

Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE: AL
USA 8/2015:

17 April 2015

Excellency,

We have the honour to address you in our capacities as 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 Human Rights Council resolutions 26/7 and 22/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of relatives of victims of the Bali terrorist bomb attack of 2002, Ms. **Susanna Miller**, Mr. **Matthew Arnold**, Mrs. **Maggie Stephens**, all British citizens, who are allegedly denied the right to know the truth about this attack.

According to the information received:

On 12 October 2002, a terrorist attack in Kuta and Denpasar, on the island of Bali, killed 202 people and injured 240 other persons (often referred to as the "Bali bombings"). Among those killed were the brothers of Mr. Matthew Arnold, Ms. Susanna Miller, and the son of Mrs. Stephens.

Mr. [REDACTED], an Indonesian citizen, also known as "[REDACTED]", is accused of being the operations chief of the South East Asian Islamic militant group Jemaah Islamiah. He is alleged to have been involved in the planning of the Bali bombings. He was arrested in Thailand on an unspecified date in 2003 (during or around the month of August).

Subsequently, he was taken into US custody and, on 4 September 2006, he was transferred to the US military detention facility at Guantanamo Bay ("Guantanamo Bay"), where he has remained detained since.

In April 2007, Mr. [REDACTED] appeared before a US Combatant Status Review Tribunal.

On 30 October 2008, the US Joint Task Force at Guantanamo Bay recommended Mr. [REDACTED] for continued detention under Department of Defense Control.

In March 2010, Mr. [REDACTED] filed a habeas corpus petition before the US District Court in Washington DC.

On 24 March 2010, the Court ordered the Office of the Federal Defender for the districts of Rhode Island, Massachusetts and New Hampshire, to represent Mr. [REDACTED]. Attorneys from that Office filed a notice of appearance accordingly.

On 8 March 2012, a joint motion was reportedly filed by the parties.

On 18 May 2012, the Court issued a case management order, setting out the procedure governing the petition proceedings.

Several case management orders were issued between July and December 2012.

On 20 November 2012, the Court issued an order staying all remaining obligations under the case management order of 18 May 2012, pending confirmation that Mr. [REDACTED]'s counsel was authorised to represent his client and would continue to do so.

Mr. Arnold, Ms. Miller, and the Mrs. Stephens experienced difficulties in obtaining information on Mr. [REDACTED]'s detention and the legal proceedings conducted against him.

Mr. [REDACTED] continues to be held in the Guantanamo detention facility without charges or trial.

Concern is expressed that the continued detention of Mr. [REDACTED], without charges or trial, has resulted in the denial of the right to know the truth of Mr. Arnold, Ms. Miller, and Mrs. Stephens, as victims of terrorism, on the circumstances and the events that led to the death of their relatives.

Concern is also expressed that Mr. [REDACTED] continues to be in detention without charges or trial, and that he may be facing trial before a military commission, contrary to due process and fair trial standards, including in connection with the composition and independence of such commission, the use of evidence, the possibility of victims' participation, the limited scope of the appellate review, and the applicability of the death penalty.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and comment you may have on the above-mentioned allegations.

2. Please provide any information on the legality of the detention of Mr. [REDACTED], including in connection with the habeas corpus petition that he filed and any procedure related to it.

3. Please provide any information on what steps are being taken to ensure that Mr. [REDACTED] is released from the Guantanamo detention facility, and, if appropriate, brought to trial in accordance with the established international procedural and substantive guarantees, including victims' participation into the proceedings.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

We would like to inform your Excellency's Government that we have addressed sent the present communication, for information, to the Government of Indonesia.

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

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

Annex

Reference to international human rights law

In his report on the Framework principles for securing the human rights of victims of terrorism (A/HRC/20/14), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism explained that next of kin of victims of terrorism are also considered victims of terrorism and themselves victims of grave human rights violations.

The UN Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, contained in General Assembly resolution 60/147, adopted on 16 December 2005, state that full and effective reparation should include satisfaction, which, according to paragraph 22 (b) also include the full and public disclosure of the truth. Paragraph 24 of Principles and Guidelines specifies that victims of gross human rights violation and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.

The UN Global Counter-Terrorism Strategy stresses the need to promote and protect the rights of victims of acts of terrorism and their families and facilitate the normalization of their lives (Pillar I of the Strategy). The United Nations Global Counter-Terrorism Strategy was adopted by Member States on 8 September 2006 and was most recently reaffirmed in June 2014 by General Assembly resolution 68/276, itself reaffirming General Assembly resolutions 60/288, 62/272, 64/297 and 66/282.

In his report on the framework principles (A/HRC/20/14), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism also recommended that while conducting an effective, official investigation when individuals have been killed or seriously injured as the direct or indirect result of an act of terrorism, State authorities should ensure that the next-of-kin are kept fully informed about investigations and the progress made, and be provided with an adequate opportunity to participate. This includes providing them with all information necessary to exercise any right they may have in domestic law to participate in criminal proceedings against the suspected perpetrator (A/HRC/20/14, paras. 36, 37 and 67 (c)).

Furthermore, in his report on accountability (A/HRC/22/52), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism also emphasizes that the establishment of the truth is an indispensable part of the right to adequate reparation of the victim of a gross human rights violation (A/HRC/22/52, para. 23).

On the close relation between the right to truth, fair trial guarantees and impunity, the relevant provisions of the International Covenant on Civil and Political Rights (ICCPR), which your Excellency's Government ratified on 8 June 1992, include article 9,

which sets out the right not to be deprived arbitrarily of one's liberty and to be entitled to a trial within a reasonable time or to release; and article 14, which sets out the right to fair proceedings before an independent and impartial tribunal, including fair and public hearings. Similarly, Article 9 of the Universal Declaration of Human Rights (UDHR) sets out the right not to be deprived arbitrarily of one's liberty. Article 10, sets out the right to a fair and public hearing by an independent and impartial tribunal.

Human Rights Council resolutions 12/122 of 12 October 2009 and 9/11 of 18 September 2007 both recognized in their respective paragraph 1 the importance of the right to truth with regard to ending impunity.

In his report on the framework principles (A/HRC/20/14), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism emphasised the direct linkage between the duty of States to investigate and prosecute terrorist suspects, to end impunity and to prevent future acts of terrorism. The report stated that indefinite or secret detention of terrorist suspects, without charge or trial, violates international law and precludes the possibility of victim participation in bringing offenders to justice (A/HRC/20/14, paras. 34 and 67 (b)).

In addition, the report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism (A/HRC/22/26, para. 43) emphasized that the right to a fair trial presupposes the right to a speedy trial if the individual concerned is suspected of a terrorist crime recognised under international human rights law. Delays in the trial process could undermine additional guarantees under article 9(3) of the ICCPR afforded to detained persons and increase the risk of potentially indefinite detention in violation of international human rights law.