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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; the Independent Expert on the situation of human rights in the Sudan; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and Working Group on the issue of discrimination against women in law and in practice;

REFERENCE: UA G/SO 218/2 G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (89-15) G/SO 214 (53-24) Sudan
SDN 6/2012

5 September 2012

Excellency,

We have the honour to address you in our individual 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; Independent Expert on the situation of human rights in the Sudan; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice pursuant to Human Rights Council resolutions 15/18, 15/23, 17/2, 17/5, 18/16, 16/23, and 16/7.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding a woman who has been sentenced to death by stoning for alleged adultery, Ms. **Layla Ibrahim Issa**.

According to information received:

On 10 July 2012, Ms. Layla Ibrahim Issa, a 23-year old Sudanese woman resident of South Kordofan, was allegedly sentenced to death by stoning by the Mayo court in Khartoum, on charges of adultery under article 146 of Sudan's 1991 Criminal Code (Decision No. N/A/15/execution/2012). The case of adultery was reportedly brought against Ms. Ibrahim Issa by her husband, who claimed her 6 month old child is not his.

It is reported that the court did not brief Ms. Ibrahim Issa about her rights, that she did not have access to a lawyer during her trial in contradiction of Article 135 of the 1991 Criminal Procedure Act, and that she was convicted based on her alleged confession. She is reportedly now detained in Omdurman Women's Prison in shackles together with her 6-month old baby. An appeal has been filed against the conviction and sentence.

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 her right not to be deprived arbitrarily of her life and 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) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

Furthermore, we would like to recall that article 6(2) of the ICCPR, to which Sudan acceded to on 18 March 1986, provides that “in countries which have not abolished the death penalty”, the “sentence of death may be imposed only for the most serious crimes”. In interpreting article 6(2) of the Covenant, however, the Human Rights Committee has consistently rejected the imposition of a death sentence for offences that do not result in the loss of life, finding only cases involving murder not to raise concerns under the most serious crimes provision. Similarly, the Committee has observed that the restriction encapsulated in that phrase cannot be interpreted as permitting the imposition of the death penalty “for crimes of an economic nature, for corruption and for adultery, or for crimes that do not result in loss of life” (CCPR/C/28/Add.15, 3 August 2003, paragraph 8). As the Special Rapporteur on Extrajudicial Executions observed in a report 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).

We would also like to remind your Excellency's Government that the death penalty must be regarded as an extreme exception to the fundamental right to life, and must, as such, be interpreted in the most restrictive manner. Accordingly, it is crucial that all fair trial and other protections provided for in international human rights law are fully respected in proceedings relating to capital offences. These minimum fair trial guarantees are set forth inter alia in article 14 (3) of the ICCPR. It states: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...] (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; [...] (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it. [...] (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

In this context, we would further like to refer your Excellency's Government to article 14(1) of the ICCPR, which 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.”

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 endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular principle 6, which states: “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.” Principle 5 of the Bangalore Principles of Judicial Conduct, adopted in The Hague in 2002 (E/CN.4/2003/65), also states: “Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.”

Furthermore, we would like to refer your Excellency's Government to article 14(3) of the International Covenant on Civil and Political Rights, which states: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;” and “(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”

The right to be assisted by a lawyer is also set forth in 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, Havana, Cuba, 27 August to 7 September 1990, in particular in principle 1, which states: “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”; principle 5, which states: “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”; and principle 7, which states: “ Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”

Principle 2 of the Basic Principles on the Role of Lawyers, further states: “Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.”

We would moreover like to recall that, as a State Party to the ICCPR, your Excellency's Government has undertaken to ensure equality between men and women in the enjoyment of all civil and political rights, including the right to life and the right not to be subjected to torture or to cruel, inhuman or degrading punishment. We would like to refer to article 4 (j) of the United Nations Declaration on the Elimination of Discrimination against Women which states that “all appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women.” In this regard, the criminalization of adultery reinforces patriarchal family systems and disproportionately impacts women

Further, article 4 (c) and article 4 (d) of the United Nations Declaration on the Elimination of Violence against Women, notes the responsibility of states to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms. (adopted by General Assembly resolution 48/104 on 20 December 1993). According to the UDHR and ICCPR, each Government has the obligation to protect the right to physical and mental integrity of all persons.

Finally, we would like to take this opportunity to inform your Excellency's Government that we consider that the offence of adultery, though it may constitute a matrimonial offence, should not be regarded as a criminal offence punishable by death, stoning or imprisonment. Therefore, we call on your Excellency's Government not to execute Ms. Ibrahim. It is our view that the criminalization of sexual relations between consenting adults should be regarded as an interference with the privacy of the individuals concerned in violation of article 17 of the ICCPR which provides that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, not to unlawful attacks on his honour and reputation".

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, as well as your observations on the following matters:

1. Are the facts alleged in the above summaries accurate?
2. Please indicate the current status of the appeal filed on behalf of Ms. Ibrahim Issa.
3. Please confirm the legal grounds for the arrest and detention of Ms. Ibrahim Issa and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
4. Please provide statistics as to the number of persons sentenced to death and the number executed in the past three years for the offence of adultery. In particular, indicate how many men and how many women were sentenced to death and executed for the offence of adultery.
5. Please provide information on how the trial of Ms. Ibrahim Issa respected the fundamental principles of fair trial and due process, as enshrined, inter alia, in article 14 of the ICCPR, the Basic Principles on the Independence of the Judiciary, and the Basic Principles on the Role of Lawyers.

We undertake to ensure that your Excellency's Government's response is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response on the above questions, we would urge your Excellency's Government to ensure that Ms. Ibrahim Issa is provided with independent, competent legal counsel, and that the appeal proceedings comply with the principle of fair trial and due process. Pending this, we entreat your Excellency's Government to immediately ensure a stay of execution and the release of Ms. Ibrahim Issa.

On the long-term, we would also encourage your Excellency's Government to engage in a comprehensive review of the provisions of Sudan's 1991 Criminal Code with a view to removing all provisions that discriminate against, or have a discriminatory impact on women, including those regarding adultery in accordance with Sudan's own constitutional provision on the right to equality and non-discrimination on the ground of sex. Furthermore, such review should render domestic legislation in conformity with the norms of the ICCPR, including its article 6 (2) on the imposition of the death penalty. We further encourage your Excellency's Government to consider becoming a State party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Lastly, 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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Mashood Baderin
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