

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: UA USA 18/2022
(Please use this reference in your reply)

21 September 2022

Excellency,

We have the honour to address you in our capacity as 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 44/5 and 43/20.

First, we would like to acknowledge Your Excellency's Government's moratorium on federal executions issued by the Justice Department in July 2021. We see this as a very positive step, not least given the complications of administering the death penalty in a manner compatible with human rights.

Second, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. Alan Eugene Miller, a national of the United States of America sentenced to death, scheduled to be executed by lethal injection in the State of Alabama on 22 September 2022.

According to the information received:

Mr. Alan Eugene Miller is a national of the United States of America (US), sentenced to death and scheduled to be executed on 22 September 2022. At present, he is held in the custody of the Alabama Department of Corrections at William C. Holman Correctional Facility. It is submitted that the death sentence imposed against him will be enforced through lethal injection.

In the US, lethal injection protocols have varied over time. Currently, States use either a one-drug protocol or a three-drug protocol.

In the one drug protocol, pentobarbital is injected in a large and super therapeutic quantity and the effect is to create the state of stupor while also weakening cardiac contraction to the point of death. This has been employed in fourteen States.

In the three-drug protocol, which is the one used in the State of Alabama and seven other States, a large intravenous dose of midazolam (usually 500 mg) is given that is believed to create a state of stupor. This is followed by a paralyzing drug that blocks spontaneous movement and finally potassium is injected to stop cardiac contraction.¹

¹ The lethal injection protocol is described in UA USA 13/2016: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22839>; the replies of the

Protocols involving midazolam have generated controversy as they may cause respiratory distress, even involving pulmonary edema, and a subsequent traumatic sensation of suffocation. As a result, executions enforced by a lethal injection of midazolam may be particularly painful and can last for hours before being completely enforced.

It is therefore feared that Mr. Alan Eugene Miller may experience prolonged pain and suffering during the execution.

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we wish to recall that States that have not yet abolished the death penalty must respect Article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the United States of America in 1992, which prohibits certain methods of execution, particularly all those which cause suffering or are humiliating. Failure to respect Article 7 would inevitably render the execution arbitrary in nature and thus also in violation of Article 6 of the ICCPR, which protects the right to life of all individuals².

We therefore reiterate the concerns already expressed on several occasions with regard to the use of lethal injection as a method of execution in the State of Alabama, particularly due to the severe physical and mental suffering that it may inflict on the condemned before inducing death³. We stress that painful and humiliating methods of execution are unlawful and emphasize that where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering⁴.

In light of the above, given the urgency of the matter and the irreversibility of the death penalty, we respectfully call on your Excellency's Government **to intervene to halt the execution of Mr. Alan Eugene Miller pending a review of the execution protocol in the State of Alabama.**

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

Government are accessible at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33444> and <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33443>.

² See Human Rights Committee, General comment n. 36, Article 6, para. 40: right to life, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkG1d%2fPPRiCAqhKb7yhsrdB0H115979OVGGB%2bWPAxhNI9e0rX3cJImWwe%2fGBLmVrGmT01On6KBOgqmxPNIjrLLdefuuQjN19BgOr%2fS93rKPWbCbgoJ4dRgDoh%2fXgwn>

³ See UA USA 13/2016 and the replies of the Government quoted above; as well as UA USA 4/2018: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23656> and the reply of the Government: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34032>; and UA USA 5/2022: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27172>

⁴ See Safeguards guaranteeing protection of the rights of those facing the death penalty: <https://www.ohchr.org/en/instruments-mechanisms/instruments/safeguards-guaranteeing-protection-rights-those-facing-death>; and Human Rights Committee, General comment n. 20: Prohibition of torture or other cruel, inhuman or degrading treatment or punishment, <https://www.ohchr.org/en/resources/educators/human-rights-education-training/general-comment-no-20-prohibition-torture-or-other-cruel-inhuman-or-degrading-treatment-or>

In view of the urgency of the matter, we would appreciate a rapid 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:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please explain whether the enforcement of the death sentence imposed against Mr. Alan Eugene Miller in the circumstances described above would comply with the international human rights obligations of the Government of the United States of America, particularly under Articles 6 and 7 of the International Covenant on Civil and Political Rights.

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.

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

Alice Jill Edwards

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