

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

Ref.: AL SAU 15/2021
(Please use this reference in your reply)

11 January 2022

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 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 and 43/20.

We are writing to follow-up on the cases of Mr. **Ali al-Nimr**, Mr. **Abdullah al-Zaher**, Mr. **Dawood al-Marhoon**, Mr. **Abdullah al-Howaiti**, Mr. **Ali Hassan Al-Rabie** and Mr. **Mustafa al Darwish**. The situation of these persons has been the subject of several communications by several Special Procedures mandates.

According to the information received:

Mr. Ali al-Nimr, Mr. Abdullah al-Zaher and Mr. Dawood al-Marhoon

Mr. Ali al-Nimr, Mr. Abdullah al-Zaher and Mr. Dawood al-Marhoon were arrested in 2012 in relation to protest-related offences, committed when they were below the age of 18. They were tortured and ill-treated, forced to confess, denied adequate legal assistance during trial and sentenced to death. Since 2015, their case has been raised by a number of Special Procedures mandate holders on different occasions¹.

Most recently, on 7 February 2021, the Saudi Human Rights Commission announced that Mr. al-Nimr, Mr. al-Zaher and Mr. al-Marhoon had been re-sentenced to ten years in prison, inclusive of time served².

On 3 March 2021, several Special Procedures mandates welcomed the commutation of the death sentences and urged that the charges against the three persons be dropped³.

¹ See SAU 8/2015: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18932>; SAU 2/2016: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=21114>; Government's reply: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=32551>; SAU 7/2017: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23248>; Government's reply: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33825>; SAU 13/2018: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24136>; Government's replies: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34421>; and <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34474>; See also <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16487>

² https://twitter.com/HRCSaudi_EN/status/1358485184522448897

³ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26829&LangID=E>

According to the new information received, on 27 October 2021 and 14 November 2021 respectively, Mr. Ali al-Nimr and Mr. Abdullah al-Zaher were released from prison⁴. Mr. Dawood al-Marhoon, on the other hand, remains imprisoned. It was reported that he may be released in early 2022.

We welcome the release of Mr. Al Nimr and Mr. al-Zaher and respectfully call once again on your Excellency's Government to consider the release of Mr. al-Marhoon.

Furthermore, we continue to respectfully recommend to Your Excellency's Government to uphold the universal prohibition against torture and ill-treatment, as set forth under Article 5 of the Universal Declaration of Human Rights (UDHR) and Articles 1, 2 and 16 of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment (CAT), ratified by Saudi Arabia in 1997; and to create a policy, legal and institutional environment enabling the redress and rehabilitation for victims of torture. In this regard, we would recommend that these three persons be afforded access to redress, reparations and rehabilitation.

Mr. Abdullah al-Howaiti

Mr. Abdullah al-Howaiti was arrested on 8 May 2017 when he was 14 years old. He was accused of shooting a police officer during the robbery of a jewelry store, tortured, forced to confess under torture and sentenced to death on 30 October 2019. The death sentence was upheld by the Court of Appeal in January 2021⁵.

According to the new information received, on 10 November 2021, the Supreme Court of Saudi Arabia overturned Mr. al-Howaiti's conviction and sent the case back to the court of first instance, the Criminal Court of Tabouk, for retrial.

The first retrial hearing was held on 7 December 2021, and it was attended by Mr. al-Howaiti's lawyer and representatives of the Human Rights Commission. It is reported that the Public Prosecution Office again requested the death sentence. A second retrial hearing was held on 28 December 2021.

We take note of the latest development in the case of Mr. al-Howaiti. We welcome the decision of the Supreme Court to order his re-trial. Given his age at the time of the crime he is accused of, and the number of years he has spent thus far in prison, while he may be innocent, we would recommend that he be released on bail, pending his re-trial.

Under international human rights law, the prohibition of the death penalty and its execution for crimes committed by persons below the age of 18 at the time of the act is provided for in several international and regional human rights treaties, in particular in Article 37 of the Convention on the Rights of the Child, ratified by Saudi Arabia in 1996. Under that treaty Saudi Arabia has a legal obligation to treat everyone

⁴ <https://reprieve.org/uk/2021/10/27/ali-al-nimr-released-from-prison-in-saudi-arabia/>;
<https://www.reuters.com/world/middle-east/young-saudi-shiite-whose-death-sentence-was-commuted-leaves-jail-2021-11-16/>
See SAU 4/2021:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26054>; Government's reply: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36149>.

under the age of 18 as a child. Children should never be subject to the death penalty; this practice violates an existing norm of customary international law and renders the punishment tantamount to torture.

We respectfully reiterate our call to ensure that Mr. al-Howaiti is re-tried in full compliance with international juvenile justice norms as assented by Saudi Arabia. In this context we also recall the absolute prohibition of torture, including the prohibition of the use of statements obtained under torture or other ill-treatment. The allegation that Mr. al-Howaiti was tortured, and that of his forced admission of responsibility in the crime imputed on him should be duly investigated. If confirmed, this should be fully taken into account by the court and he should be afforded redress and rehabilitation. Furthermore, if the torture occurred, any officer responsible for its commission should be prosecuted.

In this later regard, we respectfully reiterate our calls that your Excellency's Government consider to strengthen legal, institutional and procedural safeguards to protect individuals against torture while in the custody of the Kingdom; and to prohibit the death penalty for children for all crimes, including in relation to offences punished under *qisas* and *hudud*.

Case of Mr. Ali Hassan Al Rabie

Mr. Ali Hassan Al Rabie was arrested on 9 December 2013, while visiting his brothers, both of whom were sentenced to death and executed along with 35 other persons in April 2019. According to reports, he was placed in solitary confinement for six months; subjected to torture or other cruel, inhuman or degrading treatment or punishment, including for the purpose of extracting a confession, which he refused to sign; denied access to his lawyer and any possibility to communicate with his family. He was sentenced to death in July 2019⁶.

According to new information received, on 16 November 2021, the Specialized Criminal Court issued a new ruling against Mr. Ali Hassan Al Rabei, converting the death sentence into a 25-year prison sentence. The verdict was subsequently submitted to the Court of Appeal and it is now pending confirmation.

We take note of the latest development in the case of Mr. Ali Hassan Al Rabie, welcome the Specialized Criminal Court's decision to commute his sentence to 25 years imprisonment, and hope that the Court of Appeal will confirm that decision. As in the other cases referred to above, given the possibility that he was not involved in the crime for which his brothers were sentenced and executed, we recommend that Mr. Al Rabie be retried in compliance with international human rights norms for fair trial, including the independent investigation of any allegation of torture as a means to obtain self-incriminating evidence.

⁶ See SAU 1/2021: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25878>; Government's reply: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36039>.

Case of Mr. Mustafa al Darwish

We thank your Excellency's Government for the replies of 23 July 2021 and 1 September 2021 and have taken due note of their content⁷.

We previously called on your Excellency's Government to annul the death sentence imposed on Mr. al Darwish; to independently investigate the allegations that he was tortured and to see to it that he be re-tried in conformity with international norms.

We regret that a death penalty was imposed on him on 15 June 2021, in spite of the serious allegations that he was tortured and that the evidence leading to that judgement may have been obtained in such conditions. We recall that any death sentence enforced in contravention of a State's obligations under international law is tantamount to an arbitrary execution and hence unlawful; and respectfully reiterate our recommendation to consider a moratorium on all executions pending further consideration to abolish the death penalty in the Kingdom.

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 safeguard the rights of the above individuals 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 these allegations and recommendations.

We would like to inform your Excellency's Government that after having transmitted an allegation letter 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 allegation letter and the regular procedure.

We reserve the right to publicly express our concerns in these cases. The information at hand appears to be sufficiently reliable and raises matters warranting serious attention. The question of the judicial deprivation of life of a person is of utmost importance, especially when it is tainted by credible allegations of torture and the use of incriminating evidence obtained under such condition. For these reasons, we believe that there is a public interest in being informed about an issue that concerns everyone's human rights. Any public expression of concern on our part would 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

⁷ <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36449>;
<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36532>

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

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 refer your Excellency's Government to: Articles 9 of the Universal Declaration of Human Rights (UDHR) which state that "No one shall be subjected to arbitrary arrest, detention or exile"; Article 10 of the UDHR which establish the right of everyone to due process and fair trial; Article 3 of the UDHR, which protects the right to life, and Article 19 of the UDHR, which guarantees the right to freedom of opinion and expression.

We also wish to respectfully remind your Excellency's Government of the applicable international human rights standards outlined by the Arab Charter on Human Rights (ACHR), specifically to articles 5, 8, 13, 15, 26 and 28, which provide that everyone has the right to life, liberty and security of person, that no one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment, to liberty and security of person and freedom from arbitrary arrest or detention, to be treated with humanity and with respect for the inherent dignity of the person when deprived of their liberty, to freedom of association and to freedom of opinion and expression.

We also wish to recall Article 1 and 16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), 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, confessions and other information extracted under torture or ill-treatment are not admissible into any legal proceeding, as their admission violates the rights of due process and a fair trial (Article 15).

Furthermore, we would like to refer to Article 37 of the Convention on the Rights of the Child which state that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. (...); (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

In addition, we would like to refer to the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty, which provide that capital punishment may be imposed only for the most serious crimes, 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. And that persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death.

Finally, we would further like to draw the attention of your Excellency's Government 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. Furthermore, we would like to refer to Human Rights Council resolution 24/5 in which the Council "remind[ed] States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections and including persons espousing *minority or dissenting views or beliefs*, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions of the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law" (OP2, emphasis added).