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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 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 (33-27) Terrorism (2005-4) G/SO 214 (53-24)
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28 August 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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, 17/5, 15/15, 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. **Saleh Musa Ahmed Mohammed Al Baydani**, who is reportedly at risk of imminent execution in Iraq, as well as the case of 21 individuals allegedly executed on 27 August 2012.

According to information received,

Mr. Saleh Musa Ahmed Mohammed Al Baydani, aged 19, is a Yemeni citizen who is currently detained in Al Soussa Prison in Sulaimaniyah, in Iraq. It is reported that he was arrested in Iraq on 12 August 2009, and sentenced to death in a trial before Al Saa Court on 18 July 2011, for association with a terrorist group under the provisions of Iraqi Law Number 13 of 2005. His death sentence was allegedly recently ratified and his execution is reported to be imminent.

Mr. Al Baydani was reportedly a minor at the time of his arrest, and by consequence, at the time of the alleged commission of crime. Violations of due process and fair trial guarantees are further alleged. In particular, we are informed that Mr. Al Baydani was not shown any official document warranting his arrest in 2009. Following his arrest, he was allegedly detained incommunicado during ten months in the Central Prison of Baghdad, and eventually allowed to contact his family for the first time in May 2010.

In addition, the trial of 18 July 2011, is reported to have been the first and only hearing on his case. Although Mr. Al Baydani allegedly contested the

accusations brought against him, he is reported to have never had access to legal counsel since the beginning of his detention and, consequently, to adequate legal defence. It is further reported that the court may have issued the death sentence on the basis of confessions extracted under torture and with no other evidence presented in this case.

We are further informed that 21 individuals, including three women, were executed on 27 August 2012, for terrorism-related charges in accordance with Article 4 of the Anti-Terrorism Law.

Without prejudging the accuracy of the information made available to us, we would like to express concern that the death penalty may be imposed on Mr. Saleh Musa Ahmed Mohammed Al Baydani, as well as was implemented on 21 individuals, on charges of crimes that are not considered as most serious crimes under international human rights law. We are also concerned that the trial of Mr. Saleh Musa Ahmed Mohammed Al Baydani allegedly did not comply with international human rights law provisions of due process and fair trial.

In a number of communications, including the latest one sent on 26 July 2012, as well as in the press release dated 27 July 2012, the Special Rapporteur on extrajudicial, summary or arbitrary executions raised concern about the alleged executions scheduled to take place in Iraq, following allegations that they would not comply with the provisions of due process and transparency under international human rights law. He called for their immediate halt and has yet to receive a reply from your Excellency's Government. We are concerned that further executions in Iraq allegedly continue to be carried out in non-compliance with international human rights law provisions.

We would like to respectfully remind your Excellency's Government that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes" in accordance with Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR), which the Government of Iraq ratified on 25 January 1971. In interpreting article 6(2) of the Covenant, the United Nations Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision.

Furthermore, regarding the information that Mr. Al Baydani was minor at the time of his arrest for terrorism-related charges, as well as that the proceedings on his case did not comply with due process and fair trial safeguards, we would like to stress that only full respect for stringent due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which violates human rights standards. This applies to terrorism-related cases as well. In this respect, we would like to refer to the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, in particular to:

- Safeguard 3, providing that persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death;

- Safeguard 4, stipulating 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;

- Safeguard 5, stating that “capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after 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, 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 6, requiring that “anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory”.

Without expressing at this stage an opinion 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 or his life 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 stress also that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Furthermore, we would like to draw the attention of your Excellency's Government to paragraph 7.c of Human Rights Council Resolution 8/8 of 18 June 2008, which reminds all States that “Prolonged incommunicado detention may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person”.

We would further like to draw your Excellency's Government's attention to article 15 of the Convention against Torture providing 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 6c of Human Rights Council resolution 8/8 of 2008 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”. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the International Covenant on Civil and Political Rights.

We would also like to remind your Excellency's Government that a norm of customary international law has emerged in recent years that bans the application of capital punishment on persons who were minors at the time they allegedly committed the

crime, because such penalty as applied to persons under age constitutes cruel, inhuman and degrading punishment.

In view of the urgency of the matter and of the irreversibility of the punishment of the death penalty, we call on your Excellency's Government not to execute Mr. Saleh Musa Ahmed Mohammed Al Baydani, which, if carried out, would be inconsistent with acceptable standards of international human rights law. Furthermore, 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 cases accurate?
2. Please provide information concerning the legal grounds for the arrest and detention of Mr. Saleh Musa Ahmed Mohammed Al Baydani and how these measures are compatible with international norms and standards as stated, *inter alia*, in the UDHR and the ICCPR.
3. Please provide full details, including the names, gender and age of the 21 individuals executed on 27 August 2012. Please indicate the specific crimes that Mr. Saleh Musa Ahmed Mohammed Al Baydani, as well as the 21 individuals executed, have been found guilty of and the legal basis for the death sentence imposed against them. Please indicate how this is compatible with international human rights law, specifically with the requirement in article 6(2) of the ICCPR.
4. Please provide detailed information on each stage of judicial proceedings and indicate how they comply with the requirement and guarantees of a fair trial and due process as enshrined in article 14 of the ICCPR and United Nations Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty. In the case of Mr. Saleh Musa Ahmed Mohammed Al Baydani, please clarify *inter alia* how his right to appeal was ensured and whether the proceedings gave due considerations to the fact that he was minor at the moment of his arrest, and respectively, of the commission of the alleged crime.
5. Please provide information on the measures undertaken to ensure that any statements or confessions obtained under torture is excluded from judicial proceedings.

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 Mr. Saleh Musa Ahmed Mohammed Al Baydani 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

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