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**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 Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: UA G/SO 218/2 G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (53-24)  
SAU 8/2012

25 May 2012

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 situation of human rights defenders; 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, 16/5, 17/2, 17/5, 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning allegations concerning the arbitrary arrest and torture in detention of Mr. **Ahmed El-Sayed**, and false charges being brought against him.

Mr. Ahmed El-Sayed is an Egyptian human rights lawyer who represents a number of Egyptian citizens who have allegedly been detained arbitrarily in Saudi Arabia.

According to the information received:

On 17 April 2012, Mr. El-Sayed was detained upon arrival at Jeddah Airport. It is reported that Mr. El-Sayed's wife, who accompanied him on his trip, was informed by Saudi authorities that Mr. El-Sayed had been tried in absentia and sentenced to one year's imprisonment and 20 lashes for insulting the King of Saudi Arabia.

It is alleged that Mr. El-Sayed was subjected to physical and mental torture while detained in Zahban Prison, including being beaten in different parts of the body. It

is further alleged that on 21 April, during an interrogation in which he was subjected to torture, Mr. El-Sayed confessed to drug trafficking.

Reportedly, on 24 April, the Saudi Embassy in Egypt issued a statement denying that Mr. El-Sayed had been arrested for insulting the King, claiming instead that he had been arrested for having 21,380 Xanax tablets in his possession. Sources indicate that the use or distribution of Xanax is prohibited in Saudi Arabia, and the death penalty can be imposed on those convicted of possession of drugs.

It is communicated that Egyptian officials at Cairo Airport have declared that Mr. El-Sayed's luggage was searched before he boarded the plane, and that no drugs of any kind were contained therein.

According to reports, Mr. El-Sayed is currently on trial. It is reported that his Saudi lawyer has been prevented from representing him and that the Saudi authorities have appointed another lawyer to him against his will.

Reportedly, the most recent hearing of Mr. El-Sayed's trial was heard on 23 May 2012. It is alleged that the prosecution have asked the Court to sentence Mr. El-Sayed to death, and a verdict is expected to be delivered on 29 May.

Grave concern is expressed for the physical and psychological integrity of Mr. El-Sayed, particularly in light of the allegations of torture and the possible imposition of the death penalty. Further concern is expressed that the alleged arbitrary arrest and torture of Mr. El-Sayed and the alleged false charges against him may be directly related to his legitimate work in the defence of human rights, particularly the legal assistance which he provides to Egyptians who are allegedly arbitrarily detained in Saudi Arabia.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned person is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his/her/their 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).

In this connection, we would also like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular to the Principle 6, which states that "the principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected."

Furthermore, with regard to concerns expressed regarding the alleged charges brought against Mr. El-Sayed we would 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 to Principle 16, which provides that "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".

Moreover, we would like to draw the attention of your Excellency's Government to Principle 12 of the Guidelines on the Role of Prosecutors, which states that "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, as well as to Principle 13, which provides that "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".

With regard to the legitimate activity of Mr. El-Sayed as a human rights lawyer, carried out reportedly through providing legal assistance in defense of human rights, we would like to draw the attention of Your Excellency's Government to 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 held at Havana, Cuba, from 27 August to 7 September 1990. In particular, we would like to refer to the Principle 16, which provides that "Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics"; as well as Principle 17, according to which "Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities" and Principle 18, which states that "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions".

In addition, regarding the alleged violation of the right to be assisted by a lawyer we would like to refer your Excellency's Government to Principles 1 and 5 of 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, which provide that "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 that “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence”, respectively.

Regarding the allegation of possible imposition of the death penalty for an alleged possession of drugs, we would like to draw your Excellency’s Government’s attention to Safeguard 5 of the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty which provides 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”. Moreover, Safeguard 1 of the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty. It provides that “in countries which have not abolished the death penalty, capital punishment may be imposed only for most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequence” (UN ECOSOC Resolution 1984/50 of 25 May 1984). As observed in a report of the Special Rapporteur on extrajudicial, summary or arbitrary executions to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). The crime allegedly committed by Mr. El-Sayed had no lethal or other extremely grave consequences. We therefore urge your Excellency’s Government to take all necessary measures to prevent the imposition of the death penalty to Mr. El-Sayed.

While we do not wish to prejudge the accuracy of these allegations, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the case of the person 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), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context, we would like to draw the attention of your Excellency’s Government 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.”

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of the person 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 UDHR, the CAT.

We would like to draw your Excellency's Government's attention to article 15 of the Convention against Torture 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".

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 9 para. 3 point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in

violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In view of the urgency of the matter, we urge your Excellency's Government to refrain from executing Mr. El Sayed and would appreciate a response on the initial steps taken by your Excellency's Government to safeguard his rights 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 above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. 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.
4. Please provide the full details of the legal basis for the charges that have been brought against Mr. El-Sayed.
5. Please provide details as to whether the above information concerning the trial and charges against Mr. El-Sayed is accurate, and provide information concerning all ongoing and future proceedings related to his case.
6. Please indicate whether Mr. El-Sayed has access to his family, legal counsel of his choosing, and medical personnel.
7. Please provide information concerning access of human rights monitors and independent civil society representatives to Zahban Prison.
8. Please provide information on the measures undertaken to ensure that any statement on confession obtained under torture is excluded from judicial proceedings.

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 the above mentioned person 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

Margaret Sekaggya  
Special Rapporteur on the situation of human rights defenders

Gabriela Knaul  
Special Rapporteur on the independence of judges and lawyers

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