

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; 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 8/2021

28 May 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; 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 44/5, 42/22, 43/4, 41/12 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Mustafa al Darwish**, a national of Saudi Arabia, who reportedly faces imminent execution, after having been allegedly arbitrarily arrested and currently detained, tortured and sentenced to death following a reportedly unfair trial, for crimes that allegedly occurred when he was below eighteen years old.

According to the information received:

On 24 May 2015, Mr. Mustafa al Darwish was arrested and placed in detention at Al-Mabahith prison, in Dammam. Among the charges brought against him was his alleged participation in the demonstrations that took place in the country in 2011. At that time, Mr. al Darwish was seventeen years old.

While in detention, Mr. al Darwish was allegedly placed in solitary confinement and repeatedly tortured, which led to him losing consciousness several times. He was forced to sign a confession which he later confirmed in trial was due to torture threats he faced.

After two years of detention, in 2017, Mr. al Darwish was sent for trial before the Specialized Criminal Court, on charges of participating in the shooting at security officers, taking part in protests and demonstrations, for "covering up persons sought by the authorities" and for storing on his phone "material against the security of the State". Mr. al Darwish was only granted the assistance of a lawyer after the first hearing had taken place in August 2017.

In March 2018, Mr. al Darwish was sentenced to the death penalty for the above-mentioned charges and for violating the Sharia principle of *ta'zir*. The sentence was upheld by the Court of Appeals and it is now pending final confirmation before the Supreme Court.

It is feared that Mr. al Darwish can be executed at any moment. His family reportedly has no information on his current condition, in spite of their repeated requests, including at the Court of Appeal and the Supreme Court; a circumstance which increases the family's suffering and fears for Mr. al Darwish's life.

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we are deeply concerned Mr. al Darwish was sentenced to death for crimes allegedly committed when he was less than eighteen years of age i.e. when he was still a child. We wish to emphasize that the prohibition of executions for crimes committed by children (persons under the age of eighteen) is provided 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.

We are further concerned that Mr. al Darwish was reportedly sentenced to death without due process and fair trial (Article 10 of the Universal Declaration of Human Rights (UDHR)). Reportedly, he did not have access to a lawyer upon his arrest and could not resort to any remedy to challenge the lawfulness of his detention (Article 9 UDHR); he was subjected to torture or other cruel, inhuman or degrading treatment or punishment and was forced to sign a confession under torture, which was admitted as evidence at the trial, contrary to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, including the absolute prohibition on the use of statements made as a result of torture or other ill-treatment in any proceedings, as set forth in Articles 2, 15 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was ratified by Saudi Arabia in 1997. Furthermore, he is accused of committing crimes for participating in protests and demonstrations. We would like to recall that the peaceful participation in assemblies is a fundamental right (Article 20 UDHR) and should not be criminalized, even if other parties at the assembly were not peaceful.

In addition, we wish to stress that, when not legally prohibited, the death penalty may be imposed only following compliance with a strict set of substantive and procedural requirements. In particular, capital punishment may only be carried out for the "most serious crimes", involving intentional killing. We are concerned that Mr. al Darwish might have allegedly been charged, sentenced and may reportedly be executed for offences that do not reach this threshold, but merely for the exercise of his rights to freedom of expression and of peaceful assembly.

Similarly, capital punishment may only be imposed pursuant to a final judgment rendered by a competent court 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. We reiterate that the imposition and subsequent execution of a death sentence upon the conclusion of a trial in which due process and fair trial standards have not been respected constitutes an arbitrary killing for which the State is responsible. Furthermore, anyone sentenced to death shall have the right to seek pardon or commutation of sentence.

Lastly, we recall that victims of torture and other ill-treatment must have a right to lodge a complaint about their treatment while held in custody. Any allegation in this regard must be promptly followed by an impartial and thorough investigation by an independent body. Whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed, Article 12 of the CAT imposes an obligation on the State to investigate. The Government must ensure that complainants are not subject to reprisals and that victims of torture or ill-treatment receive adequate reparation.

Under these circumstances, we respectfully call on your Excellency's Government to immediately halt any steps being taken toward the execution of Mr. al Darwish, which, based on the information available to us, would constitute an arbitrary execution; to annul the death sentence imposed on him; to investigate fully the allegations of torture and to ensure that he is re-tried in conformity with international law and standards.

We are issuing this appeal in order to safeguard the rights of Mr. al Darwish from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*¹.

We also respectfully reiterate our calls on your Excellency's Government to adopt and put into effect without delay the legislative measures recently announced to abolish the imposition of the death penalty for children for all crimes, including in relation to offences punished under *qisas* and *hudud*².

Lastly, we call on Your Excellency's Government to consider establishing an official moratorium on all executions as a first step towards fully abolishing the death penalty in the country.

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 current state of physical and mental integrity of Mr. al Darwish and please explain whether he has had

¹ Article 41 ICJ Statute 'Interim Protection': Part III, Section D (Incidental Proceedings), Subsection 1

² See urgent appeal sent on 23 February 2021 (UA SAU 4/2021): <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26054> ; Government's reply: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36149> .

access to adequate medical care, as appropriate;

3. Please explain whether Mr. al Darwish's arrest and subsequent detention were in compliance with international human rights law and standards; and please explain whether the trial of Mr. al Darwish was conducted in a manner consistent with international due process and fair trial standards;
4. Please provide information on the current conditions of detention of Mr. al Darwish, including with regard to contacts with his family and lawyer, and how these conditions are consistent with the provisions of the Standard Minimum Rules for the Treatment of Prisoners ("The Mandela Rules"). This is also essential to help relieve the anguish suffered by Mr. al Darwish's family for lack of information about their relative;
5. Please provide detailed information and, where available, the results, of any investigation, and judicial or other inquiries carried out in relation to the allegations of torture and confessions extracted under duress. If no inquiries have taken place, or if they have been inconclusive, please explain why.
6. Please also provide information on the existing procedures for persons sentenced to death to seek clemency or a pardon, and provide detailed information on how they can access such procedures.
7. Please also provide information in how far Mr. al Darwish is charged for his participation in demonstrations and protests and what evidence exists of him being a violent element at said events.

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 may 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.

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.

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 respectfully urge you to stay the execution and initiate a process to review the case.

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

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan
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

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