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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UAG/SO 218/2 G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (53-24)
SAU 3/2013

4 March 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; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 17/2, 17/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the risk of imminent execution of the following seven individuals:

1. Mr. **Sarhan b. Ahmad b. Abdullah Al Mashaikh** (دبع نب دمحم نب ناحرس) 9041313301 .oN DI iduaS ,(tserra nopu 22 dega) 92 dega ,الله آل مشايخ),
2. Mr. **Saeed b. Hassan b. Ahmad Al Omari Al Zahrani** (سعید بن حسن بن أحمد) (العُمري الزهراني), aged 29 (aged 22 upon arrest), Saudi ID No. 1059802510
3. Mr. **Ali b. Mohamed b. Hazzam Al Shahri** (يرمشلل مازح نب دمحم نب يلع) , aged 27 (aged 20 upon arrest), Saudi ID No. 1041770189
4. Mr. **Nasser b. Saeed b. Saad Al Qahtani** (دعس نب ديعس نب رصان) 6536350101 .oN DI iduaS ,(tserra nopu 42 dega) 13 dega ,ال قحطاني),
5. Mr. **Saeed b. Nasser b. Mohamed Al Yaala Al Shahrani** (رصان نب ديعس) بن محمد آل يعلی ال شهرادي), (tserra nopu 12 dega) 82 dega .oN DI iduaS , 1057361329
6. Mr. **Abdulaziz b. Saleh b. Mohamed Al Amri** (نب حل اص نب زيزعل دبع) iduaS ,(tserra nopu 32 dega) 03 dega ,(محمد ال عمري), ID No. 1037356358
7. Mr. **Ali b. Hadi b. Saeed Al Qahtani** (يناطحقلا ديعس نب يده نب يلع) , aged 31 (aged 24 upon arrest), Saudi ID No. 1041654524.

According to information received:

Messrs. Sarhan b Ahmad b Abdullah Al Mashaikh, Saeed b Hassan b. Ahmad Al Omari Al Zahrani, Ali b. Mohamed b. Hazzam Al Shahri, Nasser b Saeed b Saad Al Qahtani, Saeed b. Nasser b Mohamed Al Yaala Al Shahrani, Abdulaziz b Saleh b Mohamed Al Amri, and Ali b Hadi b Saeed Al Qahtani, are all Saudi nationals, and were arrested on 10 January 2006 in Saudi Arabia. They were all charged with organising a criminal group, armed robbery and raiding and breaking into jewellery stores, and consequently sentenced to death by the General Abha Court in Asir on 6 August 2009. Reportedly, the charges against all seven persons were fabricated since most of them did not know each other before they were arrested. It is further alleged that the convictions against all seven individuals were based largely on their initial confessions, which were allegedly extracted by torture. It is reported that all seven persons are currently kept in custody at the General Abha Prison in Abha, the capital of Asir province, waiting for the execution scheduled on 5 March 2013.

Allegedly all seven individuals were forced during pre-trial detention to stand for long hours and for sleepless nights. Allegedly they were detained in very cold cells, and not being provided with blankets or warm clothing. They were also reportedly threatened that their mothers and other family members would be brought in for interrogation unless they confess. In addition, in order to make them compliant with the investigation authorities, they were allegedly given hallucinogens along with their food.

It was further alleged that all seven individuals only had three brief court sessions, during which the judges did not provide adequate opportunities for the defence. Reportedly, all seven individuals subsequently were not allowed to speak in front of the judges and therefore neither able to plead guilty or innocent nor to formally retract their confessions. Allegedly, they were not able to file a complaint with the appropriate authorities about torture, also because the investigator who tortured them was present at all court sessions, allegedly looking at them at all times during the hearing, and he had allegedly threatened to subject them to further torture, should they retract their confessions. In addition, all seven persons had allegedly no access to the legal counselling at any stage of the proceedings against them. As mentioned, reportedly the men were not allowed to speak during the court sessions and therefore could not request legal assistance.

Furthermore, all seven individuals were reportedly not given the possibility to file appeals against their sentences. However, it was reported that as part of the regular judicial procedure concerning death penalty cases, a court of cassation confirmed the sentences seven days after they were pronounced by the court of the first instance and later ratified by the royal office.

It is also reported that Mr. Al Mashaikh was sentenced additionally to crucifixion after his execution and public display of his body for three days, as he was accused of and convicted for being the mastermind of the robberies and the head of the aforementioned criminal group.

Without prejudging the accuracy of the information made available to us, we would like to express concern that the death penalty may have been imposed and be carried out against Messrs. Sarhan b Ahmad b Abdullah Al Mashaikh, Saeed b Hassan b. Ahmad Al Omari Al Zahrani, Ali b. Mohamed b. Hazzam Al Shahri, Nasser b Saeed b Saad Al Qahtani, Saeed b. Nasser b Mohamed Al Yaala Al Shahrani, Abdulaziz b Saleh b Mohamed Al Amri, and Ali b Hadi b Saeed Al Qahtani, for offences that are not considered as most serious crimes under international law, and after proceedings which did not comply with international human rights law standards of fair trial and due process guarantees. We are also concerned that the said defendants were reportedly subjected to torture.

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 the execution of Messrs. Sarhan b Ahmad b Abdullah Al Mashaikh, Saeed b Hassan b. Ahmad Al Omari Al Zahrani, Ali b. Mohamed b. Hazzam Al Shahri, Nasser b Saeed b Saad Al Qahtani, Saeed b. Nasser b Mohamed Al Yaala Al Shahrani, Abdulaziz b Saleh b Mohamed Al Amri, and Ali b Hadi b Saeed Al Qahtani, which, if carried out, would be inconsistent with 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 sentence imposed against all of them.

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).

Article 11 (1) further states that "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

Furthermore, we would like to stress that each Government has the obligation to protect the right to life, the physical and mental integrity of all persons. These rights are set forth *inter alia* in the UDHR, the United Nations Safeguards Guaranteeing Protection of the Rights of those Facing Execution of 1984 (ECOSOC Resolution 1984/50) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which your Excellency's Government ratified on 23 September 1997.

With regard to the risk of imminent execution of Messrs. Sarhan b Ahmad b Abdullah Al Mashaikh, Saeed b Hassan b. Ahmad Al Omari Al Zahrani, Ali b. Mohamed b. Hazzam Al Shahri, Nasser b Saeed b Saad Al Qahtani, Saeed b. Nasser b Mohamed Al Yaala Al Shahrani, Abdulaziz b Saleh b Mohamed Al Amri, and Ali b Hadi b Saeed Al Qahtani, we would like to respectfully remind 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 to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes that are interpreted under international human rights law to encompass only crimes of intentional killing. The United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provide under article 1 that “in countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences”. In the report to the 67th session of the General Assembly (A/67/275), the Special Rapporteur on extrajudicial, summary or arbitrary executions holds that death sentences may be imposed only for those crimes that involve intentional killing. Offences of organising a criminal group, armed robbery and raiding and breaking into jewellery stores do not hence constitute most serious crimes under international law.

Furthermore, in countries that have not abolished the death penalty, capital punishment may be imposed only following a trial that complied with fair trial and due process safeguards. The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has pointed out that any death sentence undertaken in contravention of a Government’s international obligations is tantamount to an arbitrary execution. 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 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 International Covenant on Civil and Political Rights, 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.” Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution, which by definition violates human rights standards.

In this context, we would like to draw your Excellency’s Government attention to the report of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment to the United Nations General Assembly A/67/279 of 9 August 2012. In his report the Special Rapporteur observes that the possible safeguards given during legal process to ensure a fair trial in cases in which the death penalty might be imposed should be at least equal to those contained in article 14 of the ICCPR and that the imposition and enforcement of the death penalty following an unfair trial must be considered as particularly cruel, inhuman and degrading and in violation of article 7 of the ICCPR and articles 1 and 16 of the Convention Against Torture (CAT) (paras. 58, 60 and 61).

With regard to allegation of torture we would like to draw your Excellency’s Government attention to article 15 of the CAT 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 6c of

Human Rights Council resolution 8/8 of 2008 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”.

With regard to the alleged restrictions of the detainees’ rights to a fair trial, we would like to draw the attention of your Excellency’s Government to the Working Group on Arbitrary Detention’s Deliberation No. 9 [A/HRC/22/44] concerning the definition and scope of arbitrary deprivation of liberty under customary international law. The Working Group found that the prohibition of all forms of arbitrary deprivation of liberty forms part of customary international law and constitutes a peremptory or *jus cogens* norm. The Working Group further “regards cases of deprivation of liberty as arbitrary under customary international law in cases where: (c) The total or partial non-observance of the international norms relating to the right to a fair trial established in the Universal Declaration of Human Rights and in the relevant international instruments is of such gravity as to give the deprivation of liberty an arbitrary character (para.38).”

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 these cases accurate?
2. Please confirm the legal grounds for the arrest of the seven individuals mentioned and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR.
3. Please indicate the specific crimes that the seven persons mentioned have been found guilty of and the legal basis of the death sentence imposed against them. Please indicate how this is compatible with international human rights law, specifically with the requirement to impose the death penalty for the most serious crimes only, namely for crimes of intentional killing only.
4. Please provide detailed information on each stage of judicial proceedings against the seven defendants, and indicate how they comply with the requirements and guarantees of a fair trial and due process as enshrined in the Safeguards Protecting the Rights of those Facing the Death Penalty.
5. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation

to the allegations of torture or ill-treatment in these cases. 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 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 Messrs. Sarhan b Ahmad b Abdullah Al Mashaikh, Saeed b Hassan b. Ahmad Al Omari Al Zahrani, Ali b. Mohamed b. Hazzam Al Shahri, Nasser b Saeed b Saad Al Qahtani, Saeed b. Nasser b Mohamed Al Yaala Al Shahrani, Abdulaziz b Saleh b Mohamed Al Amri, and Ali b Hadi b Saeed Al Qahtani 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.

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

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