

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE: UA G/SO 214 (3-3-16) G/SO 214 (33-27) Terrorism (2005-4)  
BLR 11/2011

9 December 2011

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 17/5, 17/2 and 15/15.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the imminent execution of Mr. **Dzmitry Kanavalau** and Mr. **Uladzslau Kavalyou**.

According to information received

Mr. Dzmitry Kanavalau and Mr. Uladzslau Kavalyou were arrested on 12 April 2011, in connection with a series of bomb attacks in Belarus. They were sentenced to death on 30 November 2011. Mr. Dzmitry Kanavalau was found guilty of committing terrorist attacks and producing explosives and Mr. Uladzslau Kavalyou was found guilty as an accomplice and for failing to inform the authorities.

Their sentences were confirmed by the Supreme Court of Belarus. The only appeal remaining is for clemency with the President. If rejected, the two men will be at imminent risk of execution.

We are informed that during trial, Mr. Uladzslau Kavalyou retracted his confession, claiming that it was obtained under duress. He indicated that during interrogation the investigator had threatened to shoot him. It is also alleged that there is no forensic evidence linking the two accused to the crimes and that the security camera footage which was relied on by the prosecution was tampered with.

While we do not wish to prejudge the accuracy of the information provided to us, we would like to bring to the attention of your Excellency's Government our concerns relating to the imposition and implementation of the death penalty after trials that allegedly do not comply with international obligations undertaken by your Excellency's Government, including fair trial safeguards.

Although international law does not prohibit the death penalty, it nonetheless mandates that it must be regarded as an exception to the fundamental right to life, and must as such be applied in the most restrictive manner. It is essential that when capital punishment is imposed all fair trial standards and safeguards contained in international human rights law are fully respected in the relevant proceedings, with the sentence being pronounced only following a fair and regular judicial process. The United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provides under article 5 that "Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights (ratified on 12 November 1973), including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings." Along the same lines, the Human Rights Committee has underlined in its General Comment n° 32 on the "Right to equality before courts and tribunals and to a fair trial" (2007) that "In cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of fair trial is particularly important" (paragraph 59).

The Special Rapporteur on summary executions has pointed out that any death sentence undertaken in contravention of a Government's international obligations is tantamount to an arbitrary execution. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution, which by definition violates human rights standards.

Likewise, the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, has highlighted that "[a]s article 6 of the [International] Covenant [on Civil and Political Rights] is non-

derogable in its entirety, any [...] State which seeks to retain the death penalty for terrorist crimes is obliged to ensure that fair trial rights under article 14 of the Covenant are rigorously guaranteed. [...] [T]he Special Rapporteur therefore emphasizes that any trial for terrorism offences which could lead to the imposition of the death penalty, as well as all stages before the trial, and the consideration of appeals on matters of fact and law after the trial, must rigorously comply with all aspects of a fair trial.” (A/63/223, para. 43).

The Special Rapporteur on the independence of judges and lawyers has also drawn regular attention to Principle 6 of the Basic Principles on the Independence of Judiciary (adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985), stating that ‘the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected’.

We therefore urge your Excellency’s Government to take all necessary steps to ensure that the right to life of Mr. Dzmitry Kanavalau and Mr. Uladzslau Kavalyou are respected. Considering the irreversible nature of the death penalty, we request you not to execute the people mentioned above, and certainly not without ensuring that all procedures followed complied with international standards has been resolved.

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. Since we are expected to report on this case to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the cases accurate?
2. Please provide a complete list of the persons currently in detention awaiting the death sentence, with the dates of their sentence, the offences of which they were found guilty, and the remedies used by them as well as those still available to them.
3. Please indicate what measures are being undertaken to ensure that all death penalty cases comply with fair trial guarantees as required under international law.

We undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

Christof Heyns  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers

Ben Emmerson  
Special Rapporteur on the promotion and protection of human rights and  
fundamental freedoms while countering terrorism