

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL SSD 2/2020

12 October 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5, 43/16, 44/8 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information concerning the alleged arbitrary killing of Mr. Emmanuel Peter Juma and the reported harassment and intimidation of Mr. Godfrey Bulla, a prominent human rights lawyer, as a result of his efforts to prevent the execution of Mr. Juma.

According to the information received:

In June 2012, Mr. Emmanuel Peter Juma was convicted and sentenced to life imprisonment by the High Court in Juba, after his relatives filed a criminal case against him under section 206 of the Penal Code Act of 2008 for causing the death of their mother. It is reported that Mr. Juma suffered of mental health issues when he killed his mother, who died of a head injury in December 2011. Mr. Juma was in his mid-twenties at the time of his conviction.

In February 2020, Mr. Juma was released from prison after his relatives filed an application to the court for his release. However, approximately one month after his release, Mr. Juma's family decided to return him to prison because he reportedly exhibited mental health problems that threatened the safety and welfare of the family.

In June 2020, Mr. Juma was informed that the Supreme Court reviewed his case and subsequently convicted and sentenced him to death, thus changing the sentence previously issued by the High Court from life imprisonment to death. Mr. Juma was further informed that his case was sent to the Office of the President for confirmation of the execution.

It is alleged that Mr. Juma did not have any legal representation during the criminal proceedings before the High Court or during the Supreme Court review of his case, and that he did not have any avenues to appeal the death sentence as it was imposed by the Supreme Court which is the final judicial instance in South Sudan.

In this context it is also alleged that, while the Supreme Court has the power to confirm and alter death sentences issued by lower courts, national law does not entitle the Supreme Court to change the verdict of lower courts from imprisonment to death.

After being informed of the imposition of the death sentence, the relatives who filed the criminal case against Mr. Juma decided to opt for reconciliation, in accordance with customary law, and a reconciliation agreement was reached between all parties involved.

Following the signing of this agreement, on 22 June 2020, an application was sent to the Supreme Court of South Sudan, asking for recognition and enforcement of the voluntary reconciliation agreement.

The application further asked that the case file be retrieved from the Office of the President so that it can be sent to the Court of First Instance in Juba for re-sentencing.

The agreement was submitted in accordance with article 122(5) (d) of the 2011 Transitional Constitution (read in conjunction with section 6 (i) of the 2008 Code of Criminal Procedure Act and article 206 (b) of the 2008 Penal Code Act), which requires courts to recognize and enforce voluntary reconciliation agreements between parties when adjudicating both civil and criminal cases.

In spite of that, however, it is reported that Mr. Juma was executed on 16 July 2020. Requests to stay the execution for a week in order to allow for sufficient time to amend the death sentence in accordance with the voluntary reconciliation agreement were reportedly refused by the Chief Justice and [REDACTED]

It is further alleged that prominent human rights lawyer Mr. Godfrey Bulla was threatened and harassed for his efforts to prevent the execution of Mr. Juma. He was reportedly threatened by [REDACTED] who prevented him from leaving the prison and attempted to have him arrested after accusing him of opposing the Government's plans and promoting regime change. The threats by [REDACTED] were allegedly preceded by intimidation attempts of the Chief Justice.

Mr. Bulla was eventually able to leave the prison with the support of the relatives of Mr. Juma. Nevertheless, he continues to fear for his physical safety in light of the possibility of being arbitrary arrested by security forces.

Finally, it is reported that there is a heightened risk that additional executions may be carried out at Juba Central Prison during the coming weeks and months. Of concern is the recent transfer of a number of death row inmates from Torit to Juba. These convicts were transferred from Torit State Prison to Juba Central Prison on 9 August 2020, reportedly on the request of Juba prisons authorities. All inmates were convicted and sentenced to death between October 2018 and April 2020.

It is alleged that most of the inmates have not been provided with legal representation or adequate information about the status of their appeal proceedings. Given that the transfer of death row prisoners to Juba Central Prison can be an indication for their imminent execution, there is a risk that these inmates may be executed in the near future.

In relation to the imposition of the death penalty against Mr. Juma, while we do not wish to prejudge the accuracy of the allegations received, we are concerned that, if confirmed, his execution would be in contravention of articles 3 and 5 of the Universal Declaration of Human Rights (UDHR); article 6 (1) and 7 of the International Covenant on Civil and Political Rights (ICCPR); and article 4 and 5 of the African Charter on Human and Peoples' Rights (ACHPR), which South Sudan ratified on 23 October 2013, which guarantee the right of every individual to life and protects against torture and other cruel, inhuman or degrading treatment.

We stress that, in countries that have yet to abolish it, the death penalty can only be applied for the “most serious crimes”, which are considered to be those involving intentional killing. Furthermore, pursuant to international human rights law, the death penalty should not be imposed on persons with mental or intellectual disabilities<sup>1</sup>.

In light of the mental health condition reportedly affecting Mr. Juma, the implementation of the death penalty against him may have amounted to an arbitrary killing. This would itself absorb, without - however - prejudging their merit, further concerns relating to due process and fair trial guarantees, protected under Article 10 of the UDHR and article 14 of the ICCPR and article 7 of the ACHPR, particularly with regard to Mr. Juma's right to adequate legal representation during all stages of the proceedings, the right to appeal the death sentence, and the imposition of the death penalty in spite of the voluntary reconciliation agreement. On this, we also recall that the right to a fair trial is specifically protected under article 19 of the 2011 Transitional Constitution of South Sudan.

In relation to the allegations concerning Mr. Godfrey Bulla, we recall the Basic Principles of the Role of Lawyers, which require States to adopt all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (Principle 16); and to adequately safeguard them where the security of lawyers is threatened as a result of discharging their functions (Principle 17)<sup>2</sup>.

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

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<sup>1</sup> See Economic and Social Council resolutions 1984/50 and 1989/64; CCPR/C/74/D/684/1996; A/67/279, para. 58; and A/HRC/36/26.

<sup>2</sup> Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba; 27 August to 7 September 1990: <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>

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 provide the details of the legal proceedings that resulted in the imposition of the death penalty on Mr. Juma. In this context, please provide information as to how the reported mental health issues of Mr. Juma were taken into account during his sentencing. Please also provide information on the legal basis for the Supreme Court decision to change the sentence of Mr. Juma from life imprisonment to a death sentence.
3. Please provide detailed information on the measures taken to provide Mr. Juma with a fair trial and due process guarantees during all stages of the criminal proceedings against him.
4. Please provide details on the application of article 122(5) (d) of the 2011 Transitional Constitution during the legal proceedings against Mr. Juma.
5. Please provide information on any measures taken to prevent the arbitrary killing of Mr. Juma, given that the court proceedings do not appear to have met applicable fair trial and due process guarantees. If no measures have been taken, please explain why.
6. Please provide detailed information on any other executions scheduled to take place at Juba Central Prison and Wau Central Prison.
7. Please provide detailed information on any measures that have been taken to ensure the safety and physical and psychological integrity of Mr. Bulla as well as the details on the results of any investigation or inquiry into the above-mentioned threats against Mr. Bulla. If no investigation has been initiated, please explain why.
8. Please provide details on any measure taken to ensure that Mr. Bulla can freely and independently exercise his profession as a human rights lawyer without any form of intimidation, threats, harassment or improper interference.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will 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.

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

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

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to Article 3 of the Universal Declaration of Human Rights which states that "Everyone has the right to life, liberty and security of person".

Furthermore, Article 6 (1) of the International Covenant on Civil and Political Rights states that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

We also stress that States must refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis with others, such as persons whose serious psycho-social and intellectual disabilities impeded their effective defense, and on persons that have limited moral culpability. Persons with disabilities, including psychosocial and intellectual disabilities, are also entitled to specific measures of protection so as to ensure their effective enjoyment of the right to life on equal basis with others. Violation of the fair trial guarantees provided for in Article 14 of the ICCPR in proceedings resulting in the imposition of the death penalty would render the sentence arbitrary in nature, and in violation of Article 6 of the Covenant. Such violations might involve the lack of effective legal representation during all stages of the criminal proceedings; lack of an effective right of appeal; lack of adequate time and facilities for the preparation of the defense, including inability to access legal documents essential for conducting the legal defense or appeal; failure to provide accessible documents and procedural accommodation for persons with disabilities<sup>3</sup>.

In addition we recall the Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by Economic and Social Council resolution 1984/50 of 25 May 1984 which state, inter alia, that capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings<sup>4</sup>.

Lastly, we wish to recall the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to Article 9 (3) (c) of the Declaration, which provides that everyone has the right to "offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human

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<sup>3</sup> General Comment n. 36:

[https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf)

<sup>4</sup> <https://www.ohchr.org/en/professionalinterest/pages/deathpenalty.aspx>

rights and fundamental freedoms”. Importantly, article 12(2) stipulates that States must take all necessary measures to ensure the protection of everyone against “any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration<sup>5</sup>.

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<https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx#:~:text=Adopted%20by%20General%20Assembly%20resolution%2053%2F144%20of%209%20December%201998&text=Everyone%20has%20the%20right%2C%20individually,the%20national%20and%20international%20levels.>