

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers; 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 26/7, 26/12, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **imminent execution of nine prisoners in Indonesia**.

According to the information received:

Ms. **Rani Andriani**, an Indonesian national of around 30 years of age, was convicted in 2000 to death by firing squad for smuggling one kilogram of heroin. Ms. Andriani has been held prisoner in Tangerang. On 30 December 2014, her clemency request was rejected by the President of Indonesia. In the evening of 13 January 2014, she was transferred to an unknown location.

Mr. **Daniel Enemu**, a Nigerian national of around 30 years of age, was convicted in 2004 to death by firing squad in connection to drug offenses. On 30 December 2014, his clemency request was rejected by the President of Indonesia. Mr. Enemu has been held prisoner in Nusakambangan and has recently been transferred and placed in isolation.

Mr. **Namaona Denis** was sentenced to death by firing squad by the Bandung High court in 2011, after being convicted of smuggling 940 grams of heroin at the Soekarno-Hatta airport in Jakarta. Mr. Denis, aged 49, was reportedly born in

Nigeria but travelled to Indonesia with a Malawian passport. According to his lawyers, Mr. Denis was not provided with adequate interpretation and therefore did not understand his trial proceedings. Mr. Denis has been held prisoner in Tangerang. In the evening of 13 January 2014, he was transferred to an unknown location. Although his clemency request was rejected by the President of Indonesia on 30 December 2014, Mr. Denis had not been informed of the result of his petition at the time of his transfer. He had reportedly been intending to file a Peninjauan Kembali petition to request a review of his sentence and conviction, but if held incommunicado he will not have the chance to do so.

Ms. **Tran Thi Bich Hanh**, a 37 year old Vietnamese national, was sentenced to death on 22 November 2011 by the Boloyali District Court for drug trafficking. On 30 December 2014, her clemency request was rejected by the President.

Mr. **Marco Archer Cardoso Moreira**, a 52 year old Brazilian national, was convicted in 2004 by the Tangerang District Court for smuggling 13.4 kilograms of cocaine into Indonesia through Soekarno-Hatta airport in Jakarta. The decision was upheld by the Banten High Court in August 2004, and by the Supreme Court in January 2005. Mr. Moreira applied for presidential clemency on various occasions but these were rejected in 2006, 2008, 2014 and more recently on 30 December 2014.

Mr. **Kiem Soei Ang**, a 52 year old Dutch national, was convicted to death in January 2003 for drug-related offenses by the District Court in Tangerang. On 20 May 2003, Mr. Ang appealed to the High Court of Bandung, but the court dismissed the appeal without providing a reasoned and accountable judgment. On 1 October 2003, a cassation appeal to the Supreme Court was also dismissed without a reasoned and accountable judgment. It is reported that since his conviction Mr. Ang has shown a remarkable rehabilitation and transformation, as was acknowledged by prison directors and the narcotics agency BNN. In 2006, Mr. Ang appealed to the Supreme Court for a Peninjauan Kembali (PK), pursuant to Article 263(2) of Law no 8 Regarding Civil Procedure ("KUHAP"). The Supreme Court's dismissed the PK in June 2006 without having addressed Mr. Ang's arguments in full. It is reported that in the PK review process, due weight was not given to the new material available concerning Mr. Ang's rehabilitation and that the court did not address two of the three grounds submitted. As the decisions of the High and Supreme Courts were not supported by stated reasons, there is concern that they were not made transparently. On 17 June 2013, Mr. Ang applied to the President for clemency based upon these matters and upon the nature of his offence. On 7 January 2015, he was informed that his clemency request had been rejected by the President on 30 December 2014. On 15 January 2015, Mr. Ang received notification that his execution is to be carried out in 72 hours. Mr. Ang has been held in Pasir Putih Prison, in Nusakambangan, and has now been moved to a different prison, purportedly closer to an execution location.

Mr. **Agus Hadi**, aged 53, and Mr. **Pujo Lestari**, aged 39, both Indonesian nationals, were convicted in 2007 for attempting to traffic almost 25,500 tablets of ecstasy from Malaysia to Indonesia's Batam Island. They submitted new petitions for a case review to the Supreme Court, as provided for by a 2014 Constitutional Court decision.

Mr. **Gunawan Santoso**, an Indonesian national, was convicted to death in 2003 for being the mastermind behind the murder of his father-in-law and his bodyguard. He submitted a new petition for a case review to the Supreme Court, as provided for by a 2014 Constitutional Court decision.

