

**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; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
AL SAU 6/2020

22 May 2020

Excellency,

We have the honour to address you in our capacities 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; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/15, 34/18 and 34/19.

In this connection, we are writing to follow-up on the cases of Mr. Ali al-Nimr, Mr. Dawood al-Marhoon, and Mr. Abdullah al-Zaher, particularly within the context of Your Excellency's Government announced decision to end the death penalty for crimes committed by persons under the age of eighteen as required under international law.

The cases in concern were raised, most recently, in an urgent appeal sent on 11 October 2018 (UA SAU 13/2018) and in a public statement issued on 29 October 2018<sup>1</sup>. Your Excellency's Government replied to the urgent appeal on 21 November 2018. In the reply, the Government provided information on the cases, including with regard to the place of detention of the individuals concerned, the procedure to follow in case of execution of the death sentences. The letter rejected as inaccurate the allegations of torture that may have led to the conviction and sentences of death.

According to the information received:

The Saudi Human Rights Commission recently announced a Royal Decree ending the application of the death penalty for individuals convicted of crimes committed while they were minors<sup>2</sup>. The Commission noted that the Decree would come into force just after Saudi Arabia ended the practice of flogging as a criminal punishment and explained that any individual who received a death sentence for crimes committed while being a minor would no longer face execution. Instead, the individual would receive a prison sentence of no longer than ten years in a juvenile facility.

The Commission further clarified that the abolition of the death penalty would include those sentenced to death for terrorism-related crimes and would be retroactively applicable.

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<sup>1</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23795&LangID=E>

<sup>2</sup> [https://twitter.com/HRCSaudi\\_EN?ref\\_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor](https://twitter.com/HRCSaudi_EN?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor)

There are at least 13 individuals currently facing the death penalty in Saudi Arabia for acts they allegedly committed as minors. They have either been prosecuted or are currently being prosecuted in the anti-terrorism courts or under the anti-terrorism law, or face a penalty under *qisas* or *hudud*.

While we do not wish to prejudge the accuracy of the information received, we welcome the decision announced by Your Excellency's Government to abolish the death penalty for minors, which is consistent with international law. The prohibition of executions for crimes committed by persons under the age of eighteen is codified in several international and regional human rights treaties, in particular in Article 37 of the Convention on the Rights of the Child, which Saudi Arabia ratified in 1996 and Article 7 of the Arab Charter on Human Rights.

We also welcome the announced decision to end flogging, which the Human Rights Council in Resolution 8/8, concluded can amount to cruel, inhuman or degrading treatment or punishment, and even torture (para 7a).

We respectfully encourage the authorities of Saudi Arabia to implement these measures without delay, and to give serious consideration to fully abolish the death penalty and completely renounce to corporal punishment. We remain at Your Excellency's Government disposal for any assistance we may be able to provide to support efforts in this regards.

At the same time, we note that the text of the Royal Decree as well as its translation into law has yet to be released. Its absence creates uncertainty as to the scope and extent of the decision, and whether there are exceptions to the announced prohibition of executions on juveniles. We recall that the 2018 Juvenile Law includes an exception for those charged under the anti-terrorism and terrorist financing regime, and another for offences punished under *qisas* and *hudud* categories of penalties.

We take the opportunity to reiterate our call to Your Excellency's Government to release Mr. Ali al-Nimr, Mr. Dawood al-Marhoon and Mr. Abdullah al-Zaher, as well as all other juveniles sentenced to death for the legitimate and peaceful exercise of their fundamental rights, including the right to freedom of opinion and expression.

Similarly, we reiterate our recommendation that the cases of these young men as well as all other cases of juveniles involving allegations of torture and ill-treatment, including those sentenced to death after reportedly having confessed under duress, should be thoroughly reviewed and investigated; and where it is found that torture or other ill-treatment was used to obtain inculpatory evidence, those juveniles should be released and the perpetrators be brought to justice.

We also wish to recall that Articles 3, 9 and 10 of the Universal Declaration of Human Rights respectively protect the right to life, liberty and security of persons; establish that no one shall be subjected to arbitrary arrest or detention; and guarantee the right of everyone to a fair trial. Furthermore, Article 1 and 16 of the Convention against

Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), acceded by Saudi Arabia in 1997, establish the absolute right of everyone to be free from torture and other cruel, inhuman and degrading treatment or punishment and the need that any allegation in this regard is investigated, promptly and ex officio. In this connection, please also refer to the **Annex on Reference to international human rights law** attached to this letter which cites relevant international human rights instruments and standards.

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 a comment you may have on the above mentioned reported information.
2. Please provide a copy of the Royal Decree and afferent legal amendments to the Penal Code or any related legislation that establishes into law the abolition of the imposition of the death penalty on juvenile, as well as the ending of flogging; as well as the related implementation decrees.
3. Please provide detailed information, including timing, on how the Government of Saudi Arabia envisages to implement the announced decision to abolish the death penalty for minors. Please also explain whether and to what extent the lawyers and the families of those sentenced to death, who should see their death sentences turned into prison sentences, are being, or will be involved, in the implementation of such decision, particularly with regard to the provision of adequate information as to the whereabouts of their relatives and the right to access to them.
4. Please provide detailed information, including timing, on how the Government of Saudi Arabia envisages to implement the announced decision to end flogging as a form of punishment. In particular, please explain for which crimes the decision will be applied and whether there remain crimes for which flogging will still be applicable. If so, please explain what these crimes are and please provide information on the rationale for keeping flogging as a form of punishment for them.
5. Please provide detailed information on how the decision to abolish the death penalty for minors will impact the cases of Mr. Ali al-Nimr, Mr. Dawood al-Marhoon and Mr. Abdullah al-Zaher. In particular, please explain whether Your Excellency's Government intends to release them and when.
6. Please confirm the number of persons currently facing death penalty for crimes they allegedly committed when they were minors and the alleged charges or crimes for their sentences.

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.

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(s) responsible for the alleged violations.

Given the importance of these decisions, we believe that they requires the most serious attention on the part Your Excellency's Government, and would thus appreciate a response to this communication at your earliest convenience. We may be considering to publicly welcome these decisions and express our remaining concern in the cases described in this letter. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye

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

Nils Melzer

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

**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, 9 and 10 of the Universal Declaration of Human Rights which respectively state that "Everyone has the right to life, liberty and security of person"; that "No one shall be subjected to arbitrary arrest, detention or exile"; and that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

We also wish to recall Article 1 and 16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), acceded by Saudi Arabia in 1997, which establish the absolute right of everyone to be free from torture and other cruel, inhuman and degrading treatment or punishment. In this regard, we wish to point out that Saudi Arabia is obliged to investigate, promptly and ex officio, all allegations of torture and ill-treatment and other serious human rights violations wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction (Article 12). In addition, confessions and other information extracted under torture or ill-treatment are not admissible into any legal proceeding, as their admission violates the rights of due process and a fair trial (Article 15).

Furthermore, we would like to refer to Article 37 of the Convention on the Rights of the Child which state that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. (...); (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

In addition, we would like to refer to the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty, which provide that capital punishment may be imposed only for the most serious crimes, after a legal process which gives all possible safeguards to ensure a fair trial, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings. And that persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death.