

Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: UA G/SO 214 (33-27)
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16 September 2011

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 17/5.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received concerning the imminent execution of **Mr. Syed Zahid Hussain Shah**, a Pakistani jewellery importer/exporter, sentenced to death in China.

According to the information I have received:

On 19 March 2010, the Shanghai First Intermediate People's Court sentenced Mr. Syed Zahid Hussain Shah to death on drug trafficking charges. The verdict was upheld by the Shanghai High Court on 10 November 2010, and subsequently approved by the Supreme People's Court. The execution by lethal injection is scheduled for 21 September 2011.

Mr. Syed Zahid Hussain Shah's family stated that he did not commit the crime he was found guilty of. However, it is reported that when consulting with his embassy in accordance with the rights provided to him under article 36(1) of the Vienna Convention on Consular Relations of 1963, he was advised to plead guilty, which he eventually did. It is further claimed that Mr. Hussain Shah has only received limited consular assistance.

On 9 September 2011, his relatives held a press conference in Islamabad, Pakistan, during which they told reporters that his business partners had falsely implicated him in the case. The family further sought help from the President and the Prime Minister, respectively of Pakistan, but their letters reportedly remain unanswered.

In view of the above allegations, I would like to respectfully remind your Excellency's Government that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life which is protected under article 3 of the Universal Declaration on Human Rights. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. As the first Special Rapporteur on extrajudicial, summary or arbitrary executions stated in 1985, it has long been understood that the Safeguards guaranteeing protection of the rights of those facing the death penalty adopted by Economic and Social Council resolution 1984/50 (25 May 1984) would "serve as criteria for ascertaining whether an execution is of a summary or arbitrary nature" (E/CN.4/1985/17, para. 24). In this respect, I would like to draw your Excellency's Government to two issues in relation to the present case which fall short of these safeguards.

Firstly, according to the aforementioned safeguards, "1. [i]n countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences." Furthermore, as observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). This would exclude charges of drug trafficking from those for which the death penalty can be imposed under international law.

Secondly, the same instrument provides that "7. [a]nyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment." Nevertheless, I am informed that no clemency procedures are provided for death row inmates in China, after they have exhausted domestic remedies in the courts of China.

Additionally, I wish to remind your Excellency's Government that Mr. Syed Zahid Hussain Shah has the right to seek consular assistance as required by the Vienna Convention on Consular Relations (VCCR) of 1963, which China acceded to on 2 July 1979. I would therefore appeal to your Excellency's Government not to proceed with the execution of Mr. Syed Zahid Hussain Shah, which would, on the facts available to me, clearly constitute a violation of international law. Considering the incompatibility of the imposition of the death penalty for charges which have not resulted in a loss of life, I also urge your Excellency's Government to commute his death sentence. I would finally appeal to your Excellency's Government to introduce clemency procedures for all death penalty cases as required by international standards.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Syed Zahid Hussain Shah in compliance with the above international instruments.

I undertake to ensure that your Excellency's Government's response is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

A similar communication on the present case has also been sent to the Government of Pakistan.

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

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions