

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

REFERENCE: UA
IDN 5/2016

13 May 2016

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 **alleged imminent execution of between 10 and 15 prisoners in Indonesia**.

Between December 2014 and April 2015, the Special Rapporteur on extrajudicial, summary or arbitrary executions sent four urgent appeals to the Government of Indonesia regarding imminent executions of suspected drug offenders, many of which were foreign nationals. Case IDN 2/2014 of 10 December 2014 (sent jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), addressed the imminent execution of five prisoners; case IDN 1/2015 of 16 January 2015 (sent jointly with the Special Rapporteur on independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), addressed the imminent execution of nine prisoners including Mr. **Agus Hadi** (Indonesian) and Mr. **Pujo Lestari** (Indonesian); case IDN 2/2015 of 6 March 2015 (sent jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), addressed the imminent execution of ten prisoners; and case IDN 4/2015 of 24 April 2015, addressed the imminent execution of ten prisoners. We regret that we have not yet received a reply from your Excellency's Government.

According to the information received:

Since 7 April 2016, the Attorney General of Indonesia has been quoted in the media as stating that plans for a new round of executions were underway. On 22 April 2016, Indonesia's Coordinating Minister for Politics, Law and Security Affairs stated during a press conference in Jakarta that the authorities will only provide three days' notice ahead of the next executions, as required under Indonesian law.

On 8 May 2016, three prisoners were moved from Batam Class II Penitentiary to Batu prison in Nusakambangan prison island, where 13 death row prisoners were executed in 2015. On the same day, a prison official informed journalists gathered in the neighbouring town of Cilacap that there were 59 prisoners awaiting execution in Nusakambangan prison island.

On 10 May 2016, the Attorney General confirmed that the new round of executions will be carried out "in the near future". Prison and police officials have also stated that they had completed the preparation of the execution grounds at Nusakambangan prison island, in Central Java, and that firing squads had been organized. The authorities have repeatedly referred to their execution plan as an effective tool in tackling drug trafficking. Fear has been expressed that executions may take place as early as this week.

On 11 May 2016, a new announcement was made to the media by Indonesian officials at the execution site indicating that 15 prisoners are now scheduled for execution, five of whom are Indonesian nationals.

Although the Government has not announced the list of prisoners facing executions, it is presumed that executions will target drug offenders who have filed a case review (Penjuaun Kembali) and include foreign as well as Indonesian nationals. The three persons below may be scheduled for execution.

Mr. **Agus Hadi** and Mr. **Pujo Lestari** were arrested on 22 November 2006 for attempting to smuggle benzodiazepine pills from Malaysia. They were detained at the Riau Islands Police Headquarters, where they were interrogated until their transfer to the Batam prosecution detention center on 12 December 2006. They first appeared before a judge at a trial hearing in the Batam District Court on 30 January 2007, nine weeks into their detention. Mr. Hadi received legal assistance 20 days after his arrest. Mr. Lestari received legal assistance 78 days after his arrest and a week after the court had scheduled the first trial hearing. On 8 May 2016, Mr. Hadi and Mr. Lestari were brought to Nusakambangan Island.

Mr. **Humphrey Jefferson Ejike Eleweke** is a prisoner in Batu Prison in Nusakambangan. He was arrested on 2 August 2003 on drugs-related charges. On 6 April 2004, he was sentenced to death by the Central Jakarta District Court. He appealed his conviction to the Jakarta High Court on 12 April 2004 and to the Supreme Court on 23 August 2004. The appeals were rejected on 22 June 2004 and 4 November 2004, respectively. On 16 May 2006, Mr. Ejike Eleweke filed a *Penjuaan Kembali*, where he provided evidence of his innocence, which was confirmed by several witnesses, and mistreatment at the hands of the police. Nonetheless, his review was rejected on 27 September 2007. On 14 April 2016, Mr. Ejike Eleweke was informed that he was no longer entitled to file a clemency petition since the deadline for doing so had passed.

At least three other foreign nationals (two Nigerian and one Zimbabwean) received similar letters around 14 April 2016 denying them the right to seek clemency due to expiration of the time limit. It is reported that there are at least five Indonesian nationals charged with drug-related offences who have also received notice of imminent execution.

Reports indicate that the authorities in Indonesia are actively pursuing the policy of executing drug offenders sentenced to death. The country had resumed executions in March 2013 after a four year hiatus. Fourteen people were executed in 2015 and at least 46 new death sentences were imposed that year, 29 of which were for drug-related offences. All executions carried out in 2015 were for drug trafficking. A *de facto moratorium* on executions has been in place in Indonesia since the last round of executions in late April 2015.

Reports indicate the existence of systemic flaws in the administration of justice in Indonesia which have resulted in violations of fair trial and other international safeguards that apply to the imposition of the death penalty, including: lack of access to legal counsel from the time of arrest and at different stages of the trial and appeals; ill-treatment at the hands of the police to extract confessions or counter-signatures of police dossiers used as evidence in court; first appearance before the judge at the moment of the trial; lack of information about the right to submit an appeal; and executions carried out against defendants whose appeals were pending before the courts.

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

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 planned 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 urge your Excellency's Government to ensure that the death sentence against the aforementioned individuals is annulled and that they are re-tried in compliance with international standards.

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. These allegations also seem to be in contravention of the right to fair proceedings before an independent and impartial tribunal, as set forth in article 14 of the ICCPR and article 10 of the UDHR.

Article 6(2) of the ICCPR states that the sentence of death may be imposed only 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. 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, 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.

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).

The absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is an international norm of *jus cogens*, 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)).

Last, 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.

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.

We are considering to publicly expressing our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment