

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

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(Please use this reference in your reply)

18 May 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 44/5, 42/22, 42/16, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the mandatory imposition of the death penalty for murder in the case of Ms. Chausiku Nchama Magoiga**, following trial proceedings in which mitigating circumstances relating to her experience of domestic and gender-based violence and the fact that her husband's death was due to self-defense do not appear to have been adequately considered.

According to the information received:

Circumstances surrounding the death of Mr. Nchama Magoiga Mwita

Ms. Chausiku Nchama Magoiga is a 35-year-old farmer who belongs to the Kuria tribe in the Mara region of Tanzania and has reportedly experienced continuous severe domestic and gender-based violence since her marriage. She was married off at the age of fifteen and had access to limited schooling due to the obligation to provide for her family at a young age. As a mother of four children, including a five years old child, she holds ongoing childcare responsibilities.

During their marriage, Mr. Nchama Magoiga Mwita, who was allegedly addicted to alcohol, repeatedly brutally beat and insulted Ms. Nchama Magoiga. When the abuse became unbearable, Ms. Nchama Magoiga used to seek refuge with her parents-in-law, but they were reportedly too afraid of retaliation from their son to offer her any protection. Other villagers also reportedly knew that Mr. Mwita was mistreating Ms. Nchama Magoiga, but were reportedly too afraid to intervene.

On 9 November 2017, when Mr. Mwita came home drunk at dinner time, he started verbally abusing her and reportedly threatened to kill her. Their children, Alexander Peter and Happiness Peter, who were 12 and 9 years old,

were sent to bed. Subsequently, Mr. Mwita followed Ms. Nchama Magoiga to their bedroom and locked the door. Being isolated from the rest of the house, he beat her with several instruments, including a hammer, causing her to fall. Ms. Nchama Magoiga eventually managed to take the hammer from her husband's hand and reportedly hit him over the head to defend herself.

As soon as Ms. Nchama Magoiga realized that her husband was seriously injured, she immediately informed her neighbors and asked them to help her transport her husband to the nearest hospital. On the way to the hospital, however, she noticed that Mr. Mwita was no longer breathing, whereupon she and one of the neighbors left his body in a nearby field.

In the morning of 10 November 2017, after a passerby discovered the body of Mr. Mwita, bystanders reportedly began beating Ms. Nchama Magoiga until she confessed to killing her husband. On the same day, she was arrested by police officers from Borega Outpost Police Station in Nyakonga village, Tarime district, Mara region. On 11 November 2017, an autopsy was performed on Mr. Mwita, revealing that the cause of death arose from acute blood loss caused by two wounds to his head, leading to heart failure.

Conviction of Ms. Nchama Magoiga for murder

In November 2017, Ms. Nchama Magoiga was not afforded legal counsel during her interrogation immediately following her arrest. On 14 May 2020, her trial began, with the prosecution reportedly calling eight witnesses, while the defense summoned only Ms. Nchama Magoiga and the neighbor who assisted in transporting her husband's body to the nearest hospital and who was acquitted as a result of the trial.

On 1 June 2020, the Court Resident Magistrate of Musoma at Tarime (Extended Jurisdiction) sentenced Ms. Nchama Magoiga to death by hanging for murder of Mr. Mwita in violation of section 196 and 197 of the Penal Code [Cap. 16 Rev. 2019].¹ The sentence was handed down after Ms. Nchama Magoiga had been deprived of effective legal representation in her trial proceedings and of adequate consideration of the possibility of her husband's death as a result of self-defense against his acts of violence, which were reportedly life-threatening to her at the time of the alleged murder. Moreover, the Court did not consider Ms. Nchama Magoiga's history of domestic and gender based violence, which could have served as mitigating evidence regarding her conviction.

While Ms. Nchama Magoiga was provided with a legal counsel during pre-trial and trial proceedings, made available to her by the State in the context of capital offenses at the level of the High Court, she did not meet with her attorney until one month before the start of her trial, and thus three years after her arrest, only to consult him four more times during her trial thereafter. At the appeal stage, she was denied any legal assistance.

¹ Criminal Sessions Case No. 02 of 2020, Court of Resident magistrate of Musoma at Tarime (extended jurisdiction), *The Republic vs Chausiku W/O Nchama@ Magoiga*, p. 22.

Because the defense counsel failed to interview additional witnesses in preparation for the trial and to summon them to present additional evidence at the trial, the Court allegedly relied only on the testimony of Ms. Nchama Magoiga's 9-year-old daughter at the sentencing phase, who stated that in the night of her father's death, she did not hear her father beating her mother after she had gone to bed. The court subsequently concluded that there was insufficient evidence to establish that a fight had actually taken place between the spouses that would have necessitated the use of force through self-defense by Ms. Nchama Magoiga against Mr. Mwita. However, at the time of the events, her daughter was sleeping in a separate room 12 meters away from the room in which Ms. Nchama Magoiga was confined, meaning that her daughter reportedly could not have overheard any commotion outside the bedroom. In addition, Ms. Nchama Magoiga testified that she did not scream for help during the beatings. Her other child, Alexander Peter, who was also present in the house when the alleged murder occurred, was not called to the witness stand. None of the eight witnesses called by the prosecution disputed the circumstances of Mr. Mwita's death as described by Ms. Nchama Magoiga.

On 23 September 2020, Ms. Nchama Magoiga filed an appeal against her conviction and death sentence in the form of a two-page handwritten document, without legal counsel but with the assistance of a prison official. This situation is reportedly attributed to the limited availability of public defenders and the prioritization and allocation of limited legal resources for trial proceedings rather than guaranteeing or providing timely legal support for appeal proceedings. As a result, defendants often file their appeals without legal representation with little chance of a successful outcome to their case.

Inadequate detention conditions and adverse effects on Ms. Nchama Magoiga's mental health condition

Ms. Nchama Magoiga was detained at Tarime Prison from 14 November 2017 until 9 July 2020, when she was transferred to Butimba Prison, where she remains incarcerated to date. It is reported that Ms. Nchama Magoiga's mental health condition has steadily deteriorated since her conviction and that she shows signs of depression, which can be exacerbated by the reported lack of adequate psychological treatment in prison. In addition, her physical condition has worsened due to a stroke she suffered in September 2021. It was reported that, as a consequence, Ms. Nchama Magoiga struggles to remember the names of her children and that the stroke has affected one of her hands and legs. Although she was able to consult a doctor, she was reportedly denied adequate medical care.

Detention conditions at Butimba Prison are particularly difficult to endure due to limited food resources and complete isolation from visitors. Her transfer to Butimba Prison, which is located more than 300 km from her village, has also affected the ability of persons associated with her to contact her, as they lack the financial resources to afford the long trip to the prison. Ms. Nchama Magoiga has reportedly not seen any of her children since 2020.

Inmates at Butimba Prison are reportedly not informed of her impending execution, heightening fears that the execution could be imminent. They also do not receive adequate legal representation and thus leaving inmates in constant uncertainty about their fate.

As a result of these conditions, Ms. Nchama Magoiga reportedly shows clear signs of what is known as the “death row phenomenon,” which involves anxiety, terror, fear, depression and mental anguish due to prolonged detention on death row.

Alleged failure to recognize gender-based violence as mitigating evidence in court proceedings in Tanzania

Ms. Nchama Magoiga has been a victim of domestic and gender-based violence since the age of fifteen. In 2007, Ms. Nchama Magoiga fainted due to Mr. Mwita's beatings, after which she woke up with a wound in her abdomen. However, Mr. Mwita refused to take her to the hospital, which exacerbated her severe injuries. In 2012, Mr. Mwita beat her with a panga, a machete-like tool, until she lost consciousness. When a concerned neighbor inquired about her, Mr. Mwita stated that he would kill Ms. Nchama Magoiga. During trial, Ms. Nchama Magoiga and her daughter testified that Mr. Mwita beat her daughter with a panga and caused her bladder trauma, resulting in her hospitalization at NDDH Hospital Serengeti District and ongoing health complications. Despite these circumstances, and due to the alleged ignorance of Ms. Nchama Magoiga's defense counsel regarding gender-based violence, he has failed to develop a defense argument that fully explains the extent of Ms. Nchama Magoiga's victimization based on the past abuse that she suffered at the hands of her husband.

The Tanzania Penal Code [CAP 16. R.E. 2019] provides for the death penalty for murder in Section 196, which must be imposed mandatorily pursuant to its Section 197. This reportedly places a particularly heavy burden on women suffering from domestic and gender-based violence as in these cases, longstanding psychologically traumatizing experiences of abuse, do not constitute mitigating circumstances that would override the mandatory death penalty. Women on death row also receive little support from their communities due to stigma. In mainland Tanzania, about 51% of women aged 15 to 49 years report that they have experienced emotional, physical, or sexual violence at the hands of their husband/partner. The numbers are worse in the Mara region, where 78% of women testify that they have experienced such violence.² Reportedly, impunity for gender-based violence is widespread, and perpetrators are rarely held accountable by the Tanzanian criminal justice system.

On 28 November 2019, the African Court on Human and Peoples' Rights found that the mandatory death penalty in Tanzania is inconsistent with the

² Tanzania Demographic and Health Survey (2010), National Bureau of Statistics, pp. 282 ([https://dhsprogram.com/pubs/pdf/FR243/FR243\[24June2011\].pdf](https://dhsprogram.com/pubs/pdf/FR243/FR243[24June2011].pdf))

African Charter on Human and Peoples' Rights (Banjul Charter).³ The Court stated that the mandatory imposition of the death penalty is “automatic and mechanical,” and “as such, the provision of the sentence and its imposition do not permit consideration of mitigating factors” thus taking away the discretion inherent in the exercise of the judicial function and not paying attention to proportionality between the facts and the penalty. Therefore, such situation “does not uphold fairness and due process” constituting “an arbitrary deprivation of the right to life.”⁴ Tanzania has imposed a *de facto* moratorium on executions since 1994. However, Tanzanian courts reportedly refuse to implement the African Court's ruling and continue to sentence individuals to death based on laws that make the use of the death penalty binding for the crime of murder. Scarce resources for conducting investigations into mitigation circumstances and/or a lack of awareness of gender-based violence among court and prison personnel also allegedly contribute to this situation.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern that the death penalty may have been imposed on Ms. Chausiku Nchama Magoiga following judicial procedures that do not consider her history of survivor of domestic gender-based violence as mitigating factors and that may not fulfill the most stringent guarantees of fair trial and due process required under international human rights law, when capital punishment is imposed. We are also concerned by the fact that, while Tanzania has instituted a *de facto* moratorium on executions since 1994, the death penalty remains mandatory for murder charges, which runs counter the international trend toward abolishing the death penalty worldwide.

In view of the above, we call upon your Excellency's Government as a matter of urgency to halt the execution of Ms. Chausiku Nchama Magoiga. On the allegations made available to us, her execution may constitute a violation of applicable international human rights standards and thus an arbitrary execution. We further urge your Excellency's Government to commute the death sentence and to ensure that she is re-tried in compliance with international standards relating to due process and fair trial.

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, to be free from torture or cruel, inhuman or degrading treatment or punishment, to liberty and security and to fair trial guarantees as set out in article 6, 7, 9 and 14 of the International Covenant on Civil and Political Rights, which the United Republic of Tanzania ratified in 1976 and articles 2 and 16 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

³ *Ally Rajabu and Others v. United Republic of Tanzania*, Application No. 007-2015, Judgment on Merits and Reparations, Press Release, African Court on Human and Peoples' Rights, 28 Nov. 2019, at 6.

⁴ *Ibid.*

Fair trial and due process guarantees and non-discrimination

We note with concern that Ms. Nchama Magoiga did not receive effective legal representation during the drafting of her appeal, and that the latter is still pending. In this regard, we underline that the death penalty must not be imposed in a discriminatory manner and the element of non-discrimination applies both procedurally and substantively. We would like to highlight that article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, provides 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. Only full respect for the most stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution. Furthermore, article 6(4) of the ICCPR and article 7 and 8 of the above-mentioned safeguards establish 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. Moreover, 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.

We remind the authorities that under universal standards of due process and fair trial, the imposition of the death penalty is always arbitrary and unlawful when the court ignores or discounts essential facts that may have significantly influenced a capital defendant's motivations, situation and conduct, including their exposure to domestic violence and other abuse. With regard to the trial of Ms. Nchama Magoiga, we are particularly troubled by the court's failure to consider the significance of domestic gender-based violence as a mitigating factor in her case. We also recall that child marriage is often the result of entrenched gender inequality and that girls who marry before 18 years of age are more likely to experience domestic violence. We are also alarmed that Ms. Nchama Magoiga's status as the mother of four children - her youngest child having been less than a year old when she was sentenced to death - and thus her position as the primary provider for her family was not adequately considered as a mitigating circumstance by the court.

The failure to consider Ms. Nchama Magoiga's personal history is particularly egregious given that her husband's death occurred when Ms. Nchama Magoiga appears to have acted in self-defense. We recall that the latter constitutes a legitimate defence under Section 18A (1) (a) of the 1981 Penal Code of Tanzania which empowers persons to defend themselves against any unlawful attack or act of violence against their body. We also stress that the Special Rapporteur on extrajudicial, summary or arbitrary executions has argued that "the imposition of the death penalty against clear evidence of self-defense constitutes an arbitrary killing. This is particularly important for women charged with murder of their intimate partners, or others, when defending themselves" (A/HRC/35/23, paragraph 44).

We note that there are meaningful similarities among women subject to mandatory death penalty for murder in Tanzania, including histories of long-term abuse and absence of effective legal and psychological assistance. We recall that the Special Rapporteur on extrajudicial, summary or arbitrary executions called on states in 2017 to review laws, criminal procedures and judicial practices to ensure that they

take full account of women's backgrounds, including histories of prior abuse, noting that such considerations are particularly crucial in cases involving capital punishment (A/HRC/35/23). In her report on the situation of women deprived of liberty, the Special Rapporteur on violence against women noted that being victims of gender-based violence may be a cause of women's involvement in criminal offences and subsequent imprisonment. Consequently, States have a duty to address the structural causes that contribute to women's incarceration, and to recognize women's histories of victimization. The Rapporteur reminded States of their due diligence obligation under international law to prevent, respond to, protect against, and provide redress for all forms of gender-based violence (A/68/340).

In its General Recommendation 33 on women's access to justice, the CEDAW Committee stresses that stereotyping and gender bias in the justice system have far-reaching consequences for women's full enjoyment of their human rights. They impede women's access to justice in all areas of law. Stereotyping distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts. Often, judges adopt rigid standards about what they consider to be appropriate behaviour for women and penalize those who do not conform to those stereotypes. Stereotyping also affects the credibility given to women's voices, arguments and testimony. Such stereotyping can cause judges to misinterpret or misapply laws. In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice.

The Committee also emphasizes that States parties have an obligation to expose and remove the underlying social and cultural barriers, including gender stereotypes, that prevent women from exercising and claiming their rights and impede their access to effective remedies. Discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men. Women who are unaware of their human rights are unable to make claims for the fulfilment of those rights. The Committee has observed, especially during its consideration of periodic reports submitted by States parties, that they often fail to guarantee that women have equal access to education, information and legal literacy programmes.

