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PROCEDURES SPECIALES DU
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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 extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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) G/SO 214 (33-27) Terrorism (2005-4) G/SO 214 (53-24)
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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; 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, 17/5, 22/8, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the cases of Messrs. **Bara' Ibrahim Muhammad** and **Taysir Jassim Muhammad**, who are at risk of imminent execution.

According to the information received:

Mr. Bara' Ibrahim Muhammad and Mr. Taysir Jassim Muhammad were among a group of 11 persons sentenced to death on 8 August 2010 by the First Branch of the Criminal Court in the province of Anbar. According to reports, they were accused and convicted for their alleged involvement in the explosions that took place in the city of Hit, Anbar province, on 7 January 2010, and which resulted in the death of eight people and several injured.

Messrs. Bara' Ibrahim Muhammad and Taysir Jassim Muhammad, along with the other nine individuals, were held incommunicado at the directorates of Counter-Terrorism in Haditha and Hit where they were subject to interrogation under

torture. They were given electric shocks, beaten and hung up by their arms until they agreed to confess to the crime they were accused of. They however retracted their confessions at a later stage. During the proceedings, several of them complained that they were tortured and submitted medical evidence to the court. Allegedly, the Court admitted however the pre-trial confessions as evidence against the defendants, and found all 11 individuals guilty and sentenced them to death. The death sentences were reportedly upheld by the Court of Cassation in 2011, and nine of them were executed on 22 September 2013 in Baghdad

The remaining two - Messrs. Bara' Ibrahim Muhammad and Taysir Jassim Muhammad - are awaiting the imminent execution of their death sentences.

Without prejudging the accuracy of the information made available to us, we are expressing concern that the death penalty may have been imposed against Messrs. Bara' Ibrahim Muhammad and Taysir Jassim Muhammad, and the other nine aforementioned individuals, after proceedings that did not comply with international human rights law standards on fair trial and due process guarantees. We are also concerned said that these persons were reportedly subjected to torture and ill-treatment.

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 their execution, which, if carried out, would be in breach of acceptable standards of international human rights law. We call upon your Excellency's Government not to execute them and to commute without delay the death sentences imposed against them.

We would like to bring to the attention of your Excellency's Government that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right of life. Article 3 of the Universal Declaration of Human Rights (UDHR) and 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by the Republic of Iraq on 25 January 1971, respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life.

Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution. We wish to refer your Excellency's Government to Safeguard 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty that provides that capital punishment may only be carried out pursuant to a final judgment 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 ICCPR. 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". The Special Rapporteur on extrajudicial, summary or arbitrary

executions has pointed out that any death sentence undertaken in contravention of a Government's international obligation is tantamount to an arbitrary execution.

In this connection, we would like to draw the attention of your Excellency's Government to article 15 of the Convention against Torture, which the Republic of Iraq acceded on 7 July 2011, that 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 also wish 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."

In that context, we would further like to draw the attention of your Excellency's Government to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/63/223, paragraph 43), in which the Special Rapporteur emphasizes 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."

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 persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their 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 International Covenant on Civil and Political Rights (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 Messrs. Bara' Ibrahim Muhammad and Taysir Jassim Muhammad 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 detailed information on each stage of the judicial proceedings against Messrs. Bara' Ibrahim Muhammad and Taysir Jassim Muhammad, as well as the other nine mentioned individuals, and indicate how they comply with international human rights standards, in particular the right to a fair trial and due process as enshrined in article 14 of the ICCPR, the United Nations Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty and the Guidelines on the Role of Prosecutors.
3. Please provide information concerning the legal grounds for the arrest and detention of Messrs. Bara' Ibrahim Muhammad and Taysir Jassim Muhammad 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.
4. Please provide the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to the allegations of torture or ill-treatment in the cases of Messrs. Bara' Ibrahim Muhammad and Taysir Jassim Muhammad, as well as the other nine mentioned individuals. 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 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 Messrs. Bara' Ibrahim Muhammad and Taysir Jassim Muhammad are respected and, in the event that your investigations support or suggest the above allegations of torture 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

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Ben Emmerson
Special Rapporteur on the promotion and protection of human rights and
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