

(Translated from Arabic)

**Permanent Mission of the Kingdom of Saudi Arabia
Geneva**

Reply to the letter of the former High Commissioner for Human Rights (27 September 2018), concerning the defendants Israa al-Ghomgham, [REDACTED] responding to memorandum UA SAU 11/ 2018 (10 October 2018) from the Special Rapporteurs on the subject of Israa al-Ghomgham.

1. Case of Ms. Israa bint Hassan al-Ghomgham, arrested on 24 Safar 1437 AH (6 December 2015);
2. Case of [REDACTED]
3. Case of [REDACTED]
4. Case of [REDACTED]
5. Case of [REDACTED]

Arrest warrants were issued against the above by the competent authority pursuant to article 4 of the Counter-Terrorism and Terrorism Financing Law (2013), which stipulates: “The Minister of the Interior may issue a warrant of arrest against anyone suspected of committing any of the crimes provided for in this Law.” They were detained pursuant to article 2 of the Law, which stipulates: “Crimes of terrorism and terrorism financing are held to be major crimes requiring detention” and article 5, which stipulates: “The investigating body may detain any person accused of a crime provided for in this Law for a period or successive periods of not more than six months in total and may extend such period(s) for a further six months if required by the investigation. In cases requiring a longer period of detention, the matter shall be referred to the Specialized Criminal Court to decide on the extension.”

Ms. Israa al-Ghomgham was charged with committing several crimes, including:

- Membership of a terrorist entity with links to a hostile, terrorism-supporting State that seeks to cause chaos, unrest and riot in the Kingdom; inciting sectarian strife; and receiving training courses in this hostile State in ways and means of achieving these goals;
- Producing, transmitting and storing materials designed to violate public order, which are criminal acts punishable under article 6(1) of the Anti-Cyber Crime Law, which stipulates: “Anyone who commits one of the following cybercrimes shall be sentenced to a term of imprisonment of not more than five years and/ or a fine of not more than three million riyals: (1) The production, transmission or storage of material with the intention of violating public order, religious values, public morals or privacy, by means of the internet or computer systems.”
- The crime of forgery, criminalized and punishable under article 8 of the Anti-Forgery Law (2013), which stipulates that anyone who forges a document attributed to a public body or an employee thereof in his professional capacity or to a subject of public international law or an employee thereof in his professional capacity shall be sentenced to a term of imprisonment of between of between one and five years and a fine of not more than 500,000 riyals.



The others – [REDACTED] – were charged with committing several crimes, including:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

They were questioned by the competent body and, after making a confession, which was accepted as lawful by the court, they were charged and the case file forwarded to the competent court by the public prosecutor, pursuant to article 15 of the Law of Criminal Procedure, which stipulates: “Pursuant to its law, the Bureau of Investigation and Public Prosecution shall have jurisdiction to initiate and pursue criminal actions before the competent courts.” Article 126 of the same Law stipulates: “If, upon completion of the investigation, the Bureau of Investigation and Public Prosecution believes that there is sufficient evidence against the accused, the case shall be brought before the competent court and the accused summoned to appear.” Article 26 of the Counter-Terrorism and Terrorism Financing Law (2013) stipulates: “If multiple interrelated crimes have been committed, one of which is a crime stipulated in this Law, the specialized court shall have jurisdiction to decide on all the crimes with which the accused is charged unless decided separately prior to being filed with the said court.” Article 3(b, c) of the Bureau of Investigation and Public Prosecution Law stipulates: “The Bureau shall have jurisdiction, in accordance with the law and as set out in the implementing regulations, to take action in respect of an investigation by bringing legal action or closing the case, and to prosecute cases before the courts.”

Upon appearing in court for the first hearing, the charges were read out to the defendants. The public prosecutor asked the court for a prison sentence and fine for Israa

al-Ghomgham, together with confiscation of the means used in committing the crime; he did seek the death penalty for her. However, the public prosecutor asked for the death sentence for the others as a discretionary punishment. They were given a copy of the charge sheet, pursuant to article 160 of the Law of Criminal Procedure, which stipulates: "During the hearing, the court shall inform the accused of the offense of which he is charged. The indictment shall be read and explained to him and he shall receive a copy thereof. The court shall then ask the accused to respond." The defendants asked for time to present their replies to the public prosecutor's charge and the judge informed them that they have the right to appoint an attorney or representative to defend them, pursuant to article 4(1) of the Law of Criminal Procedure, which stipulates: "Accused persons shall have the right to seek the assistance of an attorney or a representative to defend them during the investigation and trial stages." If they lack the financial ability to engage counsel, they have the right to ask for a defence attorney at State expense, pursuant to article 139, which stipulates: "In respect of major crimes, the accused shall personally appear before the court, without prejudice to his right to seek defence counsel. If he lacks the financial capacity to engage counsel, he may ask the court to appoint a lawyer to defend him at State expense, as stated in the regulations. In respect of other crimes, the accused may be represented by an agent or attorney to present his defence. In all cases, the court may order the accused to appear in person."

