

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; the Special Rapporteur on the situation of human rights defenders; 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

Ref.: AL SAU 14/2021
(Please use this reference in your reply)

8 November 2021

Excellency,

We have the honour to address you in our capacities 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; Special Rapporteur on the situation of human rights defenders; 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, 43/4, 41/12, 43/16, 40/16 and 43/20.

We are writing to follow up on the case of human rights defender Dr. **Moussa Al-Garni**, a national of Saudi Arabia, whose case was examined by the Working Group on Arbitrary Detention in 2007.

In April 2006, Dr. Moussa Al-Garni, a human rights defender, university professor and a long standing advocate of political and social reforms in the country, petitioned, together with other persons, the King of Saudi Arabia for permission to open an Islamic civil society organization with the aim of “discussing freedom, justice, equality, citizenship, pluralism, proper advice and the role of women.” On 2 February 2007, he and the other persons were reportedly arrested by agents of the Intelligence Services (Mabahith) on grounds of financing terrorism and conducting other illegal activities.

In its opinion no. 27/2007, adopted on 28 November 2007, the Working Group on Arbitrary Detention considered that the deprivation of liberty of Dr. Al-Garni, and that of eight other persons, was arbitrary, in contravention of Articles 9, 19 and 20 of the Universal Declaration of Human Rights (UDHR). Consequently, the Working Group requested the Government of Saudi Arabia to take the necessary steps to remedy the situation and bring Dr. Al-Garni’s deprivation of liberty into conformity with the norms and principles enshrined in the UDHR¹.

According to the new information received:

In February 2010, Dr. Al-Garni was brought for trial before the Saudi Arabia Specialized Criminal Court.

¹ <https://undocs.org/A/HRC/10/21/Add.1>

On 22 November 2011, he was sentenced to twenty years in prison, followed by a travel ban of the same duration, on charges of “disobeying the ruler”, “planning to start a political party”, and “communicating with foreign entities”.

While deprived of his liberty, Dr. Al-Garni was subjected to torture or other cruel, inhuman or degrading treatment or punishment, including beating, solitary confinement and placement in cells together with other detainees, possibly including supporters of the Islamic State of Iraq and the Levant (ISIL), who would beat and harass him due to his reformist views and civic engagement.

Dr. Al-Garni was also forcibly transferred to a psychiatric hospital and given inappropriate medication. He was systematically denied adequate medical care, even when, in May 2018, he suffered from a stroke.

In the morning of 10 October 2021, Dr. Al-Garni was found dead in his cell in Dhahban prison, Jeddah, by other prisoners. Authorities established that the death occurred at 2 am of the same day. An autopsy on Dr. Al-Garni’s body was carried out the day after.

On 14 October 2021, Dr. Al-Garni’s body was returned to his family. The body allegedly had signs of torture, including fractured ribs.

Dr. Al-Garni’s cause of death appears not to have been natural but instead the result of trauma, including to the face and head.

According to the information available, no thorough investigation has thus far been conducted into the death of Dr. Al-Garni, in order to determine its cause and circumstances.

While we do not wish to prejudge the accuracy of the information received, we wish to express our grave concern at these allegations which, if confirmed, would amount to violations of the right to life, as set forth in Article 3 of the UDHR; and of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, established in Article 5 of UDHR and Article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Saudi Arabia in 1997.

They would also be in violation of the right to liberty and security of the person, protected by Article 9 of the UDHR; the right to freedom of opinion and expression, guaranteed in Article 19 of the UDHR; the right to freedom of peaceful assembly and association, set forth in Article 20 of the UDHR; and the right to due process and fair trial, protected by Article 10 of the UDHR.

By depriving persons of their liberty, States assume the responsibility to care for their lives and bodily integrity and must therefore take all necessary measures to protect their lives. Such a heightened duty creates a presumption of State responsibility for deaths in custody that can only be rebutted through a prompt, impartial, thorough and transparent investigation carried out by an independent body, to determine their cause and circumstances and contribute to preventing their recurrence. Such investigations would also contribute to reduce trauma and provide an

effective remedy to the next of kin and the identification, prosecution and punishment of those responsible.

On the other hand, when deaths appear to be of natural causes, an adequate investigation, including an independent autopsy, can contribute to dispelling concerns about inadequate health care or foul play, thereby assisting States to address the presumption of responsibility for deaths in detention². United Nations human rights mechanisms have also highlighted the need to adequately investigate instances of inter-prisoner violence. Failure to investigate in such cases results in impunity and has been described as a human rights violation in and of itself in cases of torture and ill-treatment³.

In connection with the above alleged facts and concerns, 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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have about these allegations.
2. Please provide detailed information on measures taken to implement opinion no. 27/2007 of the Working Group on Arbitrary Detention; if no measures were taken to do so, please explain the reason(s) why and how is this consistent with the repeated calls by the Human rights Council to States to cooperate with its human rights mechanisms;
3. Please explain why Dr. Al-Garni, who is not known for having used or advocated the use of violence, was sentenced to 20 years of imprisonment and travel ban;
4. Please clarify the allegations that he was tortured in detention; that he was placed in cell with other prisoners, possibly including persons suspected of radical religious views, who ill-treated him; was transferred to a psychiatric hospital; and was not afforded medical treatment, even after he had a stroke, and how, if these allegations are accurate, this is consistent with the duty of care and humane treatment of detainees and prisoners by penitentiary authorities;
5. Please provide information on whether any investigation was conducted into the allegations of torture and other cruel, inhuman or degrading treatment or punishment reportedly suffered by Dr. Al-Garni. If no investigation was carried out or it was inconclusive, please explain the reasons why.

² Report of the United Nations High Commissioner for Human Rights, Human Rights in the administration of justice (A/HRC/42/20): <https://undocs.org/A/HRC/42/20>

³ Ibid.

6. Please provide information on the autopsy that was carried out following Dr. Al-Garni's demise, and its conclusion; please clarify how it was conducted and by whom;
7. Was an investigation by an independent body carried out to determine the cause and circumstances of his death, and what was its outcome? Please clarify the methodology used for such an investigation, and whether it was guided by international applicable standards in such a case, including the United Nations Protocol on the Investigation of Potentially Unlawful Death (Minnesota Protocol). If no investigation was carried out or if it was inconclusive, please explain the reasons why.
8. Please indicate what measures – legal, institutional and otherwise – are in place to ensure that human rights defenders, including civil society and activists, can operate in an enabling environment and can peacefully carry out their legitimate activities without fear of harassment, stigmatization, violence or criminalization of any kind.
9. Please provide information in details of how the counterterrorism efforts of Your Excellency's Government comply with the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, in particular with international human rights law requirements of same.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary 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.

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

Clément Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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, 10 and 20 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"; 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"; and that "Everyone has the right to freedom of peaceful assembly and association".

We stress that several resources are available to States in order to assist them in the implementation of their obligation to investigate deaths in custody. The *Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)* specifies that the duty to investigate is triggered when a State agent causes the death of a detainee or when a person dies in custody. The duty entails reporting the event, without delay, "to a judicial or other competent authority that is independent of the detaining authority and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such a death"⁴.

Furthermore, in 2013, the International Committee of the Red Cross (ICRC) published its Guidelines for Investigating Deaths in Custody, providing States with detailed guidance on the norms and standards to be respected and the methodology to be followed by preliminary, judicial and non-judicial investigations into cases of death in custody⁵.

Lastly, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also known as the Istanbul Protocol, provides detailed guidance for investigating cases of alleged torture and reporting such cases to the relevant authorities, setting out the standards for the legal investigation and documenting the physical and psychological effects of torture by medical professionals⁶.

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, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) provide States with important and detailed guidelines for protecting and fulfilling the human rights of persons deprived of their

⁴ <https://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>

⁵ <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4126.pdf>

⁶ <https://www.ohchr.org/documents/publications/training8rev1en.pdf>

liberty, including on how to implement access to health care in detention⁷.

Rule 56, in particular, provides that prisoners should be afforded an opportunity to make complaints regarding their treatment, without censorship, to the central prison administration or the appropriate judicial or competent authorities. The existence of adequate complaints mechanisms is an important prerequisite for effective investigative and accountability mechanism. In order to be effective, complaints mechanisms must be independent, effective, confidential and accessible to victims of torture, including persons deprived of their liberty. They must have the capacity to deal freely with any complaint, provide effective follow-up for the purpose of remedial action and ensure that those who file complaints do not face reprisals. Persons deprived of their liberty must be aware of and have confidence in these mechanisms⁸.

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.

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 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;
- 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 7, which provides for the right to develop and discuss new human rights ideas and principles and to advocate their acceptance;
- 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;
- article 17 which provides that “[i]n the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.

⁷ On this, also see the recommendations formulated by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in his report on the right to health in the context of confinement and deprivation of liberty (A/HRC/38/36): https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/36 .

⁸ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>