

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 15 prisoners in Indonesia**.

Between December 2014 and May 2016, the Special Rapporteur on extrajudicial, summary or arbitrary executions sent four urgent appeals to the Government of Indonesia regarding imminent executions of suspected drug offenders, many of which were foreign nationals. Case IDN 2/2014 of 10 December 2014 (sent jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), addressed the imminent execution of five prisoners; case IDN 1/2015 of 16 January 2015 (sent jointly with the Special Rapporteur on independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), addressed the imminent execution of nine prisoners including Mr. **Agus Hadi** (Indonesian) and Mr. **Pujo Lestari** (Indonesian); case IDN 2/2015 of 6 March 2015 (sent jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), addressed the imminent execution of ten prisoners; and case IDN 4/2015 of 24 April 2015, addressed the imminent execution of ten prisoners; case IDN 5/2016 of 13 May 2016 (sent jointly with the Special Rapporteur on independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) addressed the imminent execution of between 10 and 15 prisoners including Mr. **Humphrey Jefferson Ejike Eleweke** (Nigerian). We regret that we have not yet received a reply from your Excellency's Government.

According to the information received:

Since 6 July 2016, which marked the end of the religious month of Ramadan, the Attorney General and other authorities of Indonesia have declared in local media that the Government will carry out a new round of execution.

On 22 July 2016, the Attorney General of Indonesia stated that executions will be carried out soon and would include Indonesians and possibly a woman. On 25 July 2016, family visits to Nusakambangan prison were temporarily halted for one week. Closing access to the prison island and restricting family visit ahead of executions has been a practice in the past.

Prison and police officials have stated that they have completed the preparation of the execution grounds at Nusakambangan prison island, where 13 death row prisoners were executed in 2015, and that firing squads had also been organized.

On 26 July 2016, reports indicated that 14 prisoners had been given 72 hours' notice of execution by the Indonesian authorities, including Mr. **Zulfikar Ali** (Pakistani); Ms. **Merri Utami** (Indonesian); Mr. **Agus Hadi** (Indonesian); Mr. **Pujo Lestari** (Indonesian); Mr. **Humphrey Jefferson Ejike Eleweke** (Nigerian); Mr. **Seck Osmane** (Nigerian); Mr. **Freddy Budiman** (Indonesian); Mr. **Obinna Nwajagu** (Nigerian); Mr. **Michael Thitus Igweh** (Nigerian); Mr. **Eugene Ape** (Nigerian); Mr. **Okonkwo Nonso Kingsley** (Nigerian); Mr. **Ozias Sibanda** (Nigerian); Mr. **Frederick Luttar** (Nigerian); Mr. **Gurdip Singh** (Indian). Another prisoner, Mr. **Suryanto** (Indonesia), may also be scheduled for execution. The executions may be carried out in the night of 28 July or morning of 29 July.

Mr. Zulfikar Ali was sentenced to death in 2005 for drug-related offences. On 20 June 2016, Mr. Ali's lawyer received a letter from the Indonesian State Secretary confirming that he still has the right to seek clemency. Mr. Ali did not exhaust his appeal process. On 25 July, he was moved to Batu prison from Cilacap General Hospital, where he was treated for his kidney and heart problem. Mr. Ali's legal proceedings have been reportedly marred with irregularities and abuse of due process guarantees during arrest, investigation, detention and court trial and appeal. Mr. Ali was subjected to torture and cruel, inhuman and degrading treatment whilst in police custody. He was repeatedly punched, kicked, hit with a pistol, and threatened with death unless he signed a confession. As a result of this torture, Mr. Ali received emergency stomach and kidney surgery and had continued to receive hospital treatment for twelve years after the torture. He remains in extremely poor health. Mr. Ali was detained incommunicado for 72 hours before he was officially taken into custody and he was detained for at least three months before being brought to the first trial hearing. He was also denied the rights to be informed in a language which he understands of the nature and cause of the charge against him, to communicate with a counsel, and to have the free assistance of an interpreter. Mr. Ali's medical records show that he continues to suffer poor health as a result of his mistreatment by the Indonesian authorities. His lawyer's request to have him transferred from the hospital in Cilacap where he has been receiving treatment to a better equipped hospital in Jakarta was recently rejected.

Ms. Merri Utami was convicted of drug-related crimes. She was physically and verbally abused and threatened with sexual violence by police officers during her arrest and early detention. It is unclear if her detention followed a formal arrest. Ms. Utami's trial lawyer was unhelpful during the proceedings and ceased all contact with her shortly after. Her appeals have been rejected and her case review application is pending. Ms. Utami has not yet filed for clemency. On 24 July 2016 she was transferred from Tangerang women's prison, Banten, to Batu prison, Nusakambangan, Cilacap, Central Java.

Mr. Agus Hadi and Mr. Pujo Lestari were arrested on 22 November 2006 on drug related charges. They first appeared before a judge at a trial hearing in the Batam District Court on 30 January 2007, nine weeks into their detention. Mr. Hadi received legal assistance 20 days after his arrest. He was denied the right to attend his Penjuaun Kembali (PK) case review hearing and to access legal counsel. Moreover, evidence as to Mr. Hadi's innocence has been ignored. Mr. Lestari received legal assistance 78 days after his arrest and a week after the court had scheduled the first trial hearing. He was denied the right to attend his PK hearing. On 8 May 2016, Mr. Hadi and Mr. Lestari were brought to Nusakambangan Island. On 23 July, Mr. Agus Hadi's family was notified by the Office of the attorney General that they should "visit him". He is in the process of submitting his clemency plea.

Mr. Humphrey Jefferson Ejike Eleweke is a prisoner in Batu Prison in Nusakambangan. On 6 April 2004, he was sentenced to death on drugs-related charges. On 16 May 2006, Mr Ejike Eleweke filed a Penjuaun Kembali, where he provided evidence of his innocence, which was confirmed by several witnesses, and mistreatment at the hands of the police. Nonetheless, his review was rejected on 27 September 2007. Mr. Ejike Eleweke was subjected to torture and cruel, inhuman and degrading treatment whilst in police custody. He was repeatedly beaten and burnt with cigarettes during interrogation and threatened with being shot if he refused to sign a confession or implicate others. On 14 April 2016, Mr. Ejike Eleweke was informed that he was no longer entitled to file a clemency petition since the deadline for doing so had passed. On 22 July 2016, his lawyer received a notification stating that Mr. Ejike Eleweke and three other Nigerian nationals on death row will be executed soon.

Mr. Obinna Nwajagu was sentenced to death on drug related charges and is a prisoner in Batu Prison in Nusakambangan. On 14 April 2016, Mr. Nwajagu received a letter from the Central Jakarta District Prosecutors Office informing that he is no longer eligible for clemency since the deadline for doing so had passed. Mr Nwajagu was reportedly tortured into incriminating himself.

Mr. Eugene Ape was convicted and sentenced to death on drug-related charges and is a prisoner in Batu Prison in Nusakambangan. Mr. Ape does not appear to have had assistance overcoming his language barrier during his trial.

Mr. Michael Thitus Igweh was sentenced to death in 2003 for drug-trafficking and possession, and is currently a prisoner in Batu Prison in Nusakambangan. Mr. Igweh was reportedly subject to torture during the investigation and his detention.

Mr. Seck Osmane was sentenced to death for drug-related crimes in July 2004. He is a prisoner in Kembang Kuning Prison in Nusakambangan.

Mr. Frederick Luttar was convicted of drug possession and sentenced to death by the West Jakarta District Court in August 2006. He is a prisoner in Batu Prison, in Nusakambangan. Mr Luttar may not have been afforded adequate support to overcome the Indonesian language barrier.

Mr. Okonkwo Nonso Kingsley has been sentenced to death for drug-related offences. He has applied for clemency and judicial review but both applications have been rejected.

Mr. Ozias Sibanda has been sentenced to death for drug-related offences and is a prisoner in Batu Prison in Nusakambangan. A series of irregularities were reported during his trial. Mr. Sibanda was represented at trial by a lawyer who was later found to have a drinking problem. In addition, his interpreter was not properly qualified and made many mistakes during the trial.

Mr. Freddy Budiman was sentenced to death for drug trafficking in July 2013. He is currently a prisoner in Batu Prison, Nusakambangan. Mr Budiman has not yet petitioned for clemency.

Reports indicate that the authorities in Indonesia are actively pursuing the policy of executing drug offenders sentenced to death. The country exercises a blanket refusal to consider clemency applications in all drug-related cases. Indonesia had resumed executions in March 2013 after a four year hiatus. Fourteen people were executed in 2015 and at least 46 new death sentences were imposed that year, 29 of which were for drug-related offences. All executions carried out in 2015 were for drug trafficking-related offences. A de facto moratorium on executions has been in place in Indonesia since the last round of executions in late April 2015.

Reports indicate the existence of systemic flaws in the administration of justice in Indonesia which have resulted in violations of fair trial and other international safeguards that apply to the imposition of the death penalty, including: lack of access to legal counsel from the time of arrest and at different stages of the trial and appeals; ill-treatment at the hands of the police to extract confessions or counter-signatures of police dossiers used as evidence in court; first appearance before the judge at the moment of the trial; lack of information about the right to submit an appeal; and executions carried out against defendants whose appeals were pending before the courts.

We would like to express serious concern that the death penalty may be carried out against 15 prisoners, most of which have been convicted on drug-related charges, which does not meet the threshold of “most serious crimes”. We are further concerned that in some cases the death penalty has been upheld following judicial procedures that may not fulfill the most stringent guarantees of fair trial and due process, including access to adequate legal assistance and interpretation during the proceedings, and that some of the prisoners reportedly scheduled for execution have not exhausted all of their appeal avenues. We are further concerned at the allegations that some of the defendants were subjected to torture, inhuman or degrading treatment during the investigations or their detention.

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 the planed executions**, 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 individuals is annulled and that they are re-tried in compliance with international 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 Indonesia 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 like to draw the attention of your Excellency’s Government attention to article 6(2) of the ICCPR which states that the sentence of death may be imposed only for the most serious crimes. This provision has consistently been interpreted by the Human Rights Committee to mean that the death sentence may only be imposed in respect of intentional killing. Furthermore, article 6.4 of ICCPR 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, as stressed in article 5 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, 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.

We would also like to recall that resumptions 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 (CCPR/CO/84/SYR, para. 7).

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 Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

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)).

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.

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 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.

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