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**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 Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.**

REFERENCE: UA G/SO 218/2 G/SO 214 (53-24)  
IRQ 7/2013

25 November 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7 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 detention and imminent risk of forced return from Iraq to Saudi Arabia of Mr. **Ayesh Al Harby**, also known as Ayesh Al Faridi, Saudi national, born in March 1973, residing in Baghdad, Iraq since 2000, political asylum registered with the UNHCR in Iraq (file No. 281-13c00293 9 j 2013).

According to the information received:

In September 2000, Mr. Al Harby was granted political asylum following his alleged involvement in diverting a Saudi Airways airplane from Jeddah to Baghdad in an attempt to protest the human rights situation in Saudi Arabia. It is reported that although Mr. Al Harby and his associate were granted political asylum in Iraq, the latter was forcibly returned to Saudi Arabia where he was sentenced to death after a trial allegedly characterized by severe procedural irregularities and allegations of torture and ill-treatment while in detention.

On 17 July 2005, Mr. Al Harby was reportedly arrested by the United States Armed Forces in Baghdad, held in detention in an unknown facility for three years without any charges or trial. He was reportedly released on 27 September 2008. While in detention, Mr. Al Harby was reportedly subjected to torture and ill-treatment. On 17 July 2009, Mr. Al Harby was allegedly arrested by the Iraqi Ministry of Interior forces and subjected to severe acts of torture. He was

subsequently tried before Al Rusafa Court in Baghdad and sentenced to 15 years in prison on charges of alleged “terrorism-related activities” and alleged membership in armed groups. In July 2013, Mr. Al Harby was transferred to a section of Al Rusafa Prison in Baghdad where he reportedly remains detained to date. It is reported that the conditions of detention where Mr. Al Harby is currently held are inhuman. It is feared that if extradited to Saudi Arabia, Mr. Al Harby will be subjected to torture and ill-treatment and imposition of death penalty. In view of the extradition request, serious concern is expressed about the physical and mental integrity of Mr. Al Harby.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Al Harby 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, and articles 9 and 14 of the International Covenant on Civil and Political Rights.

We would like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the situation of Mr. Al Harby. 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, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this context and with respect to the allegations according to which Mr. Al Harby is facing imminent risk of extradition to Saudi Arabia where he will be at risk of being subjected to torture and ill-treatment and imposition of death penalty, we would like to draw the attention of your Excellency's Government to article 3 of the Convention against Torture, which provides that no State party shall expel, return (refouler), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In this regard, paragraph 9 of General Comment No. 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in which the Human Rights Committee states that State parties “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement.”

We would also like to draw the attention of your Excellency's Government to paragraph 16 of the Resolution A/RES/65/205 of the UN General Assembly which urges States “not to expel, return (“refouler”), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights,

humanitarian and refugee law, in particular the principle of non-refoulement.” Furthermore, paragraph 7d of Human Rights Council Resolution 16/23 urges States “(n)ot to expel, return (refouler), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, [...]”

With respect to the allegations of torture and ill-treatment, we would like to draw your Government’s attention to paragraph 1 of Human Rights Council Resolution 16/23 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

With respect to the allegations, according to which the conditions of detention facility where Mr. Al Harby is currently held amount to inhuman treatment, we would like to draw your Government’s attention to the Standard Minimum Rules for the Treatment of Prisoners. (Adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). We would also like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988. (Adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

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 the above-mentioned person 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. Has a complaint been lodged by or on behalf of Mr. Al Harby?
3. Please provide information concerning the legal grounds for the arrest and detention of Mr. Al Harby 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 this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

5. Please provide details on whether any risk assessment of Mr. Al Harby's return to Saudi Arabia was carried out. In granting the extradition to Saudi Arabia, has the court assessed the possibility that Mr. Al Harby might be tortured in his country or receive an unfair trial?

6. Please explain if other options for protection measures have been explored with the Government of Saudi Arabia to ensure the safety and well-being of the complainant in case of extradition to Saudi Arabia. If yes, please provide information on these options.

7. Please indicate the steps undertaken to ensure the well-being and physical and mental integrity of Mr. Al Harby in view of allegations of inhumane conditions of detention.

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. Al Harby 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.

Mads Andenas  
Chair-Rapporteur of the Working Group on Arbitrary Detention

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

