

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Enforced or Involuntary Disappearances

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and Working Group on Enforced or Involuntary Disappearances, pursuant to Human Rights Council resolutions 43/20 and 45/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Osama Talal Abbas Al-Mahruqi**, a dual Saudi and Australian national, reportedly extradited from Morocco to Saudi Arabia, despite the provisional measures ordered by the United Nations Committee Against Torture (UNCAT), on the basis of the potential risk of torture and other ill-treatment. Since his extradition on 13 March 2021, no information on Mr. Al-Mahruqi's fate or whereabouts is available.

According to the information received:

Osama Talal Abbas Al-Mahruqi (أسامة طلال عباس المحروقي) is a Saudi citizen born on 1 December 1981. He resided in Melbourne, Australia for almost 14 years and was granted the Australian nationality in 2009. On his Australian passport, his name is Osama Alhasani and his date of birth 11 December 1978. The reasons for the discrepancies in his name and date of birth are not known.

Mr. Mahruqi holds a PhD in Business Information Systems from the Royal Melbourne Institute of Technology and was reportedly an imam at a mosque in Melbourne.

Upon his return to Saudi Arabia, he worked as an associate professor at the King Abdelaziz University in Jeddah, and consultant on matters of international business and trade at the Ministry of Industry and Foreign Trade, in addition to being a Quran reader.

In 2015, Mr. Mahruqi was reportedly forced to leave his position as a consultant to the Government of Saudi Arabia following intimidation and harassment allegedly resulting from his critical opinion. He had subsequently left the country to reside between Turkey and the United Kingdom. He married a Moroccan citizen, in 2017, and is now the father of a four-month-old child.

On 8 February 2021, Mr. Mahruqi travelled to Morocco to visit his wife and new-born child. He arrived at Casablanca airport with his Australian passport. Few hours after his arrival at his wife's house in Tangier, Mr. Mahruqi was

brutally arrested by eight security personnel dressed in civilian clothing, who allegedly insulted him and beat him in front of his wife and child. During his arrest, Mr. Mahruqi was reportedly informed that he was the subject of a red notice issued by the International Criminal Police Organization (INTERPOL) at the request of the Saudi authorities, without being presented with an arrest warrant. He was then taken to the Tangier police station where he was held in police custody for three days.

On 10 February, Mr. Mahruqi's wife visited him at the Tangier police station. He allegedly told her that he was pressured into signing a document agreeing to his voluntary return to Saudi Arabia. Mr. Mahruqi refused to sign such a document.

After three days in police custody, an arrest warrant was issued against Mr. Mahruqi, based on which he appeared before the King's Prosecutor, where he was able, for the first time since his arrest, to benefit from the assistance of an ex-officio lawyer, with whom he had a half an hour meeting.

On 11 February 2021, the Attorney General of Saudi Arabia transmitted an extradition request against Mr. Mahruqi to the Morocco authorities, referring to the Riyadh Convention on Judicial Cooperation of 22 March 1983. The request for extradition states that Mr. Mahruqi is wanted for questioning and trial in ongoing criminal proceedings, citing charges of car theft, which allegedly took place in February 2015 and involved six other defendants. According to the Saudi Government, Mr. Mahruqi left Saudi Arabia on 4 July 2015, following this case.

In this regard, on 27 March 2018, the Jeddah court reportedly sentenced the six defendants, with the exception of Mr. Mahruqi, who had already left the country, to three months in prison. However, the judgment reportedly made reference to allegations of torture and ill-treatment that the defendants raised during the trial. The prison sentence was, however, confirmed by the First Criminal Chamber of the Mecca Court of Appeal on 30 May 2018.

Following the hearing on 11 February 2021, Mr. Mahruqi was transferred to Tangier prison where he was held in deplorable conditions and received only bread and water. On 23 February, he was further transferred to Tiflet2 prison.

Mr. Mahruqi allegedly had a heart attack a year ago and suffers from hypertension. However, since his transfer to Tiflet2 Prison, Mr. Mahruqi's wife had encountered difficulties in visiting her husband or providing him with the necessary medication to avoid the aggravation of his health condition.

On 3 March 2021, Mr. Mahruqi's lawyers requested the Criminal Court of Cassation, responsible for ruling on extradition requests, to postpone the first hearing, as they were not allowed to prepare the defence with their client. The hearing was thus postponed until 8 March.

It is reported that following the visit of a delegation from the Moroccan National Human Rights Council to Mr. Mahruqi, he was allowed to make calls to his wife several times this week, as well as to speak with his lawyers.

The hearing on 8 March was reportedly attended by his lawyers, representatives from the Australian Consulate and the Saudi Embassy. However, Mr. Mahruqi followed the proceedings virtually and was not given the opportunity to speak. During the hearing, the lawyers reportedly insisted on the risk of torture and other ill-treatment that Mr. Mahruqi could incur in the case of his extradition to Saudi Arabia and requested his release.

On 10 March, the Court of Cassation issued a favourable opinion on the extradition request and instructed that Mr. Mahruqi be handed over to the Saudi judicial authorities. This decision becomes final and enforceable following the confirmation by decree of the Head of Government.

On 11 March, Mr. Mahruqi reportedly received visits from his wife, lawyers and the Australian consulate. He would not have been informed, until then, of the decision in favour of his extradition rendered the day before by the Court of Cassation. Mr. Mahruqi was reportedly disturbed and stressed during his wife's visit, having no information about the actions that will be taken against her.

On 12 March, the United Nations Committee Against Torture (UNCAT) was seized of the case of Mr. Mahruqi and transmitted a formal request to the Moroccan Government for the application of interim measures, according to which Mr. Mahruqi should not be extradited to Saudi Arabia until his case is considered by the Committee to decide on the potential risk of torture and other ill-treatment incurred by Mr. Mahruqi, under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

On the same day, despite the UNCAT's interim measures and without informing his lawyers, his family or the Australian consulate, Mr. Mahruqi was reportedly extradited to Saudi Arabia. His family reportedly heard the news from the Moroccan media the next day. However, no response was given to the lawyers' request to Tifelt2 Prison and the King's Prosecutor to verify the veracity of the information suggesting that Mr. Mahruqi had already been extradited.

Since Mr. Mahruqi's alleged extradition on the morning of 13 March, no information on his fate or his whereabouts had been made available.

While we do not wish to prejudge the accuracy of the aforementioned allegations, we would like to express our deep concern at the accelerated extradition procedures in the case of Mr. Mahruqi, and the fact that he was handed-over to the Saudi authorities in secrecy and without notifying his family, lawyer or Australian Consulate. We are also alarmed by the incommunicado detention of Mr. Mahruqi since his extradition to Saudi Arabia, without any contact with the outside world or

information on his fate or whereabouts. These allegations, if confirmed, will constitute a violation of Saudi Arabia's obligations under article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified on 23 September 1997, as well as the Declaration on the Protection of All Persons from Enforced Disappearance.

We wish to remind your Excellency's Government of the absolute and non-derogable prohibition on returning an individual to a place where they risk being exposed to torture or other ill-treatment. Accordingly, Article 3 of the CAT provides that “[n]o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”; and that, “[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”.

We would like to stress that the failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance. In this regard, we would like to draw the attention of your Excellency's Government to paragraph 27 of General Assembly Resolution 68/156 (February 2014), which, “[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished”.

Furthermore, we would like to underline the provisions of the Declaration on the Protection of All Persons from Enforced Disappearance which categorically prohibits any act leading to enforced disappearance as this constitutes a serious and flagrant violation of human rights; and specifies that no circumstances whatsoever can justify enforced disappearances (Articles 1 and 7). Indeed, enforced disappearance constitutes an aggravated form of arbitrary detention, and may constitute a form of torture and ill-treatment.

We also like to bring to your Excellency's Government attention the legal and procedural safeguards against torture and ill-treatment including the right to legal counsel and to contact one's family from the outset of arrest provided in the UN Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment (Body of Principles). Furthermore, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment reiterated, “The risk of torture and ill-treatment is greatest in the first hours of custody and during incommunicado detention. Therefore, preventive safeguards must be implemented immediately after arrest, including the notification of a third party, access to a lawyer and a physician and the furnishing of the detainee with information on their rights, available remedies and the reasons for arrest..”(A/73/207).

We wish to further highlight that the “prohibition of arbitrary deprivation of liberty is non-derogable and recognized in all major international and regional

instruments for the promotion and protection of human rights.” (A/HRC/22/44, para. 42). Moreover, we remind that incommunicado detention constitutes “the most heinous violation of the norm protecting the right to liberty of human being under customary international law,” as the individual is “left outside the cloak of any legal protection.” (A/HRC/22/44, para. 60).

We further wish to highlight that among the core elements of a fair trial is the right to legal assistance, which undergirds “the right to a fair and public hearing by a competent, independent and impartial tribunal, as established by law under articles 3 and 9 of the UDHR.

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 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 full information, without delay, on the fate and whereabouts of Mr. Mahruqi including the exact place where he has been held since his arrival to Saudi Arabia on 13 March, the conditions of his detention and the treatment he received, and explain how this is compatible with Saudi Arabia’s international human rights obligations.
3. Please provide detailed information on the legal and practical procedures followed to hand-over Mr. Mahruqi to the Saudi authorities and extradite him from Morocco to Saudi Arabia. Please also clarify the authorities that supervised and conducted the extradition, as well as the detailed information on the date, time and means of the extradition.
4. Please provide detailed information on the factual and legal grounds of the arrest and detention of Mr. Mahruqi, as well as any formal charges against him, and the legal provisions used to charge him.
5. Please provide full information on measures which have been taken, or which are foreseen, to guarantee the conduct of criminal proceedings by independent and impartial judicial authorities, in full compliance with the norms of due process recognised by international law, and the observance of fundamental safeguards, including unrestrained and confidential access a lawyer of his own choice and to an independent medical doctor, as well as regular contact with his family.

While awaiting a reply, we urge your Excellency's Government to immediately reveal the place where Mr. Mahruqi is being held and ensure his physical and moral integrity, as well as take all necessary measures to halt the alleged violations and prevent their re-occurrence.

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.

In view of the urgency of this situation, and the risks to Mr. Mahruqi's physical and moral integrity, we reserve the right to publicly express our concerns in this case. In our view, the information upon which the press release will be based is sufficiently reliable to substantiate our fears about the fate of this person, and 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.

Please note that a letter expressing similar concerns is being sent to the Government of the Kingdom of Morocco, and a copy to the Government of Australia.

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

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

Tae-Ung Baik
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances