

Mandates of the Working Group of Experts on People of African Descent; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; 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 Working Group of Experts on People of African Descent; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; 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 27/25, 25/32, 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 **Mr. Kevin Cooper, who is allegedly awaiting execution in California following judicial proceedings that did not meet international standards of fair trial and due process.**

In July 1983, Mr. Kevin Cooper, an African American male then aged 25, was arrested for the murder of Mr. Douglas Ryen, his wife Ms. Peggy Ryen, their 10-year-old daughter Jessica Ryen, and an 11-year-old boy, Christopher Hughes. The crime took place on 4 June 1983 at the Ryen's home in Chino Hills, outside of Los Angeles. During the attack, each victim suffered between 25 and 46 separate wounds inflicted by multiple weapons. A surviving member of the family, Mr. Joshua Ryen, aged eight, was also wounded in the attack, but survived. The brutality of the crime reportedly led to intense pressure on the authorities to resolve the case. Mr. Cooper, who had escaped from a minimum security prison on 2 June 1983 and was hiding in an empty house near the Ryen's residence for two nights before the crime, was arrested approximately two months after the crime. In March 1985, a jury sentenced Mr. Cooper to death.

Mr. Cooper was the subject of an urgent appeal sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions (case USA 1/2004), on 22 January 2004, in which she expressed concern that, at the sentencing phase, the jury had been reportedly provided with almost none of the available mitigating evidence in a fifteen minute presentation by the trial lawyer. We regret that we have not yet received a reply from your Excellency's Government to this communication.

According to the information received at the time, the authorities initially alleged that more than one person were involved in the crime given the scale of the violence and

the number of weapons used. This was supported by the account of a witness who saw a car like the Ryen's, driven by a white male, leaving the area on the night of the crime and a second witness who saw the silhouette of three or four other people in the car. It was further reported that according to initial statements by the only survivor, Mr. Joshua Ryen, there were three white or Hispanic attackers. He did not recognize Mr. Cooper as being the murderer. However, after several contacts with the police and the media, he reportedly said that he could no longer remember details of the crime.

Additional facts implicating multiple attackers included: i) the statement of a local woman who two days after the murders found a pair of bloody coveralls reportedly belonging to her then-boyfriend Mr. Lee Furrow. The coveralls were turned over to the police, who destroyed them without performing any tests on them; ii) two shirts were found in the vicinity of the crime, a bloody tan t-shirt and a blue shirt thought to have blood on it, which is missing. Mr. Furrow's girlfriend stated that Mr. Furrow was wearing a tan T-shirt on the night of the crime; iii) the confession of a prisoner (a Mr. Kenneth Koon) to a cellmate, in late 1984, indicating that he and two other men had carried out the murders. Despite the existence of these elements implicating other possible perpetrators, Mr. Cooper's jury reportedly heard no evidence about the confession or the blue shirt, and heard only limited information regarding the coveralls (specifically, testimony by the officer who recovered the coveralls who said, contrary to his previous statements, that they did not have blood on them and were of no evidentiary value).

There were also questions raised surrounding the evidence that linked Mr. Cooper to the crime. Among the substantial amounts of blood at the crime scene a single spot from someone other than the victims was reportedly found. The criminalist in charge of the investigation waited to test the blood spot until he had Mr. Cooper's blood profile. That criminalist then tested the spot and Mr. Cooper's blood side by side and determined that they matched. Upon learning that Mr. Cooper's serological profile did not match the initial results, the criminalist altered his lab notes and results to implicate Mr. Cooper and then reportedly lied about those alterations under oath at Mr. Cooper's trial. No independent verification of the blood spot's profile was reportedly made because the blood spot was allegedly used up by the testing.

According to the additional information received:

Since the death penalty was imposed in 1985, Mr. Cooper has filed seven state habeas petitions, three federal habeas petitions with the United States District Court for the Southern District of California, eight writs of certiorari with the Supreme Court of the United States, two habeas petitions filed directly with the Supreme Court of the United States, and multiple discovery motions in California courts.

The petitions indicate that the death penalty imposed against Mr. Cooper violates his internationally guaranteed fundamental rights, including his right to due

process and a fair trial, because, inter alia, (i) the criminal investigation was severely mishandled; (ii) the State presented false evidence at trial; (iii) the State failed to make exculpatory evidence available to Mr. Cooper and his attorney; (iv) Mr. Cooper's defense counsel provided ineffective assistance; (v) failures of due process marred Mr. Cooper's appeals; (vi) the standards for criminal appeals in the United States and California improperly constrain claims of actual innocence; and (vii) racial bias underlined Mr. Cooper's trial and conviction and pervades the U.S. system of capital punishment generally.

