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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

**Mandates of the Chair of the Working Group on the use of mercenaries and the Special Rapporteur
on torture and other cruel, inhuman or degrading treatment or punishment.**

REFERENCE: AL G/SO 214 (2005-4) G/SO 214 (53-24)
USA 6/2013

31 May 2013

Excellency,

We have the honour to address you in our capacities as Chair of the Working Group on the use of mercenaries and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolution 15/12 and 16/23.

Paragraph 18 of Human Rights Council resolution 21/8 requests the Working Group “to continue to monitor mercenaries and mercenary-related activities in all their forms and manifestations, including private military and security companies, in different parts of the world, including instances of protection provided by Governments to individuals involved in mercenary activities.”

In this connection, we would like to bring to the attention of your Excellency's Government information we have received with regard to the allegation that it refused to allow the plaintiffs in the case of Al Shimari v. CACI Premier Technology, Mr. Taha Yaseen Arraq Rashid, Mr. Asa'ad Hamza Hanfoosh Al-Zuba'e and Mr. Suhail Najim Abdullah Al Shimari, to travel to the United States of America (U.S.) to participate in their lawsuit against a private military contractor at Abu Ghraib in Iraq.

According to the information received:

Mr. Taha Yaseen Arraq Rashid, Mr. Asa'ad Hamza Hanfoosh Al-Zuba'e and Mr. Suhail Najim Abdullah Al Shimari instigated a lawsuit against a private military contractor, CACI Premier Technology, Inc., alleging torture and ill-treatment at Abu Ghraib in Iraq (Al Shimari v. CACI Premier Technology, Civil Action No. 08-cv-0827 (E.D. Va. filed Sept. 15, 2008)). The plaintiffs have made serious allegations that they have suffered from torture and other abuse at the hands of the defendant. All three men were reportedly released from U.S. detention in Iraq more than five years ago without charge.

Mr. Rashid, Mr. Al-Zuba'e and Mr. Al Shimari were all granted visas to travel to the U.S. during winter 2012/2013 and were able to secure boarding passes for their flight from Baghdad, Iraq to the U.S., scheduled on 15 March 2013. However, just before their departure, they were informed that U.S. authorities would not permit them to board the flight. All three men immediately reapplied for expedited visas to travel to the U.S.. However, these visas have not yet been granted and their lawyers, who have been in regular contact with officials at the Department of State since 15 March 2013, have been given no explanation of the reasons their clients were denied permission to board their flight on 15 March 2013 or of the status of their reapplication for expedited visas. Mr. Rashid, Mr. Al-Zuba'e and Mr. Al Shimari risk dismissal of their case if they are unable to appear for deposition in the U.S.

While we do not prejudge the accuracy of these allegations, we would like to recall that your Excellency's Government is a State Party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The right to a remedy is reflected not only in articles 2(3)(a) and 9(5) of the ICCPR and articles 13 and 14 of CAT, which provides that victims of torture should have the right to redress and adequate compensation, but also in customary international law.

In this regard, we would also like to remind your Excellency's Government of paragraph 7e of Human Rights Council Resolution 16/23, which urges States "(t)o ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation."

Finally, we would highlight that one of the foundational principles of the Guiding Principles on Business and Human Rights, adopted by the Human Rights Council provides that "[a]s part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy".

We take note that the United States of America has consistently reaffirmed its commitment to providing redress to persons who suffer human rights violations, such as torture and war crimes, including by military contractors. In accordance with its obligation and commitment, we ask your Excellency's Government to allow the plaintiffs to travel to the United States of America so that their claims are not prematurely dismissed, or at the least, inform the plaintiffs' attorneys of the reasons their clients have been denied entry to the United States of America so that they may be able to contest that decision.

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 above summary accurate?
2. Please provide information on the reasons why the three men, Mr. Rashid, Mr. Al-Zuba'e, and Mr. Al Shimari, were not permitted to board the flight on 15 March 2013 and the status of their reapplication for expedited visas.
3. Please provide information on the steps that have been taken to assure that the alleged victims, Mr. Rashid, Mr. Al-Zuba'e, and Mr. Al Shimari, will be able to pursue the remedies that the United States of America is obligated by international law to make available to them.

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 rights and freedoms of the above mentioned persons 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.

Anton Katz
Chair of the Working Group on the use of mercenaries

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