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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: AL G/SO 214 (3-3-16) G/SO 214 (33-27) Terrorism (2005-4) G/SO 214 (53-24)
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolution 17/2, 17/5, 15/15 and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received regarding the case of Mr. Ajmal Kasab, who was reportedly executed on 21 November 2012, in the state of Maharashtra, in India, after proceedings that did not comply fully with fair trial and due process guarantees.

According to information received:

Mr. Ajmal Kasab, a Pakistani national aged 25, was executed by hanging on 21 November 2012 by the Indian authorities in Yerawada prison, in Pune city of the state of Maharashtra, in India. Mr. Kasab was sentenced to death in 2010 by a special court for his alleged involvement in the Mumbai attacks which took place on 26 November 2008, and reportedly resulted in 150 persons killed and approximately 250 individuals injured. It is reported that Mr. Kasab was found guilty of more than 80 charges, including murder, committing acts of terrorism and criminal conspiracy to commit murder.

Mr. Kasab's death sentence was upheld by India's Supreme Court on 29 August 2012. It is further reported that Mr. Kasab's petition for mercy was rejected by the

Ministry of Home Affairs and the Governor of the state of Maharashtra in September 2012, as well as by the President of India on 5 November 2012.

The legal proceedings against Mr. Kasab allegedly did not comply sufficiently with international human rights law standards regarding fair trial and due process guarantees. In particular, his defence counsel during the first-instance trial, Mr. Abbas Kazmi, was allegedly given insufficient time to prepare Mr. Kasab's defence. It is reported that the lawyer was appointed with delays and was given eight days to respond to the opening statements of the prosecution, in a context where the charge-sheet against Mr. Kasab was 20,000 pages long at that time. The Supreme Court reportedly held at a later stage that the time offered was sufficient.

Furthermore, Mr. Kazmi was allegedly denied opportunities to cross-examine the witnesses and evidence used by the prosecution. In particular, Mr. Kazmi's request to be provided with a copy of the medical report, concluding that Mr. Kasab was 21 years old at the time of the offence, and used by the prosecution, was reportedly rejected. This led to the alleged inability of the defense to seek other medical experts' opinions on the age of the defendant.

In addition, Mr. Kazmi was reportedly refused permission to inspect the various places connected with the alleged offences that the defendant had been charged with. It is also alleged that Mr. Kazmi had raised objections regarding evidence given through affidavits, rather than orally, which reportedly rendered him unable to cross-examine witnesses. According to the information received, the first-instance court held to dismiss Mr. Kazmi for lack of cooperation, although it is reported that, under the Code of Criminal Procedure of India, a judge has no power to dismiss a lawyer.

During the High Court proceedings, Mr. Kasab's newly appointed lawyers were allegedly unable to obtain the Court's permission to meet the defendant without police presence within hearing distance. It is also alleged that during the trial in the Supreme Court, Mr. Kasab and his lawyer, Mr. Raju Ramachandran, never met before the proceedings.

Furthermore, it is reported that neither Mr. Kasab's lawyer nor his family were informed of his execution. Mr. Kasab's execution, as well as its date and time, were allegedly held secret. The Indian authorities reportedly informed the public of the execution after it had been carried out, and justified it as necessary to have avoided intervention from human rights defenders.

Without prejudging the accuracy of the information made available to us, we would like to express concern that the death penalty may have been imposed and carried out against Mr. Ajmal Kasab after proceedings which did not comply with international human rights law standards of fair trial and due process guarantees.

We also take note of the concerns brought to our attention that this execution in India is the first to have been carried out since 2004 that is after eight years of respect of a *de facto* moratorium on the implementation of the death penalty.

We would like to bring to the attention of your Excellency's Government that, in countries that have not abolished the death penalty, capital punishment may be imposed only following a trial that complied with fair trial and due process safeguards, as provided in articles 6(2) and 14 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by India on 10 April 1979. Furthermore, 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 a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights (ICCPR), including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings." Safeguard 4 further stipulates that "capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts". Only full respect for stringent fair trial and due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution.

These provisions apply also to the respect of due process guarantees in post-conviction proceedings, which need to be conducted in full transparency. In this regard, we would like to bring to the attention of your Excellency's Government the report submitted to the Human Rights Council by the Special Rapporteur on extrajudicial, summary or arbitrary executions on "Transparency and the imposition of the death penalty" (E/CN.4/2006/53/Add.3), which observed that "due process rights and other safeguards on the right to life remain even after a person has been convicted of a crime and sentenced to death". "Refusing to provide convicted persons and family members advance notice of the date and time of execution is a clear human rights violation". In the report to the 67th session of the General Assembly (A/67/275), the Special Rapporteur on extrajudicial, summary or arbitrary executions holds that a State that fails to be transparent in its death sentences in line with article 14 of the ICCPR risks also violating article 6 of the ICCPR. He therefore recommends that States "ensure transparency regarding individual cases of capital prosecution, death sentences and executions, including access to information by prisoners, their family members and the public".

We would further like to draw the attention of your Excellency's Government to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/67/279 Paragraph 52) in which the Special Rapporteur emphasizes that in relation to the enforcement of the death penalty, the Human Rights Committee has recommended that families of death row inmates be given reasonable advanced notice of the scheduled date and time of execution, with a view to reducing the psychological suffering caused by the lack of opportunity to prepare themselves for that event (CCPR/C/JPN/CO/5, para. 16). Secrecy [...] (is a) especially cruel feature (s) of

capital punishment, highlighting the need for total transparency and avoidance of harm to innocents in the whole process.

We would further like to draw the attention of your Excellency's Government to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/63/223, paragraph 43), in which the Special Rapporteur emphasizes that "any trial for terrorism offences which could lead to the imposition of the death penalty, as well as all stages before the trial and the consideration of appeals on matter of fact and law after the trial, must rigorously comply with all aspects of a fair trial."

In this connection, we would also like to refer your Excellency's Government to article 14(1) of the ICCPR, which states: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." Article 14(3) of the ICCPR further states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing; and (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

In its General Comment No. 32, the Human Rights Committee further indicated that: "Adequate facilities' must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory."

Furthermore, we would like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular: principle 7, which states: "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention."; principle 8, which states: "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials."; and principle 21, which states: "It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time."

Principle 15 of the Basic Principles on the Role of Lawyers also stipulates: “Lawyers shall always loyally respect the interests of their clients.”

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary accurate?
2. Please provide detailed information on each stage of the judicial and post-conviction proceedings conducted against Mr. Ajmal Kasab, and indicate how they comply with the requirement and guarantees of a fair trial and due process as enshrined, *inter alia*, in article 14 of the ICCPR. Please also specify how full transparency was ensured at every stage of the proceedings.

We would appreciate a response within sixty days. Your Excellency’s Government’s response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency’s Government to take all necessary measures to guarantee that, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Ben Emmerson
Special Rapporteur on the promotion and protection of human rights
and fundamental freedoms while countering terrorism

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading
treatment or punishment