

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

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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 the situation of human rights in the Islamic Republic of Iran; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 26/7, 28/21, and 26/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged imminent execution of **Mr. Kelven Ozube Agbai**, a Nigerian citizen, after a trial that did not meet international standards of fair trial and due process and for an offence that does not meet the threshold of a "most serious crime" under international law.

According to the information received:

Mr. Kelven Ozube Agbai, a Nigerian national, has been detained in Iran's Evin prison since March 2013, when he was reportedly arrested at Imam Khomeini Airport in Tehran after airport officials reportedly found drugs in his suitcase as he attempted to enter the country. He has been in detention since his arrest. On 29 August 2013, Branch 24 of Tehran's Revolutionary Court convicted Mr. Agbai for possession of 1.46 kilograms of cocaine and sentenced him to death. The conviction and death sentence were affirmed by the Prosecutor General's office and the final ruling was communicated to Mr. Agbai in December 2013. Mr. Agbai's sentence can be executed at any time.

It is reported that Mr. Agbai was pressured to sign documents while in custody that had not been translated from the original Persian/Farsi, and that he did not

have proper access to an interpreter and legal assistance during the investigation phase of his case and trial.

We express grave concern that the death penalty may be carried out against Mr. Kelven Ozube Agbai for drug-related offenses, which do not meet the threshold of “most serious crimes” under international law. We are also concerned that the death sentence against Mr. Agbai has been imposed following judicial procedures that may not fulfill the most stringent guarantees of fair trial and due process, including adequate access to a translator and legal counsel. It is also not clear whether Mr. Agbai was granted proper access to the Nigerian consular officials in Tehran upon his arrest and detention and before his trial and conviction.

While we do not wish to prejudge the accuracy of these allegations, the above alleged facts indicate a prima facie violation of the right of every individual to life and security and not to be arbitrarily deprived of his life or liberty, as set forth in articles 6(1) and 9 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Islamic Republic of Iran on 24 June 1975, and 3 of the Universal Declaration of Human Rights (UDHR). These allegations also seem to be in contravention of the right to fair proceedings before an independent and impartial tribunal, including the right to communicate with a legal counsel, as set forth in article 14 of the ICCPR and article 10 of the UDHR. The right to have access to a lawyer is also enshrined in the UN Basic Principles on the Role of Lawyers.

We would also like to bring to the attention of your Excellency’s Government Article 6(2) of the ICCPR which provides that countries which have not abolished the death penalty may only impose it for the most serious crimes. This provision has consistently been interpreted by the Human Rights Committee to mean that the death sentence may only be imposed in respect of intentional killing. The Human Rights Committee 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).

Moreover, 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 following a legal process which gives all possible safeguards to ensure a fair trial, including the right to adequate legal assistance at all stages of the proceedings.. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution. 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.

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 execution of Mr. Kelven Ozube Agbai** which, on the facts available to us may constitute a violation of applicable international human rights standards, and thus an arbitrary execution. We further urge your Excellency's Government to ensure that the death sentence against the aforementioned individual is annulled and that he is re-tried in compliance with international standards.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above on the above mentioned allegations.
2. Please provide detailed information on the measures taken to ensure due process and fair trial guarantees to Mr. Agbai, including effective access to a lawyer, translator/interpreter and consular officials, as established in international human rights law, in particular articles 9 and 14, of the ICCPR, the UN Basic Principles on the Role of Lawyers and the Vienna Convention on Consular Relations.
3. In light of the allegation that the death sentence against Mr. Agbai was affirmed by the Office of the Prosecutor General, please provide detailed information on measures taken to ensure that the final conviction and sentence against Mr. Agbai were rendered by a competent court.

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

In light of the nationality of the above-named victim, we wish to inform you that a copy of this letter will be shared with the Government of Nigeria.

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

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers

Ahmed Shaheed
Special Rapporteur on the situation of human rights in the Islamic
Republic of Iran

Christof Heyns

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