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HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the independence of judges and lawyers; 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 capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 16/16, 17/2, 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 alleged torture and ill-treatment of Mr. **Shawki Ahmad Sharif Omar** by Iraqi officials in the Karkh Prison, Iraq, and the alleged use of evidence obtained under torture, incommunicado detention at an unknown location since 21 May 2013 and arbitrary detention since 24 June 2010 after completion of his sentence.

According to the information received:

Mr. Shawki Ahmad Sharif Omar, born in 1961 in Kuwait, with Jordanian and United States of America (US) citizenship, took up residence in the US in 1980 and studied mechanical engineering. After the US invasion in Iraq, he reportedly left for Iraq, hoping to find a well-paid job in the context of the efforts to rebuild the country's infrastructure. He lived in Al Zayouna district, behind Al Rubiyah Street in Baghdad.

In October 2004, Mr. Omar was arrested along with his then pregnant wife by US soldiers at their home, reportedly as the result of an anonymous complaint. Subsequently, he was allegedly held incommunicado for two weeks. It is reported that his family was given no information about his fate or whereabouts. It is also reported that Mr. Omar has never been able to establish where he was taken during this period. Mr Omar later reported that he had been held in a tiny room for about a week before interrogation sessions started. During the interrogation sessions, he was reportedly questioned about his alleged links to members of the

Iraqi insurgent movement. He was repeatedly tortured and ill-treated by means, inter alia, of electric shocks and simulations of drowning. He was beaten in front of his wife and the US security personnel further threatened to rape his wife in front of him.

According to the information received, Mr. Omar's wife was released after two weeks and he was transferred to Camp Cropper (today known as Karkh Prison) and then to Abu Ghraib Prison (reopened as Baghdad Central Prison) with a period of several months of detention in the US army base Camp Bucca close to Umm Qasr in the south of Iraq. Only months before the withdrawal of the US troops from Iraq, he was reportedly handed over to the Iraqi authorities in July 2011 and was taken back to Karkh Prison. Mr. Omar reportedly opposed this transfer to Iraqi jurisdiction for fear of torture and ill-treatment.

It is reported that while still being held in US-controlled facilities, he was sentenced to 15 years imprisonment for illegal entry to Iraq following an allegedly grossly unfair trial before the Central Criminal Court in Iraq on 24 June 2010. The sentence allegedly relied on statements extracted under torture from him and third persons, some of whom reportedly later withdrew their statements made in court.

It is furthermore reported that although Mr. Omar was able to mandate a lawyer for his defence, he was only able to communicate with him sporadically, which made the preparation of the defence difficult. In addition, the hearing at which his sentence was pronounced was allegedly suddenly brought forward by three weeks without any explanation. The change in schedule was allegedly not communicated to the lawyer, reportedly making it impossible for him to attend the hearing.

Mr. Omar was reportedly able to submit an appeal and the Court of Cassation decided at the beginning of 2011 to reduce his sentence to seven years imprisonment. Having completed the seven-year sentence in October 2011, his current detention is allegedly devoid of any legal basis and therefore arbitrary for the last 19 months.

According to new information received:

At the end of November and the beginning of December 2012, Mr. Omar was reportedly taken in for new interrogations, again about his alleged implication in terrorist networks. He was allegedly subjected to severe beatings and was threatened by security personnel that he would be transferred to a secret detention facility for even harsher treatment.

It is also reported that subsequently in January 2013, around 25 detainees of Karkh Prison were transferred out of the prison and that their fate and whereabouts were unknown at the time.

It is alleged that violence against inmates in Iraqi detention facilities is increasing. Information has been received that in the same prison, detainees were seen coming out of questioning sessions with fractured bones and burns.

On 19 May 2013, Mr. Omar's cell was reportedly violently searched by several prison guards, who broke his fan and television. In protest against this, Mr. Omar allegedly refused to drink although his health was already of concern before he announced he would stop drinking, as he had gone on hunger strike several weeks earlier.

On 21 May 2013, Mr. Omar was reportedly removed from his cell and taken to an unknown location. Family members contacted the prison authorities right after the transfer but were reportedly denied further information. Given the alleged previous torture, ill-treatment and threats voiced against Mr. Omar, concerns are raised that he is currently at high risk of torture and ill-treatment.

Serious concern is expressed concerning the alleged torture and ill-treatment of Mr. Omar. Serious concern is also expressed concerning the alleged use of evidence obtained under torture before the Iraqi Central Criminal Court. Serious concern is further expressed about the transfer of Mr. Omar to an unknown location and the alleged refusal of prison authorities to provide information to his family, as well as the subsequent imminent risk of torture and ill-treatment. Similar concerns are raised with regard to the ongoing detention of Mr. Omar without legal grounds.

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 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).

We should also like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Omar. 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 ICCPR, which your Excellency's Government ratified on 25 January 1971 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which your Excellency's Government acceded to on 7 July 2011.

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."

We would also like to draw the attention of your Excellency's Government to article 2(2) of the CAT, 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 would also like to draw the attention of your Excellency’s Government to paragraph 8b of Human Rights Council Resolution 16/23, which reminds States that “Prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person and to ensure that secret places of detention and interrogation are abolished.”

Furthermore, we would also like to draw the attention of your Excellency’s Government to article 15 of the CAT, which 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 would also like to 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;”

We would like to draw the attention of your Excellency’s Government to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Excellency’s Government’s attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States “(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”

With regard to the right of access to a lawyer, 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 defense and to communicate with counsel of his own choosing.” In its General Comment No. 32, the Human Rights Committee further indicated that: “Adequate facilities’ must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory.”

In relation to the allegations according to which the fate and whereabouts of Mr. Shawki Ahmad Sharif Omar are unknown, we would like to bring to your Excellency’s Government’s attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which sets out necessary protection by the State, and in particular:

- article 2 (no State shall practice, permit or tolerate enforced disappearances);
- article 7 (No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances); and
- article 10 (right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest).

In the event that your investigations support or suggest the above allegations to be correct, we urge your Excellency’s Government to take all necessary measures to guarantee that the right of physical and mental integrity of Mr. Omar and accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

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 of the cases accurate?
2. Please provide information on the fate and whereabouts of Mr. Omar.
3. Please provide the details, and where available the results, of any investigation, medical examinations, 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 any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

5. Please provide information concerning the legal grounds for the continuing detention of the abovementioned person and how such measure is compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.

6. Has compensation been provided to the victim or the victim's family?

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 note that a communication shall be addressed to the United States of America by the pertinent Special Procedures according to their mandates and methods of work.

Please accept, Excellency, the assurances of our highest consideration.

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Olivier de Frouville
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