

Mandates of the Working Group of Experts on People of African Descent; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of migrants

REFERENCE:
AL IDN 7/2017

29 September 2017

Excellency,

We have the honour to address you in our capacities as Working Group of Experts on People of African Descent; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 27/25, 25/32, 35/15 and 34/21.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **execution of 12 Nigerian nationals in Indonesia since 2008, as well as five others who remain on death row under threat of imminent execution.**

Between December 2014 and May 2016, the Special Rapporteur on extrajudicial, summary or arbitrary executions sent 5 urgent appeals to the Government of Indonesia regarding imminent executions of suspected drug offenders, many of which were foreign nationals. Case IDN 6/2014 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, two women and seven men, 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 10 prisoners; case IDN 4/2015 of 24 April 2015, addressed the imminent execution of 10 prisoners, one woman and nine men; and case IDN 5/2016 addressed the imminent execution of between 10 and 15 prisoners. We regret that we have not yet received a reply to the above mentioned letters from your Excellency's Government.

According to the information received:

In response to what has been termed a "drug emergency," Indonesia imposes capital punishment for drug-related crimes. Since 1999, 149 individuals, 12 women and 137 men, have been sentenced to death for drug offenses, as part of the Government's campaign against what President Joko Widodo has claimed is a "drug emergency". Of those 149 individuals, 94 were foreign nationals, among them five women, and 30 were Nigerian men. Since 2008, 12 Nigerian men have

been executed for drug offenses. Some of those who have been executed went to Indonesia as migrant workers.

On 24 July 2016, the Nigerian Embassy in Jakarta was given a list of 14 men who had been convicted of drug offenses and who were scheduled to be executed, eight of whom were Nigerian nationals.

On 29 July 2016, four individuals from the list, three of whom were Nigerian nationals, were executed by firing squad. The other 10 individuals, including five Nigerian nationals, remain imprisoned on death row for drug offenses.

On 22 July 2017, President Joko Widodo endorsed extrajudicial execution of foreign nationals suspected of drug-related crimes, telling law enforcement officers to shoot “foreign drug dealers who enter the country and resist arrest.”

Without prejudging the accuracy of these allegations, 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. 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 assistance from the time of arrest and at different stages of the trial and appeals; torture and cruel, inhumane and degrading 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.

Concern is also expressed that Nigerian nationals who come into contact with the Indonesian criminal justice system may experience police brutality, discrimination and hatred based on their skin color, and deprivation of legal representation, that they may be targeted because of their nationality and that they are subject to execution at a disproportionate rate and for offenses that do not meet the seriousness required for imposition of the death penalty. We are concerned about allegations that foreign nationals in general and Nigerians in particular may face discrimination in relation to both criminal enforcement and sentencing in drug-related cases, and deeply concerned that foreigners may be subject to rising levels of extrajudicial killings.

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.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please describe the laws and procedures governing the imposition of the death penalty in Indonesia, and particularly efforts to ensure that Indonesian law meets the requirement of ICCPR Article 6(2), which holds that the death penalty should only be applied for the most serious offences.
3. Please indicate the procedures that are used to ensure the rights of criminal defendants in Indonesia, particularly in capital cases, including the clemency process.
4. Please indicate how the crime of torture is criminalized in Indonesia and what measures, if any, have been taken to address the allegations of torture in this and related cases.
5. Please explain how the respect of international standards with regard to fair trial and due process guarantees, including interpreters and free and competent legal services, is ensured during court proceedings in Indonesia for all persons, regardless of their migration status or nationality.
6. Please provide official statistics regarding the nationality of those sentenced to death in Indonesia, and any documents explaining why certain groups may be disproportionately subject to the death penalty.
7. Please enumerate any efforts to ensure that criminal investigations and trials are free of racial and ethnic bias.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

We wish to inform you that this letter will also be sent to the authorities of Nigeria for their information.

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

Sabelo Gumedze
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Mutuma Ruteere
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Felipe González Morales
Special Rapporteur on the human rights of migrants

Annex

Reference to international human rights law

In connection with the allegations and concerns expressed in this communication, the following international legal norms and standards would appear to be relevant and applicable:

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 the 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 the acceleration of executions runs counter to the international trend towards the reduction and eventual abolition of the death penalty. General Assembly resolution A/RES/65/206 affirms that that a moratorium on the use of the death penalty contributes to respect for human dignity and to the enhancement and progressive development of human rights. Furthermore, the resolution calls on States “to progressively restrict the use of the death penalty and to reduce the number of offences for which it may be imposed” and “to establish a moratorium on executions with a view to abolishing the death penalty.” The resolution further calls upon States which have abolished the death penalty not to reintroduce it.

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 as well as the ICCPR and the Convention Against Torture, ratified by Indonesia on 28 October 1998.

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)).

According to article 4 of General Comment 31 of the Human Rights Committee, the obligations contained in the ICCPR are binding on every State as a whole and 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.

With regard to the allegations of torture in police custody, we wish to recall to your Excellency's Government that under Article 2 of the CAT States must take effective legislative, administrative, judicial or other measures to prevent acts of torture; they shall ensure that all acts of torture are offences under their criminal law and that they are punishable (CAT, Art. 4); that allegations of torture are promptly and impartially investigated (CAT, Art. 12); that they are duly prosecuted by a court of law, that perpetrators are punished according to the gravity of the offence, and that victims obtain redress and compensation (CAT, Art. 14).

The allegations also appear to contravene several provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Indonesia on 25 June 1999, notably Article 2(1), in which States undertake to engage in no act or practice of racial discrimination, and Article 5(a) which guarantees the right to equal treatment before courts of justice without distinction as to race, colour, national or ethnic origin. Further, Article 2(1) of the ICCPR provides that all people have the rights in the ICCPR "without distinction of any kind, such as race, colour...national or social origin," while ICCPR Article 26 provides that all persons "are equal before the law and are entitled without any discrimination to the equal protection of the law."

We would also like to draw your Excellency's Government's attention to General Recommendation No. 30 of the Committee on the Elimination of Racial Discrimination which recommends the State party "19. To ensure the security of non-citizens, in particular with regard to arbitrary detention [...]", "18. To ensure that non-citizens enjoy equal protection and recognition before the law [...]", and "21. To combat ill-treatment of and discrimination against non-citizens by police and other law enforcement agencies and civil servants by strictly applying relevant legislation and regulations providing for sanctions and by ensuring that all officials dealing with non-citizens receive special training, including training in human rights".

Furthermore, we would like also to refer Your Excellency's Government to article 18 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified by Indonesia on 31 May 2012, which states, inter alia, that: "migrant workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals. In the determination of any criminal charge against them or of their rights and obligations in a suit of law, they shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law" and article 24, which states that "every migrant worker and every member of his or her family shall have the right to recognition everywhere as a person before the law."