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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; and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

REFERENCE: UA G/SO 218/2 G/SO 214 (3-3-16) G/SO 214 (33-27)
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6 August 2013

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; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 15/18, 17/2, and 17/5.

In this connection, we would like to draw the attention of your Excellency's Government to the information we have received regarding the case of Mr. **Muhammad Thabet Taher Samoum** (also referred to as Mr. Muhammed Taher Thabet Samoum), who is reportedly at a high risk of imminent execution in Yemen.

Mr. Samoum was the subject of two previous communications sent to your Excellency's Government, dated 23 December 2010 and 14 December 2012. A reply from your Excellency's Government to these communications is still awaited.

According to the new information received:

Mr. Muhammad Thabet Taher Samoum , detained in Ibb, is believed to be again at a high risk of execution, despite the fact that his execution was halted twice in the past.

While in previous communications it was already reported that Mr. Samoum was a minor at the time of commission of the crime of killing, new information received indicates the existence of considerable evidence confirming that his age at the time of the commission of the offence was not more than 11 years. In particular, it is alleged that the defendant's birth and vaccination certificates confirm that his age at the time of the crime could not have been more than 11 years. Allegedly, these documents were not given due consideration throughout

the legal proceedings conducted against Mr. Samoum. It is further reported that the doctors who were in charge of establishing the defendant's age lacked adequate professional methods of determining age in criminal proceedings.

It is also reported that Mr. Samoum did not enjoy fully his rights to legal representation. In addition, the defendant reportedly maintained that the alleged killing was unintentional. Allegedly, no witness has been examined, nor has an autopsy on the body of the victim been conducted in order to establish the full facts.

Without prejudging the accuracy of the information made available to us, we would like to reiterate our concern that the death penalty may have been imposed, and be imminently carried out against Mr. Muhammad Thabet Taher Samoum for an offence committed when he was a minor, which is in contravention of international human rights law. We are also concerned that the death sentence against him may have been pronounced after proceedings that did not comply with international standards related to the right to fair trial and due process guarantees.

In view of the urgency of the matter and of the irreversibility of the death penalty, we call on your Excellency's Government not to execute Mr. Muhammad Thabet Taher Samoum, and commute without delay his sentence.

In this regard, we would like to respectfully remind your Excellency's Government that any judgments imposing the death sentence on, and executions of juvenile offenders are incompatible with the international legal obligations undertaken by your Excellency's Government under various instruments. Article 37(a) of the Convention on the Rights of the Child (CRC), that the Government of Yemen ratified on 1 May 1991, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, Article 6(5) of the International Covenant on Civil and Political Rights (ICCPR), that the Government of Yemen acceded to on 9 February 1987, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

The Committee on the Rights of the Child has observed in its General Comment No. 10 on children's rights in juvenile justice that "Article 37 (a) of CRC reaffirms the internationally accepted standard (see for example article 6 (5) of ICCPR) that the death penalty cannot be imposed for a crime committed by a person who at that time was under 18 years of age. It means that a death penalty may not be imposed for a crime committed by a person under 18 regardless of his age at the time of the trial or sentencing or of the execution of the sanction."

Furthermore, the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, adopted by the Economic and Social Council resolution 1984/50 of 25

May 1984, provides under article 3 that “persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death”.

We would like to reiterate also that, in countries which have not yet abolished the death penalty, only full respect for stringent fair trial and due process guarantees distinguishes capital punishment as permitted under international law from a summary execution, which violates international human rights standards. The United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, adopted by the Economic and Social Council resolution 1984/50 of 25 May 1984, provides under article 5 that “Capital punishment may only be carried out pursuant to a final judgement 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 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 4 further stipulates 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”.

Regarding the allegations of unfair trial and lack of due process in the trial of Mr. Mr. Muhammad Thabet Taher Samoum, we would like to refer your Excellency's Government to article 14(1) of the ICCPR, which states: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Article 14(3) of the ICCPR further 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 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 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.”

We would like to refer your Excellency's Government to article 14(4) of the ICCPR, which states: "In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation."

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Samoum 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 (UDHR), and articles 9 and 14 of the 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 Mr. Samoum 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. Samoum and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and ICCPR.
3. Please provide information on the legal grounds for the imposition of the death penalty against Mr. Samoum, and indicate how they comply with the international human rights law provisions prohibiting the imposition of the death penalty against juvenile offenders.
4. Please specify the procedures conducted to determine the defendant's age at the time of the offense and how their results were taken into account during the legal proceedings and issuance of the death sentence against Mr. Samoum.
5. Please provide detailed information on each stage of the legal proceedings against Mr. Samoum, and indicate how they comply with the requirement to guarantee his right to fair trial and due process safeguards as enshrined inter alia in article 14 of the ICCPR.

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 Mr. Samoum 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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions