

Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: UA
SAU 10/2015:

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 28/9, 25/2, 22/20, 26/7, 25/13, 25/18, and 26/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the death sentence issued against Mr. **Ashraf Fayadh** on 17 November 2015 after an allegedly unfair trial.

According to the information received:

On 6 August 2013, artist and poet Mr. Ashraf Fayadh of Palestinian origin, born in Saudi Arabia, was arrested by the religious police in Abha, southwest Saudi Arabia, on the basis of accusations of having committed apostasy, promoting atheism and having "illicit relationships" with women. The apostasy and atheism charges were based on his poetry work "Instructions Within", published in 2008, and also on a witness account claiming that he had heard him blaspheme in public. The religious police released him on 7 August 2013.

On 1 January 2014, Mr. Fayadh was re-arrested, and his trial commenced on 12 February 2014. Mr. Fayadh claimed that his work “Instructions Within” contained love poems and did not intend to insult religion. The trial concluded on 26 May 2014 with the General Court of Abha sentencing him to four years’ imprisonment and 800 lashes for apostasy. The testimony of the witness claiming that he had heard Mr. Fayadh express blasphemous opinions was rejected due to the existing “hostility” between him and Mr. Fayadh.

The prosecution appealed the verdict and sentence and asked for a retrial, which was granted. On 17 November 2015, the General Court of Abha overturned its initial verdict and sentenced Mr. Fayadh to death. Mr. Fayadh did not have legal representation during the judicial proceedings. The Court gave him 30 days for appeal. On 24 November, Mr. Fayadh appointed a lawyer for his appeal.

We are expressing our serious concern that the death penalty may be carried out against Mr. Fayadh for the peaceful expression of his opinions, notably his poetry work, which cannot meet the threshold of “most serious crimes” required in international law for imposing capital punishment. Our concern is heightened by the allegations that the judicial procedures against Mr. Fayadh that led to his death sentence did not fulfill the most stringent guarantees of fair trial and due process, particularly in connection to access to legal representation; and that the verdict and the sentence were based on the account of a single witness whose testimony was rejected on the first ruling because the court had observed animosity between the witness and Mr. Fayadh. We are further gravely concerned about what appears to be the disproportionate sentencing of Mr. Fayadh on account of the charge of “apostasy” for his legitimate exercise of his right to freedom of opinion and expression. It is a further serious concern that Mr. Fayadh’s judgment and severe sentence may have a deterrent effect on other artists, writers, poets, individuals and groups in Saudi Arabia, discouraging them to exercise their right to freedom of opinion and expression either orally, in writing or in print, in the form of art, or through any other media, out of fear of persecution.

In view of the urgency of the matter, and of the irreversibility of the punishment of the death penalty, **we call upon your Excellency’s Government as a matter of urgency to halt the execution of Mr. Fayadh**, which, on the facts available to us may constitute a violation of applicable international human rights standards, and thus an arbitrary execution. We further appeal to Saudi Arabian authorities to commute the death sentence against Mr. Fayadh.

Without making any judgment as to the accuracy of the information made available to us, the above allegations appear to be in contravention of the rights of every individual to life, liberty and security; freedom from arbitrary arrest and detention, a fair and public hearing by and independent and impartial tribunal; freedom of thought, conscience and religion; and freedom of opinion and expression, including in the form of

art, as set out in articles 3, 9, 10, 18 and 19, respectively, of the Universal Declaration of Human Rights (UDHR), and articles 5, 14, 13, 30 and 32, respectively, of the Arab Charter on Human Rights, which your Excellency's Government ratified on 15 April 2009. The above allegations also appear in contravention of the right to have access to a lawyer as enshrined, inter alia, in the UN Basic Principles on the Role of Lawyers.

We would also like to bring to the attention of your Excellency's Government Article 1 of the United Nations Safeguards Protecting the Rights of those facing the Death Penalty, which provides that countries which have not abolished the death penalty may only impose it for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences. And, with regards to possible execution of the death penalty, we also recall the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/67/279), in which retentionist States are called upon to rigorously observe the restrictions and conditions imposed by articles 1 and 16 of the Convention Against Torture, to which your Excellency's Government acceded on 23 September 1997.

Moreover, article 5 of the Safeguards provides that capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, including the right to adequate legal assistance at all stages of the proceedings. Only full respect for stringent due process guarantees distinguishes capital punishment from a summary execution. Similarly, article 19(e) of the Cairo Declaration of Human Rights in Islam (CDHRI) provides that sentences of death imposed after failure to stringently adhere to fair trial guarantees constitute a violation of international law.

Article 7 of the Safeguards and 6 of the Arab Charter on Human Rights also provide that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.

We also wish to refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1, 2, 5 and 6 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

It is our responsibility under the mandate 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 observations on any additional information and any comment you may have on the above mentioned allegations. We would further appreciate receiving updated information on the current situation of the above mentioned individuals.

We may publicly express our concerns in the near future as we may form the view that the information on which this allegation letter is based, and which may inform a press release, is sufficiently reliable to indicate a matter warranting immediate attention. If a press release is issued, it will indicate that we have been in contact with your Excellency's Government to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Karima Bennoune
Special Rapporteur in the field of cultural rights

David Kaye
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions