

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; 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 13/2021

30 November 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; 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 43/16, 42/22, 43/4 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 **alleged arbitrary detention and raid of the homes of women human rights defenders Ms. Asmaa Al-Subaie and Ms. Maha Al-Rafidi, and the alleged arbitrary detention of human rights defenders Dr. Mohammed Al-Qahtani, Mr. Fowzan Mohsen Awad Al-Harbi, Mr. Issa Al-Nukhaifi and Mr. Khaled Al-Omair.**

Ms. Al-Subaie is a woman human rights defender and university student, who uses her social media networks to express her views defending women's rights and supported women subjected to domestic violence, as well as defending detainees.

Ms. Al-Rafidi is a woman human rights defender and was a journalist for Al-Watan newspaper. She uses her social media networks to advocate for the defense of prisoners of conscience, and to express her rejection of normalisation of relations with Israel and her support for the Palestinian cause.

Dr. Al-Qahtani is a human rights defender and a founding member of the Saudi Civil and Political Rights Association (ACPRA), a leading human rights organisation in Saudi Arabia. The case of Mr. Al-Qahtani was included in the 2021, 2020, 2019, 2013 and 2012 reports of the Secretary-General on allegations of interrogation, travel ban and sentencing to 10 years of imprisonment for allegedly providing false information to outside sources, including UN human rights mechanisms. Mr. Al-Qahtani is currently held in Al-Ha'ir Prison in Riyadh. In December 2020 and March 2021, Mr. Al-Qahtani reportedly carried out hunger strikes jointly with other inmates to protest harassment and lack of family contact, access to books and essential medication. In April 2021, Mr. Al-Qahtani also reportedly tested positive for COVID-19 and since 7 April 2021 has been denied any contact with the outside world.

Mr. Al-Harbi is a human rights defender and member of ACPRA. The case of Mr. Al-Harbi was included in the 2021, 2020, 2019 and 2014 reports of the Secretary-General on allegations of arrest and detention for his cooperation with the UN. As of May 2020, he was serving a 10-year prison sentence at Al-Malaz prison in Riyadh to be followed by a travel ban of 10 years. On 20 May 2021, special procedures mandate holders raised the case of Mr. Al-Harbi and other human rights defenders expressing

concerns about their alleged arbitrary detention and long prison sentencing as well as abuse and torture in connection to their work (SAU 6/2021).

Mr. Al-Nukhaifi is a human rights defender, anti-corruption activist and lawyer who advocates against the government's policy of forced displacement of persons from the borders between Saudi Arabia and Yemen without adequate compensation. He has also been critical of and protested against Saudi Arabia's war on Yemen. The case of Mr. Al-Nukheifi was included in the 2021, 2020, 2019 and 2018 reports of the Secretary-General following his six-year prison sentence, with a six-year travel and social media ban upon release for his cooperation with the Special Rapporteur on extreme poverty to Saudi Arabia during a visit in January 2017 (SAU 2/2017). In November 2019, the Working Group on Arbitrary Detention stated that Mr. Al-Nukheifi's detention was arbitrary (A/HRC/WGAD/2019/71, paras. 76, 83, 90, 95), and raised particular concern about the reprisals against him for his consultation with the Special Rapporteur on extreme poverty (para. 93). Mr. Al-Nukheifi is currently held in Al Ha'ir Prison in Riyadh.

According to information received by OHCHR, between 6 and 14 March 2021, Mr. Al-Nukheifi joined other prisoners in a hunger strike in protest over harassment, included being denied family contact and access to books and newspapers. On 11 March 2021, he was reportedly transferred to hospital as a result of the hunger strike. On 20 May 2021, special procedures mandate holders raised the case of Mr. Al Nukheifi and other human rights defenders expressing concerns about the alleged arbitrary detention and long prison sentencing as well as abuse and torture in connection to their work (SAU 6/2021).

Mr. Al-Omair is a human rights defender who was arrested in January 2009 following the organization of a protest against the bombing of the Gaza Strip and was subsequently sentenced to eight years in prison for alleged illegal gathering and circulating information on internet pages.

There have been several communications sent by Special Procedures' mandate holders regarding allegations of arbitrary arrest and detention of Mr. Al-Qahtani, including SAU 3/2021, SAU 12/2017, SAU 4/2016, SAU 11/2014, SAU 5/2013. We thank your Excellency's Government for the response received to SAU 3/2021, SAU 12/2017 and SAU 4/2016, but regret to inform you that at the time of writing no response has been received in relation to the allegations raised in the two latter communications.

According to the information received:

The case of Ms. Asmaa Al-Subaie

On 1 June 2021, officers allegedly affiliated with the Presidency of State Security raided the home of Ms. Al-Subaie without a warrant, and reportedly confiscated her personal electronic devices and took her to an unknown location.

It has been reported that the reason for her arrest and arbitrary detention is in response to her posts on Twitter, in which she expressed her views in the defense of women's rights and in support of women subjected to domestic violence. Ms. Al-Subaie also posted on her Twitter account advocating for the

rights of detainees, calling for their trials to be public and criticizing the sentences issued against them, as a result of their peaceful expression on the internet, and for calling for the release of all prisoners of conscience.

The case of Ms. Maha Al-Rafidi

On 28 September 2019, Ms. Al-Rafidi was allegedly arrested without a warrant and arbitrarily detained, after approximately thirty officials, including armed and hooded men and those in military uniform, raided the home of a family member of Ms. Al-Rafidi's, where she was staying, and confiscated her electronic equipment. It is reported that she was kept in solitary confinement in Sha'ar Prison for two months following her arrest, after which she was beaten and subjected to ill-treatment, before being transferred to a general ward without charge.

Ms. Al-Rafidi's arrest and arbitrary detention appears to be linked to her activity on Twitter, in which she tweeted in support of human rights, including for the release of prisoners of conscience. She has not yet been charged.

The case of Dr. Mohammed Al-Qahtani, Mr. Fowzan Al-Harbi and Mr. Issa Al-Nukhaifi

On 15 August 2021, Dr. Al-Qahtani went on hunger strike in protest against the Al-Ha'ir prison administration's ill-treatment of prisoners, the confiscation of his books and their unwillingness to transfer of a number of inmates who suffer from mental illnesses to a hospital for treatment, due to the danger that their presence poses to the other inmates.

Dr. Al-Qahtani was joined in his hunger strike by Mr. Al-Harbi and Mr. Al-Nukhaifi, and a number of prisoners of conscience, who are reportedly in poor health conditions in ward A8 of Al-Ha'ir Reformatory Prison in Riyadh. Reportedly, information regarding the detention conditions in this ward has been strictly limited by the authorities, through the monitoring of phone calls with families and the prevention of discussing matters related to the hunger strike or their demands.

The case of Mr. Khaled Al-Omair

On 6 July 2018, Mr. Al-Omair was detained without charge, after he allegedly filed a complaint with the Saudi Royal Court (the Office of the King) against an officer of the General Investigations Department, who reportedly tortured Mr. Al-Omair during his imprisonment from December 2008 to April 2017.

On 24 October 2019, Mr. Al-Omair was told that there will be no further hearing sessions for his case, nor was he given a list of charges. However, in April 2021, a further hearing session was held for Mr. Al-Omair before the Specialised Criminal Court (SCC) in Riyadh, following which he was sentenced to seven years in prison, on the premise that he was "leading activities aimed at harming the security of the kingdom".

On 30 July 2021, Mr. Al-Omair was also allegedly subjected to a murder attempt by another prisoner, who has not been identified since the attempt.

Mr. Al-Omair has not been provided with any protection measures by authorities since this attempt.

On 16 August 2021, the Court of Appeal sentenced Mr. Al-Omair to two further years' imprisonment, bringing the total sentence against him to nine years' imprisonment. A travel ban for a similar period was also ordered against him, following the completion of his sentence.

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we would like to express our serious concern for what appears to be a pattern of widespread and systematic arbitrary arrests and detention of persons, including human rights defenders, for peacefully exercising their legitimate human rights to freedom of opinion and expression, belief, assembly and association. The non-violent criticism of state policies or institutions, including the judiciary, cannot be made a criminal offence in any society governed by rule of law and abiding by human rights principles and obligations, and constitutes a violation of the right to freedom of opinion and expression. We express further concern for the allegations of mistreatment of some of the above-mentioned individuals while deprived of their liberty.

In his 2021 report on cooperation with the UN in the field of human rights, the Secretary-General reported that multiple UN actors have identified alleged acts of intimidation and reprisals in the form of harassment, arbitrary arrest and detention, torture and ill-treatment, and heavy sentencing of those who cooperate or attempt to cooperate with the UN and their relatives (A/HRC/48/28 para. 105, Annex I para. 92). This includes allegations of reprisals concerning six individuals in detention and one who died in custody. Additional updates to previously reported cases were not included due to fear of further reprisals. In its July 2020 report, the Working Group on Enforced and Involuntary Disappearances addressed the "important risk of reprisal in Saudi Arabia," in the form of threats against those who report the disappearance of family members to the Working Group and "a culture of fear," stating that Saudi Arabia has been included in eight out of ten reports of the Secretary-General from 2010-2019 (A/HRC/WGEID/121/1, Annex I, para. 3 and 47).

In connection with the above alleged facts and concerns, please 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.

We are issuing this appeal in order to request that your Excellency's Government safeguard the rights of the abovementioned individual from irreparable harm and without prejudicing any eventual legal determination.

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, in particular, where the human rights defenders are currently detained and possible charges against them.

2. Please provide information concerning the legal grounds for the arrest and detention of the abovementioned persons and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR. Please provide information on whether all detainees have access to family members, legal counsel, and medical personnel. In particular, please also provide information on the current health of Dr. Al-Qahtani.
3. Please provide information on any investigations which may have been undertaken, or which are foreseen, with regard to allegations of torture or other cruel, inhuman or degrading treatment or punishment detailed above. If no such investigations have been initiated, please explain how this is compatible with the human rights obligations of Saudi Arabia.
4. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit cases through its regular procedure in order to render an opinion on whether the deprivation of liberty is arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the urgent appeal and the regular procedure.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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 draw the attention of your Excellency's Government to the principles and international standards applicable to this communication.

We would like to draw the attention of your Excellency's Government to article 19 of the Universal Declaration of Human Rights (UDHR), which provides for the right to freedom of expression, as well as to the Human Rights Council resolution 12/16, calling on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. This right applies online as well as offline. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 29 of the UDHR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the above-mentioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the UDHR.

Furthermore, we wish to refer to Human Rights Council resolution 24/24 which calls on States to ensure adequate protection from intimidation or reprisals for cooperation with the United Nations, its representatives and mechanisms in the field of human rights; and Human Rights Council resolution 22/6, which provides for the right to “unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms”.

Moreover, the 2015 report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/30/29), pursuant to Human Rights Council resolution 12/2 (A/HRC/30/29) reiterates the Secretary-General's firm position that “any act of intimidation or reprisal against individuals or groups for their engagement with the United Nations, its mechanisms and representatives in the field of human rights is completely unacceptable and must be halted, immediately and unconditionally” (para. 47).

In paragraph 23 of its General Comment No. 34, the Human Rights Committee has recognized that those “persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports”, are “frequently subjected to threats, intimidation and attacks because of their activities.” The Committee has urged States parties to protect against attacks aimed at silencing those exercising their right to freedom of expression.

We also refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

We would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We would like to refer also to the Commentary to the Declaration on Human Rights Defenders which states that "travel restrictions imposed on defenders in order to prevent them from participating in assemblies of different kinds outside their country of residence is contrary to the spirit of the Declaration and the recognition in its preamble that individuals, groups and associations have the right to "promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

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). According to body of principles the "Communication of the detained or imprisoned person with the outside world, and in particular his family . . . shall not be denied for more than a matter of days."(**Principle 15**). Notwithstanding, the right to immediately inform a person of his choice of the arrest (**Principle 16.1**) and to further correspond with family "detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world" (**Principle 19**). We also refer to paragraph 28 of

the General Assembly resolution 68/156 (2014) which emphasises that conditions of detention must respect the dignity and human rights of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment.

Furthermore, we would like to draw the attention of your Excellency's Government to paragraph 8a of Human Rights Council Resolution 16/23, which reminds States that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture".