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Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; 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 resolution 17/2, 22/8, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning alleged practices conducted in collusion with the Saudi Arabian Government regarding the detention and interrogation of Mr. **Ahmed Abu Ali**, the alleged prolonged solitary confinement at the United States Penitentiary, Administrative Maximum Facility (ADX) in Florence, Colorado, and the alleged detention without respect for his right to a fair trial and other minimum due process guarantees. A letter on this case is being sent to the Government of Saudi Arabia as well.

According to the information received:

On 11 June 2003, Mr. Ahmed Abu Ali, an American citizen born in 1981 in Houston, Texas, was allegedly arrested while taking a test at Medina University in Medina, Saudi Arabia, at the behest of the United States. He was subsequently beaten and whipped in prison until he admitted that he was part of an Al-Qaeda cell connected to the May 12 Riyadh bombings. Reportedly, Mr. Ali was then transferred to Riyadh where he was placed in solitary confinement for 40 days and deprived of sleep while the Saudi Arabian secret police agency (Mabahith), created a 40-page statement that Mr. Ali was coerced through torture to sign.

Reportedly, as he was being arrested in Saudi Arabia, 15 armed FBI agents simultaneously stormed into his house in Falls Church, Virginia, United States,

looking for items related to Mr. Ali's alleged involvement in a separate case (U.S. v. Royer).

It is reported that for nearly a month after his arrest Mr. Ali was subjected to torture that left his hands permanently disabled. He allegedly received visits from the FBI agents that raided his Falls Church home and was held incommunicado until 26 September 2003, when Mr. Ali was finally able to contact his wife by phone. He informed his wife that during his interrogation in Riyadh, the FBI agents that stormed his house in Virginia and visited him in his detention facility in Riyadh threatened to transfer him to Guantanamo Bay and label him an "enemy combatant" if he did not give testimony that incriminated the defendants in the Royer trial. After the first phone call, it is also reported that Mr. Ali sent a letter that asked his family not to worry and begged them not to think he was forced to write the letter.

On 10 October 2003, he reportedly called his wife, and she asked about the suspicious letter he sent, to which he responded "don't ask me these questions. It hurts me when you ask me these questions." His wife asked, "do they hurt you?" and Mr. Ali replied in the affirmative. It is unclear whether the alleged torturers were connected with the FBI that raided his home. Mr. Ali was then allegedly placed in solitary confinement for an additional three months after his interrogation.

According to the information received, after his transfer to the United States of America, Mr. Ali was sentenced to an aggregate term of imprisonment of life without parole. His case resulted in two appeals to the United States Court of Appeals for the Fourth Circuit. On 17 April 2006, Mr. Ali was sentenced to an aggregate term of thirty years imprisonment. Both, Mr. Ali and the Government filed a notice of appeal. On 6 June 2008, the Fourth Circuit remanded for a new sentencing hearing (*United States v. Abu Ali*, 528 F. 3d 210 [4th Cir. 2008]). The resentencing was held on 27 July 2009 and resulted in the trial court's imposition of an aggregate term of life without parole. On 1 February 2011, the Fourth Circuit affirmed the sentence (*United States v. Abu Ali*, 410 Fed. Appx.673 [4th Cir. 2011]). It is reported that Mr. Ali's trial was not conducted fairly and that there is currently a motion to vacate his sentence. During the trial, it is reported that the defence brought expert witnesses who testified that the marks on Mr. Ali's back, the unbearable pain in his hands impeding his ability to even hold a pen and that the psychological stress he now experiences are consistent with his claims of being tortured. The defence also presented the 2004 U.S. State Department Report on Human Rights that found that Saudi security officials utilized physical and psychological coercion in the past to extract confessions from detainees. This report directly refutes testimony given by Saudi officials claiming they have a strict policy against torturing their detainees. Nevertheless, it is reported that the jury found Mr. Ali's statements to be given voluntarily and the 2004 U.S. State Department Report on Human Rights was excluded because "the report was irrelevant in that it did not address what happened to Abu-Ali." (Order Dated October 11, 2005; docket #249).

The motion to vacate the sentence is reportedly making four new claims. First, the court erred by not using the 2004 Human Rights report. Second, the Confrontation Clause was violated when the Saudi security force (Mabahith) were permitted to relate the substance of statements made by other detainees regarding Mr. Ali's alleged membership of an Al Qaeda cell. Third, in violation of the Federal Rule of Evidence 602, where witnesses "may not testify to a matter unless evidence is sufficient to support a finding that a witness has personal knowledge of the matter," Saudi officials were allegedly allowed to testify based on hearsay. Fourth, the prosecutor committed misconduct when he asked the jury to put themselves in the petitioner's shoes as to whether they would complain about unacceptable prison standards and stating that Mr. Ali was coming back to the United States to "kill us."

