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**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**UNITED NATIONS**  
**OFFICE OF THE UNITED NATIONS**  
**HIGH COMMISSIONER FOR HUMAN RIGHTS**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**Mandates of the Working Group on Arbitrary Detention; 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**

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

REFERENCE: UA G/SO 218/2 G/SO 214 (3-3-16) G/SO 214 (33-27) Terrorism (2005-4) G/SO 214 (53-24)  
IRQ 5/2013

11 October 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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 resolutions 15/18, 17/2, 17/5, 22/8, 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 case of Mr. **Ahmad Nuri Badawi 'Abbas**, who is at risk of imminent execution in Iraq.

According to the information received,

Mr. Ahmad Nuri Badawi 'Abbas, aged 29, was detained in Yarmouk district of Baghdad on 3 April 2009 and convicted under the Iraqi Anti-Terrorism Law, Law 13 of 2005 for the alleged killing of security officers in an attack on a checkpoint in the al-Ghazaliya district of Baghdad in February 2009. On 29 December 2010, he was sentenced to death by Branch 1 of the Central Criminal Court in Baghdad. The Court of Cassation reportedly upheld the sentence on 27 July 2011.

Reportedly, Mr. Ahmad Nuri Badawi 'Abbas is currently held on death row at the Maximum Security Prison (al-Himaya al-Quswa) at Camp Justice in Baghdad. He risks being executed imminently, at a very short notice.

It is further reported that the proceedings against Mr. Ahmad Nuri Badawi 'Abbas were conducted in violation of international human rights law standards regarding fair trial and due process. In particular, after his arrest in 2009, Mr. Ahmad Nuri

Badawi 'Abbas was allegedly held incommunicado for at least two weeks in a detention facility of the Counter-Terrorism Unit in the Green Zone. It is also alleged that, during that time, he was subjected to torture, including to beatings with a cable and electric shocks, as well as forced to confess.

Mr. Ahmad Nuri Badawi 'Abbas reportedly retracted later his confession, affirming that it was obtained under coercion and torture. Despite this statement, the Court of Cassation allegedly accepted his confession as evidence against him, and confirmed the death sentence. It is reported, in parallel, that two applications for retrial have been submitted on behalf of the defendant, and both have been rejected.

Furthermore, at least 42 individuals, including one woman, were reportedly executed in Iraq on 9 and 10 October 2013 under terrorism-related charges. Since August 2004, it is reported that approximately 530 people have been executed in Iraq. It is also reported that at least 90 cases of death sentences have been imposed under the Anti-Terrorism Law, Law 13 of 2005, after serious allegations of violation of fair trial and due process standards, such as use of confessions obtained under torture while in incommunicado detention and lack of access to a lawyer.

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 be carried out against Mr. Ahmad Nuri Badawi 'Abbas in contravention of international human rights law, namely after proceedings that did not comply with international human rights law standards of fair trial and due process. We are also concerned about the information that Mr. Ahmad Nuri Badawi 'Abbas was tortured while in detention. Further concern is expressed regarding the allegations on the number of death sentences imposed and implemented in Iraq after serious violations of international human rights law standards regarding fair trial and due process guarantees.

In view of the irreversibility of the punishment of the death penalty, we urge your Excellency's Government to take all steps necessary to prevent the execution of Mr. Ahmad Nuri Badawi 'Abbas which, if carried out, would be inconsistent with acceptable standards of international human rights law. We call upon your Excellency's Government not to execute him and to commute without delay the death sentence imposed against him.

In light of the aforementioned allegations, we would like to draw to the attention of your Excellency's Government to several principles applicable to this case under international law.

In this context, we wish to refer to article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) that the Republic of Iraq ratified on 25 January 1971, stipulating that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". Although international

law does not prohibit the death penalty, it nonetheless provides that it must be regarded as an exception to the fundamental right to life, and must as such be applied in the most restrictive manner.

In this regard, only full respect for stringent fair trial and due process guarantees distinguishes capital punishment as permissible under international law from a summary execution, which by definition violates international human rights law standards. 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 judgement 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”.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned person is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the ICCPR.

We would like to further refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular principle 6, which states: “The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.”

Concerning the allegation of lack of access to a lawyer, we would also 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 to the following principles:

- Principle 1, which states: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings”;

- 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.”; and

- 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.”

Regarding the allegation that confession extracted under torture was used against the defendant, we would like to refer your Excellency's Government to the Guidelines on the Role of Prosecutors, 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 guideline 16, which states: “When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.”

Furthermore, we would like to draw your Excellency's attention to General Assembly Resolution 66/171 and Human Rights Council Resolution 19/19, whose paragraphs 1 reaffirms “that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law.”

In his report on the protection of human rights and fundamental freedoms while countering terrorism (A/63/223, para. 31), the Special Rapporteur on the promotion and protection of human rights while countering terrorism notes that article 14(3)(g) of the ICCPR is also invoked where “methods violating the provisions of article 7 (torture and any other inhumane treatment) are used in order to compel a person to confess or testify.” In that report, the Special Rapporteur further stresses that the practical implementation of article 14 (3)(g) of the Covenant is dependent on safeguards and procedural rules that ban in law and practice statements made involuntarily (A/63/223, para. 32).

In this context, 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 rigourously comply with all aspects of a fair trial.”

We would further like to draw the attention of your Excellency's Government to article 15 of the Convention Against Torture (CAT), 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;”

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 the above-mentioned person in compliance with the above international instruments.

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 facts alleged in the summary of the case accurate?
2. Please provide information concerning the legal grounds for the arrest and detention of Mr. Ahmad Nuri Badawi 'Abbas and how these measures are compatible with international norms and standards as stated inter alia in the UDHR and ICCPR.
3. Please explain the legal grounds for the imposition of the death penalty against Mr. Ahmad Nuri Badawi 'Abbas, and explain how this is compatible with the mentioned international human rights law standards. Please provide detailed information on each stage of the judicial proceedings against Mr. Ahmad Nuri Badawi 'Abbas and indicate how they comply with the international human rights law requirement to guarantee a fair trial and due process, as enshrined, inter alia, in article 14 of the ICCPR.
4. Please provide details, and where available the results, of any inquiries, medical examination, and judicial or other inquiries carried out in relation to the allegations of torture and ill-treatment of Mr. Ahmad Nuri Badawi 'Abbas. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide details on the 42 individuals reportedly executed in Iraq on 9 and 10 October 2013, including their full identity details, the alleged offences for which they were sentenced to death, and information on every stage of the legal proceedings against them.

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.

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

El Hadji Malick Sow  
Chair-Rapporteur of the Working Group on Arbitrary Detention

Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers

Christof Heyns  
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