The petitions indicate that the prosecution presented false evidence at trial on several occasions: i) the presentation of manipulated testimony of the surviving victim which was wholly inconsistent with previous statements regarding the existence of multiple attackers; ii) the results of a blood sample found at the crime scene were initially inconsistent with Mr. Cooper's blood, however the criminologist later altered his lab notes and claimed that he had misinterpreted his results. This manipulation led five Federal Judges to conclude that the results of the blood test presented at trial was false evidence; iii) cigarettes connecting Mr. Cooper to the Ryen's stolen station wagon were apparently planted after the initial search in order to implicate him.

In addition, the investigators reportedly failed to make exculpatory evidence available to the defense when: i) the bloody coveralls provided by Lee Furrow's girlfriend were destroyed; ii) the prosecution failed to turn over daily police logs describing the existence of a second possible blood stained shirt (blue) which would have undermined the theory of a single attacker, nor did the prosecution turn over the described blue shirt for examination and testing.

Moreover, Mr. Cooper's trial counsel allegedly failed to provide adequate representation by, among others: i) failing to present evidence of other killers to the jury; ii) failing to call Lee Furrow's girlfriend to testify and to follow-up on the information she provided; iii) failing to investigate Mr. Koon's confession to a cellmate; iv) failing to respond to court requests when the jury reached an impasse on execution, which later led to the jury imposing the death penalty; and v) providing incorrect legal advice.

In 2009, five federal appellate judges issued a warning indicating that "the State of California may be about to execute an innocent man." Six additional federal appellate judges joined dissents finding that Mr. Cooper never had a fair hearing to prove his innocence. The eleven Ninth Circuit Judges' dissent determined that evidence against Mr. Cooper was likely planted or manipulated by authorities and that exculpatory evidence was destroyed or withheld from the defense. It also stressed that without the planted evidence and had the exculpatory evidence been disclosed, the state would not have been able to obtain a conviction against Mr. Cooper.

In April 2011, Mr. Cooper filed a complaint with the Inter-American Commission on Human Rights (IACHR), which issued a final report in favor of him after a four-year examination of his claims. The IACHR found that the manner in which certain evidence pertinent to the basis for Mr. Cooper's conviction (exculpatory evidence that may have been disposed of or dismissed, and evidence that may have been planted or manipulated) and the ineffective defense provided by a court-appointed counsel failed to meet the standards of fair trial and due process, and amounted to a denial of justice. It also found that the imposition and execution of the death penalty under such circumstances would constitute a violation of the right to life. The IACHR had issued precautionary measures on his behalf.

After exhausting his appeals, Mr. Cooper filed a Petition for Executive Clemency with the Governor of California ("Clemency Petition") on 17 February 2016. He remains incarcerated in San Quentin State Prison, awaiting execution.

Mr. Cooper is expected to be among the first inmates to be executed when lethal injections resume in California.

We would like to express serious concern that the death penalty may be carried out against Mr. Cooper following judicial procedures that may not fulfill the most stringent guarantees of fair trial and due process, including access to adequate legal assistance and conviction upon clear and convincing evidence leaving no room for an alternative explanation of the facts surrounding the crime.

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 any plans for Mr. Cooper's execution**, which on the facts available to us may constitute a violation of applicable international human rights standards and thus an arbitrary execution, **and to grant his requests for Executive Clemency**, including **(i) granting Mr. Cooper reprieve of his death sentence; (ii) undertaking a complete investigation into Mr. Cooper's case with the goal of determining whether Mr. Cooper is innocent and whether he should be released from prison; and (iii) pardoning Mr. Cooper if the evidence shows that he is innocent or, should there remain any question as to his innocence, instructing the San Bernardino District Attorney that if he does not retry Mr. Cooper within a reasonable time in a fair trial, the Governor will pardon him.**

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 the United States of America is a State Party. 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 further like to draw the attention of your Excellency's Government to article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, which 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, including the right to adequate legal assistance at all stages of the proceedings. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution. Article 4 of the Safeguards also stipulate 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. Furthermore, Article 6.4 of the 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.

We 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 the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which the United States ratified in 1994, as well as article 7 of the ICCPR.

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, in his report A/67/279, stated that most circumstances surrounding the actual imposition or execution of the death penalty can constitute cruel, inhuman or degrading treatment or punishment or even torture. As such, the harshness of the death penalty goes beyond the execution itself. Physical or mental torture or other cruel, inhuman or degrading treatment or punishment may be inflicted on a convict and his or her relatives awaiting execution at different stages of his or her time in detention. (para 75).

We would further like to recall that according to paragraph 4 of General Comment 31 of the Human Rights Committee, the obligations contained in the Covenant are binding on every State as a whole and that all branches of government (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.

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 Mr. Cooper 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 and/or considerations concerning the case.

We intend to publicly express 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 will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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

Ricardo A. Sunga III
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Mutuma Ruteere
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia
and related intolerance

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers

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