

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA SAU 9/2018

26 July 2018

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 36/6, 34/18, 32/32, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the incommunicado detention of human rights defender, Mr. Khalid Al-Omair.

Mr. Al-Omair is a human rights defender who has criticised human rights violations relating to the blockade of Gaza in the Occupied Palestinian Territory (OPT).

Mr. Al-Omair was subject to a previous communication on 21 January 2009 (SAU 1/2009). We acknowledge the reply submitted by your Excellency's Government on 8 September 2009. We regret that the reply did not outline the legal basis for Mr. Al-Omair's detention and omitted to provide any information on how his detention complies with international human rights norms and standards. The reply merely states that Mr. Al-Omair was detained on a "security-related charge", without providing any further clarifications. Furthermore, the reply did not address the question of whether there was an ongoing investigation in relation to the case or whether Mr. Al-Omair had been granted access to a lawyer.

According to the information received:

On 28 December 2008, Mr. Al-Omair was arrested by Saudi security forces one day after he had declared his intention to participate in a peaceful protest against the Israeli blockade of Gaza in the OPT.

On 15 May 2011, Mr. Al-Omair was sentenced by the Specialised Criminal Court in Riyadh to eight years in prison, with a travel ban imposed for the same period upon completion of his sentence. The Court found Mr. Al-Omair guilty of “attempted illegal gathering” and “publishing information online”.

On 12 April 2017, Mr. Al-Omair was released more than six months after completion of his eight year sentence, which he had officially completed serving on 5 October 2016.

Upon his release, Mr. Al-Omair filed a complaint with the Saudi Royal Court alleging that he had been tortured by officers of the General Directorate of Investigation on various occasions both during pre-trial detention and while serving his sentence. Mr. Al-Omair alleges that these instances of torture included being handcuffed by his hands and feet, placed in solitary confinement for nine consecutive days in an empty cell with nothing to sleep on and being forced to stand for many hours without rest on several occasions.

On 5 July 2018, Mr. Al-Omair went to the General Directorate of Investigation to follow-up on the aforementioned complaint and was asked to leave pending investigation of the complaint.

On 6 July 2018, several agents from the General Directorate of Investigation allegedly requested that Mr. Al-Omair accompany them to Al-Ha’ir prison in order to meet with a special committee which they allegedly stated had been mandated to investigate his complaint.

Mr. Al-Omair’s fate and whereabouts are unknown since entering the prison on 6 July 2018.

Grave concern is expressed at the allegations of Mr. Al-Omair’s arbitrary and incommunicado detention which appears to be directly related to the complaint he submitted alleging that he had been tortured throughout the eight year prison sentence he served for attempting to exercise his rights to freedom of assembly and of association and freedom of expression. Particular concern is expressed at the fact that Mr. Al-Omair’s whereabouts and well-being are unknown due to the fact that he has reportedly not been contactable since entering Al-Ha’ir prison on 6 July 2018. We are gravely concerned about Mr. Al-Omair’s physical and mental integrity in light of allegations that he had previously been tortured during his period in detention between 2008 and 2017.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency’s Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to draw to the attention of your Excellency's Government articles 3, 5, 9, 19 and 20 of the Universal Declaration of Human Rights (UDHR) which guarantee the rights to liberty and security of person, not be subjected to torture or to cruel, inhuman or degrading treatment or punishment, not to be subjected to arbitrary arrest or detention, the rights to freedom of opinion and expression as well as the rights to freedom of peaceful assembly and of association.

We would also like to remind your Excellency's Government that incommunicado detention effectively places an individual outside the protection of the law, in contravention of article 6 of the UDHR, and deprives him or her of any legal safeguards, including the right to challenge the lawfulness of detention before a court.

Moreover, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Saudi Arabia acceded to on 23 September 1997. Article 12 of the CAT 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 requires State parties to prosecute suspected perpetrators of torture.

We would also like to refer to 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 draw your attention to articles 1 and 2 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, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. In addition, article 6 of the Declaration provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, as well as the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance on these rights.

We would also like to bring to your Government's attention the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 of 9 December 1988. We would particularly like to draw your attention to principles 1, 5(1), 6, 10 and 21 (1) (2) which state that no circumstance may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment; it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of

compelling him to confess, to incriminate himself otherwise or to testify against any other person and; no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.

In addition, the Declaration on the Protection of All Persons from Enforced Disappearances establishes that no State shall practice, permit or tolerate enforced disappearances (Article 2). In its article 13, the Declaration also proclaims that any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention. Also, accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention.

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 on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Khalid Al-Omair in compliance with international instruments.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal basis for the alleged detention of Mr. Al-Omair, and how these measures are compatible with Saudi Arabia's obligations under international human rights law. Please specify if any charges have been brought against him and when he will be granted access to a lawyer of his choosing and to his family.
3. Please provide details on the measures taken to ensure the physical and mental integrity of Mr. Al-Omair while in detention.
4. Please provide information about the allegations of torture and ill-treatment. In particular, please provide information about whether any investigation has been initiated. If no such investigation has taken place, please explain why.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

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

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

We would also like to bring to the attention of your Excellency's Government that should the sources submit the allegations concerning Mr. Khalid Al-Omair as a case to the Working Group on Enforced or Involuntary Disappearances, it will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

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

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

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

