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The Permanent Mission of the Kingdom of Saudi Arabia to the United Nations Office and other international organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights, the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the human rights of migrants, and would like to refer to the latter's joint communication ref: **AL SAU 11/2022** dated **22 November 2022**. The Permanent Mission has the honor to attach herewith the reply of the Saudi Government on the aforementioned communication.

The Permanent Mission of the Kingdom of Saudi Arabia to the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the human rights of migrants the assurance of its highest consecration.



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*(Translated from Arabic)*

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

**UA SAU 11/2022**

**Hussein Abo al-Kheir**

**1. With regard to the request to provide any additional information and any comment you may have on the above-mentioned allegations:**

We wish to state that responses have already been submitted to the allegations and conjectures contained in joint communication US SAU 7/2017, dated 28 July 2017, concerning the case of Hussein Saeed Abo-al-Kheir submitted by a number of thematic mandate-holders, including the authors of this communication, and to the communication received from the Working Group on Arbitrary Detention (WGAD/2021/SAU/Case/4), dated 29 November 2021. The communications addressed most of the allegations and conjectures raised in the communication currently under discussion. The allegations were reviewed and all relevant facts were clarified in detail. In addition, the applicable laws of the Kingdom and the measures taken with respect to the said person's case were specified and shown to be consistent with international human rights principles and norms. The foregoing facts should be taken into account and due consideration should be given to the information provided on the case.

The information contained in joint communication UA SAU 11/2022, dated 22 November 2022, is inaccurate and comprises false allegations based on information received from the source that is devoid of support and evidence. The Kingdom has reviewed the allegations and intends to clarify all relevant facts, in line with its cooperation with international human rights mechanisms.

Death penalties are enforced once the perpetrators have been convicted, by final and definitive judgments, of crimes that are legally punishable by the death penalty. The Kingdom takes continuous and comprehensive action to review and develop existing laws that criminalize and prescribe penalties for crimes, including the death penalty, and seeks to narrow their scope without precluding the implementation of final, definitive and enforceable judgments based on legally valid provisions, an approach that is consistent with the general rules of criminal law.

Hussein Abo al-Kheir was arrested by customs officers at the Durra border on the basis of suspicion as he crossed the border in his private vehicle. Upon referral of the vehicle to the radiological examination system, foreign objects were found in the fuel tank. An inspection was then conducted by the customs controller, who found three sacks containing 195 bags with a total of 292,000 pills that are prohibited pursuant to the Narcotic and Psychotropic Substances Control Act. He confessed of his own free will to the investigating authority and endorsed his confessions to the charges filed against him before the court, in accordance with article 101 (2) of the Code of Criminal Procedure.

The person in question was not subjected to any form of enforced or involuntary disappearance, and the Kingdom provided information concerning his whereabouts at the time to the Working Group on Enforced or Involuntary Disappearances. He was detained in the General Prison in Tabuk region, which is a designated and known place of detention, and he could exercise his right to visits and contacts. He was provided with an international calling card to enable him to contact his family. He also exercised his right to visits, and received visits [REDACTED]

[REDACTED] In addition, the Embassy of the Hashemite Kingdom of Jordan in Riyadh was informed of his arrest and detention and of the grounds for his arrest, in accordance with the Vienna Convention on Diplomatic Relations. The Kingdom's laws prohibit all orders or instructions that direct, authorize or encourage enforced disappearance.

All citizens and residents in the Kingdom enjoy all their rights, and the Kingdom's legislation contains no provisions or even references that discriminate against anyone. Discrimination is actually criminalized and punishable. It is clear from the foregoing that the measures taken in the said person's case were sound. They were consistent with

international human rights norms, with the Kingdom's obligations under international human rights law, and with the human rights treaties that it has ratified, including the United Nations Convention on the Elimination of All Forms of Racial Discrimination, which constitutes part of its legislation.

The death penalty is never imposed in the Kingdom on discriminatory grounds, such as one's nationality or some other ground. It is surprising that the mandate-holders who participated in the communication consider that the said person was subjected to discriminatory treatment for being a foreigner, in violation of his right not to be subjected to discrimination. The fact is that the Working Group on Arbitrary Detention, which participated in the communication, expressed the view that the said person's case did not fall under category V of its working methods, according to which a case constitutes arbitrary detention if it is due to discrimination based on birth or on national, ethnic or social origin. We are therefore taken aback by these contradictory and diverse conclusions, and we wish to reaffirm that all citizens and residents, both men and women, enjoy their rights without discrimination, in accordance with the legislation in force in the Kingdom. No group, regardless of its designation, is accorded precedence in regard to the exercise of those rights. Any person whose rights are violated may lodge a complaint in accordance with the available legal remedies. State institutions have a legal obligation to ensure that all individuals are treated fairly, regardless of their religion, race, gender or nationality. If any of those institutions or their representatives or any other person violates a right, effective legal action to guarantee human rights may be taken by a number of mechanisms, including the judiciary and governmental and non-governmental human rights institutions.

**2. With regard to the request to provide information on actions taken by the Government of the Kingdom in response to the recommendations made in Opinion 36/2022 of the Working Group on Arbitrary Detention:**

The Kingdom is taking steps to compile information on the Opinion concerning the person in question, and it will provide the information to the Working Group, in accordance with the usual procedures and the working methods of the Working Group on Arbitrary Detention, within the specified time limit of six months from the date on which the Opinion was issued, which was 10 October 2022. We request the Working Group and the thematic mandate-holders who participated in the communication to respect this time limit and to comply with article 13 (c) of the Code of Conduct, which requires mandate-holders to give the State concerned adequate time to respond to their conclusions and recommendations.

**3. With regard to the request to provide detailed information on the extent to which the execution of the death penalty in the case of Hussein Abo al-Kheir for drug-related offences, and in light of the alleged irregularities in his trial, is consistent with international human rights law, including the United Nations Safeguards for the Protection of the Rights of Persons Facing the Death Penalty:**

The allegation that the said person's rights were violated is unfounded. He had a fair and public trial before an independent court. Article 3 of the Code of Criminal Procedure stipulates that no criminal penalty shall be imposed on any person unless he has been found guilty of an act that is prohibited by law, and only after a trial conducted in accordance with legal requirements. Accordingly, the Kingdom's legislation contains many procedural guarantees that control the conduct of criminal proceedings, and that guarantee the rights of the accused by ensuring that all persons are presumed innocent until proven guilty by a final judgment based on the legal requirements set forth in the provisions of the Code and the relevant laws. The Kingdom's laws provide all guarantees of a fair trial and due process, in accordance with the Kingdom's international human rights obligations and with international human rights norms and standards.

When he appeared before the court in the presence of the Public Prosecutor, the charges were read out to him and he received a copy thereof, in accordance with article 160 of the Code of Criminal Procedure, which stipulates

that: “During the arraignment, the court shall inform the accused of the charges against him, read out and explain the indictment, provide him with a copy thereof, and call upon the accused to plead thereto.” Article 172 of the Code stipulates that: “Any of the parties may provide the court with written information regarding the case for inclusion in the casefile.” The court informed him that he was entitled to seek the assistance of a lawyer to defend him in the case, in accordance with article 4 (1) of the Code. If he lacked the financial means to seek the assistance of a lawyer, he could ask the court to appoint one to defend him at the State’s expense, in accordance with article 139 of the Code. However, he decided to present his own defence pleas in the case. The legal proceedings continued and the court refrained from delivering its judgment until the statements of all the parties had been heard, all defence pleas had been presented orally or in writing, and no request to present additional information had been filed. Having examined the evidence and the records of the evidence collected, it closed the proceedings in his presence after studying the casefile, in accordance with article 173 of the Code, which stipulates that the court shall first hear the prosecutor’s indictment and then the plea by the defendant or his legal representative or lawyer. It shall then hear the civil party’s petition, followed by the response of the accused or his legal representative or lawyer. Each of the parties shall be entitled to comment on the statements of the other parties, the defendant being the last to address the court. The court shall then deliver its judgment, either of acquittal or of conviction with the imposition of a penalty, and in both instances the court shall also rule on the civil party’s petition. The said person’s case was considered by three judges in the court of first instance, in accordance with article 20 of the Statute of the Judiciary, which stipulates that: “The criminal court shall be composed of the following specialized divisions: divisions for *qisas* and *hudud* cases [which carry, respectively, retaliatory and predetermined penalties]; for *ta’ziri* cases [which carry discretionary penalties]; and for cases involving juveniles. Each division shall comprise three judges, with the exception of cases specified by the Supreme Judicial Council, which shall be examined by a single judge.” The preliminary judgment handed down by the court included a death sentence, in accordance with the Narcotic and Psychotropic Substances Control Act. After the preliminary judgment was handed down, the person in question was granted the right to challenge the judgment and to file an appeal within 30 days from the date of receipt of a copy of the judgment, in accordance with article 192 (1) of the Code of Criminal Procedure, which stipulates that: “The convicted person, the prosecutor or the civil claimant may, within the legally prescribed time limit, appeal or request scrutiny of judgments handed down by courts of first instance. The court that hands down the judgment shall inform them of this right when delivering the judgment.” Once the objection was filed, it was considered by the judges of the court of first instance, who confirmed their judgment. The entire file was then referred to the appeal court, in accordance with article 196 of the Code, which stipulates that: “The division that rendered the challenged judgment shall examine the grounds on which the objection is based without hearing submissions, unless necessary, and may amend or uphold 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 statement of objection, to an appeal court. If it amends the judgment, all the parties to the case shall be so informed and the normal procedural rules shall apply.” It is mandatory in the case of a death penalty to submit the casefile to the court of appeal, even if none of the litigants submits such a request. Article 194 of the Code stipulates that: “The time limit for filing an appeal or a request for review is 30 days. If no appeal is filed during that period, the right of appeal and review shall expire. If a death sentence is handed down, it shall be submitted to the court of appeal for review, even if none of the parties submits a request.” The division of the appeal court which is competent to hear such cases is composed of five judges, in accordance with article 15 (1) of the Statute of the Judiciary which stipulates that: “Each district shall have one or more appeal courts, which shall comprise various specialized divisions, each consisting of three judges, with the exception of the criminal division hearing cases involving the death penalty [...] which shall consist of five judges.” The appeal court upheld the death sentence imposed on the person in question and the case was referred to the Supreme Court, in accordance with article 10 of the Code of Criminal Procedure, which stipulates that: “Death sentences imposed or upheld by an appeal court shall not be final until they have been

