

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA SAU 10/2021

27 August 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; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 44/5, 42/22, 45/3, 43/8, 40/10, 40/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the cases of Mr. **Mohammed Al-Shakhouri** and Mr. **Asaad Makki Shubbar**, the latter a member of Saudi Arabia's Shi'a minority, who were sentenced to death following trials which did not meet due process guarantees and for crimes which do not appear to meet the "most serious crimes" threshold as required under international law.

According to the information received:

Mr. Mohammed Al-Shakhouri

On 17 April 2017, Mr. Mohammed Al-Shakhouri, born in 1984, disappeared. It later transpired that he had been arrested. There were no witnesses and the exact place of arrest remains unknown, although it is presumed that he was arrested at one of the checkpoints around al-Qatif and al-Awamiya. His fate and whereabouts were unknown for three days.

On 21 April 2017, Mr. Al-Shakhouri briefly re-appeared when he was taken by security forces in chains to his family home. Several items were confiscated from the house. After the raid on his house, Mr. Al-Shakhouri again disappeared. Persons associated with him repeatedly visited Qatif police and the Qatif Mabahith attempting to ascertain his whereabouts. However, no information was given as to his whereabouts or reasons for his arrest and they were not permitted to appoint a lawyer to communicate with him. Five months later, persons associated with Mr. Al-Shakhouri were informed that he was detained in Mabahith prison in Riyadh, but were not permitted to meet with him.

During his enforced disappearance, Mr. Al-Shakhouri was reportedly held in solitary confinement for three months during which time he was subjected to various types of torture and ill-treatment. This reportedly included sleep deprivation, beatings, and stress positions. His ill-treatment led to back pain, bruising and caused several of his teeth to fall out. He was denied access to the prison doctor during the first year of his detention. He was later able to see the prison doctor but was not provided with any medicine, and attempts by relatives to bring medicine were rejected by the prison administration. He was taken to the hospital twice, but it is unclear what treatment he was given. Following his solitary confinement, Mr. Al-Shakhouri was then transferred to the Riyadh Investigation Department, and then to Dammam Investigation Prison.

In October 2017, Mr. Al-Shakhouri's relatives were able to visit him for 30 minutes in Dammam Investigation Prison. Immediately after the visit, communication was cut. Shortly afterwards, his family was informed that he had been transferred to al-Haa'ir prison in Riyadh. Later, Mr. Al-Shakhouri was able to receive regular visits from his family until the onset of the COVID-19 pandemic when visits were suspended. Recently, contact has been intermittently allowed every 3-6 months.

On 11 July 2019, the Public Prosecutor submitted a list of charges and requested that the judge sentence Mr. Al-Shakhouri to execution. The charges included:

- Joining an armed "terrorist party" entitled Hezbollah al-Hijaz, intending to bring down the State and committing terrorist warfare operations.
- Seeking to destabilize the social fabric and national cohesion. Advocating, participating in, and promoting sit-ins and demonstrations that affect the stability of the Kingdom, in addition to raising slogans against the State and supporting the "terrorist Hezbollah party."
- Financing terrorism and terrorist acts.
- Receiving training on how to use grenades and how to make explosives.
- Possessing weapons and ammunition and receiving training on how to disassemble, install, and use them.
- Possessing a MicroSD memory card and installing therein pictures of information of the "terrorist Hezbollah party."

The Prosecutor relied on confessions made by Mr. Al-Shakhouri, which it is believed were coerced using torture.

On 12 January 2019, the court appointed a lawyer for Mr. Al-Shakhouri. This was the first time during his abduction, arrest, and detention that Mr. Al-Shakhouri had legal representation. Due to the COVID-19 pandemic, Mr. Al-Shakhouri's lawyer has only been able to meet with him a few times.

On 21 February 2021, a trial judge sentenced Mr. Al-Shakhouri to death for the charges collectively. His lawyer informed the judge that Mr. Al-Shakhouri

had been subjected to enforced disappearance and that his confession was made following torture. However, no investigation was ordered.

On 2 August 2021, the death sentence was upheld on appeal.

The case is now pending before the Supreme Court.

Mr. Asaad Makki Shubbar

On 28 April 2017, Mr. Asaad Makki Shubbar, born in 1984, a member of the Shi'a minority, was arrested in Aseer Province, without a warrant being shown. A few days after his arrest, he was able to inform persons associated with him of his detention.

From his arrest until May 2019 (more than 2 years), he was held without trial. During this period, he was subjected to various types of torture and ill-treatment. This reportedly included beatings of his body and face, particularly targeting his lower back which he had previously injured, threatening to strip him, to break his back and give him injuries that would prevent him from walking and threatening to detain and assault a family member. Reportedly interrogators also used sectarian terms denigrating minority Shi'a believers and insulted his religious beliefs. The mistreatment resulted in back injuries. However, his requests to transfer him to hospital for treatment were not granted and he was left in severe pain.

During his pretrial detention, Mr. Shubbar was held in solitary confinement for four months and was forced to sign confessions written by the investigating authorities.

In May 2019, the Specialized Criminal Court held the first hearing on his case. The Public prosecutor filed the following charges:

- Joining an armed terrorist organization aiming to carry out terrorist acts inside Saudi Arabia for the benefit of a foreign enemy by shooting at security personnel.
- Joining a group of people from Qatif in acts of sabotage, monitoring roads, participating in demonstrations, chanting slogans and calling for participation in demonstrations and sit-ins.
- Supporting a party classified as a terrorist organization that attempts to undermine the social fabric and national unity, and advocating, participation, promotion and incitement to sit-ins and demonstrations through his possession of images.
- Training on how to dismantle and install weapons.

The charges were brought under a number of legal provisions including the Law on Combating Terrorism Crimes and Financing.

During the trial, Mr. Shubbar denied the charges, indicated that he was forced to sign confessions following torture and asked for an investigation including examination of security camera footage of the interrogation. This request was not granted.

In January 2021, Mr. Shubbar was sentenced to death for the charges collectively.

In July 2021 the Specialized Appeals Court upheld his sentence.

The case is now pending before the Supreme Court.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned by the reported sentencing to death of Mr. Al-Shakhouri and Mr. Shubbar on the basis of what seems to be confessions obtained through torture. The reported use by the judicial authorities of coerced confessions as evidence of guilt would constitute a blatant violation of due process and of fair trial guarantees. In addition, we note with concern that in the case of Mr. Shubbar, his persecution and ill-treatment while in detention may have been motivated by Mr. Shubbar's religion or belief, being a member of the Shi'a religious minority. We are further concerned by the failure to investigate Mr. Al-Shakhouri's and Mr. Shubbar's reported enforced disappearance and torture, despite the trial judge apparently being informed of these allegations.

If confirmed, these allegations would amount to violations of the right to life, liberty and security (guaranteed by article 3 of the Universal Declaration of Human Rights – hereinafter “UDHR”), the right not to be subjected to torture (article 5 of the UDHR), the right to recognition as a person before the law (article 6 of the UDHR), the right to a remedy (article 8 of the UDHR), the interdiction on arbitrary arrest or detention (article 9 of the UDHR), the right to a fair hearing (article 10 of the UDHR), the right to freedom of thought, conscience and religion or belief (article 18 of the UDHR) as well as the absolute prohibition of enforced disappearance, as set forth in articles 1, 2 and 7 of the Declaration on the Protection of all Persons from Enforced Disappearance (hereinafter “the Declaration”); and the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, established in articles 2 and 16 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment (hereinafter “CAT”), which Saudi Arabia ratified in 1997.

We would like to refer to the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty (hereinafter “the Safeguards”), which provide that capital punishment may be imposed only for the most serious crimes. We highlight that “most serious crimes” should be understood to refer to cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). We further note that the Safeguards require that capital punishment be imposed only after a legal process which gives all possible safeguards to ensure a fair trial. This includes 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.

Article 12 of the CAT requires States ensure a prompt and impartial investigation is carried out wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction and article 15 which provides that statements which are established to have been made as a result of torture shall not be invoked as evidence in any proceedings. We further refer to articles 9, 10, 13, 14 and 19 of the Declaration, which state *inter alia* that allegations of enforced disappearances should be promptly, thoroughly, and impartially investigated and that 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.

The United Nations Committee against Torture has repeatedly concluded that enforced disappearances may amount to torture and other forms of ill-treatment both with regard to the disappeared and with regard to their family members, due to the anguish and uncertainty concerning the fate and whereabouts of loved-ones.¹

The “principle of legal certainty” under international law, enshrined in article 11 of the UDHR, requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offense and what would be the consequence of committing such an offense, We’ve previously addressed our concern in another communication regarding your Excellency’s counterterrorism legislation. (OL SAU 12/2020) This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse.² Moreover, the law must be formulated with sufficient precision so that the individual can regulate his or her conduct accordingly.

Numerous statements by UN human rights mechanisms have highlighted that national counter-terrorism legislation is limited to the countering of terrorism as properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the model definition proposed in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly. The seriousness of, and punishment for, a criminal conviction must be proportionate to the culpability of the perpetrator. No one should be convicted of participating in a terrorist act, or facilitating or funding terrorism, unless it can be shown that that person knew or intended to be involved in terrorism as defined under national law.

The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in General Assembly

¹ See, for example, conclusions and recommendations on the second periodic report of Algeria - A/52/44, para. 79, on the initial report of Namibia - A/52/44, para. 247 and on the initial report of Sri Lanka -A/53/44, paras. 249 and 251)

² A/73/361, para. 34.

resolution 47/135 refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). In this regard, members of religious or belief minorities such as the Shia in Saudi Arabia shall “not be denied the right, in community with the other members of their group, to profess and practice their own religion...” according to the obligations set out in Article 27 of the International Covenant on Civil and Political Rights.

The 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55) states in its Article 2 (1): “[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief.” In Article 4 (1), the General Assembly further states that: “All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]” Furthermore, we would like to refer your Government to Article 4(2) according to which: “All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

Given the irreversible nature of the execution of a death penalty, we respectfully urge your Excellency’s Government to ensure Mr. Al-Shakhouri and Mr. Shubbar are not executed; to take all the necessary steps to address any allegation of enforced disappearance, torture, arbitrary detention and violation of fair trial and due process guarantees that they may have suffered; and to ensure, at a minimum, that Mr. Al-Shakhouri and Mr. Shubbar are retried in full compliance with international legal standards.

We are issuing this appeal in order to safeguard the rights of the above individuals from irreparable harm and without prejudicing any eventual legal determination.

We would like to request that a copy of this communication be shared with the Supreme Court in order to ensure they are aware of the allegations that Mr. Al-Shakhouri and Mr. Shubbar have been tortured and subjected to enforced disappearance and can order investigations accordingly.

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 prompt response on the urgent steps taken, or to be taken, by your Excellency’s Government to safeguard the rights of Mr. Al-Shakhouri and Mr. Shubbar in compliance with Saudi Arabia’s human rights obligations.

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 detailed information on the factual and legal grounds of the arrest, detention, and trial of Mr. Al-Shakhouri and Mr. Shubbar and their compliance with Saudi Arabia's obligations under international human rights standards, including in relation to Mr. Shubbar's rights as a member of the Shia minority.
3. Please provide detailed information on any investigation undertaken into the claims of enforced disappearance, torture and/or other cruel, inhuman or degrading treatment or punishment and arbitrary detention reportedly suffered by Mr. Al-Shakhouri and Mr. Shubbar, with a view to ensuring accountability of those responsible. If no investigation was or is being conducted, please explain why.
4. Please set out how the charges related to terrorism conform to the principles of legal certainty, and are consistent with the legal framework of counter-terrorism found in UNSCR 1373 and FATF Recommendations 8.

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 cases through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the urgent appeal and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable damage to the life and personal integrity of Mr. Al-Shakhouri and Mr. Shubbar, 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.

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.

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

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

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