Mr. Ali is currently being detained in the United States Penitentiary, Administrative Maximum Facility ("ADX") in Florence, Colorado. He is allegedly being subjected to prolonged solitary confinement and concern is expressed about his deteriorating mental health. He is reportedly under 23-hour lock down in a 7 by 12 foot cell, and denied reading materials. Letters are allegedly received months after they are sent, and he is only allowed one unscheduled telephone call to his family a month. In 2009, it is reported that Mr. Ali was involved in a hunger strike to protest the poor prison conditions.

Serious concern is expressed about the alleged use of evidence obtained through torture leading to the conviction of Mr. Ali, and about the authenticity of the judicial proceedings and the respect for his minimum due process guarantees. Finally, serious concern is expressed about the prolonged solitary confinement and the reportedly deteriorating mental health conditions of Mr. Ali.

Without in any way implying any conclusion as to the facts of the case, we would like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the allegations outlined above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons under its jurisdiction. 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 and Punishment (CAT). In this connection, we would like to draw attention of your Excellency's Government to article 10, paragraph 1 of the ICCPR, which provides that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

We would like to draw the attention of your Excellency's Government to article 2(2) of the Convention Against Torture, which provides that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. In this regard we note that paragraph 2 of Resolution 16/23 of the Human Rights Council, which "Condemns in particular any action or attempt by States or public officials to legalize,

authorize or acquiesce to torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions, and urges States to ensure accountability for all such acts.”

We wish to draw your Excellency’s attention to General Assembly Resolution 66/171 and Human Rights Council Resolution 19/19, whose paragraphs 1 reaffirms “that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law.”

Regarding use of evidence obtained through torture, we would like to draw the attention of your Excellency’s Government 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 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;”

In this connection, we would also like 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.”

Furthermore, we would like to bring to the attention of your Excellency's Government guideline 12 of the Guidelines on the Role of Prosecutors, which states: “Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.”; and guideline 13, which states: “In the performance of their duties, prosecutors shall: (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination; (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect.”

We would also like to draw your attention to the right to a fair trial as one of the fundamental guarantees of human rights and the rules of law embodied in article 14 of the International Covenant on Civil and Political Rights. Article 14(1) 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. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.”

In his report on the protection of human rights and fundamental freedoms while countering terrorism (A/63/223, para. 31), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism notes that article 14(3)(g) of the International Covenant on Civil and Political Rights is also invoked where “methods violating the provisions of article 7 (torture and any other inhumane treatment) are used in order to compel a person to confess or testify.” In that report, the Special Rapporteur further stresses that the practical implementation of article 14 (3)(g) of the Covenant is dependent on safeguards and procedural rules that ban in law and practice statements made involuntarily (A/63/223, para. 32).

We would also like to refer your Excellency’s Government to the Bangalore Principles of Judicial Conduct, adopted in The Hague in 2002 (E/CN.4/2003/65), and in particular principle 5, which states: “Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.”

With regard to the alleged prolonged solitary confinement of Mr. Ali, we would also like to draw the attention of your Excellency’s Government to paragraph 6 of General Comment No. 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the ICCPR (adopted at the 44th session of the Human Rights Committee, 1992). In this regard, we would also like to draw your attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that “efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged” (adopted by the General Assembly by resolution 45/111 of 14 December 1990). In addition, we would like to draw the attention of your Excellency’s Government to my interim report to the General Assembly of 5 August 2011 (A/66/268) stating that where the physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering, when used as a punishment, during pre-trial detention, indefinitely, prolonged, on juveniles or persons with mental disabilities, it can amount to cruel, inhuman or degrading treatment or punishment and even torture. Paragraph 26 of the report states that, “of particular concern

to the Special Rapporteur is prolonged solitary confinement, which he defines as any period of solitary confinement in excess of 15 days. He is aware of the arbitrary nature of the effort to establish a moment in time which an already harmful regime becomes prolonged and therefore unacceptably painful. He concludes that 15 days is the limit between “solitary confinement” and “prolonged solitary confinement” because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible.”

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:

1. Are the facts alleged in the summary accurate?
2. Please provide information about the legal grounds and the reasons for Mr. Ali’s solitary confinement at the ADX United States Penitentiary.
3. Please provide information on measures taken by your Excellency’s Government to ensure that Mr. Ali is not being subjected to prolonged solitary confinement and the measures taken to assure adequate medical treatment to maintain Mr. Ali’s mental health.
4. Please provide information on measures taken by your Excellency’s Government to reduce the use of solitary confinement and to abolish prolonged solitary confinement and other extreme isolation practices within the penitentiary system.
5. Please provide information on steps taken by your Excellency’s Government to define a maximum term beyond which solitary confinement would be considered prolonged and therefore banned.
6. Please provide information on your Excellency’s Government’s assessment of the conditions and alleged interrogation practices of the Mabath, or the Saudi security forces in the prisons of Medina and Riyadh.

We would appreciate a response within sixty days. Your Excellency’s Government’s response will be made available in a report 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. Ali 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 my highest consideration.

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Special Rapporteur on the independence of judges and lawyers

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