confirmed by the Supreme Court.” Article 198 of the Code stipulates that: “The convicted person, the public prosecutor or the civil claimant may lodge an objection in cassation with the Supreme Court against judgments or rulings delivered or upheld by an appeal court.” It was studied and scrutinized by five judges, in accordance with article 10 (4) of the Statute of the Judiciary, which stipulates that “the Supreme Court shall exercise its functions through requisitely specialized divisions, each division being composed of three judges with the exception of the criminal division hearing judgments involving the death penalty, which shall be composed of five judges”, and in accordance with article 11 (1) of the Statute, which stipulates that “judgments or rulings involving a death penalty that are delivered or upheld by an appeal court shall be reviewed”. The Supreme Court, after examining the said person’s case and studying the casefile, decided to overturn the judgment and to return the case to the court of first instance for a ruling by a different division. When the case was returned to the court that had handed down the judgment for consideration by a different division, similar criminal proceedings were conducted and a death sentence was issued pursuant to article 37 (1) of the Narcotic and Psychotropic Substances Control Act, since he was proven to have smuggled the seized quantity. The casefile was referred to the appeal court which, having studied the content, handed down a judgment supporting the death sentence. The casefile was then referred to the Supreme Court, which upheld the judgment. As all stages of the legal proceedings had thus been completed, the judgment became final and enforceable, in accordance with article 210 of the Code, which stipulates that: “Final judgments are those which have not been challenged within the legally prescribed time limit or which have been upheld or delivered by the Supreme Court.” Article 212 of the Code stipulates that: “Criminal judgments shall not be enforced until they have become final.” The death penalty imposed on the person in question was executed on Sunday, 20 Shaban 1444 A.H. (12 March 2023 A.D.).

The procedures conducted and the guarantees provided in the said person’s case are consistent with international human rights law and norms, with international standards governing a fair trial and due process, and with international safeguards guaranteeing protection of the rights of persons facing the death penalty, including the provisions of Economic and Social Council resolution 1984/50 of 25 May 1984.

It should be noted that the death penalty is imposed only for the most serious crimes and in extremely limited circumstances. It is not imposed or implemented until judicial proceedings at all levels of jurisdiction have been completed. The Kingdom’s legislation provides all guarantees of a fair trial and due process that are consistent with the Kingdom’s international human rights obligations. The case must be heard by a bench of three judges in the court of first instance. The judgment is then referred to the appeal court, even if no party has filed an appeal, and is reviewed by a bench of five judges. If the appeal court endorses the death sentence, the case is referred to the Supreme Court and is reviewed by a bench of five judges. If the Supreme Court endorses the judgment, all stages of the proceedings have been completed and the judgment becomes final, pursuant to article 210 of the Code of Criminal Procedure, and enforceable, pursuant to article 212 of the Code.

