

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE:
AL SAU 5/2019

25 February 2019

Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 36/6, 35/15 and 35/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the investigations and the trial currently taking place in Saudi Arabia in relation to the enforced disappearance and killing of journalist Jamal Khashoggi.

According to the information received:

On 2 October 2018, Mr. Jamal Khashoggi was killed inside the consulate of Saudi Arabia in Istanbul, Turkey. Saudi authorities initially denied any knowledge of this, maintaining that Mr. Khashoggi had left the consulate alive. Some weeks later, they admitted he had been killed, in their consulate in Istanbul and allowed the Turkish authorities to enter its premises, as well as the consul general's residence, in order to conduct investigations. In parallel, the Saudi Public Prosecutor ordered twenty-one Saudi nationals to be detained in relation to the killing. Eleven of these twenty have been indicted and are currently facing trial in Saudi Arabia.

On 3 January 2019, a hearing for eleven individuals was held in the Criminal Court of Riyadh. The Public Prosecutor is demanding capital punishment for five of the defendants¹. The names of the indicted individuals have not been officially released. According to public reports, the five individuals facing the death penalty may include [REDACTED]

[REDACTED]. The full details of the indictment, as well as any information on the overall scope of the trial, are not publicly available.

Turkish authorities have reportedly sought extradition of eighteen individuals, who may include all or some of the eleven facing trial in Saudi Arabia. On 9 December 2018, the former Saudi Minister of Foreign Affairs, [REDACTED] publicly stated that the Turkish request would not be granted.

¹ <https://www.spa.gov.sa/viewstory.php?lang=en&newsid=1841684>.

On 4 January 2019, the Office of the High Commissioner for Human Rights (OHCHR) expressed concern that the trial did not seem to meet the requirements of an independent and international probe into the case, which the OHCHR had called for, in order to ensure meaningful accountability and justice².

From 28 January to 2 February 2019, the Special Rapporteur on extrajudicial, summary or arbitrary executions conducted a country visit to Turkey. The purpose of the visit, undertaken under the terms of the Special Rapporteur's mandate, was to initiate an international human rights inquiry into the killing of Mr. Khashoggi.

On 31 January 2019, a second hearing of the trial in Saudi Arabia was reportedly held. However, no information on the outcome is available, except that the hearing may have been postponed until 7 March 2019.

The Saudi authorities are reportedly continuing their investigation into the killing of Mr. Khashoggi. They requested the Republic of Turkey to share any relevant evidence. To date, Turkish authorities have reportedly not shared their findings. The whereabouts of Mr. Khashoggi's remains are still unknown. The Working Group on Enforced or Involuntary Disappearances transmitted an urgent action letter concerning the disappearance of Mr. Khashoggi on 10 October 2018 and the case remains pending.

Without making any judgment as to the accuracy of the information available to us, as well as on the question of which states has jurisdiction to investigate and try the case at hand, we would like to observe, at the outset, that, when there exist plausible allegations that public officials have committed, or have been complicit in the commission of gross or systemic human rights violations, the authorities of the State concerned are obliged, under international law, to ensure that an effective, official investigation, is undertaken³.

For such an investigation to be effective, it needs to be adequate. This means that it should begin promptly, secure all relevant evidence, and lead to the identification and, where appropriate, the punishment of the perpetrators and those on whose authority the crime was committed. The persons responsible for conducting the investigations should be independent of anyone implicated or likely to be implicated in the events⁴.

Investigating authorities are obliged to allow victims, and/or victims' relatives, effective access to the investigative process; to disclose to them and to the public, to the extent necessary to safeguard their respective legitimate interests, all relevant evidence and findings, including the identity of the perpetrators, as well as the fate and

² <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23798&LangID=E>; <https://news.un.org/en/story/2019/01/1029772>.

³ Declaration on the Protection of All Persons from Enforced Disappearance; and www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-52_en.pdf.

⁴ Ibid.

whereabouts of the disappeared person, if any; and to clarify, where appropriate, the process by which any alleged violation was officially authorized. Victims, and/or victims' relatives, should be protected against reprisals and threats and also have the right to adequate reparation⁵.

When the obligation to carry out an effective investigation imposes a duty to seek mutual legal assistance from other States, through diplomatic or judicial inquiries, the results of these should also be disclosed⁶. In circumstances where the investigations implicate more than one State, ensuring effective protection of the right to life carries an expectation, at a minimum, that the States concerned would cooperate effectively and take all reasonable steps to facilitate and conduct an effective investigation.

Any criminal proceedings ensuing from the investigations should serve as a mechanism to clarify the occurrence and circumstances of the act being investigated, in this case the killing and the whereabouts of Mr. Khashoggi's remains, to establish full accountability of those responsible for them and to provide adequate remedies to the victim's relatives. It is therefore essential that the proceedings are conducted by a competent, independent and impartial jurisdiction, in accordance with international fair trial and due process standards, including in terms of publicity and public participation.

Lastly, in cases when the death penalty might be applied, it should be stressed that executions carried out without adherence to the strictest guarantees of fair trial and due process are unlawful and tantamount to an arbitrary execution.

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

In view of the seriousness of the matter, including the fact that the whereabouts of Mr. Khashoggi remains continue to be unknown, we would appreciate a response on the steps taken by your Excellency's Government to safeguard the rights of all the individuals concerned in the case at hand in compliance with international law.

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 explain how the Government of the Kingdom Saudi Arabia determined its jurisdiction over the case at hand.

⁵ Ibid.

⁶ Ibid.

3. Please provide information on any investigation undertaken by the Government, and the results obtained, including in terms of forensic evidence, witness testimonies, as well as the proceedings that are currently in progress.
4. Please provide all information on the steps taken by the Government to identify the whereabouts of Mr. Khashoggi's remains, including transcripts of interviews with the eleven individuals who have been indicted, the twenty-one who have been detained, and any other witnesses or person knowledgeable about the murder.
5. Please provide detailed information on the steps taken by the Government to cooperate with the Turkish authorities and the reasons why their extradition request was not granted. Please explain what evidence the Saudi authorities requested from the Turkish authorities and how that would be relevant for the purpose of their investigations.
6. Please provide information on the identity of the individuals currently facing trial in Saudi Arabia in connection with that case, their official function, if any, the charges brought against each of them, as well as on the tribunal, including its composition, and whether its hearings are public. If its proceedings are behind closed doors, please explain why.
7. Please provide information on whether the indictment of the persons currently tried in the case has been made public. If it has, we would appreciate to receiving a copy of it. If it has not, please explain why.
8. Please explain why the death penalty is sought against some of the defendants.
9. Please explain whether the additional ten individuals initially arrested have been released, and on what grounds.
10. Please explain whether the eleven individuals currently facing trial were arrested or placed in detention and, if so when, and when were they informed of the charges brought against them. Please explain whether they are currently held in detention, or anyway deprived of their liberty, and whether they have access to a defence counsel of their choice and are provided with an opportunity to challenge the lawfulness and rationale of their detention, as appropriate.
11. Please explain whether the judicial proceedings against these individuals are being conducted in a manner that is consistent with international fair trial and due process standards, including with regard to the guarantees of the defense, victim's relatives' rights and the requirements of publicity and public participation.

12. Please explain how the Government of Saudi Arabia is upholding its transparency obligations in the case, which include keeping Mr. Khashoggi's surviving relatives updated on the status of the investigation and the trial.

While awaiting a reply, we wish to remind that the Special Rapporteur on extrajudicial, summary or arbitrary executions has asked your Excellency's Government to grant her permission to undertake a country visit to Saudi Arabia for to pursue her efforts to clarify the fate and whereabouts of Mr. Khashoggi, and would welcome a positive response to that request. In this regard, we would welcome that permission is granted to Special Rapporteur on extrajudicial, summary or arbitrary executions, as well as other international and domestic observers, to attend the court proceedings that shall be taking place on 7 March 2019.

In the meanwhile, we urge that the proceedings in relation to this case, be held in an open and transparent fashion, in keeping with the very high level of interest that the killing of Mr. Khashoggi has generated in the international community.

We may publicly express our concerns in this case in the near future as, in our view, the information currently at hand is sufficiently reliable to indicate a matter warranting undivided attention. We also believe that the wider public should be alerted to the potential human rights implications of these allegations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to Article 3 of the Universal Declaration of Human Rights which states that "Everyone has the right to life, liberty and security of person".

Furthermore, we wish to recall relevant provisions of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, including Article 2 which affirms that "No State shall practise, permit or tolerate enforced disappearances. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance"; Article 3 according to which "Each State shall take effective (...) measures to prevent and terminate acts of enforced disappearance (...)"; Article 14 which states that "Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State (...). All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance (...)"; Article 16 which states that persons alleged to be responsible for an act of enforced disappearance "(...) shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts. (...) The persons presumed responsible (...) shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial"; Article 17 which states that "Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified"; and Article 19 which states that "The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to

adequate compensation (...).In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation”.

