UN-ECOWAS fact-finding team has been able to establish certain key facts, more importantly; it has been instructive in proving that the crimes actually took place thereby removing any uncertainties. However, this is only the first step. The fact-finding team's report cannot suffice as conclusive evidence on this case since it only established the death of 8 persons with no information on the rest. A comprehensive investigation therefore must be conducted to establish fully the whereabouts of the other missing emigrants whose names were duly registered in Gambian police stations as noted in the fact-finding team's report.

Again, the right to reparation is well established in international human rights law as a central element of the right to a remedy contained in international and regional human rights treaties as well as regional human rights courts and bodies.³ All the victims that were involved in

³ For example: Universal Declaration of Human Rights, Article 8; International Covenant on Civil and Political Rights, Article 9(5): "anyone who has been a victim of unlawful arrest or detention shall have an enforceable right to compensation"; Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, Article 14: "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of death of the victim as a result of an act of torture, his dependants shall be entitled to compensation"; Committee on the Elimination of Racial Discrimination, General Comment 26 on Article 6: "the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination,...is not necessarily secured solely by the punishment of the perpetrator...the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim, whenever appropriate"; Working Group on Involuntary or Enforced Disappearances, General Comment to Article 19 of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance (UN Doc. E/CN/4/1998/43): "The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete rehabilitation as possible. In the event of death of the victims as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation"; International Convention on the Protection of All Persons from Enforced Disappearance (not yet in force), Article 24(4): "Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation"; UN Principles on Extra-legal Executions, Principles 4 and 16; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Principles 4-7; **European Court of Human Rights, Aksoy v. Turkey**, Judgment of 18 December 1996, para. 98: "where an individual has an arguable claim that he has been tortured by agents of the State, the notion of an "effective remedy" entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure," and;

this incident are entitled to a suitable remedy in accordance with such international human rights norms. The right to a remedy obligates the Gambia government, on whose territory the crimes were committed, to provide compensation irrespective of whether or not the government was involved in the crimes. The specific rules governing reparations must be followed in determining the reparations for the victims rather than a contribution on discretionary terms as agreed upon in the MOU.

The inviolability of human dignity must be upheld. The perpetrators of the crimes in this case should be held accountable for their actions through a fair trial conducted by a competent tribunal. This, we believe, will signal to the rest of the UN community of the intolerance of such acts of impunity that continue to threaten the citizens' enjoyment of fundamental human rights and freedoms.

In making this submission, we request the Council to address the following concerns;

- **Ensure** that justice prevails by demanding the Gambia government to immediately surrender the perpetrators of the crimes for prosecution before a competent court of law;
- **Request** the Gambia government to make an account of the steps it will take to indemnify the victims and the basis upon which such arrangements will be made;
- **Establish** that the victims in this case are entitled to a remedy in accordance with international and regional human rights instruments that are binding on The Gambia;
- **Recommend** the Gambia government to ensure that all victims that were reportedly involved in the incident are adequately compensated taking into account their special circumstances prior and subsequent to the incident in accordance with international human rights procedures;
- **Demand** the Gambia government to take serious measures to investigate the whereabouts of the missing emigrants, including seeking international cooperation to assist it undertake a comprehensive and legitimate investigation.