**4. With regard to the request to indicate why, allegedly, no investigation was carried out into the allegations of torture committed by Saudi prison authorities and why Hussein Abo al-Kheir was allegedly not provided with legal counsel and consular information throughout the judicial proceedings in his case:**

We wish to underscore, at the outset, that the person in question was not subjected to any form of torture or ill-treatment, according to the results of the investigations undertaken by the court in response to the said person’s allegation that he had been tortured. The court took the necessary measures to verify the allegation and found no corroborating evidence.

We wish to reaffirm that the Kingdom is fully aware of the seriousness of the crime of torture and takes effective measures to prevent the commission of or any attempt to commit such an offence. The legislation prescribes severe penalties for perpetrators, regardless of their status. If a court has any suspicion or has good reason to believe

that a crime of torture has been committed against an accused person (a victim), it arranges forthwith for investigations even in the absence of allegations by the person concerned. If it is confirmed that a crime of torture has been committed, criminal proceedings are instituted against the suspects in order to impose the requisite penalties and to provide justice for victims of torture and compensation for the harm that they have suffered.

We wish to underscore in this regard that torture is criminalized and punishable under the Kingdom's legislation, which provides for safeguards and measures to ensure that no detainee or prisoner is subjected to torture or other cruel, inhuman or degrading treatment. Article 2 of the Code of Criminal Procedure prohibits the subjection of an arrested person to physical or mental harm and to torture or degrading treatment. Article 36 of the Code stipulates that persons who are detained shall be treated in a manner conducive to the preservation of their dignity and shall not be harmed physically or mentally. They shall be informed of the reasons for their detention and shall have the right to contact anyone whom they wish to notify of their detention. Article 102 of the Code requires the interrogation of accused persons to be conducted in a manner that does not influence their will to make statements. They may not be required to take an oath or be subjected to coercive measures. Furthermore, they may not be interrogated outside the premises of the investigating authority unless the investigator deems such action to be necessary.

Article 28 of the Prison and Detention Act prohibits the use of violence of any kind against prisoners or detainees and requires disciplinary measures to be taken against any civilian or military officials who perpetrate such acts, without prejudice to any criminal penalty that they may also incur. Pursuant to article 2 (8) of Royal Decree No. 43 of 1377 A.H. (1958 A.D.), public officials who, in the course of their duties, inflict ill-treatment or use coercion such as torture, cruelty, confiscation of property or denial or personal liberties, including exemplary punishment, imposition of fines, imprisonment, exile or mandatory residence in a certain place and illegal entry into private dwellings, face imprisonment for up to 10 years.

All prisons and detention facilities in the Kingdom are monitored and inspected, and all necessary measures are taken in the event of any infringement. The Public Prosecution Service also monitors criminal investigation officers in the performance of their investigative duties, in accordance with article 25 of the Code of Criminal Procedure.

With a view to enhancing oversight mechanisms and safeguarding the rights of prisoners and detainees, the Human Rights Commission is entitled, pursuant to article 5 (6) and (7) of its Statute, to visit prisons and detention centres at any time, without the need for permission from the competent authority, to receive and verify complaints concerning human rights, and to take the corresponding legal measures. In addition, the National Society for Human Rights, which is a civil society association, visits prisons and detention facilities and receives complaints. Offices have been opened in prisons for the Public Prosecution Service, and in some of them also for the Human Rights Commission and the National Society for Human Rights, so that they can monitor inmates' conditions of detention and receive complaints on the spot. The Kingdom's legislation requires all State bodies to guarantee justice for all, regardless of their religion, race, gender or nationality.

The Kingdom is committed to the human rights treaties that it has ratified, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which constitutes part of its legislation, in accordance with the Kingdom's human rights obligations.

The Human Rights Commission monitored the situation of the person in question and visited him during his detention. It concluded that the correct procedures had been undertaken, that the applicable human rights laws and regulations had been implemented, and that no law had been infringed. Acting in line with its fields of competence, which include ensuring the availability of rights and safeguards and the implementation of human rights law, the Commission did not identify any violation of the said person's rights.

With regard to action to enable the said person to appoint a lawyer, we reaffirm that he was given the opportunity to obtain legal aid and to seek the assistance of a representative or lawyer during the investigation and trial stages, in accordance with article 4 (1) of the Code of Criminal Procedure, which stipulates that: “Any accused person has the right to avail himself of the services of a representative or lawyer to defend him during the investigation and trial stages.” All accused persons are informed, when they appear for interrogation, of their legal rights and they sign a document to indicate their awareness of such rights, including access to a lawyer or representative, especially for serious crimes, in accordance with article 22 of the implementing regulations of the Code of Criminal Procedure. However, the person in question decided to present his own defence pleas in the case.

