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31 May – 18 June 2010

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Item 3 / Interactive Dialogue with the Special Rapporteur
on the Independence of Judges and Lawyers

3 June 2010

Joint NGO Oral Statement By

Union of Arab Jurists, The International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), Arab Lawyers Union, North-South XXI, General Federation of Iraqi Women, General Arab Women Federation

Mr. President, Mme Special Rapporteur on the independence of judges and lawyers, distinguished representatives of States and Civil Society,

We would firstly like to thank the Special Rapporteur for her report and reiterate our commitment to support her valuable work.

Mme Special Rapporteur, as you mentioned in your report, the visits request for Iraq is pending since 2008 despite the numerous appeals made by your predecessor and by yourself and despite reiterated concerns over death sentences imposed by the Iraqi High Tribunal and Special Court in the general context of absence of guarantee of independence and impartiality which are the necessary conditions of a fair trial.

This was already stressed by the United Nations in several official statements. In May 2008, the former UN Special Rapporteur on the Independence of Judges and Lawyers stated his strong objections regarding the conduct of these courts. According to the Special Rapporteur, the trials of these courts have violated international standards on due process and violated human rights standards and principles, in particular the right to be tried by an independent and impartial tribunal and the right to adequate defense as stipulated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.^[i]

We wonder why the special Rapporteur didn't continue examining the behavior of these courts, as her predecessor did, bearing in mind that these courts are continuing today in prosecuting Iraqis without any respect to the minimum human rights standards. The Special Rapporteur on extra judicial, summary or arbitrary executions has stated similar positions in this regard^[ii].

It is also worthy to mention here the position of the former UN High Commissioner in her legal opinion of 8 Feb. 2007, in which she described the violations that occurred in the trials of these courts.^[iii]

Mme Special Rapporteur, as you noted in your report, it is fundamental in order to provide a fair, independent and impartial justice among peoples to respect minimum standards of procedure and to guarantee the independence of judges and lawyers from any political or ideological party. In this context we would like to express our deep concerns on the current situation faced by Iraqi citizen while facing criminal charges. The reintroduction and extension of the scope of the death penalty added to the deterioration of the judiciary and the prevalence of arbitrary procedures and unfair trials, which was a matter of great concern to a large number of delegations during the last UPR session.

In view of the above, we urge the Special Rapporteur to investigate the conduct of these courts in accordance with her mandate, taking into account the reports of the United Nations Assistance Mission to Iraq, the information provided by NGOs, as well as, families and lawyers of those facing these trials. It should be stressed that the above mentioned courts must be stopped from executing innocent Iraqis because they are the production of the American invasion and occupation, bearing in mind that International Humanitarian Law applicable to occupying powers prohibits the creation of new or special courts or tribunals and the manipulation of the existing system of law in order to protect innocent civilians from arbitrary actions.

Thank you.

3 June 2010

[i] - Reports and statement by the UN Special Rapporteur on the independence of judges and lawyers <http://www2.ohchr.org/english/issues/judiciary/index.htm>

[ii] - Reports and statements by The Special Rapporteur on extrajudicial, summary or arbitrary executions can be found in this link: <http://www2.ohchr.org/english/issues/executions/index.htm>

[iii] Opinion of the High Commissioner: <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/0C7D1ECC70EA129CC125727D00525A58?opendocument>