

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the rights of persons with disabilities

Ref.: AL USA 5/2022
(Please use this reference in your reply)

14 April 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights of persons with disabilities and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5 and 44/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the execution of Mr. Matthew Reeves, a person with intellectual disability, by lethal injection which took place on 27 January 2022 in the State of Alabama**, following trial proceedings that allegedly failed to adequately consider Mr. Reeves' intellectual disability, violated his fair trial rights, and resulted in the use of a method of execution, which may have subjected him to cruel, inhuman or degrading treatment or punishment, or even torture.

The use of lethal injection was the subject of previous communications (USA 13/2016 of 3 November 2016; UA USA 4/2018 on 15 February 2018) in which serious concern was raised over the drug cocktail used in the State of Alabama which may cause severe physical and mental suffering of the condemned before death.

According to the information received:

In January 1998, Mr. Reeves was convicted of capital murder in the course of a robbery committed in Selma, Alabama, on 27 November 1996, when he was 18 years old. He was sentenced to death on 20 July 1998. It is alleged that Mr. Reeves death sentence has been upheld despite claims that he has an intellectual disability and that his trial lawyers failed to retain an expert to present such evidence at the initial trial proceedings.

Alleged failure to adequately consider Mr. Reeves' intellectual disability

While the request to present an expert that could testify to Mr. Reeves intellectual disability was granted, trial attorneys subsequently failed to contact a neuropsychologist assigned to evaluate Mr. Reeves' intellectual capacity in a timely manner and, as a consequence, held the court hearing without an expert assessment. This reportedly constituted an obstacle to obtaining a mitigation based on Mr. Reeves' intellectual capacity. In addition, the court heard no analysis of any brain damage Mr. Reeves may have suffered as a result of being shot in the head 10 weeks before the crime.

On 20 July 1998, the day of sentencing, the attorneys contacted a psychologist who had been appointed by the court to assess Mr. Reeves' competency to stand

trial and his psychological condition at the time of the crime. It is documented that the psychologist was called for testimony even though she had not evaluated Mr. Reeves for intellectual disability prior to the trial and had not made contact with Mr. Reeves' attorneys until the day of the sentencing.

At a post-conviction hearing, the neuropsychologist who was not summoned at the first trial and who had since reviewed Mr. Reeves's records and conducted testing testified that Mr. Reeves had an intellectual disability. He concluded that Mr. Reeves' intellectual abilities were below average and his adaptive skills showed significant deficits in several areas. However, the State court, as well as the Alabama Court of Criminal Appeals, dismissed the allegations of intellectual disability and inadequate representation.

Allegations of inadequate legal assistance

In the court proceedings related to Mr. Reeves' case, the entire sentencing phase reportedly lasted only 90 minutes and crucial mitigating evidence was withheld from the jury and the judge. These deficiencies led three federal judges on the 11th Circuit Court of Appeals and four Supreme Court justices to acknowledge that Mr. Reeves' legal representation at trial was inadequate. In addition, a young juror who had originally voted for life imprisonment was allegedly pressured into changing her vote in favor of the death penalty, resulting in the 10-vote threshold for imposing the death penalty being reached. In addition, jurors were reportedly not made aware of relevant risk factors in Mr. Reeves' life, including childhood domestic violence and gun and substance abuse, that could be considered mitigating elements to his sentence.

In 2019, the U.S. District Court affirmed the death sentence, noting that the federal motion was subject to the 1996 Antiterrorism and Effective Death Penalty Act, which requires federal deference to state court decisions. In 2020, the 11th Circuit Court of Appeals affirmed various deficiencies of Mr. Reeves's trial proceedings including that trial counsel's performance would have been deficient; that the mitigating evidence that could be gathered after the fact would be meaningful for a review of the case; and that the absence of this mitigating evidence at the first trial would call into question the application of the death penalty.

In 2021, however, the Supreme Court reversed that ruling without giving Mr. Reeves an opportunity to brief the matter or provide oral argument in his case. According to three Supreme Court justices, the decision constitutes a troubling trend in which the Court seeks to summarily overturn grants of relief to individuals facing execution.

On 7 January 2022, a federal judge issued a preliminary injunction stating that Mr. Reeves' execution should be carried out by the then-still-researched method of nitrogen hypoxia instead of the standard method of lethal injection. Mr. Reeves did not complete the election form for this new method of nitrogen hypoxia because, as later determined by a federal judge, he was unable to read and understand the form without assistance due to his condition of intellectual disability. The failure of the authorities to provide assistance in order to mitigate

the difficulties arising from Mr. Reeves' cognitive impairments was claimed to constitute a discriminatory practice. Based on these views, the federal judge ruled that the State should halt the execution until it fully developed the nitrogen hypoxia protocol.

On 26 January 2022, a three-judge panel of the 11th Circuit Court of Appeals upheld the injunction, citing, among other things, an expert testimony that Mr. Reeves' language skills were far below the level needed to understand the execution form.

On 27 January 2022, the State appealed to the U.S. Supreme Court, and the execution, scheduled for 6:00 p.m. local time, was postponed while the justices reviewed the case. At 7:25 p.m., the stay was lifted by a vote of 5-4 of the Supreme Court justices, and Mr. Reeves was consequently executed by lethal injection. The dissenting justices claimed that the Supreme Court's decision disregarded well-documented findings of trial deficiencies and discriminatory treatment of Mr. Reeves based on his intellectual disability.

Mr. Reeves was pronounced dead at 9:24 p.m. at age 43.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern that the death penalty has been imposed on Mr. Reeves following judicial procedures that have allegedly failed to fulfill the most stringent guarantees of fair trial and due process that are required under international human rights law when capital punishment is imposed. We profoundly deplore that the execution of Mr. Matthew Reeves was carried out on 27 January 2022, despite calls to suspend the application of the death penalty and to properly review his case.

We are alarmed by the reported failure to properly investigate, present and consider mitigating information concerning Mr. Reeves' condition of intellectual disability. If the alleged facts prove to be true this may constitute a violation of article 14 of the International Covenant on Civil and Political Rights (ICCPR), of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, and the Convention on the Rights of Persons with Disabilities (CRPD) signed by the United States on 30 July 2009. We note that the death penalty should never be imposed on individuals who face specific barriers in defending themselves on an equal basis with others, such as persons with intellectual disabilities (CCPR/C/GC/36, para 49). We recall that all persons with disabilities, and especially persons with intellectual and psychosocial disabilities, shall be informed about, and provided access to, promptly and as required, appropriate support and accommodation to facilitate their effective participation, as well as procedural accommodations to ensure fair trial and due process (para. 24).

With respect to the reported grave deficiencies related to Mr. Reeves' legal representation, we remind your Excellency's Government that the imposition of the death penalty is always arbitrary whenever the court ignores or disregards material facts that may have significantly affected the defendant's motives, situation, and conduct. In this regard, we are particularly troubled by the unusually short sentencing phase, Mr. Reeves' counsel's failure to present expert witnesses attesting to his intellectual disability, and the alleged failure to consider Mr. Reeve's personal history of abuse as

a mitigating factor in his sentence. In light of the dissenting opinions of several justices engaged in Mr. Reeves trial proceedings, which may constitute evidence for the acknowledgement that there exist uncertainties and inconsistencies in relation to the manner in which the trial proceedings have been conducted and the evidence presented, we wish to recall that the death penalty may only be imposed when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

We further express serious concern that the method of lethal injection, which suffocates a conscious inmate in a manner that has been compared to being buried alive, has inflicted pain and suffering on Mr. Reeves that may amount to cruel, inhumane or degrading treatment or punishment, or even torture.¹ In its general comment No. 20 (CCPR/C/21/Add.3) the Human Rights Committee stressed that “the method of execution must cause the least possible physical and mental suffering.” In this regard, we reiterate that Alabama’s three-drug lethal injection protocol may have “torturous effects” due to the use of a sedative pharmacologically incapable of holding a convict unconscious in the presence of the excruciating pain likely to be induced by the other drugs injected during his execution. The longstanding position of the United Nations Human Rights Committee is that imposition of the death penalty in a manner that is contrary to another provision of the ICCPR also violates article 6. Thus, failure to respect article 7 by imposing the death penalty in a manner that constitutes torture or cruel, inhuman or degrading treatment contrary to article 7 would inevitably render the execution arbitrary in nature and be in violation of article 6. According to the facts available to us, Mr. Reeve's execution therefore appears to constitute a violation of applicable international human rights law, and thus an arbitrary execution and a violation of the prohibition against torture.

We would also like to bring to the attention of your Excellency's Government that we have emphasized in previous communications² that the resumption of executions at the federal level sharply contradicts national and global trends toward the abolition of the death penalty. The United Nations Human Rights Committee has expressed its deep concern about the de facto reinstatement of death sentences and executions by a State party to the ICCPR.³ The death penalty is always incompatible with full respect for the right to life and its abolition is both desirable and necessary to promote human dignity and the progressive development of human rights. While the ICCPR allows States that retain the death penalty to continue to use it, we understand that this “dispensation” for States Parties should not be interpreted as a justification for the deprivation of life of individuals, even if lawfully sentenced to death, and that, strictly speaking, it does not make the execution of a death sentence legal.⁴ Therefore, **we respectfully underscore that the resumption of executions is absolutely inconsistent with the international obligations of the United States of America.**

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.

¹ UA USA 13/2016 and UA USA 12/2021.

² Report of the Secretary-General, Question of the death penalty, A/HRC/27/23.

³ Human Rights Committee, Concluding Observations on Syria, CCPR/CO/84/SYR, para. 7.

⁴ Human Rights Committee, CCPR/C/78/D/829/1998, appendix, individual opinion, page 30.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 details on the manner in which Mr. Reeves' intellectual disability was taken into account during the trial proceedings and what measures will be taken to prevent discriminatory practices based on the failure to consider a convicted person's intellectual disability in future cases.
3. Please provide details on whether any investigations were initiated into the above alleged violations of fair trial and due process rights, including the exertion of pressure on a juror to change her vote in favor of the death penalty, and if so, with what outcome.
4. Please provide details on the measures that the Government of the United States of America has taken or intends to take to fully prevent individuals from being subjected to a method of execution that reportedly constitutes cruel, inhuman or degrading treatment or punishment, or even torture.
5. Please explain how the continued imposition of the death penalty, including on persons with intellectual disabilities, is consistent with the United States' international human rights obligations.

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.

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

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

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Gerard Quinn

Special Rapporteur on the rights of persons with disabilities

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 (UDHR) which states that "Everyone has the right to life, liberty and security of person"; and to article 6 of the International Covenant on Civil and Political Rights (ICCPR), which the USA ratified on 8 June 1992, which 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 would also like to draw your attention to the right of every individual to liberty and security as set out in article 7 of the International Covenant on Civil and Political Rights and articles 2 and 16 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the USA ratified on 21 October 1994. We would also like to draw your attention to the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment as set out in article 7 of the ICCPR and articles 2 and 16 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the USA ratified on 21 October 1994.

We wish to remind your Excellency's Government that any execution resulting from proceedings indicating a potential violation of the right to fair proceedings before an independent and impartial tribunal, as set forth in article 10 of the UDHR and in article 14 of the ICCPR, would amount to a violation of the right to life as set out in article 3 of the UDHR and in article 6 of the ICCPR.

We would further like to draw the attention of your Excellency's Government to article 3 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty (Safeguards), which provides that the death sentence may not be carried out on persons with mental disability. Article 4 of the Safeguards stipulates that the death penalty may only be imposed when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts. This guidance is reiterated in article 5 of the Safeguards, which also demands that 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. In this regard, we wish to recall that the Human Rights Committee has emphasized that States parties should "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" (CCPR/C/GC/36, para. 49).⁵

In this regard, we wish to bring to the attention of Your Excellency's Government the 2020 International Principles and Guidelines on access to justice for persons with disabilities, which aim at supporting States in revising, designing and

⁵ See also Communication No. 684/1996, *RS v Trinidad and Tobago*, Views adopted by the Human Rights Committee on 2 April 2002, para. 7.2; Commission on Human Rights resolution 2005/59, para. 7(c).

implementing justice systems that provide equal access to justice for persons with disabilities, in line with international human rights standards.

We further refer to articles 7, 8 and 9 of the Safeguards, indicating that anyone sentenced to death shall have the right to seek pardon, or commutation of sentence, that capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence and that the death penalty, if carried out, shall be executed in such a way as to cause as little suffering as possible.⁶ In this regard, the Human Rights Committee clarified that the right to security of persons protects individuals from intentional infliction of bodily or mental harm (General Comment 35, CCPR/C/GC/35). The Committee added that the right to security of persons may overlap with the right to life guaranteed by article 6 of the ICCPR. Moreover, the Commission on Human Rights, as well as Economic and Social Council resolution 1989/64, recommends that States further strengthen the protection of the rights of persons facing the death penalty by abolishing the death penalty for persons with intellectual or psychosocial disabilities, equally at the stage of sentence or execution.

We further recall that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has taken the view that most methods of execution amount to ill-treatment, if not torture, and that States applying the death penalty cannot guarantee that the prohibition of torture or ill-treatment is scrupulously observed (A/67/279, paras. 75-77) and that there is an evolving international standard to consider the death penalty in itself as a violation of the prohibition of torture and ill-treatment (para. 72).

Finally, we would like to recall that, according to paragraph 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 that all branches of the State (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.

⁶ See also Human Rights Committee, general comment No. 20, para. 6.