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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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 capacities 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 resolution 17/2, 17/5, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the case of Mr. **Muhammad Afzal Guru** who was executed after proceedings that allegedly did not comply with international standards of fair trial and due process guarantees.

According to the information received:

Mr. Mohammad Afzal Guru, aged 43, was executed by hanging, at Tihar jail in Shashikumar Velath, New Delhi on 9 February 2013. Mr. Guru had been sentenced to death in December 2002 after being convicted on charges of conspiring in an attack and waging war due to his involvement in the attacks at the Indian Parliament in New Delhi on 13 December 2001. Mr. Guru allegedly provided logistical support to those involved in the attack, during which five persons opened fire at the Indian parliament, killing nine people, including six members of the security personnel, two parliament guards and one gardener.

The death sentence against Mr. Guru was confirmed by the Supreme Court in August 2005. Mr. Guru's appeal for clemency was rejected by President Pranab Mukherjee on 3 February 2013. Allegedly, Mr. Guru was denied the opportunity to have the decision to reject his petition judicially reviewed. Furthermore, Mr. Guru's family was not informed that the petition for clemency had been rejected in time to file another appeal.

It is reported that Mr. Guru did not have legal representation from the time of his arrest until after he confessed to the offences. The confession was allegedly obtained through torture, which he subsequently retracted. It is alleged that the conviction against Mr. Guru was based largely on his initial confession. Furthermore, Mr. Guru's legal representative, who was appointed by the Government, provided an inadequate level of defence, and failed to conduct thorough cross-examination of witnesses.

The execution of Mr. Guru allegedly took place in secrecy and his family was informed of his execution by mail three days after the execution was carried out. Mr. Guru's wife was allegedly denied return of his body and denied the right to perform religious rites on her husband following his execution.

Without prejudging the accuracy of the information made available to us, we would like to express concern that the death penalty may have been imposed and carried out against Mr. Guru after proceedings which did not comply with international human rights law standards of fair trial and due process guarantees. We are also concerned that the Mr. Guru was reportedly subjected to torture.

We also take note of the concerns brought to our attention that the execution of Mr. Guru in India is the second to have been carried out since 2004, that is, after eight years of respect of a de facto moratorium on the implementation of the death penalty.

We would like to bring to the attention of your Excellency's Government that, in countries that have not abolished the death penalty, capital punishment may be imposed only following a trial that complied with fair trial and due process safeguards, as provided in articles 6(2) and 14 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by India on 10 April 1979. Furthermore, article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provides that "Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the ICCPR, 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." Safeguard 4 further stipulates that "capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts". Only full respect for stringent fair trial and due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution.

The provisions, stated above, apply also to the respect of due process guarantees in post-conviction proceedings, which need to be conducted in full transparency. In this regard, we would like to bring to the attention of your Excellency's Government the report submitted to the Human Rights Council by the Special Rapporteur on extrajudicial,

summary or arbitrary executions on “Transparency and the imposition of the death penalty” (E/CN.4/2006/53/Add.3), which observed that “due process rights and other safeguards on the right to life remain even after a person has been convicted of a crime and sentenced to death”. “Refusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation”. In the report to the 67th session of the General Assembly (A/67/275), the Special Rapporteur on extrajudicial, summary or arbitrary executions holds that a State that fails to be transparent in its death sentences in line with article 14 of the ICCPR risks also violating article 6 of the ICCPR. He therefore recommends that States “ensure transparency regarding individual cases of capital prosecution, death sentences and executions, including access to information by prisoners, their family members and the public”.

Furthermore, we would like to refer your Excellency’s Government to article 14(3) of the ICCPR, which states: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.” In its General Comment No. 32, the Human Rights Committee further indicated that: “‘Adequate facilities’ must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory.” Article 14(3) of the ICCPR further states, (e) “To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”

We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

With regard to allegation of torture we would like to draw your Excellency’s Government’s attention to article 15 of the Convention against Torture provides that, “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” We also recall that paragraph 6c of Human Rights Council resolution 8/8 of 2008 urges States “to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in article 7 of the ICCPR.

The Human Rights Committee in the case of *Uteeva v Uzbekistan* (Communication No 1150/2003 para. 7.4) observed that “the imposition of a sentence of death upon conclusion of a trial in which the provisions of the Covenant have been violated constitutes a violation of article 6 of the Covenant. In the [*Uteeva v Uzbekistan*]

case, the alleged victim's death sentence was imposed on the victim in violation of article 7, and article 14, paragraph 3 (g), of the Covenant." Similar observations were made in the cases of Khudayberganova v Uzbekistan (Communication No 1140/2002 para. 8.4), Levy v. Jamaica (communication No 719/1996 para. 7.3) and Marshall v. Jamaica (Communication No 730/1996 para. 6.6). See also General Comment No 6 on article 6 ICCPR, para. 7.

The Human Rights Committee in the case of Banderenko v Belarus (CCPR/C/77/D/886/1999) observed that "[c]omplete secrecy surrounding the date of execution, and the place of burial and the refusal to hand over the body for burial have the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress. The Committee considers that the authorities' initial failure to notify the [mother of the convict] of the scheduled date for the execution of her son, and their subsequent persistent failure to notify her of the location of her son's grave amounts to inhuman treatment of the [mother of the convict], in violation of article 7 of the Covenant." Similar observations were made in the cases of Lyashkevish v Belarus (Communication No. 887/1999 para 9.2), Khaliliov v Tajikistan (Communication No. 973/2001 para 7.7), Sultanova v Uzbekistan (Communication No. 915/2000 para. 7.10).

Moreover, 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 these cases 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 accurate?
2. Please provide detailed information on each stage of the judicial and post-conviction proceedings conducted against Mr. Afzal Guru, and indicate how they comply with the requirement and guarantees of a fair trial and due process as enshrined, inter alia, in article 14 of the ICCPR. Please also specify how full transparency was ensured at every stage of the proceedings.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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