Mr. **Tan Joni**, an Indonesian national, was convicted in 2006 for the murder of three members of a family in Baran, Tanjung Balai Karimun, Riau island province.

On 15 January 2015, the Attorney General of Indonesia formally announced that Mr. Namaona Denis, Mr. Marco Archer Cardoso Moreira, Ms. Rani Andriani, Mr. Daniel Enemuo, Ms. Tran Thi Bich Hanh and Mr. Ang Kim Soei will be executed on 18 January 2015. It also announced that a firing squad is being prepared on Nusakambangan Island and in Boyolali District, both in Central Java, for their executions. The Attorney General's office also reportedly announced that Mr. Gunawan Santoso, Mr. Tan Joni, Mr. Agus Hadi and Mr. Pujo Lestari face imminent execution, but did not provide a date for their executions.

Reports indicate that the authorities in Indonesia are actively pursuing the policy of executing drug offenders sentenced to death. There have been repeated broadcast statements by government officials, including the President himself, referring to this policy. In December 2014, the government announced a new policy on clemency according to which all applications from prisoners sentenced to death for drug-related offences, without exception will be rejected. On 31 December 2014, a letter was sent by the Supreme Court to lower courts instructing them to reject all PK applications by death row inmates. It is reported that on 9 January 2015, the Minister of Law and Human Rights, Attorney General and Coordinating Minister on Law, Politics and Security decided that case reviews will not block the implementation of death sentences and that the authorities could carry out executions if an application for clemency was rejected by the President.

The country resumed executions in March 2013 after a four year hiatus. The resumption of executions took place after years of indications that Indonesia was moving away from the death penalty. It is current practice to transfer prisoners scheduled for execution to the location of the execution and hold them incommunicado for three days, in order to comply with the requirement to give notice of an execution.

We would like to express serious concern that the death penalty may be carried out against some prisoners who have been convicted on drug-related charges, which does not meet the threshold of “most serious crimes”. We are further concerned that some of the prisoners scheduled for execution have not exhausted all of their appeal rights and that in at least two cases the death penalty has been upheld following judicial procedures that may not fulfill the most stringent guarantees of fair trial and due process, particularly in connection to access to interpretation and transparency of judicial decisions.

Without making any judgment as to the accuracy of the information made available to us, the above allegations appear to be in contravention of the right of every individual to life, liberty and security as set out in article 3 of the Universal Declaration of Human Rights (UDHR) and article 6.1 of the International Covenant on Civil and Political Rights (ICCPR), to which Indonesia is a State Party.

We would like to draw the attention of your Excellency’s Government attention to article 6(2) of the ICCPR which states that the sentence of death may be imposed only for the most serious crimes. The UN Human Rights Committee has interpreted this to mean that the death penalty must be an “exceptional measure and should not be used on non-violent crimes” (Communication No. 838/1998, 20 December 2002, paras. 6.3,7). The Human Rights Committee also noted that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant (CCPR/C/79/Add.25). Furthermore, article 6.4 of ICCPR establishes that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence and that amnesty, pardon or commutation of the sentence of death may be granted in all cases.

Moreover, as stressed in article 5 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, capital punishment may only be carried out pursuant to legal procedures which give all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution.

We would also like to recall that resumption of executions run counter to the international trend towards the reduction and eventual abolition of the death penalty. The Human Rights Committee has expressed its deep concern at the de facto reinstitution of death sentences and executions in a State party to the International Covenant on Civil and Political Rights (CCPR/CO/84/SYR, para. 7).

We wish to remind your Excellency’s Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of *jus cogens*, and as codified, inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

In this context, we would like to call the attention of your Excellency’s Government to the evidence of an evolving standard within international bodies and a

robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (A/67/279). This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). The Special Rapporteur on torture has called upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79). Retentionist States are called upon to end the practice of executions with little or no prior warning given to condemned prisoners and their families (para. 80 (c)).

We would further like to recall that according to article 4 of General Comment 31 of the Human Rights Committee, the obligations contained in the Covenant are binding on every State as a whole and that all branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, and of the irreversibility of the punishment of the death penalty, we call upon your Excellency's Government as a matter of urgency to halt the eight scheduled executions, which, on the facts available to us may constitute a violation of applicable international human rights standards, and thus an arbitrary execution. We further appeal to Indonesian authorities to commute the death sentence against the aforementioned individuals.

Your Excellency's Government's response to this communication will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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