

Mandates of the Working Group on Arbitrary Detention; 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 SSD 1/2018

5 October 2018

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; 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 33/30, 35/15 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the case of [REDACTED] who was sentenced to death for murder despite having been 15 years old at the time of the alleged commission of the crime and following judicial proceedings that do not appear to have fulfilled the most stringent guarantees of fair trial.

According to information received:

On 6 April 2017, [REDACTED] was arrested and charged under section 206 of the Penal Code for a murder which allegedly took place in April 2017.

On 14 November 2017, he was sentenced to death by hanging under section 206 of the Penal Code and section 276 of the Code of Criminal Procedure. A warrant of execution was issued against him by the Nimule Court. The warrant explicitly indicates [REDACTED] is 15 years of age.

[REDACTED] was not able to afford legal representation and did not have access to a lawyer before and during the trial.

[REDACTED] was transferred to Torit Central prison on 3 December 2017 and to Juba central prison on 9 September 2018.

A memorandum of revision was submitted to the Court of Appeal on 27 December 2017. The appeal was due to be heard on 4 October 2018 but was postponed. It is now scheduled for the week of the 8 October 2018.

We express grave concern at the death sentence issued against [REDACTED]. Our concern is heightened by the fact that he was a child at the time of the

commission of the alleged crime, and because judicial proceedings against him do not appear to have fulfilled the most stringent guarantees of fair trial. We note in particular that [REDACTED] did not have access to a lawyer prior to and during the trial.

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 to **immediately halt any steps being taken toward the execution of [REDACTED]**, which, on the basis of the information made available to us would violate international human rights law and standards, and thus constitute 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 full compliance with international human rights law and standards**. We further call on your Excellency's Government to establish a moratorium on the death penalty, and to consider its complete abolition.

While we do not wish to prejudge the accuracy of these allegations, the above information seems to 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, the right to be free from torture and other cruel, inhuman and degrading treatment or punishment, and the rights not to be arbitrarily arrested or detained, and to a fair and public trial guaranteeing due process as set forth in articles 3, 5, 9, 10 and 11 of the Universal Declaration of Human Rights (UDHR).

In relation to the latter, we wish to reiterate that Principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/RES/43/173) provides that "[a] detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay" (see also Principle 18 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (A/RES/43/113)).

Any judgment imposing the death sentence and execution of juvenile offenders is incompatible with the international legal obligations undertaken by your Excellency's Government under various instruments. We particularly highlight article 37(a) of the Convention on the Rights of the Child (CRC), to which South Sudan acceded on 23 January 2015, which expressly prohibits the imposition of the death penalty or life imprisonment without possibility of release for offences committed by persons below 18 years of age. In addition, the execution of persons for crimes committed while they were under 18 years of age is inherently cruel and amounts to a violation of the prohibition of torture and cruel, inhuman and degrading treatment which is prohibited, inter alia, in the

the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which South Sudan acceded on 30 April 2015.

We further note that the allegations also appear to indicate a prima facie violation of South Sudanese law including article 11 of the Transitional Constitution of South Sudan 2011 (TCSS), which provides no one shall be arbitrarily deprived of his or her life; article 21 of the Bill of Rights of the TCSS which restricts the use of the death penalty against individuals under 18 years of age and article 182(1) of the Child Rights Act, Chapter 10, Laws of South Sudan 2008, which provides that no child under 16 years of age shall be sentenced to imprisonment.

Furthermore, we are concerned that [REDACTED] did not have access to a lawyer prior to and during court proceedings. We would like to underline 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, including the right to adequate legal assistance at all stages of the proceedings (see article 5 of United Nations Safeguards Protecting the Rights of those facing the Death Penalty and A/HRC/36/26). We would like to refer your Excellency's Government to article 40 of the CRC, which enshrines the right to a fair trial. We further note that article 19 (6) of the TCSS provides that individuals charged with an offence that is subject to the death penalty should be provided with legal aid if they cannot afford the services of a lawyer. The imposition of the death sentence following a trial in which these provisions have not been respected constitutes a violation of the right to life. Only full respect for the most stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

We would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of [REDACTED] in compliance with international instruments.

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 mentioned allegations.
2. Please provide the details of the proceedings against [REDACTED] identified above, and their compliance with international and South Sudanese legal standards.

3. Please provide detailed information on the measures taken to provide with a fair trial and due process guarantees.
4. Please provide information on why [REDACTED] has been moved to Juba central prison.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence.

We may publicly express our concerns in the near future as, in our view, the information made available to us is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that, should the information be accurate, the wider public should be informed about the human rights implications of these violations. Any public statement on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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