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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 extrajudicial, summary or arbitrary executions; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 214 (106-10) G/SO 214 (33-27) G/SO 214 (53-24)
SAU 2/2013

11 January 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the human rights of migrants; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 17/5, 17/12, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the execution of Ms. **Rizana Nafeek (aka Rizana Nasik)**. This case was already the subject of an urgent appeal sent on 1 November 2010, to which we regret that we have yet to receive a reply from your Excellency's Government and another one on 28 June 2007, to which a response was received on 21 January 2008.

Ms. Rizana Nafeek, a Sri Lankan domestic worker, was charged with murder for killing a baby in her care in 2005 and convicted in 2007. According to the information received, the alleged offence was committed when she was probably 17 years old. Your Excellency's Government's response dated 21 January 2008 stated that "the regulations applied in the Kingdom stipulate that a person can be held criminally responsible for acts that he commits after reaching the age of majority, which differs from one individual to another and might exceed 18 years."

According to information received:

In March 2008, Ms. Nafeek's case was appealed before the High Court in Riyadh. At the trial it was alleged that after her arrest, Ms. Nafeek did not have access to a translator to enable her to explain the circumstances that led to the death of the child who was in her care. It was submitted by the defence that she was made to sign a confession under duress. The court summoned the person who took the confession for examination. In November 2008, the High Court announced that

the person left the Kingdom of Saudi Arabia and thereafter the case was adjourned several times as he could not be located.

It is alleged that Ms. Nafeek did not have access to lawyers prior to her conviction.

On 25 October 2010, the Supreme Court upheld the death sentence. Moreover, it is reported that on 6 January 2013, Sri Lankan President Mahinda Rajapaksa sent an appeal to King Abdullah requesting a stay of the execution until a settlement could be reached between the baby's family and a Saudi reconciliation committee. Appeals were repeatedly made by the parents of Ms. Nafeek to King Abdullah to pardon her. On 9 January 2013 Ms. Nafeek was executed by beheading.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw your Excellency's Government's attention to the fact that executions of juvenile offenders are incompatible with the international legal obligations which the Kingdom of Saudi Arabia has undertaken under various instruments.

Article 37(a) of the Convention on the Rights of the Child, which the Kingdom of Saudi Arabia acceded to on 26 January 1996, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age at the time of the alleged offence.

The Committee on the Rights of the Child has observed in its General Comment No. 10 on children's rights in juvenile justice that "Article 37 (a) of CRC reaffirms the internationally accepted standard (...) that the death penalty cannot be imposed for a crime committed by a person who at that time was under 18 years of age... It means that a death penalty may not be imposed for a crime committed by a person under 18 regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction. The Committee recommends the few States parties that have not done so yet, abolish the death penalty for all offences committed by persons below the age of 18 years and to suspend the execution of all death sentences for those persons until the necessary legislative measures abolishing the death penalty for children have been fully enacted. The imposed death penalty should be changed to a sanction that is in full conformity with CRC" (CRC/C/GC/10 paras 75-76).

The United Nations Safeguards Protecting the Rights of those Facing the Death Penalty elucidates when the death penalty may be imposed. In particular, article 4 provides "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."; article 5 which requires the observance of a legal process which gives 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; and article 9 which requires that when capital punishment is carried out, it should inflict the least possible suffering.

Only full respect for stringent due process guarantees distinguishes capital punishment from a summary execution, which violates human rights standards.

We would also like to refer to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988. Principle 14 states that a person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands, information concerning the reason for the arrest, as well as information on and an explanation of his rights and how to avail himself of such rights, and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

Finally, we would also like to draw the attention of your Excellency's Government to article 15 of the Convention against Torture, which your Excellency's Government acceded on 23 September 1997, which 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."

We also recall that paragraph 7c of Human Rights Council Resolution 16/23 urges States "To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing 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."

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, when relevant to the case under consideration:

1. Are the alleged facts accurate?
2. Please indicate the legal basis of the death sentence imposed against Ms. Rizana Nafeek.
3. Please indicate what measures are put in place to ensure that due process guarantees are observed in the future for all persons in the Kingdom of Saudi Arabia, regardless of their migration status or nationality.
4. Please indicate how the domestic law applicable to age of majority accords with that of the Convention on the Rights of the Child.

5. Please explain what measures will be taken by your Excellency's Government to ensure that any statement which is established to have been made as a result of torture will not be invoked as evidence in any proceedings in accordance with article 15 of the Convention against Torture.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit 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 the rights and freedoms of the above mentioned person are respected and, 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.

Given the importance of this issue, we would like to inform your Excellency's Government that a related press release shall be issued shortly.

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

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

François Crépeau
Special Rapporteur on the human rights of migrants

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