

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the promotion and protection of human rights while countering terrorism

REFERENCE:
AL SAU 12/2017

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Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on freedom of religion or belief and Special Rapporteur on the promotion and protection of human rights while countering terrorism, pursuant to Human Rights Council resolutions 33/30, 34/18, 34/5, 31/16 and 31/3.

In this connection, we would like to bring to your Excellency's Government's attention the information we have received concerning the members of the Saudi Civil and Political Rights Association (ACPRA) and other prominent human rights defenders, religious figures, writers, journalists, academics and other civic activists, whose rights to freedom of expression and peaceful assembly appear to be severely restricted. Individuals victim of such restrictions include Messrs. **Waleed bin Sami Abu al-Khair, Suleiman bin Ibrahim al-Rashudi, Abdullah bin Hamid al-Hamid**, his brother **Abdulrahman bin Hamid al-Hamid**, his brother **Issa bin Hamid al-Hamid**, as well as **Mohammed bin Fahd al-Qahtani, Abdulkareem bin Yousef al-Khoder, Mohammed bin Saleh al-Bajadi, Omar bin Mohammed al-Said, Fadhel Maki al-Manasif, Raef Badawi, Jaber bin Saleh Hamdan Aal Suleiman al-Amri, Issa al-Nukheifi, Essam Koshak, Salman al-Awdah**, his brother **Khaled Al-Awdah, Abdullah Mohamed Ubayd Allah al-Maliki, Essam al-Zamel, and Abdulaziz al-Shubaily**. All, except the Al-Awdah brothers, Mr. Al-Maliki and Mr. Al-Zamel, were the subjects of previous communications from the Human Rights Council's special procedures. They were sent on 19 August 2017 (case no. SAU 8/2017), 20 February 2017 (SAU 2/2017), 9 February 2017 (case no. SAU 1/2017), 1 September 2016 (case no. SAU 5/2016), 1 July 2016 (case no. SAU 4/2016), 11 December 2015 (case no. SAU 11/2015), 12 June 2015 (case no. SAU 3/2015), 22 January 2015 (case no. SAU 1/2015), 8 December 2014 (case no. SAU 14/2014), 31 October 2014 (case no. SAU 13/2014), 3 October 2014 (case no. SAU 11/2014), 5 May 2014 (case no. SAU 6/2014), 24 April 2014 (case no. SAU 5/2014), 31 January 2014 (case no. SAU 2/2014), 12 September 2013 (case no. SAU 8/2013), 27 March 2013 (case no. SAU 5/2013), 21 December 2012 (case no. SAU 13/2012), 12 July 2012 (case no. SAU 9/2012), 3 May 2012 (case no. SAU 7/2012), 1 March 2012 (case no. SAU 6/2012), 12 May 2011 (case no. SAU 5/2011) and 7 April 2011 (case no. SAU 3/2011).

We thank your Excellency's Government for its responses to these communications. We have taken note that according to these responses, the aforementioned persons were arrested and detained for a variety of alleged offenses related to terrorism and state security.

These offences include establishing and participating in the establishment of unlicensed associations, non-compliance with a court orders to dissolve them, misleading public opinion and tarnishing the country's reputation, explicitly defaming the loyalty and faith of the members of the Council of Senior Scholars, undermining national security, public order, breaching the peace, promoting anarchy, disparaging and insulting the judiciary, casting aspersions publicly on the honesty, impartiality and independence of the judiciary, contesting the independence of the judiciary, storing and disseminating material capable of undermining public order on the Internet, disrespecting the legal profession, providing support for terrorist groups and adopting their ideas, disseminating statements and booklets containing false, uncorroborated and unauthenticated information with a view to damaging the reputation of the Kingdom and its judicial and executive authorities. These offences are laid down in the national legislation of Saudi Arabia, including, the Penal Law for Crimes of Terrorism and its Financing (Royal Decree No. M/16 of 27 December 2013), the Anti-Cyber Crime Law (Royal Decree No. M/17 of 26 March 2007), the Civil Society Associations and Foundations Act (Royal Decree No. M/8 (1 December 2015) and the Basic Law of Governance (Royal Decree No. A/90, 1 March 1992).

We have also taken note of your Excellency's Government response that the Special Rapporteurs concerns are unfounded given that these persons have been charged with criminal acts that are defined in the Kingdom's legislation, and that they are compatible with international norms and standards, in particular with articles 19, 20 and 29(2) of the Universal Declaration of Human Rights.

We wish to underscore that, according to the Universal Declaration of Human Rights (article 29(2)) no restrictions may be placed on the exercise of the rights and freedoms laid down in the Declaration other than those that are determined by law and that strictly intend to guarantee the respect for the rights and freedoms of others and to meet just requirements of morality, public order and the general welfare in a democratic society. The important principle here is that while the freedoms are the norm, the restrictions should be the exception, and that these exceptions can only be justified on precise, reasoned and well-founded grounds. States do not have to agree with the opinions and criticisms expressed by people who hold different convictions or beliefs, but they have a positive obligation to foster and ensure the existence of an enabling environment for civil society, in terms of enjoyment of the rights to freedom of expression, peaceful assembly and association, so that citizens are able to exchange, communicate, information and opinions, and contribute to the building of a just society freely and without fear (A/HRC/20/27, paragraph 63).

On 4 May 2017, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism presented to your Excellency's Government his preliminary observations when concluding his country visit to Saudi Arabia (from 30 April to 4 May 2017). He advised the Government to establish an Independent National Security and Due Process Review Mechanism to re-examine all cases in which individuals are currently serving sentences of imprisonment for the peaceful exercise of their rights to freedom of opinion, expression, religion or belief, peaceful assembly and association. The Special rapporteur recommended that all sentences handed down for such activities be commuted or that all such prisoners be pardoned with immediate effect.

When presenting his preliminary findings, the Special Rapporteur handed to your Excellency's Government a list of priority cases for urgent review. In each of these cases, the individuals concerned are serving sentences for alleged acts of terrorism or other national security offences, whereas their only crimes seem to have been non-violent expression of their opinion, in speech or in writing. The Special Rapporteurs are dismayed that this recommendation has not been given serious consideration and call on your Excellency's Government to swiftly review all these and other similar cases, and release the individuals concerned.

The list submitted includes Messrs. Al-Khair, Al-Rashudi, Al-Hamid, Al-Qahtani, Al-Khoder, Al-Bajadi, Al-Said, Al-Manasif and Badawi. The detention of these individuals was reviewed by the Working Group on Arbitrary Detention (WGAD) in 2015. In each case, the WGAD found that their deprivation of liberty was arbitrary because it was based on the peaceful exercise of their legitimate rights to freedom of expression and peaceful association (Opinion No. 38/2015, issued on 4 September 2015 (A/HRC/WGAD/2015/38)). On 17 November 2016, the WGAD renewed publicly¹ its call for Saudi Arabia to release these persons.

On 5 October 2017, the WGAD issued its Opinion No. 63/2017 calling for the immediate release of Mr. Al-Amri, a Saudi human rights defender, who was arbitrary deprived of his liberty since 2014 after he published a video on YouTube in which he criticised the practice of prosecuting Saudi nationals for the peaceful exercise of their right to freedom of expression under the guise of terrorism (A/HRC/WGAD/2017/63). In the video, Mr. Al-Amri advocated for the release of his brother, detained for almost ten years after the expiration of his sentence, and condemned the use of the Penal Law for Crimes of Terrorism and its Financing (Royal Decree No. M/16 of 27 December 2013) and the Anti-Cyber Crime Law (Royal Decree No. M/17 of 26 March 2007) to prosecute peaceful dissidents.

While Mr. Al-Bajadi was released on 21 April 2016, the WGAD's Opinions No. 38/2015 and No. 63/2017 remain unimplemented by Saudi Arabia and Messrs. Al-Khair, Al-Rashudi, Al-Hamid, Al-Qahtani, Al-Khoder, Al-Said, Al-Manasif, Badawi and Al-Amri remain arbitrary deprived of their liberty for the peaceful exercise of their legitimate right to freedom of expression and peaceful assembly and association.

In all these cases, the Special rapporteurs reiterate their recommendations to release immediately all persons imprisoned for the peaceful exercise of their legitimate human rights.

According to new information received:

The Government of Saudi Arabia has not taken any measures to halt the alleged violations mentioned above and to prevent their re-occurrence. Saudi Arabia became a member of the Human Rights Council at the end of 2016. And yet, it has continued to

¹ See press release here:
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20886&LangID=E>

silence, arbitrary arrest, detain and persecute individuals for peacefully exercising their legitimate rights to freedom of expression, belief, peaceful assembly and association.

