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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 the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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) G/SO 214 (53-24)
SAU 9/2013

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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; 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, 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. **Mabrook Ali Saleh Al Sai'ari**, who is at risk of being executed in the next few weeks in Saudi Arabia.

According to the information received:

Mr. Mabrook Ali Saleh Al Sai'ari, a Saudi citizen, aged 43, residing in Al Wadhah, Sharurah, in Najran Province of Saudi Arabia, was accused in 2000, in Saudi Arabia, of the murder of a Yemeni citizen on the territory of the Republic of Yemen. Consequently, he was sentenced to four years and six months of imprisonment and 3500 lashes. It is reported that the sentence was carried out for the full duration, after which Mr. Al Sai'ari was released.

It is, however, alleged that upon the news of the release of Mr. Al Sai'ari, the family of the person whom Mr. Al Sai'ari was accused of killing requested the Saudi authorities to arrest and sentence him again. As a consequence, Mr. Al Sai'ari was summoned by the judicial authorities in Najran in 2005. Despite his will to cooperate with the authorities, he was allegedly arrested again upon his arrival at the police station in Najran, and placed in detention in Najran prison.

In 2012, allegedly after seven years of detention without a legal basis, Mr. Al Sai'ari was sentenced to death by the criminal court in Najran for the same alleged crime. His execution was reportedly scheduled for 8 September 2013, but was

postponed for approximately 70 days. By consequence, he remains at risk of being executed in the next few weeks.

It is further alleged that the proceedings against Mr. Al Sai'ari did not comply with fair trial and due process requirements under international human rights law. In addition to having been tried and sentenced twice for the same alleged crime, it is reported that Mr. Al Sai'ari could not appeal the death sentence against him. Moreover, because of his limited financial means, Mr. Al Sai'ari could not afford legal assistance of his choice. Allegedly, he was also not provided with a court-appointed 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. Mabrook Ali Saleh Al Sai'ari 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.

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. Mabrook Ali Saleh Al Sai'ari 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 sentences imposed against him.

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

In this respect, we would like to refer your Excellency's Government to article 3 of the Universal Declaration of Human Rights (UDHR) which guarantees the right of every individual to life, liberty and security. 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 6 further stipulates 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."

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 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”; and 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.”

International human rights law also provides that no one should be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of each country. This principle, which is enshrined, *inter alia*, in article 14 (7) of the ICCPR, can be regarded both as an international custom and as a general principle of law recognized by the international community, pursuant to article 38 (1) (b) and (c) of the Statute of the International Court of Justice.

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 UDHR.

Furthermore, we would like to 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 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

We would also like to draw your Government's attention to Resolution 8/8 of the Human Rights Council reminded Governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture. We draw your Excellency's Government's attention to General Assembly report A/60/316, which refers to the jurisprudence of UN treaty bodies, concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (para.28 A/60/316). Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment. In paragraph 5 of General Comment No. 20 (1992), the Human Rights Committee stated that the prohibition of torture and ill-treatment must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime of as an educative or disciplinary measure.

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.

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:

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. Mabrook Al Sai'ari and how these measures are compatible with international norms and standards as stated above.
3. Please explain the legal grounds for the imposition of the death penalty against Mr. Mabrook Al Sai'ari, 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. Al Sai'ari and indicate how they comply with the international human rights law requirement to guarantee a fair trial and due process.

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. 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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