We strongly condemn the apparent impunity for domestic gender-based violence in the context of a number of cases of women receiving the death penalty for actions that appear to be in self-defense. In this regard, we remind that the duty to protect the right to life requires States to take special measures of protection towards persons in situations of vulnerability whose lives have been placed at particular risk because of specific or pre-existing patterns of violence (Human Rights Committee, General Comment 36) and that domestic violence amounts to ill-treatment or torture whenever States acquiesce in the prohibited conduct by failing to protect victims and prevent prohibited acts, of which they knew or should have known, in the private sphere (A/HRC/74/148).

Death penalty as a cruel, inhuman or degrading punishment

We express serious concern at the overall imposition of death penalty on a mandatory basis for charges such as murder, while a *de facto moratorium* on capital punishment has been in place in Tanzania since 1994. We recall that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life (see Human Rights Committee, General Comment No. 6). This means that, conversely, a resumption of executions leads to less protection of the right to life (see Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/69/265), as guaranteed by Article 6 of the ICCPR. We stress that when executions have been suspended for an extended period of time, it is unlikely that their resumption may be justified by objective reasons and that there exists no evidence that the death penalty has a deterrent effect against crime.

In this connection, we would like to call your attention to an emerging international customary norm prohibiting the death penalty as a form of cruel, inhuman, or degrading punishment and trending towards its eventual abolition worldwide (see Report of the Secretary-General, Question of the death penalty, A/HRC/27/23). The cruelty of the death penalty goes beyond the execution itself. The concept of the “death row phenomenon” explains that prisoners on death row may experience severe mental trauma and physical deterioration, which may cross into the territory of degrading, cruel or inhuman treatment or punishment, or even torture. 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.

In addition, we would like to stress that the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, indicated that “deprivation of liberty has adverse effects on mental health, which may amount to violations of the right to health”.⁵

We are issuing this appeal in order to safeguard the rights of Ms. Nchama Magoiga from irreparable harm and without prejudicing any eventual legal determination.

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned person(s) 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:

⁵ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/38/36, paragraph 46.

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on how Ms. Chausiku Nchama Magoiga's trial proceedings comply with international law standards of fair trial and due process. In particular, please indicate how the current Tanzanian Penal Code complies with international law standards in regards to fair trial and due process. Please also indicate how mitigating factors such as gender-based violence and the position of defendants as primary care-taker of their family are taken into account when imposing the death penalty.
3. Please provide information on any investigations that have been carried out into the causes of Mr. Mwita's death, especially concerning the alleged act of self-defense by Ms. Nchama Magoiga that appear to have led to his death, and if so, communicate the results of such investigation. Please also provide information on whether these investigations have been carried out in compliance with the revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (*the Minnesota Protocol on the Investigation of a Potentially Unlawful Death (2016)*).
4. Please provide information on your Excellency's Government's policy and practical measures - legal, institutional, procedural - to ensure that all women are protected from domestic violence, and all authors of abuse are identified and held accountable.
5. Please provide information on training, for members of the judiciary in the areas of gender-based discrimination and domestic violence.
6. Please provide further information on the implementation of the mentioned 2019 judgment by the African Court on Human and Peoples' Rights.
7. Please provide information on whether independent psychiatric and psychological assessments were conducted regarding Ms. Chausiku Nchama Magoiga's deterioration of mental health condition after her conviction and the type of psychological treatment provided as well as on the type of medical care provided to her after she had a stroke.

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 responsible of the alleged violations.

While awaiting a reply, we recommend that prompt steps be taken to stop the execution of the death penalty against Ms. Nchama Magoiga, that her case be thoroughly reviewed by a separate court, considering the multiple mitigating factors referred to in this communication, and which seem to have been repeatedly

disregarded. In the light of this case, we also recommend that similar judicial process in capital punishment cases be thoroughly reviewed to prevent any future risk of arbitrary death sentences and executions. We also take this opportunity to encourage your Excellency's Government to ratify CAT.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to the regular procedure.

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.

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

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Mumba Malila
Vice President of the Working Group on Arbitrary Detention

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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