



Ref. UA SAU 10/2020

No.413/69

The Permanent Mission of the Kingdom of Saudi Arabia to the United Nations Office in Geneva and other international organizations in Geneva presents its compliments to the Special Procedures Branch (OHCHR), and with reference to the joint urgent appeal from special procedures dated 1 July 2020, Regarding the case of Mr. Mohamad Al-Bokari.

The Permanent Mission of the Kingdom of Saudi Arabia has the honour to enclose herewith an information note, comprising the response of the Government of Saudi Arabia to the above-mention case.

The Permanent Mission of the Kingdom of Saudi Arabia avails itself of this opportunity to renew to Special Procedures Branch (OHCHR), the assurances of its highest consideration.

Geneva, 28 August 2020



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Office of the High Commissioner of Human Rights
Special Procedures Branch

(Translated from Arabic)

**Permanent Mission of the Kingdom of Saudi Arabia
to the United Nations Office at Geneva**

Ref.: UA SAU 10/2020

**Reply of the Kingdom of Saudi Arabia to the urgent appeal dated 1 July 2020 from
Special Rapporteurs and Working Groups concerning Mr. ██████████**

**Concerning the request to provide any additional information and any comment on the
allegations**

The allegations and claims in this appeal are inaccurate and based entirely on unfounded and unsubstantiated information from a source. As is borne out by the information below, the Kingdom is looking into these allegations and clarifying all the surrounding facts in line with its policy of cooperation with international human rights mechanisms.

The appeal states that ██████████ has been living in the Kingdom as an undocumented migrant.

The name of the person mentioned is ██████████. He illegally crossed the land border into the Kingdom and took up illegal residence therein.

The appeal states that, since his arrest, the said person has not been able to consult a lawyer, that no specific charges have been brought against him and that he has not been presented before a judge.

This is untrue. After the said person was arrested, his case papers were forwarded to the Public Prosecution Service for investigation. He was informed of his legal rights, including the right of access to a lawyer or legal representative, in accordance with article 22 of the implementing regulation to the Code of Criminal Procedure, which provides that: “On arrest or detention, accused persons shall be informed of the following:

- (a) The reasons for the arrest or detention;
- (b) Their right to seek the assistance of a legal representative or lawyer during investigation and trial;
- (c) Their right to communicate with a person whom they wish to inform of their arrest or detention.”

The said person was informed of the charges against him, in accordance with article 101 (1) of the Code of Criminal Procedure, which provides that: “When accused persons appear for the first time for an investigation, the investigator shall take down all their personal information, inform them of the charge against them and enter in the record any statements that they make on the matter. The investigator may confront the accused with other accused persons or witnesses. Accused persons shall sign their statements after they have been read out to them. If they refuse to do so, the investigator shall make a note of the refusal in the record and of the grounds for the refusal.” After completing its investigation, the Public Prosecution Service considered there to be sufficient evidence to lay charges against the said person, in accordance with article 126 of the Code, which provides that: “If, after completing the investigation, the Public Prosecution Service is of the opinion that there is sufficient evidence against the accused, the case shall be referred to the competent court and the accused shall be instructed to appear before it.” The said person’s case papers were forwarded to the competent court pursuant to article 3 (1) (b) and (c) of the Public Prosecution Act, which states that the Public Prosecution Service is empowered by law to take action in respect of an investigation by bringing legal proceedings or by closing the case and to prosecute cases before the courts in line with its functions as provided in article 15 of the Code of Criminal Procedure, which states that: “The Public Prosecution Service, in accordance with the Public Prosecution Act, shall institute and pursue criminal proceedings before the competent court.”

When the said person attended the court hearing, the charges against him were read out in accordance with article 160 of the Code, which provides that: “The court shall, during



the hearing, inform accused persons of the charge against them, read out and explain the charge to them, provide them with a copy of the charge sheet and ask them to respond to the charge.” The judges informed the said person of his right to respond to the charge orally there and then, or in writing, and to have access to a defence lawyer or legal representative, pursuant to article 4 (1) of the Code, which provides that: “Accused persons may seek the assistance of a legal representative or lawyer to defend them during investigation and trial.” He replied that he had no wish to appoint a lawyer and that he would respond to the proceedings himself. He continued to attend the trial hearings, during which the court heard the statements of the parties and took note of all oral and written pleas, the reports of the evidence collected, and the absence of requests to supplement the existing material. The court then closed the proceedings in his presence after examining the relevant documents in accordance with articles 172 and 173 of the Code. Article 172 stipulates that: “Any litigant may provide the court with written information regarding the case for inclusion in the case file.” Article 173 stipulates that: “The court shall hear the charges against the accused and then the response of the accused or his or her legal representative or lawyer. It shall next hear the civil party’s petition, followed by the response of the accused or his or her legal representative or lawyer. Each party may comment on the statements of the other parties, with the accused being the last to address the court. The court may prevent any party from continuing if its submissions are irrelevant or repetitive. The court shall then deliver an acquittal or a conviction with the imposition of a penalty. In both instances, the court shall also rule on the civil party’s petition.” The said person was proven to have committed cybercrimes punishable under article 6 of the Cybercrime Act by publicly advocating homosexuality through producing a video clip and disseminating it on social networking sites, which is a breach of public order and contrary to the religious values and public morals of Saudi society. He was therefore given a preliminary sentence of imprisonment for a period of 10 months and was provided with a copy of the judgement for the purpose of appeal under article 192 (1) of the Code of Criminal Procedure, which provides that: “The convicted person, the public prosecutor or the civil party may, within the legally prescribed time limit, appeal or request scrutiny of judgments rendered by courts of first instance. The court that renders the judgment shall inform them of this right when delivering the judgment.”

After the judgement was pronounced, the said person requested the court to instruct a lawyer to defend him in this case. The Ministry of Justice therefore appointed a lawyer at State expense, in accordance with article 139 of the Code of Criminal Procedure, and provided the facilities required for the lawyer to deliver legal assistance to the said person. Under article 19 of the Legal Profession Act, all judicial bodies and investigating authorities must provide lawyers with the facilities they need to carry out their duties and must allow them to examine the case documents and be present during the investigation. Lawyers’ requests, furthermore, may not be refused without a legal justification. The Charter of the Saudi Bar Association additionally contains provisions to support the role of lawyers in promoting and protecting human rights.

The lawyer instructed at the said person’s request to defend him prepared a memorandum of appeal against the judgment. When the said person appeared in court, with his lawyer present, he decided not to appeal the judgment and remained adamant in his decision, whereas the prosecutor did appeal it in accordance with article 19 of the Code of Criminal Procedure, which states that: “Judgments in criminal cases are appealable as provided in this Code.” Article 192 (1) of the Code furthermore provides that: “The convicted person, the public prosecutor or the civil party may, within the legally prescribed time limit, appeal or request scrutiny of judgments rendered by courts of first instance. The court that renders the judgment shall inform them of this right when delivering the judgment.” After the memorandum of appeal is submitted, the division that rendered the appealed judgement considers both, in accordance with article 196 of the Code, which provides that: “The division that rendered the appealed judgment shall examine the grounds on which the appeal is based without hearing submissions, unless necessary, and shall uphold or amend the judgment as it sees fit. If it upholds the judgment, it shall refer the case, together with copies of all its records and documents, including the memorandum of appeal, to an appeal court. If the judgment is amended, it shall be communicated to the litigants and shall, in that event, be subject to the applicable rules of procedure.” The case remains under judicial consideration in the court of first instance.

The appeal alleges that [REDACTED] has been repeatedly kicked and slapped to “confess that he is gay” since his arrest and is now being held in solitary confinement.

This is untrue. The said person has not been subjected to torture and is not in solitary confinement. Under the Kingdom’s laws, it is prohibited to inflict physical or mental harm on arrested persons or to subject them to torture or degrading treatment. Accused persons must be questioned in a manner that has no impact on their willingness to give statements and must not be required to take an oath. Nor may they be subjected to coercion, as will be explained later.

The right to challenge the legality of an arrest or detention before a judicial authority is guaranteed under article 115 of the Code of Criminal Procedure, which provides that: “Upon the detention of an accused person, the original detention order shall be handed to the director of the detention centre after the director has signed a copy thereof as an acknowledgement of receipt. Pretrial detainees may file a complaint against the order to detain them or to extend their detention. The complaint shall be submitted to the head of the investigation department to which the investigator belongs, to the head of the branch or to the chief prosecutor, as appropriate, and a decision shall be taken within five days of the date of submission.” The Public Prosecution Service is independent and a part of the judiciary under Saudi law.

1. Concerning the request to provide information on the legal grounds for the arrest and detention of [REDACTED] and explain how these measures are compatible with the Kingdom’s international and regional human rights obligations and, if these were to be in contradiction to the Kingdom’s international and regional human rights obligations, to provide information on the date of his release

The said person was arrested by the police on 13 Sha’ban A.H. 1441 (6 April A.D. 2020) following the issuance of a warrant for his arrest in accordance with article 2 of the Code of Criminal Procedure, which states that: “No person may be arrested, searched, detained or imprisoned, except as provided by law, and no person may be detained or imprisoned except in places designated for such purposes and for a term fixed by the competent authority. It is prohibited to inflict physical or mental harm on arrested persons and to subject them to torture or degrading treatment.” The arrest was also consistent with article 35 of the Code, which provides that: “In cases other than flagrante delicto, no person may be arrested or detained except by order of the competent authority.” The said person was arrested on charges of having committed cybercrimes punishable under the Cybercrime Act by publicly advocating homosexuality through producing a video clip and disseminating it on social networking sites, which is a breach of public order and contrary to the religious values and public morals of Saudi society.

After the police had taken statements from the said person, he was referred to the Public Prosecution Service within 24 hours in accordance with article 34 of the Code, which provides that: “The criminal investigation officer shall promptly take statements from arrested suspects. If there appears to be sufficient evidence to charge the suspects, the officer shall within 24 hours hand them over, together with the arrest report, to the investigator, who shall question them within 24 hours and thereafter order their detention or release.” The said person was informed of his legal rights in accordance with article 22 of the implementing regulation to the Code of Criminal Procedure, as mentioned in reply No. 1, and questioned by the Public Prosecution Service, following which he was detained on a warrant charging him with the commission of a serious arrestable offence under article 112 of the Code. His detention was extended pursuant to article 114 of the Code, which provides that: “Detention shall end after five days unless the investigator sees fit to extend the period of detention. In that event, he shall refer the file, before the expiration of the period, to the head of the branch of the Public Prosecution Service, or to his representative from among the heads of the departments within his jurisdiction, for the issuance of an order to release the accused or to extend the detention for a period or for successive periods not exceeding a total of 40 days from the date of arrest. In cases requiring a longer period of detention, the matter shall be referred to the Attorney General or to his delegated representative for the issuance of an order to extend the detention for a period or for successive periods, none of which may exceed 30 days and the total of which may not exceed 180 days from the date of the arrest of the accused.

Thereafter, the accused shall be directly referred to the competent court or be released. In exceptional cases requiring a longer period of detention, the court may approve a request for the detention to be extended for a period or successive periods as it sees fit and issue a reasoned judicial order to that effect.” After completing the investigation of the said person, the Public Prosecution Service took the view that there was sufficient evidence to charge him and referred his case papers to the competent court, as indicated in reply No. 1.

So-called homosexuality, together with acts and behaviours associated with it, is criminalized and punished under the Kingdom’s laws, which are derived from the provisions of Islamic sharia. Such acts are considered an aberration of instinct and human nature, and their criminalization is not incompatible with general human rights principles. Article 29 (2) of the Universal Declaration of Human Rights states that: “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 the general welfare...”. Article 16 (3) of the Declaration also states that: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” The Human Rights Council, furthermore, advocates the strengthening of cultural diversity worldwide through the adoption of resolutions aimed primarily at the promotion and protection of human rights while taking into account country specificities. Foremost among these are its resolution 21/3 of 9 October 2012, on promoting human rights and fundamental freedoms through a better understanding of traditional values of humankind: best practices, and its resolution 29/22 of 1 July 2015, on protection of the family.

A group of States has opposed resolutions relating to so-called gay rights and, at the twenty-seventh session of the Human Rights Council held in Geneva in 2014, in its statement to the Council on behalf of the States members of the Cooperation Council for the Arab States of the Gulf, the Kingdom placed on record its rejection of and lack of commitment to such resolutions – a position shared by various other States around the world – while emphasizing its commitment to the promotion and protection of human rights. Thereafter, on 3 March 2015, the Council of the League of Arab States, meeting at the ministerial level, adopted its resolution 7902 (143rd ordinary session), which comprehensively rejected Human Rights Council resolution 27/32 of 2 October 2014 on human rights, sexual orientation and gender identity. The Council of Foreign Ministers of the Organisation of Islamic Cooperation also adopted its resolution No. 4/42-C on social and family issues, which likewise comprehensively rejected the same Human Rights Council resolution.

The Kingdom fulfils its international obligations arising from its accession to human rights conventions. The measures taken with respect to the said person are consistent with the Kingdom’s obligations under international human rights law and with related international norms, in particular article 9 of the Universal Declaration of Human Rights, which provides that “[n]o one shall be subjected to arbitrary arrest, detention or exile”, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 on 9 December 1988, principle 2 of which provides that “[a]rrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose”, and principle 4 of which provides that “[a]ny form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority”. Those measures are also consistent with rule 7 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, which provides that “[n]o person shall be received in an institution without a valid commitment order”, and with article 9 (1) of the International Covenant on Civil and Political Rights, which provides that “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

2. Concerning the request to provide information on the measures taken to protect the life, the physical and psychological integrity, and the liberty and security of ██████████, and in particular on the measures considered to prevent his deportation or transfer to a place where his personal security and integrity may be at risk

The said person entered the Kingdom illegally, as indicated in reply No. 1, and the Kingdom takes into account all considerations relevant to his situation, including article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As one of the most important and fundamental rights guaranteed to all human beings, the inherent right to life must be protected from infringement of any kind. The Kingdom has accordingly done its utmost to safeguard the right to life and to provide means of survival and safety for all. Under the Kingdom's laws, it is prohibited to restrict a person's actions or to arrest or detain any person except as provided by law, in accordance with article 36 of the Basic Law of Governance, which affirms that security must be provided for all citizens and residents throughout the country.

3. Concerning the request to provide information on the measures taken to protect ██████████ from torture and cruel, inhuman or degrading treatment, and where available, the results of any investigation, medical examination, and judicial or other inquiries conducted into the allegations of torture and ill-treatment, as well as forced anal examination and, if no inquiries have taken place, or if they have been inconclusive, to explain why

The said person was not subjected to torture and filed no complaint of torture at the time. The Human Rights Commission visited him in his place of detention so as to verify the implementation of current human rights laws and regulations, uncover any infringement of the laws applicable in the Kingdom that constituted a violation of human rights and take corresponding legal measures, in accordance with article 5 (1) of its Statute, and to investigate allegations raised in his regard, in accordance with article 5 (7) of its Statute. The said person alleged that he had been subjected to beatings and verbal abuse by a prison official. The Commission, however, saw no visible signs of any beating or assault. This allegation was referred to the competent authorities (the Public Prosecution Service) for completion of the measures required by law and for follow-up of any measures taken. The Public Prosecution Service investigated these allegations, in accordance with article 3 (1) (f) of the Public Prosecution Service Act, pursuant to which it is empowered to monitor and inspect prisons and detention centres and receive complaints from prisoners and detainees, and found no proof of their veracity. It was also confirmed that the said person was not forced to undergo an anal examination.

The Kingdom's laws prohibit and punish torture and include a series of guarantees and measures to ensure that no detainee or prisoner is subjected to torture, ill-treatment or other cruel, inhuman or degrading treatment. Under article 2 of the Code of Criminal Procedure, it is prohibited to arrest, search, detain or imprison any person except as prescribed by law. No person may be detained or imprisoned except in places designated for such purposes by law and except for the term fixed by the competent authority. It is prohibited to inflict physical or mental harm on arrested persons or to subject them to torture or degrading treatment. Article 36 of the Code further provides that arrested persons must be treated with dignity, must not be subjected to any physical or mental harm, must be informed of the reasons for their arrest and must be permitted to communicate with a person of their choosing to inform them of the arrest. Under article 102 of the Code, accused persons must be questioned in a manner that has no impact on their willingness to give statements and nor must they be required to take an oath, be subjected to coercion or be questioned away from the premises of the investigating authority unless deemed necessary by the investigator.

Article 28 of the Imprisonment and Detention Act affirms that prisoners and detainees may not be subjected to any form of assault and provides for disciplinary action against civil or military officials who commit such acts, without prejudice to any criminal penalties to which they may be liable. Under article 2 (8) of Royal Decree No. 43 of A.H. 1377 (A.D. 1958), it is prohibited for anyone acting in an official capacity to engage in ill-treatment and coercion involving, for example, torture, cruelty, confiscation of assets or denial of personal freedoms. This includes in addition the imposition of exemplary punishment or fines,

imprisonment, expulsion, compulsory residence in a specific location, and unlawful entry to homes. The penalty for such acts is imprisonment for a term of up to 10 years.

All prisons and detention centres in the Kingdom are subject to monitoring and inspection, with necessary measures taken in the event of any violation. Criminal investigation officials are also supervised in the performance of their functions by public prosecutors, as provided in article 25 of the Code of Criminal Procedure.

In the interest of further enhancing oversight and of safeguarding in turn the rights of prisoners and detainees, the Human Rights Commission, pursuant to article 5 (6) and (7) of its Statute, may visit prisons and detention centres at any time without authorization from the competent authority, receive and verify human rights-related complaints, and take corresponding legal measures. The National Society for Human Rights, which is a civil society association, also visits prisons and detention facilities and receives complaints. Offices of the Public Prosecution Service have been opened in several prisons, together in some cases with offices of the Human Rights Commission and the National Society for Human Rights, so that prison conditions can be closely monitored and complaints received on the spot. Under the Kingdom's laws, all States agencies are required to treat individuals fairly, irrespective of religion, race, gender or nationality. Where any such agency, its representative or an individual fails to enforce a right, there are mechanisms in place for providing effective human rights safeguards in accordance with legal procedures. Such mechanisms include the judicial authorities and human rights institutions, both governmental and non-governmental.

The Kingdom is bound by the human rights conventions to which it is a party, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it furthermore considers as part of its laws.

4. Concerning the request to provide information about the measures taken to provide adequate conditions of detention to ██████████ and to ensure his physical and mental health while in detention

The said person is in good health and receives necessary medical care in the same way as other detainees and prisoners, who undergo a medical examination on entering a public prison and have periodic check-ups in accordance with paragraph 5 of the Medical Services Regulation. Medical care is provided to all prisoners and detainees in accordance with article 22 of the Imprisonment and Detention Act. As mentioned earlier in reply No. 3, the Human Rights Commission visited the said person, who stated that he had ██████████ ██████████ and that he had attended the prison hospital on three occasions and received appropriate medical treatment. He was checked by the physician and an electrocardiogram was carried out. Although shown to be well, he had a rapid heart rate and was therefore given an appointment for a further check-up.

5. Concerning the request to explain what safeguards are being taken to protect people against arbitrary interference with their right to privacy and against undue interference in the exercise of their right to freedom of opinion and expression

As previously stated in reply No. 2, it is prohibited under the Kingdom's laws to restrict a person's actions or to detain or imprison any person except as provided by law, in accordance with article 36 of the Basic Law of Governance, which affirms that security must be provided for all citizens and residents throughout the country. The Kingdom's laws also protect freedom of opinion and expression, guaranteeing to all the exercise of their right to that freedom except where prejudicial or detrimental to public order or to society, its members or its firmly established values. This restriction is consistent with relevant international standards, in particular as set out in article 29 (2) of the Universal Declaration of Human Rights, which states that: "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 the general welfare...". It is also consistent with article 19 of the International Covenant on Civil and Political Rights, which provides that everyone has the right to hold ideas without interference and the right to freedom of expression, which may be subject to certain restrictions, including for respect of the rights or

reputation of others and for the protection of national security or of public order or of public health or morals.

6. Concerning the request to indicate what measures have been taken to ensure that human rights defenders in the Kingdom are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment and prosecution of any kind

No one is ever detained for exercising his or her rights and freedoms. All citizens and residents, whether men or women, enjoy their rights and exercise their freedoms without discrimination under the Kingdom's current laws. No group, however named or described, is given preference in the enjoyment of those rights or the exercise of those freedoms. Anyone whose rights are violated may file a complaint in accordance with the available legal remedies. Under the Kingdom's laws, all State agencies are required to treat all individuals fairly, irrespective of religion, race, gender or nationality. Where any such agency, its representative or an individual fails to enforce a right, there are mechanisms in place for providing effective human rights safeguards in accordance with legal procedures. Such mechanisms include the judicial authorities and human rights institutions, both governmental and non-governmental.