The defendant Israa al-Ghomgham asked for two attorneys to defend her in this case; the defendant [REDACTED], the defendant [REDACTED] and the defendant [REDACTED]. The defendant [REDACTED]. All the defendants requested that the next hearing be adjourned for three months to enable them to meet with their attorneys; their demands were met. Their case is still under judicial consideration.

The aforementioned have received their statutory rights, such as visitation, contact with the outside world, health and medical treatment, in accordance with the laws of the Kingdom.

Regarding the High Commissioner's concern at the charges brought against the defendants as a result of their participation in public demonstrations, representing a grave violation of their fundamental rights to freedom of opinion and expression, freedom of assembly and freedom to form associations, and his concern that the defendants were not granted their right to a fair trial,

What happened in the Eastern Province had nothing to do with public demonstrations, peaceful assembly or freedom of opinion and expression. It involved a group of terrorists engaged in kidnapping, inciting riots and seeking to provoke the breakdown of security, using explosives, improvised explosive devices, Molotov cocktails, firearms and military-use weapons, such as RPGs, against security personnel, citizens and residents, including women and children in residential areas, threatening the safety of innocent people and putting their lives at risk, all with the aim of killing the greatest number of security personnel and innocent people. A number of civilians and military personnel were killed and injured in those incidents and public and private property was destroyed. Nevertheless, the security forces exercised considerable restraint and treated the terrorists with a high degree of professionalism to ensure the safety of all.

The High Commissioner's concern is unjustified. They are nothing but unfounded and baseless allegations which the rapporteurs have heard. The Kingdom will investigate these allegations and clarify all the facts, in cooperation with international human rights bodies. The laws of the Kingdom prohibit the restriction of anyone's freedom of movement or his detention or imprisonment save under the provisions of the law, pursuant to article 36 of the Basic Law of Governance, which affirms that all citizens and residents on the Kingdom's territory shall enjoy security. Furthermore, article 38 affirms the principle that punishment is personal and that acts may not be criminalized with retroactive effect, stipulating: "Punishment shall be personal. There shall be no crime or punishment save on the basis of sharia or statutory provision and there shall be no punishment save for deeds committed subsequent to a statutory provision coming into effect."

All prisoners and detainees enjoy full rights and guarantees during their term of imprisonment or detention. Indeed, Saudi Arabian prisons operate on the basis of sharia and statutory standards that are consistent with international human rights standards. These safeguard the rights of prisoners and ensure that their family interests are looked after. Oversight and inspection bodies have been created under article 5 of the Law of Imprisonment and Detention to monitor application of the law inside prisons and ensure it is not transgressed. These bodies include the judiciary, Bureau of Investigation and Public Prosecution, Human Rights Commission and National Society for Human Rights. Article 3 of the Law of the Bureau of Investigation and Public Prosecution states that the Bureau shall be competent to oversee and inspect prisons and detention centres, hear complaints from prisoners and detainees, ascertain the legitimacy of their imprisonment or detention and of their remaining in prison or detention centre after expiry of the specified period, take the necessary steps to ensure the release of those imprisoned or detained without lawful cause and enforce the law against those responsible. Under article 39 of the Law of Criminal Procedure, prisoners and detainees have the right to submit, at any time, a written or verbal complaint to the warden of the prison or detention centre and request that he convey it to a member of the Bureau of Investigation and Prosecution. The warden shall accept the complaint and forward it at once, after recording it in a special register; the prisoner or detainee shall receive acknowledgement of receipt. Under article 119, an attorney may visit his client. Furthermore, under article 40, the Bureau of Investigation and Public Prosecution shall facilitate the delivery of complaints by allowing them to be submitted in a number of ways, including via the Bureau's website and social media accounts, as well as by telephone, in writing or in person.

Under article 5(6) of its charter, the Human Rights Commission may visit prisons and detention centres at any time without the permission of the competent body. Under articles 5 and 11, the Commission receives complaints relating to human rights, investigates possible violations, refers these to the competent bodies for the appropriate statutory measures to be applied and monitors action taken.

The National Society for Human Rights (a civil society organization) also visits prisons and detention centres, interviews prisoners and detainees, receives complaints and monitors possible violations, which it follows up with the competent authorities.

In addition to the offices of the Bureau of Investigation and Public Prosecution situated inside prisons, offices have been allocated to the Human Rights Commission and National Society for Human Rights in several prisons to facilitate the exercise of their oversight mandate, which includes receiving complaints from prisoners and detainees, ascertaining their veracity and addressing them promptly and directly.

The laws of the Kingdom guarantee freedom of opinion and expression for everyone unless public order or social values are transgressed or members of society are offended. This restriction has a statutory basis nationally. Thus, article 39 of the Basic Law of Governance obliges all media to use the language of decency, abide by State laws, contribute to the education of the nation and promote unity. Whatever leads to sedition or division or undermines the security of the State is forbidden. This is consistent with international standards, most significantly article 29(2) of the Universal Declaration of Human Rights, which states: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and public welfare" Furthermore, article 43 of the Basic Law of Governance stipulates: "The court of the King and that of the Crown Prince shall be open to all citizens and to anyone who has a complaint or grievance. Each individual shall have a right to address the public authorities in matters that affect him."

As regards the right of assembly, the laws of the Kingdom prohibit any assembly that might undermine the country's security and stability and its national capabilities. The Government of the Kingdom believes that the goals of such assemblies may be achieved in other, more peaceful ways and that existing laws and regulations have the means of attaining the desired outcomes more effectively than by holding demonstrations, inciting riots and creating chaos. Indeed, article 43 of the Basic Law of Governance stipulates: "The court of the King and that of the Crown Prince shall be open to all citizens and to anyone

with a complaint or grievance. Each individual shall have the right to address the public authorities in matters that affect him.”

As regards the formation of associations, the Civil Associations and Organizations Law (2015) contains a set of development and social goals designed to regulate, develop and protect non-governmental work with a view to increasing the benefit thereof, contributing to national development and promoting citizen participation in the management and development of society. The Law underpins the vision of transition from a pastoral to a developmental approach and seeks to foster the culture of voluntary work among members of society and achieve social solidarity. To simplify procedures, it states that an association may be founded by 10 persons and obtain a licence within 60 days of submission of the application papers.

The Kingdom supports societies and institutions that promote and protect human rights in general or particular aspects thereof. In fact, it treats them as key partners in the field of human rights. Examples of this partnership include promulgation of the Law on Protection from Abuse, which was drafted by a civil society organization, the draft Child Protection Law and the involvement of a number of non-governmental and civil society organizations in preparing the Kingdom’s contractual and non-contractual reports.

One of the most prominent human rights organizations is the National Society for Human Rights, which publishes reports dealing with the human rights situation in the Kingdom. Based on its own observations and the complaints and reports of violations it receives, these reports highlight the shortcomings that frustrate full implementation of human rights and the causes thereof. The Society evaluates progress achieved and presents the appropriate conclusions and recommendations. In addition, it prepares studies and issues press statements. In partnership with several other human rights societies and organizations, the Society prepares studies and reports and organises seminars, interactive activities and media events designed to protect and promote specific human rights. The law ensures the independence of its activity and guarantees unfettered exercise of its duties and responsibilities.

The Human Rights Commission organizes numerous courses, conferences, forums and workshops designed to enable human rights workers (both governmental and non-governmental) to acquire the technical capacities to equip them to engage in substantive work in the field of human rights on the basis of international standards and in the light of Islamic sharia.

As regards the death penalty, Islamic sharia protects and safeguards the fundamental human right to life. Governance in the Kingdom is derived from the Quran and Sunna of His Messenger. Thus article 7 of the Basic Law of Governance stipulates: “Governance in the Kingdom of Saudi Arabia derives its authority from the Quran and the Sunnah of His Messenger, both of which govern this Law and all the laws of the State.” Governance is based on the principles and values of justice, consultation and equality. Thus article 8 stipulates: “Governance in the Kingdom of Saudi Arabia shall be based on justice, consultation and equality, in accordance with Islamic sharia.” Islamic sharia seeks to protect and promote human rights. Thus article 26 stipulates: “The State shall protect human rights in accordance with Islamic sharia.” The judiciary in the Kingdom derives its authority and principles from Islamic sharia, which enjoins justice as the foundation of governance and guarantees judicial independence. Thus article 46 of the Basic Law of Governance stipulates: “The judiciary is an independent authority; there shall be no power over judges in their judicial function other than that of Islamic sharia.” Article 1 of the Judiciary Law stipulates that judges shall be independent, with no authority over them in respect of their judicial function save Islamic sharia and the laws of the land; no-one shall interfere with the judicial process. Article 48 of the Basic Law of Governance states that the courts shall apply the provisions of Islamic sharia to the cases before them in a manner consistent with the Quran and Sunnah and such laws not in conflict therewith which the authorities may promulgate. Article 49 states that the courts shall have jurisdiction to adjudicate all disputes and crimes save for cases which fall within the jurisdiction of the Board of Grievances (the administrative judiciary).

It should be noted that the death penalty is only handed down for the most severe crimes and within the strictest limits. It is only carried out after the process of judicial review in three degrees of courts has been completed and all the assurances of a fair trial and just proceedings have been met, in a manner consistent with the Kingdom's international human rights commitments. The law accords particular attention to the death penalty and requires application of a number of mandatory procedures to ensure that the defendant receives a fair trial. These procedures guarantee the soundness of the verdict from initial delivery by the court of first instance to final ruling. The case is heard by three judges sitting in the first degree court (court of first instance). The defendant is accorded his rights, including the right to appoint an agent or attorney and to respond to the charge. Once the initial judgment is delivered, the accused has the right to lodge an appeal in the form of a statement of objection, which must be filed within 30 days of receiving a copy of the judgment. Article 196 of the Law of Criminal Procedure stipulates: "The chamber which delivered the appealed judgment shall review the statement of objection, focusing on the grounds on which the objection is based, without holding a hearing, unless it deemed necessary. The court may uphold or overturn its verdict, as it sees fit. If the court upholds its judgment, the case shall be referred, along with all the case file, statement of objection and all documentation to the court of appeal. If the court overturns the judgment, the appellant and other litigants shall be notified accordingly and normal procedures be applied."

If the judgment is upheld then, after hearing and studying the appeal, the case file shall be sent to the court of appeal, in accordance with article 192 of the Law of Criminal Procedure, which states that the convicted person, prosecutor or claimant of private right may, within the statutory period, scrutinize and appeal judgments delivered by first degree courts. Article 194 stipulates that, in capital cases, the case file must be sent to the court of appeal even if not requested by any of the litigating parties. A special chamber with jurisdiction to hear capital cases in the court of appeal shall consist of five judges. Article 15 (1) of the Judiciary Law stipulates: "The court of appeal shall conduct its business through specialized chambers, each of which shall be composed of three judges, with the exception of the criminal chamber hearing capital cases ... which shall be composed of five judges." If it upholds the judgement, the court of appeal must refer it to the Supreme Court pursuant to article 10 of the Law of Criminal Procedure, which states that judgments delivered or upheld by the court of appeal in capital cases ... shall not be deemed final unless and until upheld by the Supreme Court. A person convicted may petition to have the judgment annulled pursuant to article 198, which states that that the convicted person, public prosecutor or claimant of private right may file a petition before the Supreme Court for a judgement delivered or upheld by the courts of appeal to be annulled.

Death sentences upheld by the court of appeal shall be reviewed by a panel of five judges pursuant to article 10(4) of the Judiciary Law, which stipulates: "The Supreme Court shall exercise its jurisdiction through specialized chambers, as necessary. Each chamber shall be composed of three judges except for a criminal chamber that reviews sentences of death ... which shall be composed of five judges." Article 11(1) of the same law stipulates: "... The review of judgments and decisions delivered or upheld by courts of appeals in capital cases." Sentences are only carried out when judgments have become final, pursuant to article 212 of the Law of Criminal Procedure, which stipulates: "Penal judgments shall not be enforced unless and until they have become final". Under article 210, final judgments are "judgments which have acquired finality by virtue of the absence of an appeal within the statutory period or by being delivered or confirmed by the Supreme Court". Death sentences require an enforcement order to be issued by the King or his representative pursuant to article 217(1) of the Law of Criminal Procedure, which stipulates: "Death sentences ... shall only be executed pursuant to a royal order issued by the King or his authorized representative."

It will be clear from these and other statutory provisions that the Kingdom seeks to enact laws and legislation that guarantee the defendant's access to a fair trial at all stages of criminal proceedings until a judgment is delivered by an independent, specialized judicial body. These assurances are consistent with the international standards which protect the rights of persons facing the death penalty, including those set out in resolution 50/ 1984 (25 May 1984) of the United Nations Economic and Social Council.

The measures taken against the aforementioned are consistent with the Kingdom's obligations under international human rights law and its voluntary undertakings in this regard.