On 18 December 2016, Mr. Issa Al Nukheifi, a socially engaged activist, was arrested. He is known for investigating cases of financial corruption, and for supporting civilians affected by the war on the Saudi-Yemeni border in their claims for compensation.

On 8 January 2017, Mr. Essam Koshak, a prominent human rights defender working on civil and political rights, was arrested. He is known for being active on Twitter and has been particularly vocal on issues related to human rights violations, corruption and freedom of expression in Saudi Arabia.

Throughout September 2017, more than sixty prominent religious figures, writers, journalists, academics and civic activists were arrested in Saudi Arabia for exercising their rights to freedom of expression and peaceful assembly and association. They are not known for having used or advocated the use of violence. The wave of arrests began with the detention of Mr. Salman al-Awdah, an influential religious figure who has over 14 million followers on Twitter, who is known for his calls for reforms and as an advocate for greater respect of human rights within the framework of the Shari'a law.

On 9 September 2017, Mr. Al-Awdah was arrested in his house in Riyadh by officers of the General Investigation Directorate (Al-Mabahith) for publishing a post on his Twitter account, expressing his support for mediation between the Saudi and Qatari authorities. Allegedly, the post reads, "may God harmonise their hearts for the good of their people."

On 12 September 2017, in what appears to be an act of reprisal for searching for Mr. Al-Awdah, Saudi authorities arrested his brother, Mr. Khaled Al-Awdah, and imposed a travel ban on the Mr. Al-Awdah's entire family.

The same day, Mr. Abdullah al-Maliki, an academic and writer known for his support for reforms, respect of human rights and critics of "one-man-rule" in Saudi Arabia, and Mr. Essam al-Zamel, an entrepreneur known for his writing about the need of economic reform, were arrested.

On 16 September and 17 September, Mr. Abdulaziz Al Shubaily and Mr. Issa bin Hamid al-Hamid, founding members of ACPRA and prominent human rights defenders, were detained.

We are expressing very serious concern about what appears to be a pattern of widespread and systematic arbitrary arrests and detention of persons, including human rights defenders, for peacefully exercising their legitimate human rights to freedom of expression, belief, assembly and association based on counter-terrorism and other national or state security legislation. The non-violent criticism of state policies or institutions, including the

judiciary, cannot be made a criminal offence in any society governed by rule of law and abiding by human rights principles and obligations.

As a member of the Human Rights Council, Saudi Arabia has a duty to have an exemplary conduct as it has pledged to commit itself, when it presented its candidature for membership in the Council. We are calling on your Excellency's Government to demonstrate its efforts to "uphold the highest standards in the promotion and protection of human rights".² While awaiting a reply, we urge that all necessary measures to halt the alleged violations and prevent their re-occurrence, in compliance with your Excellency's Government's obligations under international human rights law, as well as with the voluntary pledges and commitments of the Government of Saudi Arabia made in March 2016 as a candidate to the Human Rights Council (A/71/72).

The above allegations appear to be in contravention of the right to liberty and personal security, the right not to be subjected to arbitrary arrest, detention or exile, the right to leave and return to one's country, the right to freedom of religion or belief, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and association, and, as set forth in Universal Declaration of Human Rights' articles 3, 9, 13, 18, 19 and 20 respectively. These allegations also appear to be in contravention with article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, which provides for the enjoyment of the aforementioned civil rights, and articles 14, 24, 27, 30 and 32 of the Arab Charter on Human Rights, as well as relevant provisions of 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. We are also referring to the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolution 70/148. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

In connection with the above alleged facts and concerns, please refer to **Reference to international law Annex** attached to this letter which cites relevant international human rights instruments and standards.

As it is our responsibility, under the mandates entrusted to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we are seeking the following clarifications from Your Excellency's Government:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

² General Assembly Resolution A/RES/60/251, paras. 8 and 9.

2. Please provide detailed information about all individuals who have been arrested for non-violent acts since September 2017 on the basis of terrorism, cyber-crime or any other state security related laws, including list of persons detained, their places of detention and their precise charges. Please provide detailed information about specific actions those individuals were arrested and detained for.
3. Please provide detailed information on any measures taken to ensure the respect and protection of the aforementioned individuals' rights and freedoms, including their immediate release, in compliance with your Excellency's Government's obligations under international human rights law, as well as with the voluntary pledges and commitments of the Government of Saudi Arabia made in March 2016 as a candidate to the Human Rights Council (A/71/72).
4. Please provide detailed information about measures taken to revise counter terrorism and security related legislation that criminalizes the legitimate exercise of the rights to freedom of expression, peaceful assembly and association in line with international human rights standards, in particular with article 19, 20 and 29(2) of the Universal Declaration of Human Rights; as well as the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354(2017), 2368 (2017) and 2370 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolution 70/148.
5. Please provide detailed information about measures taken to investigate the above-mentioned allegations and to ensure the accountability of any person(s) responsible for them.

We would appreciate to receive a response within 60 days.

Given the importance of the matter, we are considering to publicly express our concerns in this regard in the near future, as the information, upon which our concerns are based, appears to be sufficiently reliable to indicate a matter warranting undivided attention. We also believe that the wider public should be alerted and informed about the human rights implications of this situation. Any public statement on our part would indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

Last, we are informing your Excellency's Government that after having transmitted this allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case again to Your Government through its regular procedure in order to render an opinion on whether the deprivation of liberty of those individuals is arbitrary or not. The present letter can in no way prejudice any opinion the Working Group may render. The Government is invited to respond separately to the present allegation letter irrespective of whether there will be a second communication under the WGAD's own regular procedure.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights, which provides that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". Article 20 of UDHR stipulates that "[e]veryone has the right to freedom of peaceful assembly and association".

Furthermore, we would like to bring to the attention of your Excellency's Government that, according to article 29 (2) of UDHR, a State may impose restrictions on freedom of expression and information but only such 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 in a democratic society.

In this regard, we refer to the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolution 70/148, which require that States must ensure that any measures taken to combat terrorism and violent extremism, including encitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

The acts of terrorism can never be justified and that States have not only the right, but also the duty, to protect individuals within their jurisdiction from threats to their lives and physical integrity from acts of terrorism. Any effective counter-terrorism strategy must include measures to address the financing of terrorism and to prevent organizations and groups from providing financial and other support for acts of terrorism or for terrorist groups. At the same time, all measures adopted must comply with States' international obligations, including human rights, humanitarian and refugee law obligations. Given the decisive role of civil society in countering terrorism and extremism, States have a duty to protect civil society and the rights that are critical to its existence and development.

However, the overly broad definitions of terrorism and other state security related crimes carry the potential for deliberate misuse and unintended human rights abuses. In connection with above alleged facts and concerns, we would like to remind your Excellency's Government that the measures taken by Saudi Arabia violate the principle of legality by applying overly broad and vague definition of terrorism and other crimes related to state security provided in the Penal Law for Crimes of Terrorism and its Financing (Royal Decree No. M/16 of 27 December 2013), the Anti-Cyber Crime Law (Royal Decree No. M/17 of 26 March 2007), the Civil Society Associations and Foundations Act (Royal Decree No. M/8 (1 December 2015) and the Basic Law of Governance (Royal Decree No. A/90, 1 March 1992).

We would like to stress the obligations of your Excellency's Government under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), acceded to by the Kingdom of Saudi Arabia on 23 September 1997, in particular article 5, which provides for the enjoyment of civil rights including: the right to leave any country, including one's own, and to return to one's country; the right to freedom of peaceful assembly and association; the right to freedom of religion or belief and, the right to freedom of opinion and expression.

We would like to bring your attention to articles 3 and 9 of the UDHR that stipulate that "no one shall be subject to arbitrary arrest, detention or exile". Article 13 articulates that "everyone has the right to leave any country, including his own, and to return to his country". Your Excellency's Government has further obligations under the Arab Charter on Human Rights (ACHR), acceded to by your Excellency's Government on 15 April 2009. Article 14 provides for "the right to liberty and security of person, and the right not to be subjected to arbitrary arrest or detention". Article 24 provides for "the right to freedom of association and peaceful assembly". Article 27 articulates that "no one shall be arbitrarily or unlawfully prevented from leaving any country, including his own, nor prohibited from residing, or compelled to reside, in any part of his country". Article 30 provides for the right to freedom of religion or belief. Article 32 provides for "the right to information and to freedom of opinion and expression".

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 (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders provides in its articles 1, 2, and 6 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, as well as right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Article 17 provides that in the exercise of the rights and freedoms referred to in the Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and 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 in a democratic society.