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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 extrajudicial, summary or arbitrary executions.

REFERENCE: UA G/SO 218/2 G/SO 214 (33-27) YEM 1/2013

7 February 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 extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 15/18 and 17/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the case of Mr. **Muhammad Abdul Wahhab Faysal al-Qassem**, an alleged juvenile offender, who may be at risk of execution in Yemen.

We would like to draw the attention of your Excellency's Government to the urgent appeal sent on 14 December 2012, by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences regarding the risk of execution of 23 alleged juvenile offenders and the execution of two other reported juvenile offenders in Yemen in 2012. A reply to this communication is still awaited from your Excellency's Government.

According to the information received:

Mr. Muhammad Abdul Wahhab Faysal al-Qassem was sentenced to death on 14 February 2005 by the Court of First Instance in Ibb, Yemen, under charges of murder of a man allegedly committed in February 1998. Mr. Faysal al-Qassem's death sentence was reportedly upheld by an appeal court in February 2009, confirmed by the Supreme Court in February 2012, and recently ratified by the President of Yemen.

It is reported that the General's Prosecutor's Office informed Mr. Muhammad Abdul Wahhab Faysal al-Qassem that he will be executed on Sunday, 10 February 2013. Mr. Muhammad Abdul Wahhab Faysal al-Qassem is currently held in Ibb prison, and was reportedly informed at the end of January 2013 that he was given two weeks to see his family, write a will, and seek pardon from the family of the victim he is alleged to have killed. On 6 February 2013, the President of Yemen reportedly ordered the suspension of the execution, although it is unclear whether the suspension is temporary or indefinite.

It is alleged that Mr. Muhammad Abdul Wahhab Faysal al-Qassem might have been a minor at the time of commission of the offence, and that his age at that time is still disputed. According to Mr. Muhammad Abdul Wahhab Faysal al-Qassem, he was less than 18 years old at the time of the alleged offence. The Court reportedly determined that he was over 18 years old at that time on the basis of falsified copies of his school reports and a medical examination in 2004 that Mr. Muhammad Abdul Wahhab Faysal al-Qassem claims did not take place. It is further reported that the Court held that the copies of the birth certificate presented by the defendant were forged.

We are also informed that an official medical examination committee was created in 2012 in Yemen to determine the age of alleged juvenile offenders. The case of Mr. Muhammad Abdul Wahhab Faysal al-Qassem was reportedly not reviewed by this committee.

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 Mr. Muhammad Abdul Wahhab Faysal al-Qassem for an offence that he had allegedly committed at a juvenile age, which is in contravention of international human rights law. We are also concerned that the evidence used in court to determine his age is disputed and may lack sufficient elements upon which the age of the defendant at the time of the alleged offence could be established.

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 Mr. Muhammad Abdul Wahhab Faysal al-Qassem, 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 Mr. Muhammad Abdul Wahhab Faysal al-Qassem, and to commute without delay the death sentence imposed against him.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the said person 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 (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

As stated in our previous communication of 14 December 2012, any judgments imposing the death sentence and executions of juvenile offenders are incompatible with the international legal obligations undertaken by your Excellency's Government under various instruments. Article 37(a) of the Convention on the Rights of the Child (CRC), that the Government of Yemen ratified on 1 May 1991, expressly provides that capital punishment shall not be imposed for offences committed by persons below eighteen years of age. In addition, article 6(5) of the ICCPR, that the Government of Yemen acceded to on 9 February 1987, provides that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age.

The Committee on the Rights of the Child has observed in its General Comment No. 10 on children's rights in juvenile justice that "Article 37 (a) of CRC reaffirms the internationally accepted standard (see for example article 6 (5) of ICCPR) that the death penalty cannot be imposed for a crime committed by a person who at that time was under eighteen years of age. It means that a death penalty may not be imposed for a crime committed by a person under eighteen regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction."

Furthermore, the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, adopted by the Economic and Social Council resolution 1984/50 of 25 May 1984, provides under article 3 that "persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death". Safeguard 4 further stipulates that "capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts".

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. Please provide information concerning the legal grounds for the imposition of the death penalty against Mr. Muhammad Abdul Wahhab Faysal al-Qassem, and indicate how they comply with the international human rights law provisions, prohibiting the imposition and implementation of the capital punishment against juvenile offenders. Please also provide information regarding the evidence used to determine his age at the time of the alleged offence.

3. Please provide information concerning the legal grounds for the detention of Mr. Muhammad Abdul Wahhab Faysal al-Qassem, and indicate how this measure is compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.

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

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions