

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 26/12, 26/7 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged imminent execution of Mr. Hussain Humaam Ahmed following judicial procedures that did not meet international standards of fair trial and due process of law.**

According to the information received:

Mr. Hussain Humaam Ahmed (22 year old) was arrested on 2 October 2012 and charged on 20 December 2012 for the murder of former MP and religious scholar Dr. Afrasheem Ali. On 16 January 2014, the Criminal Court sentenced Mr. Ahmed to death. On 7 September 2015, the High Court upheld the death sentence.

On 24 June 2016, the Supreme Court upheld the death sentence handed down to Mr. Ahmed despite the fact that criminal investigations into the case are still ongoing. The verdict hearing took place after the Supreme Court refused to accept letters from the father and brother of the victim stating that as next of kin they no longer wanted to implement the death sentence against Mr. Ahmed under the Qisas principle in Islamic Shari'a, which stipulates that the victim's next of kin has the ultimate say on whether the accused should be executed. In the letter, the relatives explained that although during hearings at the lower court they had indicated their desire to implement the death sentence, following the appeal hearings which revealed that the investigations into the case had not been completed, they believe that Mr. Ahmed could provide more information that could help the investigation. They noted that only after the investigation has been fully completed they will inform whether they would like the death sentence to be imposed on Mr. Ahmed.

The Supreme Court refused to accept the letters, stating that they were not submitted during official hours. During the verdict hearing, the court dismissed a request from the defence lawyer for an opportunity to speak and bring the letter of the victim's family to the attention of the court.

Interpretations of Islamic Shari'a that require the defendant to remain in prison until all heirs reach adulthood were also ignored, leaving out two children of the victim from the Qisas process.

Reports further indicate that the criminal proceedings against Mr. Ahmed did not afford the defendant guarantees of fair trial and due process. The prosecution and the courts have reportedly based the murder accusation and verdict on a pre-trial confession which was made at a remand hearing before the defendant was charged for murder, in disregard of Articles 51, subsection (c) and 52 of the Maldivian Constitution, establishing that only statements made by a mentally sound person inside a court of law during a trial hearing shall be considered admissible. Anonymous witness testimonies were reportedly used to corroborate this confession without calling into question their reliability.

Furthermore, Mr. Ahmed has claimed in court that the confession was made under duress, namely threat to his life and that of his family. Nevertheless, the courts refused to allow the defense to present the police investigators involved in obtaining the said confession as witnesses.

The case against Mr. Ahmed reportedly lacks the high burden of proof required by Islamic Shari'a to impose the death penalty, and there have been no eye witnesses to the murder.

Moreover, the trial report refers to a voluntary waiver of rights. Mr. Ahmed's fair trial rights were reportedly waived without evaluation of mental disorder or consideration of interrupted legal assistance.

Mr. Ahmed has been held in solitary confinement since his initial arrest. Although a claim was made at the Criminal Court that the defendant has a mental disability and his family had requested an independent psychiatric evaluation to assess his mental health status during the trial, neither Mr. Ahmed's family nor his defence lawyers are aware of any psychological evaluation being conducted on him. Mr. Ahmed's family further indicated that his mental disability directly affected his capacity to support his legal representatives, which changed several times during the trial, and the overall effectiveness of his defence.

The Government has recently announced that they will carry out the sentence, within 30 days of the sentence being passed, and they have announced that preparations are already underway for Mr. Ahmed's execution. The execution could be scheduled for the eve of Eid.

In April 2014, the government of Maldives introduced a Regulation on the Implementation of the Death Penalty, which effectively lifted the country's 60 year-old unofficial moratorium on the death penalty. The regulation was enforced by the cabinet, without a supporting law and with no open consultation. Whereas Article 21 of the Constitution states that every individual's right to life and protection of the self can only be limited through legislation passed by the Parliament, no law has been passed to date in the Maldives establishing the implementation of the death penalty. While initially the regulation allowed 3 months between a final verdict and execution, the Government later amended the section to reduce to 30 days the grace period from execution.

We express grave concern that the death penalty may be carried out against Mr. Hussain Humaam Ahmed following judicial procedures that did not fulfill the most stringent guarantees of fair trial and due process of law.

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 as a matter of urgency to halt Mr. Hussain Humaam Ahmed's execution, which, on the facts available to us may constitute a violation of applicable international human rights standards, and thus 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 compliance with international norms and standards.

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, liberty and security as set out in article 3 of the Universal Declaration of Human Rights (UDHR) and article 6.1 of the International Covenant on Civil and Political Rights (ICCPR), to which Maldives acceded on 19 September 2006. These allegations also seem to be in contravention of the right to fair proceedings before an independent and impartial tribunal, as set forth in article 14 of the ICCPR and article 10 of the UDHR.

We would like to draw the attention of your Excellency's Government to article 6.4 of ICCPR, which establishes 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 in all cases.

Moreover, article 5 of the United Nations Safeguards Protecting the Rights of those facing the Death Penalty provide 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 stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution. Article 3 of the Safeguards also stipulate that the death sentence may not be carried out on persons with mental disability.

We would also like to recall that resumption of executions run counter to the international trend towards the reduction and eventual abolition of the death penalty. The Human Rights Committee has expressed its deep concern at the de facto reinstitution of death sentences and executions in a State party to the International Covenant on Civil and Political Rights (see for instance CCPR/CO/84/SYR, para. 7).

We further wish to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of jus cogens, and as codified, inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

We would like to draw the attention of your Excellency's Government to article 15 of the Convention against Torture provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made and recalling OP 7c of Human Rights Council Resolution 16/23 which calls upon States recognize that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment."

In this context, we would like to call the attention of your Excellency's Government to the evidence of an evolving standard within international bodies and a robust State practice to frame the debate about the legality of the death penalty within the context of the fundamental concepts of human dignity and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (A/67/279). This evolving standard, along with the resulting illegality of the death penalty under such prohibition, is developing into a norm of customary law, if it has not already done so (para. 74). The Special Rapporteur on torture has called upon all States to reconsider whether the use of the death penalty per se respects the inherent dignity of the human person, causes severe mental and physical pain or suffering and constitutes a violation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (para. 79). Retentionist States are called upon to end the practice of executions with little or no prior warning given to condemned prisoners and their families (para. 80 (c)).

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

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

We are considering to publicly expressing our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release would indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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

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