

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

REFERENCE:
UA SAU 13/2018

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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 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; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/15, 34/18, 32/32 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. Ali al-Nimr, Mr. Dawood al-Marhoon, Mr. Abdullah al-Zaher, Mr. Mujtaba al-Sweikat, Mr. Salman Qureish and Mr. Abdulkarim al-Hawaj (a total of 6 individuals), who face imminent execution as a result of the criminalization of the exercise of fundamental rights exercised when they were under the age of 18.

We have already raised concerns with Your Excellency's Government over the alleged violation of the right to life of the six individuals in the following cases:

1) Case SAU 7/2017 of 28 July 2017 (sent together with the Working Group on Arbitrary Detention; the Special Rapporteur on the rights of persons with disabilities; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment). In particular, the case addressed allegations that Mr. Salman Qureish and Mr. Abdulkarim al-Hawaj, along with 15 other individuals, were tortured, and unfairly sentenced to death for protest related offenses committed when they were under the age of 18. In the reply to the communication, Your Excellency's Government rejected the allegations raised therein as inaccurate;

2) Case SAU 7/2016 of 21 November 2016 (sent together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment) addressed allegations of torture of Mr. Mujtaba al-Sweikat and relating to the imposition of a death

sentence as a result of an unfair trial for offenses committed when he was under the age of 18. In the reply to the communication, Your Excellency's Government denied all allegations.

3) Case SAU 2/2016 of 22 March 2016 (sent together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment) addressed allegations of torture of Mr. Ali al-Nimr, Dawood al-Marhoon and Abdullah al-Zaher and relating to the imposition of a death sentence as a result of an unfair trial for offenses committed when they were under the age of 18. In the reply to the communication, Your Excellency's Government requested additional time to examine the allegations, but thus far there has been no follow-up.

4) Case SAU 8/2015 of 19 October 2015 (sent together with Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment) addressed allegations of torture of Dawood al-Marhoon and relating to the imposition of a death sentence as a result of an unfair trial for charges brought against him only in relation to the exercise of his right to freedom of assembly when he was under the age of 18. Thus far, no reply to the communication was received from Your Excellency's Government.

5) Case SAU 6/2015 of 21 September 2015 (sent together with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment) addressed allegations of torture of Ali al-Nimr and relating to the imposition of a death sentence as a result of an unfair trial for offenses committed when he was under the age of 18. In the reply to the communication, Your Excellency's Government denied all allegations.

In light of the repeated detailed communications already sent by several Special Rapporteurs we will not repeat all of the relevant facts, but summarize them as follows:

According to the information received:

All six individuals were arrested and sentenced to death between 2014 and 2017 as a result of the criminalization of the exercise of fundamental rights exercised when they were under the age of 18, thus considered minors under international human rights law, and related to the exercise of fundamental rights, including freedom of assembly and expression.

All six individuals were allegedly tortured and ill-treated and did not have access to a viable complaint mechanism. Furthermore, authorities did not conduct any investigation into these allegations.

Case of Mr. Dawood al-Marhoon

In 2011 and 2012, at the age of 16 years old, Mr. Dawood al-Marhoon participated in a number of so-called Arab Spring protests in Qatif, Eastern Province.

In January 2012, security forces shot him in a leg during a protest in Awamiya.

On 15 May 2012, at the age of 17, he was detained and subsequently released on the same day.

On 22 May 2012, he was arrested in Dammam Central Hospital, where he was receiving treatment for an eye injury sustained as a result of a road traffic accident. He was then transferred to a military hospital and three days later to the Dammam Juvenile Detention. There, he was placed in solitary confinement for two weeks.

During the two weeks, government officials subjected him to torture and ill-treatment, including beatings and verbal abuse. He was then forced to sign a blank confession. During this period of detention, Mr. Dawood al-Marhoon's relatives were never notified of his whereabouts.

On 9 November 2013, he was transferred to the General Department of Investigations in Dammam, where he was held in solitary for one month. In this period, he was electrocuted, hung upside-down, and beaten while tied to a chair.

On 29 January 2014, the Attorney General initiated proceedings against Dawood al-Marhoon before the Specialized Criminal Court. The prosecution relied on the forced confession obtained as a result of torture and charged him with "sowing corruption and breaching security."

Dawood al-Marhoon was not informed of the charges brought against him until the first hearing, where he was also appointed a legal counsel. At the end of the hearing, he was sentenced to death.

His lawyers appealed but were denied information on the progress of the proceedings and information relating to the hearing dates. On 29 September 2015, the Specialized Criminal Court upheld the death sentence. The case was subsequently transferred to the Ministry of Interior, where the sentence awaits implementation.

Case of Mr. Ali al-Nimr

On 14 February 2012, Saudi authorities arrested Mr. Ali al-Nimr, a 17 year old high school student, for his participation in so-called Arab Spring protests in Qatif, Eastern Province in 2012.

During his arrest and detention he was subjected to torture and ill-treatment by the General Investigation Directorate, which forced him to confess the charges against him.

On 17 December 2013, the Specialized Criminal Court heard Mr. Ali al-Nimr's case in absentia. He was charged with 12 offences, including treason and membership in a terrorist cell. Subsequent hearings were held in his absence and Mr. Ali al-Nimr learned of these charges at a later time. He was also initially denied a lawyer, who when appointed was denied access to the case file.

On 27 May 2014, the Specialized Criminal Court sentenced Mr. Ali al-Nimr to death. The sentence was upheld on appeal by the High Court. Mr. Ali al-Nimr may now be executed at any time.

Case of Mr. Abdulkarim al-Hawaj

On 16 January 2014, the Saudi security forces arrested Mr. Abdulkarim al-Hawaj for participating in a protest when he was 16 years old. Allegedly, he was held incommunicado in detention for five months and was subjected to torture, including beatings, electric shocks, suspension from the ceiling and being prevented from using the bathroom for prolonged periods of time.

On 1 June 2016, the Specialized Criminal Court sentenced him to death. On 17 July 2017, the sentence was upheld on appeal. At present, no information is available on the charges brought against him or on the conduct of the trial.

Case of Mr. Salman Qureish

Mr. Salman Qureish was arrested on an unspecified date between September 2012 and December 2013, along with 23 other individuals, in relation to so-called Arab Spring protests that took place in al-Awamiyah in 2011.

Mr. Salman Qureish, along with four others, was charged with shooting at security forces resulting in the death of a soldier. He was 17 years-old at the time of the commission of the alleged offenses.

He was held in pre-trial detention for a period of three years, until his trial began in September 2015. It is alleged that during that time he was tortured and forced to sign a confession.

On 1 June 2016, the Specialized Criminal Court sentenced him to death. On 25 May 2017, the High Court upheld the sentence. On 14 July 2017, he was transferred to Riyadh where he awaits executions.

Case of Mujtaba al-Sweikat

On 11 December 2012, Mujtaba al-Sweikat was arrested at King Fahd International Airport. He was travelling to the United States where he was studying. He was 17 years old at the time of the arrest. He was brought to the detention center of the General Directorate for Investigations in Al-Dammam city. No warrant was provided and he was never informed of the reasons of his arrest.

While detained he was subjected to torture, which included beatings, having cold water poured over him during winter, and burnings with cigarettes, until he confessed to armed disobedience against the King and attacking security forces.

On 23 August 2015, he was brought before the Specialized Criminal Court without notice and legal representation.

On 1 June 2016, he was convicted and sentenced to death on the sole basis of the confession extracted under torture.

Case of Abdullah al-Zaher

On 3 March 2012, Saudi law enforcement arrested Abdulla al-Zaher in Al-Awamiyah City, near Al-Rif, when he was 15 years old. He was taken to Awwamiyya city police station, transferred to Qatif police station for investigation, and from there to a juvenile detention center. He was allegedly tortured during his arrest, detention and interrogation.

On 12 September 2013, Abdulla al-Zaher was transferred to the General Directorate of Investigations in Dammam, where he was coerced to confess under torture.

On 29 January 2014, a trial against him began in the Specialized Criminal Court. He was denied access to a lawyer and sentenced to death on 21 October 2014. His sentence was upheld on appeal.

In connection with the above-alleged concerns, I would like to refer your Government to Article 3 of the Universal Declaration of Human Rights (UDHR) which guarantee the right of every individual to life, liberty and security.

Under international law, “[i]n countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes.” This has been generally understood to be crimes involving intentional killing. In the present case, **the six individuals have been sentenced to death for exercising their fundamental rights to freedom of expression and assembly, which do not reach the threshold of “most serious crimes” as required by international law, and if the death sentences are carried out, they would constitute arbitrary executions.**

Any judgment imposing the death sentence and executions of juvenile offenders is incompatible with international human rights law. Article 6 (5) of the ICCPR further states that “[s]entence of death shall not be imposed for crimes committed by persons below eighteen years of age.” Similarly, article 37 (a) of the United Nations Convention on the Right of the Child (CRC), which the Kingdom of Saudi Arabia ratified in 1996, expressly prohibits the imposition of the death penalty for offences committed by persons below 18 years of age.

The Government of the Kingdom of Saudi Arabia publicly acknowledged its understanding of these international obligations. During the 73rd Session of the United Nations Committee on the Rights of the Child Your Excellency’s Government, in an official statement, clarified that no persons under the age of 18 can be subject to the death penalty. “There is no application of the death penalty on children. We provide for capital punishment in very precise circumstances and it is applied to mature adults, and only after sufficient proof the court receives an assurance that that the perpetrator of the crime was an adult at the time the crime was committed ... The crime must have been committed by a perpetrator who is an adult at the time in order for them to be sentenced to capital punishment. ...I insist there can never a sentence of capital punishment handed down on a child and it is only a sentence that is handed down to adults ... the age of liability is always 18.”¹

However, despite the above mentioned international human rights obligations and their acknowledgement by Your Excellency’s Government, the above-mentioned six individuals have all been sentenced to death for offenses that they allegedly committed under the age of 18. Thus, if executed, their deaths would amount to arbitrary deprivations of life in violation of the UDHR, the ICCPR, and the CRC.

¹ webtv.un.org/search/consideration-of-saudi-arabia-contd-2145th-meeting-73rd-session-of-committee-on-rights-of-the-child/5134779654001?term=saudi%20arabia#full-text

Further, I wish to recall that Article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provide that capital punishment may only be carried out pursuant to a final judgement 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. Furthermore, Article 4 of the Safeguards stipulate that the death penalty may only be imposed when the guilt of the person charged is based upon clear and convincing evidence. Additionally, I would also like to draw the attention of your Excellency's Government to the fact that Article 15 of the Convention Against Torture prohibits the use of information obtained under torture as evidence in any proceedings. In the present case, **the above-mentioned six individuals have been forced to confess under torture and/or ill-treatments. If true, their confessions should not have been admissible in court.**

Furthermore, Ali al-Nimr and Abdullah al-Zaher, and possibly the other four, did not receive timely and adequate legal aid. When such legal aid was provided, authorities prevented the lawyers from accessing all of the case materials. These allegations suggest that the above-mentioned six individuals have been sentenced to death in violation of the guarantees of fair trial and due process. Thus, if the death sentences are carried out, then they may amount to arbitrary executions.

Lastly, I wish to express appreciation to Your Excellency's Government for undertaking the initiative to try to bring Saudi Arabia's death penalty legislation in compliance with international standards by amending the Law on Juveniles No.114 of 19/11/1439.

Regrettably, the amendments introduced continue to fail to provide adequate protection particularly the rights of children. The new law still allows for the death penalty to be imposed on juveniles between the ages of fifteen and eighteen, while, as already said, the ICCPR explicitly prohibits the imposition of the death penalty on anyone below eighteen years of age.

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 the above-mentioned person(s) 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 any comment you may have on the above mentioned allegations.
2. Please provide information on the whereabouts of all the individuals mentioned above and the dates, if any has been set, of their planned executions.
3. Please provide detailed information on the procedures followed prior to and after an execution takes place, including the period of notice provided to family members before the execution and for the return of the body to them.
4. Please provide specific information on measures in place, and how they are upheld in practice, to ensure that allegations of torture are duly investigated and confessions obtained under torture excluded from any trial, and to ensure that the burden of proof in these cases is placed on the prosecution and not on the victim.

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.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s 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.

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David Kaye
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