

**NATIONS UNIES
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**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the independence of judges and lawyers

REFERENCE: UA G/SO 214 (3-3-16) G/SO 214 (33-27) G/SO 214 (53-24)
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the independence of judges and lawyers pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 17/2, 17/5 and 16/23.

In this connection we would like to bring to the attention of your Excellency's Government information we have received concerning the imminent execution of Mr. **Mohamed Fahd Al Wajaan Al Shamari**.

According to information received:

Mr. Al Shamari, aged 35, was sentenced to death on 7 February 2009, for a drug related offence. It is alleged that he confessed to the crime after being subjected to torture. During trial Mr. Al Shamari complained to the judge that he had confessed to the crime under duress, however the judge did not take this into account. Further during the trial witnesses contended that they had been forced to give false testimony against him during the investigative phase.

Mr Al Shamari is at risk of execution as his sentence has been approved by the King of Saudi Arabia following rejections of appeals by the Court of Cassation and the Supreme Court.

While we do not wish to prejudge the accuracy of the allegations reported to us, we would like to respectfully draw the attention of your Excellency's Government to several principles applicable to this case under international law.

With regard to the allegation that Mr. Al Shamari was sentenced to death for a drug related offense, we would like to remind your Excellency's Government that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life. As such, it must be interpreted in the most restrictive manner and can be imposed only for the most serious crimes. A thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision indicates that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

With regard to the allegation that Mr. Al Shamari was tortured, 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."

In addition we would like to draw the attention of your Excellency's Government to article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (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."

We would 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.”

With regard to the allegation that the judge did not take into account the allegations of torture we also 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.”

Additionally, in light of the allegations that the witnesses confirmed during the trial that they had been forced to make false testimonies against Mr. Al Shamari, we wish to stress that the defendant is entitled to a fair trial in accordance with article 10 of the Universal Declaration of Human Rights and the Basic Principles on the Independence of the Judiciary (endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985). Principle 6 of the latter instrument states that “The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.” Notwithstanding the fact that the offence on the basis of which Mr. Al Shamari was sentenced to death does not meet the threshold of most serious crime according to international standards, we wish to underline that “Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.” in accordance with the Safeguards guaranteeing protection of the rights of those facing the death penalty (approved by Economic and Social Council resolution 1984/50 of 25 May 1984).

Only full respect for stringent due process guarantees distinguishes capital punishment as still allowed under international law from a summary execution, which violates the most fundamental human right. We therefore urge your Excellency’s Government to take all necessary steps to ensure that the rights under international law of Mr. Al Shamari are fully respected. Considering the irremediable nature of capital punishment we therefore appeal on an urgent basis to your Excellency’s Government not to proceed with the execution, which would, on the facts available to us, constitute a violation of international law.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Mr. Al Shamari in compliance with the above international instruments.

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, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please indicate the legal justification for imposition of the death penalty on Mr. Al Shamari for a non-serious crime and please indicate how this complies with the standards developed under international law.
3. Please specify whether the complaint of Mr. Al Shamari that he had confessed to the crime under duress was addressed by the judge. If not, please explain the reasons why.

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.

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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment