

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 24/7, 26/7, 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 case of Mr. **Hajras bin Saleh bin Muhammad al-Qurey**, who is reportedly at risk of imminent execution in Saudi Arabia.

According to the information received:

Mr. Hajras bin Saleh bin Muhammad al-Qurey and his son Mr. Muhammad al-Qurey were arrested on 7 January 2012 at the al-Khadra border crossing with Yemen under the accusation of carrying drugs in their car. They were allegedly trying to drive away at speed to escape from the border police.

Mr. Muhammad al-Qurey confessed his participation in smuggling drugs but claimed that his father had not taken part in such acts. During their interrogation, they were tortured and were denied access to lawyers. Mr. Hajras al-Qurey suffers from psychological problems and has been known to lose control of himself when under pressure according to his family. Despite evidence from an assessment that the General Court in Najran had commissioned concluding that Mr. Hajras al-Qurey was suffering from a medical condition that might have impaired his judgment, this court decided that he will be tried.

On 16 January 2013, the General Court in the south-eastern city of Najran sentenced Mr. Hajras al-Qurey to death. Mr. Muhammad al-Qurey was sentenced to 20 years imprisonment. The sentences were later upheld both by an appeal

court and the Supreme Court. Mr. Hajras al-Qurey received an official text message notifying him that the local authorities at the Najran General Prison where he is held have been ordered to carry out the execution.

Information received indicated that Mr. Hajras al-Qurey could be executed in the coming days.

While we do not wish to prejudge the accuracy of these allegations or to express an opinion on whether or not the detention of Mr. Hajras al-Qurey is arbitrary, the above allegations appear to be in contravention of the right not to be deprived arbitrarily of his liberty as set forth in article 9 of the Universal Declaration of Human Rights (UDHR) as well as the right to fair proceedings before an independent and impartial tribunal, as set forth in article 10 of the UDHR.

Furthermore, we would like to express concern that the death penalty may have been imposed and be carried out against Mr. Hajras al-Qurey, after proceedings which did not comply fully with international human rights law standards regarding the imposition of the death penalty in countries which have not yet abolished it. We further express serious concern at the allegation that the ongoing trial of Mr. Hajras al-Qurey does not meet the international standards relating to the right to a fair trial and that he is being denied the medical care he needs. Concern is expressed that Mr. Hajras al-Qurey had no full and privileged access to his legal representative. We are also concerned about allegations of torture against Mr. Hajras al-Qurey.

In view of the irreversibility of the punishment of the death penalty, we urge your Excellency's Government to take all steps necessary to prevent the execution of Mr. Hajras al-Qurey, which, if carried out, would be inconsistent with acceptable standards of international human rights law. We call upon your Excellency's Government not to execute Mr. Hajras al-Qurey, and to commute without delay the death sentence imposed against him.

We would like to bring to the attention of your Excellency's Government that article 3 of the UDHR guarantee the right of every individual to life, liberty and security. According to article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, capital punishment may only be carried out pursuant to all possible safeguards to ensure a fair trial, including legal assistance at all stages of the proceedings. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution.

We would also like to respectfully remind that, "in countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences" (Safeguard 1 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, approved by Economic and Social Council resolution 1984/50 of 25 May 1984). Further jurisprudence by the United Nations Human Rights Treaty Bodies holds that the "most serious crimes"

provision should be understood to mean that only the crime of intentional killing may be punishable by death. Drug smuggling does not meet the threshold of the “most serious crimes” provision under international human rights law.

Furthermore, the above allegations appear to be in contravention with the right to be assisted by a lawyer, as set forth in Principle 1 of the Basic Principles on the Role of Lawyers and with the right to interpreter as set forth in the article 14(1-d) of the International Covenant on Civil and Political Rights (ICCPR). The allegations also appear to be in contravention with the right to lawful methods in using evidences, as set forth in Guideline 16 of the Guidelines on the Role of Prosecutors.

Moreover, we would like to remind your Excellency’s Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Saudi Arabia acceded on 23 September 1997. Furthermore, article 15 of the CAT prohibits the use of any statement made as a result of torture as evidence in any proceedings, as also provided in paragraph 7c of Human Rights Council Resolution 16/23. Furthermore, the above allegations appear to be in contravention with article 2(2) of the CAT as well as paragraph 2 of Resolution 16/23 of the Human Rights Council, which provide that no exceptional circumstances whatsoever, including on grounds of national security, may be invoked as a justification of torture.

Furthermore, the allegations of the denial of medical treatment appear to be in contravention with your Excellency’s Government’s responsibility to respect and fulfil Mr. Hajras al-Qurey’s right to the enjoyment of the right to the highest attainable standard of physical and mental health, including access to medical care while in detention, as enunciated in the United Nations Standard Minimum Rules for the Treatment of Prisoners, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and Basic Principles for the Treatment of Prisoners.

In this connection, we would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 8, which states: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

In this connection, we would like to refer your Excellency’s Government to the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular guideline 16, which states: “When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or

degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.”

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

In view of the urgency of the matter, we would appreciate a response as soon as possible on the initial steps taken by your Excellency’s Government to safeguard the rights of Mr. Hajras al-Qurey in compliance with 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 provide information concerning the legal grounds for the arrest and detention of Mr Hajras bin Saleh bin Muhammad al-Qurey and his son Muhammad al-Qurey; and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR.
3. Please provide information on the crime that Mr Hajras bin Saleh bin Muhammad al-Qurey was found guilty of, and sentenced to death. Please clarify how this is compatible with the aforementioned “most serious crimes” provision under international human rights law. Please specify what was the evidence used, based on which Mr Hajras bin Saleh bin Muhammad al-Qurey was convicted and sentenced to death.
4. Please provide detailed information on each stage of the judicial proceedings conducted against Mr al-Qurey and his son; and indicate how they comply with the requirement and guarantees of a fair trial and due process under international human rights law.
5. Please explain how the respect of international standards with regard to fair trial and due process guarantees is ensured during court proceedings in Saudi Arabia.

We undertake to ensure that your Excellency’s Government’s response will be available in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures not to execute Mr. Hajras bin Saleh bin Muhammad al-Qurey and to guarantee that his rights and freedoms are respected. We also request that your

Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

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Special Rapporteur on the independence of judges and lawyers

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