

**NATIONS UNIES  
HAUT COMMISSARIAT DES NATIONS UNIES  
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU  
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS  
OFFICE OF THE UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE  
HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: UA G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (53-24)  
IRQ 7/2011

17 November 2011

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 17/5, 17/2 and 16/23.

In this connection we would like to bring to the attention of your Excellency's Government information we have received concerning the imminent execution of several individuals including **Messrs. Yousri Fakher Mohamed Al Tariqi, Mohamed Fraj Fraj Allah, Adel Omar Mohamed Ali, Nasser Mubarak Mojib, Ibrahim Najm 'Abboud, Firas Hassan Fleih al-Juburi, Fadhel Ibrahim al-Juburi, Haydar Mut'eb 'Abdel-Qader, Hikmat Fadhel Ibrahim, Sayyid Hamadi Ahmed and Sofian Jassem Mohammad.**

We have received the following information;

We are informed that Mr Yousri Fakher Mohamed Al Tariqi, a Tunisian, was arrested on 5 May 2006, and sentenced to death in 2010. Mr Mohamed Fraj Fraj Allah, a Libyan national, aged 28, prisoner No. 177214, was arrested in July 2005 and sentenced to death in March 2007. Mr Adel Omar Mohamed Ali, a Libyan national, aged 29, prisoner No. 190465, was arrested in June 2006 and subsequently sentenced to death. Mr Nasser Mubarak Mojib, of Saudi nationality, aged 24, prisoner No. 38356, was arrested in May 2008 and sentenced to death in March 2009. It is alleged that Messer's Yousri Fakher Mohamed Al Tariqi, Mohamed Fraj Fraj Allah, Adel Omar Mohamed Ali and Nasser Mubarak Mojib were subjected to cruel, inhumane or degrading treatment during their pre-trial detention and were convicted on the basis of evidence extracted under torture. The

death sentences of 53 people, including the abovementioned, were ratified by the Iraqi Presidential Council on 20 October 2011.

Additionally, we are informed that on 16 June 2011, Messrs Ibrahim Najm ‘Abboud, Firas Hassan Fleih al-Juburi, Fadhel Ibrahim al-Juburi, Haydar Mut’eb ‘Abdel-Qader, Hikmat Fadhel Ibrahim, Sayyid Hamadi Ahmed and Sofian Jassem Mohammad and eight other individuals were sentenced to death by the Central Criminal Court. They were convicted after “confessions” from some of them were aired on the Iraqi Television Channel Al Iraqiya. The fifteen men are said to be members of an armed group and were found guilty of, inter alia murder and killings at a wedding party in a village near al-Taji, north of Baghdad, in June 2006. Their sentences have reportedly been confirmed by the Iraqi Presidential Council.

We are also informed that on 27 October 2011, eight individuals were executed after trials that did not comply with international fair trial guarantees. One of the individuals executed was Mr. Badr Ashour Mohamed Ali, a Moroccan, aged 29, prisoner No. 325453. He was arrested in December 2007 and sentenced to death in 2008. We are informed that he did not have access to counsel and was convicted on the basis of evidence extracted under torture. On 16 November 2011, 10 individuals were allegedly executed in Al Kadhimiya Prison (Fifth Section), Baghdad. Those executed include Mr. Hamdi Abdallah Mahmoud an Egyptian national and Mr. Yousri Al Tariqi, a Tunisian national.

While we do not wish to prejudge the accuracy of the information provided to us, we would like to bring to the attention of your Excellency’s Government our concerns relating to the imposition and implementation of the death penalty after trials that allegedly do not comply with international obligations undertaken by your Excellency’s Government, including fair trial safeguards.

Although international law does not prohibit the death penalty, it nonetheless mandates 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. It is essential that when capital punishment is imposed all fair trial standards and safeguards contained in international human rights law are fully respected in the relevant proceedings, with the sentence being pronounced only following a fair and regular judicial process. 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 (ratified on 25 January 1971), 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.” Along the same lines, the Human Rights Committee has underlined in its General Comment n° 32 on the “Right to equality before courts and tribunals and to a fair trial” (2007) that “In cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of fair trial is particularly important” (paragraph 59).

We would like to draw the attention of your Excellency's Government to article 15 of the CAT, which 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;"

Without in any way implying any determination on the facts of the case, and without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. 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 Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Only full respect for stringent due process guarantees distinguishes capital punishment from a summary execution. We therefore urge your Excellency's Government to take all necessary steps to ensure that the right to life of Messrs Youstri Fakher Mohamed Al Tariqi, Mohamed Fraj Fraj Allah, Adel Omar Mohamed Ali, Mr Nasser Mubarak Mojib, Ibrahim Najm 'Abboud, Firas Hassan Fleih al-Juburi, Fadhel Ibrahim al-Juburi, Haydar Mut'eb 'Abdel-Qader, Hikmat Fadhel Ibrahim, Sayyid Hamadi Ahmed, Sofian Jassem Mohammad and other individuals at risk of execution are respected. Considering the irreversible nature of the death penalty, we request you not to execute the people mentioned above, and certainly not without ensuring that all procedures followed complied with international standards has been resolved.

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 this case 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 cases accurate?
2. Please provide a complete list of the persons currently in detention awaiting the death sentence, with the dates of their sentence, the offences of which

they were found guilty, and the remedies used by them as well as those still available to them.

3. Please indicate what measures are being undertaken to ensure that all death penalty cases comply with fair trial guarantees as required under international law.
4. Please explain the measures adopted by your Excellency's Government 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.

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.

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

Christof Heyns  
Special Rapporteur on extrajudicial, summary or arbitrary executions

Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers

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