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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

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5 June 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 15/18, 15/23, 17/2, 17/5, 16/23, and 16/7.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding a woman who has been sentenced to death by stoning for adultery, Ms. **Intisar Sharif Abdallah**, 20 years old and mother of three children.

According to information received:

On May 13 2012, the criminal court of Ombada in Khartoum, central Sudan, sentenced Ms. Sharif Abdallah to death by stoning based on charges of adultery, under article 146 of Sudan's criminal code of 1991. It is reported that although she had initially pleaded not guilty, she admitted to the charges at a later hearing, after reportedly being beaten by her brother. Allegedly, the conviction was based solely on this testimony.

It is reported that during the trial, Ms. Sharif Abdallah did not have access to a lawyer, nor an interpreter, despite the fact that she has a limited knowledge of Arabic, while the man co-accused of the same charges was allegedly simply released after denying them.

Ms. Sharif Abdallah is reportedly being detained with her youngest son, who is four months old, while her two other children are in the care of her family. It

is also reported that Ms. Sharif Abdallah's family is in the process of filing an appeal at the Court of Appeals of Ombada.

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 her right not to be deprived arbitrarily of her life and 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.

With regard to the information on the sentence of Ms. Abdallah to death, we would like to recall that article 6(2) of the International Covenant on Civil and Political Rights, to which Sudan acceded on 18 March 1986, provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes". In interpreting article 6(2) of the Covenant, however, the 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. Similarly, that Committee has observed that the restriction encapsulated in that phrase cannot be interpreted as permitting the imposition of the death penalty "for crimes of an economic nature, for corruption and for adultery, or for crimes that do not result in loss of life" (CCPR/C/28/Add.15, 3 August 2003, paragraph 8). As the Special Rapporteur on Extrajudicial Executions observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

We would like to remind your Excellency's Government that the death penalty must be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner. 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. The United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provides under article 5 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, 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".

Accordingly, it is crucial that all fair trial and other protections provided for in international human rights law are fully respected in proceedings relating to capital offences. These minimum fair trial guarantees are set forth inter alia in article 14 (3) of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by

your Government. It 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. [...] (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

In this connection, we would also 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 to Principle 6, which states that “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.”

Furthermore, regarding the alleged violation of the right to be assisted by a lawyer we would like to refer your Excellency's Government to the Principles 1 and 5 of 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, which provide that “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 that “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”, respectively.

We would also like to draw your Excellency's Government's attention to Resolution 2005/39 of the Commission on Human Rights, which reminded Governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture. 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.

We would moreover like to recall that, as a State Party to the International Covenant on Civil and Political Rights, your Excellency's Government has undertaken to ensure equality between men and women in the enjoyment of all civil and political rights, including the right to life and the right not to be subjected to torture or to cruel, inhuman or degrading punishment. In this regard, we would like to express the concern that the imposition of the death penalty for the offence of sexual intercourse in the absence of a lawful relationship might disproportionately affect women. In the case of Ms. Sharif Abdallah it is reported that the man questioned in connection to the same facts was

discharged after denying adultery showing a biased and unequal treatment in this case. In this regard, we also would like to refer to article 2 of the Convention on the Elimination of all Forms of Discrimination against Women, which calls on States Parties to condemn discrimination against women in its all forms and pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

We would also like to draw the attention of your Excellency's Government to article 4 (c) and article 4 (d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of states to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms. (adopted by General Assembly resolution 48/104 on 20 December 1993).

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 Ms. Sharif Abdallah 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. 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 above summaries accurate?
2. Please indicate if an appeal has been filed on behalf of Ms. Sharif Abdallah and its current status before the court.
3. Please provide statistics as to the number of persons sentenced to death and the number executed in the past three years for the offence of adultery. In particular, indicate how many men and how many women were sentenced to death and executed for the offence of adultery. Please indicate the measures taken to ensure that all death penalty cases comply with fair trial guarantees as required under international law.
4. Please provide information concerning the legal grounds for the arrest, detention and sentence to death of Ms. Sharif Abdallah 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.
5. Please provide detailed information on each stage of judicial proceedings against Ms. Sharif Abdallah and indicate how they comply with the requirements and

guarantees of a fair trial as enshrined in article 14 of the ICCPR, and the Principle 6 of the Basic Principles on the Independence of the Judiciary.

6. Please provide details on what measures have been taken to safeguard the rights of the above-mentioned person in compliance with the above international instruments and standards.

We undertake to ensure that your Excellency's Government's response is included 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 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. Considering the irreversible nature of the death penalty, we request you not to execute the person mentioned above.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Kamala Chandrakirana
Chairperson-Rapporteur of the Working Group on the issue of discrimination
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