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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 and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

REFERENCE: AL G/SO 214 (3-3-16) G/SO 214 (33-27) Terrorism (2005-4)
IRQ 3/2013

10 September 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolution 17/2 and 17/5.

In this connection we would like to bring to the attention of your Excellency's Government information we have received concerning the **execution**, on 19 August 2013, **of 17 prisoners** over terrorism-related and criminal charges, after trials that allegedly did not comply with the most stringent fair trial and due process guarantees.

According to the information received:

On 19 August 2013, 17 prisoners sentenced to the death penalty were allegedly executed. One week before the executions, the Minister of Justice of Iraq is alleged to have announced on television that there were currently 1200 prisoners on death row and that the government was determined to continue implementing the death sentences.

Reportedly, the recent executions were carried out in accordance with the Anti-Terrorism Law No. 13 of 2005. The provisions of this law can allegedly be interpreted in many different ways and provide capital punishment for a considerable number of crimes which cannot be considered to be of a serious nature.

In addition, the executions have allegedly been implemented in violation of a number of fundamental rights and guarantees related to the administration of

justice, such as the right to equality before the courts, the right to a fair and public hearing, the right to be tried without undue delay and the right to be informed of the charges, among others.

Furthermore, it was reported that during the first weeks of the month of August 2013, a new wave of arrests has started, resulting in over 1500 individuals being incarcerated in just a few days, and which may lead to further imposition and implementation of the death penalty.

Moreover, the Iraqi Criminal Procedure Code No. 23 of 1971 guarantees to people sentenced to death the right to a new trial after new evidence has arisen and the right to clemency appeals. However, reportedly an amendment to the Criminal Procedure Code aiming at abolishing such rights has been drafted and forwarded to the Iraqi Council of Ministers. Such amendment would currently be under examination by the Parliament.

While we do not wish to prejudge the accuracy of the information provided to us, we would like express our utmost concerns regarding allegations that the death penalty is imposed and implemented after trials that do not comply with international obligations undertaken by your Excellency's Government, including the most stringent fair trial and due process guarantees. We would also like to express our concern regarding the amendment to the Criminal Procedure Code which allegedly restricts the rights of persons convicted to the death penalty to request a new trial or appeal for clemency.

As stated in previous communications, under international human rights law, in countries that have not abolished the death penalty, capital punishment may be imposed only following a trial that complied with fair trial safeguards, as provided in articles 6(2) and 14 of the International Covenant on Civil and Political Rights (ICCPR), which the Government of Iraq ratified on 25 January 1971.

The United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, in particular Safeguard 5 provides that capital punishment may only be carried out pursuant to a final judgment 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. Safeguard 4 further states 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 due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which violates human rights standards. Along the same lines, the Human Rights Committee has underlined in its General Comment No. 32 that: "In cases of trials

leading to the imposition of the death penalty scrupulous respect of the guarantees of fair trial is particularly important” (paragraph 59).

We urge your Excellency's Government to take all necessary measures to guarantee that the rights of persons sentenced to the death penalty in Iraq are respected and, in the event that your investigations support or suggest the above allegations to be correct, to ensure the accountability of any person responsible of the reported violations. In addition, we request that your Excellency's Government adopt effective measures to prevent the recurrence of the acts described above. Considering the irreversible nature of the death penalty, this can only mean that the death penalty is not executed until all concerns we have raised are dispelled in their entirety.

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 this case 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 description of the case accurate?
2. Please provide a complete list of the persons currently in detention under a death sentence, with the dates of their sentence, the offences for which they were found guilty, and the remedies used by them, as well as those still available to them.
3. Please indicate what measures are being undertaken to ensure that all death penalty cases comply with fair trial and due process guarantees as required under international human rights law.
4. Please indicate the changes to the Iraqi Criminal Procedure Code No. 23 of 1971 proposed by the reported amendment, as well as the current stage of its processing.

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 the right to fair trial and due process guarantees 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.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions