

NATIONS UNIES
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 5/2012

11 October 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 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, 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. **Ahmad 'Amr 'Abd al-Qadir Muhammad**, who is reportedly at risk of imminent execution in Iraq.

According to the information received,

Mr. Ahmad 'Amr 'Abd al-Qadir Muhammad, aged 30, is a Palestinian born in Iraq. It is reported that he was arrested on 21 July 2006, in the al-Zayouna district of Baghdad. While the security forces accused him of attempting to plant explosives on that day, his family claimed that he had hired a taxi to purchase food for his engagement celebration. On 17 May 2011, Mr. Ahmad 'Amr 'Abd al-Qadir Muhammad was sentenced to death by the Resafa Criminal Court in Baghdad, on the basis of the Anti-Terror Law of 2005. The Court of Cassation allegedly upheld the verdict. At the end of August 2012, he was reportedly transferred to al-Kadhimiya Prison in Baghdad, which is a prison where executions are allegedly carried out. He is therefore reported to be at risk of imminent execution.

Mr. Ahmad 'Amr 'Abd al-Qadir Muhammad was allegedly held incommunicado for more than a year after his arrest. His mother and neighbours were reportedly

granted access to visit him the first time at a detention centre in the Baladiyah district of Baghdad in August 2007.

It is reported that during his incommunicado detention, Mr. Ahmad ‘Amr ‘Abd al-Qadir Muhammad was subjected to torture and his injuries, including burn scars, were visible in 2007. He was allegedly forced to confess that he was a member of an armed group who had intended to plant explosives. An examination by the Forensic Medical Institute found in August 2008 that he had scarring. The allegations of torture have reportedly not been the subject of full and impartial investigations.

Furthermore, Mr. Ahmad ‘Amr ‘Abd al-Qadir Muhammad allegedly withdrew his testimony during the trial before the Resafa Criminal Court, claiming that his confession had been extracted under coercion and torture. It is reported, however, that the Court included his testimony as part of evidence while handing down his death sentence. Finally, it is reported that the eyewitnesses, including police officers, gave conflicting testimonies on this case before the Court.

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 may be carried out on Mr. Ahmad ‘Amr ‘Abd al-Qadir Muhammad after proceedings that did not comply with international human rights law standards on fair trial and due process guarantees, as well as for an alleged crime that is not considered as most serious crime under international human rights law. We are also concerned about the information that the said person has been reportedly subjected to torture.

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) that 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, 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 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 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”. By consequence, only full respect for stringent fair trial and due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which violates human rights standards.

With respect to the right to a fair trial as one of the fundamental guarantees of human rights and the rules of law embodied in article 14 of the ICCPR, the Special Rapporteur on the promotion and protection of human rights while countering terrorism further notes in his report on the protection of human rights and fundamental freedoms while countering terrorism (A/63/223, para. 31) 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).

The Special Rapporteur further emphasizes in paragraph 43 of the report 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 rigorously comply with all aspects of a fair trial.”

In this context, we would also like to refer your Excellency’s Government to the Bangalore Principles of Judicial Conduct, adopted in The Hague in 2002 (E/CN.4/2003/65), and in particular principle 5, which states: “Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.”

We would further like to 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.”

We would also 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.”

We would like to further stress 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).

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to draw your Government's attention to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture".

We would also 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 or detention in secret places 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".

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.

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 abovementioned person in compliance with the above international instruments.

While waiting for your response and in view of the irreversibility of the punishment of the death penalty, it is imperative that your Excellency's Government take all steps necessary to prevent the execution of Mr. Ahmad 'Amr 'Abd al-Qadir Muhammad, 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.

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 ‘Amr ‘Abd al-Qadir Muhammad and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
3. Please indicate the specific crime that Mr. Ahmad ‘Amr ‘Abd al-Qadir Muhammad has been found guilty of and the legal basis of the death sentence imposed against him. 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, United Nations Safeguards 4 and 5 Guaranteeing Protection of the Rights of those Facing the Death Penalty, and the Basic Principles on the Independence of the Judiciary.
5. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegations of torture in this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

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.

We further urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Ahmad ‘Amr ‘Abd al-Qadir Muhammad 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

2.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Ben Emmerson
Special Rapporteur on the promotion and protection of human rights and
fundamental freedoms while countering terrorism

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