

To the United Nations Secretary General

Antonio Manuel de Oliveira Guterres

Dear Mr. Secretary General,

Representatives of the human rights community from around the world wish to bring to your attention the matter of the execution by the State of Alabama of convicted 58-year-old US citizen Kenneth Eugene Smith on January 25, 2024 through the untested means of nitrogen hypoxia.

Of note, Alabama had already attempted to apply the death penalty by lethal injection on Mr. Smith back in November 2022.

Smith had then hung upside down for several minutes while officials frantically tried to install an IV.

However, numerous failed attempts at inserting the needle into Smith's veins left him with numerous cuts and punctures on his body, prompting the proceedings to be stopped at midnight as the execution warrant expired.

Facing another attempt by the State of Alabama to execute him using this time an untested method involving death by strangulation with nitrogen, Smith's lawyers filed an appeal to the Alabama Supreme Court arguing that any attempt to execute a person a second time using a previously untested method on a human being would violate the Eighth Amendment of the US Constitution's prohibition of "cruel and unusual punishment."

During the State of Alabama's second attempt to proceed with the execution, nitrogen gas was injected for fifteen minutes into Smith's body.

Witnesses stated that Smith appeared to be conscious as he was "struggling violently on a gurney."

He was seen breathing heavily for at least five minutes with saliva flowing from his mouth before turning motionless. Smith was officially declared dead 25 minutes after the injection with death occurring about 10-15 minutes as Smith's heart stopped at 8:08 pm or 11 minutes after the activation of the nitrogen hypoxia system.

This cruel method of execution was widely decried around the world.

Per article 7 of the Covenant on Civil and Political Rights, no one should be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no person should be subjected to medical or scientific experiments without his informed consent. Given that the above-mentioned type of execution was

unprecedented, this practice falls within the description of an unlawful medical experiment.

The United States of America signed the Pact on October 5, 1977 and ratified it with amendments on June 8, 1992. This case stands as a clear violation of the Covenant and other norms of international law.

This execution violates not only the norms of international law, it defiles the norms of morality and ethics.

Smith's execution can also be deemed to violate the terms of the Convention on the Prohibition on the Use of Chemical Weapons (CWC). The CWC prohibits the production and use of chemical weapons. This execution carried by the United States brings rehabilitates the use of medical experiments in the killing of people using poison gas at the hands of the Nazis and fascists running concentration camps during WW2.

Currently, three US states have allowed the execution of a person in such an inhumane way.

The UN Human Rights Committee and leading international human rights organizations have regularly recorded numerous human rights violations committed by the United States and while these organizations have repeatedly issued recommendations to address these violations, such recommendations are ignored while these violations continue.

It is thus necessary to call into question the right of a country that so clearly violates human rights, even as it seats as a member of the UN Human Rights Committee (UNCHR), to admonish representatives of other countries about democracy and respect for human rights.

We therefore urge you to take measures to protect human rights in the United States and adopt the following recommendations:

1. Inform the UN members about a number of US states executing prisoners using untested poison gas and request that a vote be carried out in order to compel the United States to forgo engaging in actions that run contrary to the norms of international law;

2. To submit to representatives of UN members the adoption of a draft resolution condemning the actions of the US government bearing on numerous violations of human rights and international law, specifically as relates to violations of Article 7 of the Covenant on Civil and Political Rights with regards to US citizen Kenneth Eugene Smith;

3. Petition representatives of UN members to see that the United States America be removed from the UN Human Rights Committee, owing to its repeated

failure to abide to the resolutions and conventions duly adopted by the United Nations, its violations of customary international legal norms informing the spirit of the organization's Charter, and (the US government's) utter disregard of the rights of Kenneth Eugene Smith guaranteed under these instruments.

Sincerely,

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Arnaud Develay International human rights lawyer, member of the Bar Association of Washington State (USA)

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