**5. With regard to the request to provide information as to why coerced confessions appear to have been accepted as a basis for sentencing Abo al-Khair to death:**

As stated in a previous paragraph, the person in question was not subjected to any form of torture or ill-treatment. He confessed of his own free will to the investigating authority and endorsed his confessions to the charges filed against him before the court, in accordance with article 101 (2) of the Code of Criminal Procedure. He did not claim to have been coerced when endorsing his confessions before the court. Moreover, the judge did not rely solely in his judgment on the confessions but also on the factual and presumptive evidence presented, including the arrest and search records, the testimonies of witnesses, and the cross-examinations and statements heard during the legal proceedings. Since those proceedings constitute the final stage of investigation, the court is empowered to hear witnesses, visit and inspect the scene of the incidents and seek the opinions of experts, including forensic physicians, in order to safeguard the rights of the parties involved in the case. Article 161 of the Code of Criminal Procedure stipulates that if the accused at any time confesses to the offence with which he is charged, the court shall hear his statements in detail and discuss them with him. Evidence that is proven to have been obtained through torture contravenes the provisions of the Islamic sharia and relevant legislation. According to article 187 of the Code, any action that is inconsistent with the provisions of the Islamic sharia and the legislation derived therefrom is null and void.

The Kingdom’s laws guarantee respect for the principle of the presumption of innocence of accused persons. No one may be sentenced to a criminal penalty save for an act that is prohibited by sharia or statutory law and after being convicted in a trial conducted in accordance with due process of law. Accordingly, the Kingdom’s legislation contains many procedural guarantees that control the conduct of criminal proceedings, and that guarantee the rights of the accused by ensuring that all persons are presumed innocent until proven guilty by a final judgment.

The Kingdom protects and promotes human rights through its compliance with the principle of legality. Punishment is personal and there is no crime or punishment except as defined by law or regulations. Penalties may be imposed only in respect of acts committed subsequent to the entry into force of a legal instrument.

**6. With regard to the request to indicate the reasons why no medical assistance was provided to Abo al-Khair throughout his detention, despite the fact that his mental and physical health has deteriorated and he is nearly blind as a result of the injuries sustained during the alleged torture by Saudi prison authorities:**

These allegations are unfounded and devoid of authentication. As already stated in two previous paragraphs, the person in question was not subjected to torture or ill-treatment, and he was never denied medical care. Accordingly, the allegation that he was blinded as a result of such treatment is false. The fact is that his state of health was stable and he was provided with medical care from the date of his arrest. He suffered from diabetes and high blood pressure and was regularly monitored at specialized medical clinics. Prisoners undergo regular medical examinations, pursuant to article 5 of the prison Medical Service Regulations. Medical care is provided to all prisoners and detainees, in

accordance with article 22 of the Imprisonment and Detention Act. He was conveyed for regular medical monitoring to Ward No. 1 in the General Prison in Tabuk region, which is a ward for chronic diseases.

**7. With regard to the request to provide information on any efforts envisaged to remove the death penalty in Saudi Arabia, at least for drug offences, and/or to reduce the scope of application of the death penalty, and the request to provide detailed information on how many individuals are currently held on death row with drug-related charges:**

The death penalty is not totally prohibited under international human rights law, but there are rules governing its imposition. Thus, it may be imposed solely for the most serious crimes, and safeguards guaranteeing protection of the rights of persons facing the death penalty must be put in place, in accordance with Economic and Social Council resolution 1984/50 of 25 May 1984. The Kingdom's laws are consistent with relevant international rules, safeguards and standards.

The Narcotic and Psychotropic Substances Control Act imposes the death penalty only for the most serious crimes and in extremely limited circumstances, an approach that is consistent with international human rights law. Drug crimes assume multiple shapes and forms, some of which are so grave that they constitute extremely serious crimes equivalent to premeditated murder, given their devastating impact. Such crimes require an appropriate punishment. The Act was promulgated for that purpose and in response to the criminal targeting of Saudi society by drug smuggling gangs. It thus provides a legal shield for Saudi society. The Act specifies which drug-related crimes are very serious and which are less serious by describing the criminal acts and prescribing appropriate penalties.