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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; 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.

REFERENCE: UA G/SO 218/2 G/SO 214 (3-3-16) Terrorism (2005-4) G/SO 214 (53-24)
ETH 2/2014

15 April 2014

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 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 24/7, 17/2, 22/8, and 25/13.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged arbitrary detention, torture, ill-treatment and unfair trial of Mr. **Mohamed Aweys Mudey**.

According to information received:

Mr. Mohamed Aweys Mudey, a former Somali journalist, fled to Ethiopia for safety reasons after he was wounded in a suicide bombing in Mogadishu, on 3 December 2009. He had reportedly worked with several organizations, providing news reports on a variety of Somalia-related events and issues.

It is reported that Mr. Mudey was among 100 Somalis arrested in November 2013, on suspicion of involvement in a terrorist attack in Addis Ababa.

In February 2014, when the four months period prescribed by Ethiopia's anti-terrorism law to investigate a suspect elapsed, Mr. Mudey was allegedly accused of holding information about Al-Shabaab operations in Ethiopia and charged with participating in "terrorist activities". He was allegedly found guilty and sentenced to 27 years of prison. Sources indicated that the reportedly overly broad and ambiguous anti-terrorism law, which includes a broad definition of "terrorism",

deprives suspects of the right to be presumed innocent and thus the right to a fair trial. Sources also indicated that charges were brought against Mr. Mudey based on unsubstantiated suspicion.

During the four months investigation Mr. Mudey was reportedly detained at the Federal police Crimes Investigations Sector in Addis Ababa. He was reportedly tortured during interrogation and showed evidence of having trouble walking as a result. It is alleged that he was later transferred and held in an unknown location designated for alleged “terrorists”.

It is also alleged that Mr. Mudey has been denied access to a lawyer or to family visits.

Without prejudging the accuracy of the information made available to us, we would like to express concern that Mr. Mudey may have been convicted following a trial which did not comply with international human rights law provisions regarding the rights to a fair trial and due process, including the rights to be presumed innocent and to be protected against forced confession. We are further concerned about the information that Mr. Mudey was subjected to torture or ill-treatment.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Mudey 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, and articles 9 and 14 of the International Covenant on Civil and Political Rights, which Ethiopia has acceded to on 11 June 1993.

While being conscious of the fact that States' obligation to protect and promote human rights requires them to take effective measures to combat terrorism, we would like to draw your Excellency's Government's attention to General Assembly Resolution 68/178 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 this regard, we would further like to draw your Excellency's Government to paragraph 6 (f) of this General Assembly resolution, which urges States to respect the right “to a fair trial as provided for in international law, including international human rights law, such as the International Covenant on Civil and Political Rights, and international humanitarian and refugee law.”

In this respect, we would like to recall your Excellency's Government to its obligations under the International Covenant on Civil and Political Rights, in particular to the right to a fair trial as one of the fundamental guarantees of human rights and the rules of law embodied in its article 14.

Regarding the allegation that Mr. Mudey did not have access to a lawyer, we would like to refer your Excellency's Government in particular to article 14(3) of the International Covenant on Civil and Political Rights, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

The right to be assisted by a lawyer is also set forth in 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, in particular in 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 5, which states: "Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.";

- 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 allegations of torture or ill-treatment, we would like to refer your Excellency's Government to article 14(3) of the International Covenant on Civil and Political Rights which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (g) Not to be compelled to testify against himself or to confess guilt."

In this respect, we would like to draw the attention of your Excellency's Government to paragraph 6 (o) of General Assembly resolution 68/178, which urges States, while countering terrorism, "to ensure that the interrogation methods used against terrorism suspects are consistent with their international obligations and are reviewed on

a regular basis to prevent the risk of violations of their obligations under international law, including international human rights, and refugee and humanitarian law.” In this context, we would also like to bring to your Excellency’s Government attention the report of the Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism (A/63/223, para. 31), in which the Special Rapporteur notes that article 14(3)(g) of the International Covenant on Civil and Political Rights 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 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 like to draw the attention of your Excellency’s Government to article 15 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), acceded by your Excellency’s Government on 14 March 1994, 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;”

We would like to draw your Excellency’s Government’s attention to article 4 of the CAT which requires States Parties to ensure that all acts of torture are offences under its criminal law and to make the offences punishable by appropriate penalties. In this regard, we would also like to draw your Excellency’s 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 States Parties to prosecute suspected perpetrators of torture. We would also like to draw your Excellency’s Government’s attention to paragraph 3 of Resolution 2005/39 of the Commission on

Human Rights which, “Stresses in particular that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes 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;”.

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 Mr. Mudey 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. Mudey and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
3. Please provide detailed information on each stage of the judicial proceedings conducted against Mr. Mudey and indicate how they comply with the requirements and guarantees of a fair trial as enshrined inter alia in article 14 of the ICCPR, in particular the right to access a lawyer.
4. Regarding the allegation of torture or ill-treatment, has a complaint been lodged by or on behalf of Mr. Mudey?
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 allegation of torture or ill-treatment. If no inquiries have taken place, or if they have been inconclusive, please explain why.
6. Please provide the full details of any prosecutions which have been undertaken with regards to the allegation of torture or ill-treatment. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
7. Please indicate whether compensation has been provided to the victim or the family of the victim.

8. Please provide information on the measures taken to ensure the physical and mental integrity of Mr. Mudey.

We undertake to ensure that your Excellency's Government's response will be available 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. Mudey 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.

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Ben Emmerson
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