

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 human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: UA SAU 1/2022
(Please use this reference in your reply)

26 January 2022

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 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, 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 Mr. Jaafar Sultan and Mr. Sadiq Majeed Thamer, two nationals of Bahrain, who reportedly face the death penalty, after having allegedly been arbitrarily arrested and following an unfair trial marred by torture allegations. Please note that a copy of the present letter will be sent to Bahrain.

According to the information received:

On 8 May 2015, Mr. Jaafar Sultan and Mr. Sadiq Majeed Thamer were arrested at a checkpoint on King Fahed bridge, while entering Saudi Arabia from Bahrain. They were reportedly found in possession of eleven bags of RDX explosive, fifty detonating capsules and a six meters detonating wire. They were brought to the General Investigation Prison in Dammam.

The public prosecution accused Mr. Sultan and Mr. Thamer of participating in the establishment of a terrorist cell; receiving training in foreign camps with the aim of destabilizing the security of Saudi Arabia and Bahrain; smuggling explosive materials attempting against the security of Saudi Arabia and communicating with terrorists inside the Kingdom; participating in demonstrations taking place in Bahrain; non-disclosing information on explosive materials stored in Bahrain; misleading investigations of Saudi authorities; and possessing three memory cards containing security and intelligence material, particularly on assembling and using bombs and explosive materials.

Mr. Sultan and Mr. Thamer were held incommunicado for several months. Their family learnt of their arrest through local media and received information about them only several months following their arrest. During their detention, they were tortured (Mr. Thamer was also held in solitary confinement for a hundred days) and forced to sign self-incriminating

confessions. They did not have access to a lawyer until after the trial began, and their lawyers did not have access to all documents and information of the case.

The Public Prosecution recommended that Mr. Sultan and Mr. Thamer be either sentenced to death in a *sharia* prescribed way (*hadud*, based on verse 33 of Surat Al Maida in the Quran and on Decisions 85 and 148 of the Council of Senior Scholars, Saudi Arabia's highest religious body); or to the highest sentence according to Article 15 of the Law of Explosives and Fireworks.

On 7 October 2021, Mr. Sultan and Mr. Thamer were sentenced to death by the Saudi Specialized Criminal Court, pursuant to article 1 paragraph 3 and Article 32 of the Law on Combating Crimes of Terrorism and its Financing and Article 4 and 15 of the Law of Explosives and Fireworks.

On 11 January 2022, the sentences were upheld by the Court of Appeal and could now be further appealed, within thirty days, before the Supreme Court. However, it is feared that the death sentence against Mr. Sultan and Mr. Thamer could be enforced at anytime in the very near future.

On 31 May 2016, the Grand Fourth Penal Court in Bahrain sentenced Mr. Jaafar Sultan and Mr. Thamer to life imprisonment in absentia on charges of joining a terrorist group; importing and possessing explosive materials; and agreeing to and assisting in training individuals on committing terrorist acts. The sentence was allegedly based on confessions from both extracted under duress.

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we are concerned that if they prove to be accurate, Mr. Sultan and Mr. Thamer were sentenced to death without due process and fair trial (Article 10 UDHR); did not have access to a lawyer upon their arrest and could not resort to any remedy to challenge the lawfulness of their detention (Article 9 UDHR); were subjected to torture or other cruel, inhuman or degrading treatment or punishment and were forced to sign a confession under torture, contrary to 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, 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 and guarantees of a fair trial, which have reportedly not been complied with in the cases of Mr. Sultan and Mr. Thamer.

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.

We have previously addressed our concern in another communication regarding your Excellency's counterterrorism legislation in general and the Law on Combating Crimes of Terrorism and its Financing in particular (OL SAU 12/2020) which includes a broad range of severe and often non-human rights compliant punishments, an apparent legal authorization of up to ninety-day incommunicado detention periods, up to one-year pre-trial detention periods (both which can seemingly be further extended) and serious restrictions to the right of access to counsel and other fair trial standards. We also recall that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism visited Saudi Arabia in 2017 to assess the progress that had been achieved in its law, policies and practice in the fight against terrorism, measured against international human rights law and standards, and made a number of detailed recommendations whose adoption was recommended as a matter of priority for the government.¹

In line with the foregoing, we would like to reiterate that 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. 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.

Furthermore, we recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides clear guidance to States on appropriate conduct to be proscribed and best practice.³ Those elements include:

¹ A/HRC/40/52/

² A/73/361, para. 34.

³ A/59/565 (2004), para. 164 (d).

- a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages,
- b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act,
- c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.⁴

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 step that might be presently considered or taken toward the execution of Mr. Sultan and Mr. Thamer** which, based on the information available to us, would constitute an arbitrary execution; **to annul the death sentence imposed on them; to investigate fully the allegations of torture and to ensure that they are re-tried in conformity with international law and standards.**

We are issuing this appeal in order to safeguard the rights of Mr. Sultan and Mr. Thamer from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*⁵.

Lastly, we respectfully reiterate our 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

⁴ E/CN.4/2006/98, para 37

⁵ Article 41 ICJ Statute 'Interim Protection': Part III, Section D (Incidental Proceedings), Subsection 1

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 explain whether Mr. Sultan and Mr. Thamer's arrest and subsequent detention are in compliance with international human rights law and standards; and please explain whether their trial was conducted in a manner consistent with international due process and fair trial norms and standards. Within this context, please provide information on whether there has been any investigation, and if so, what was the result, on the allegations of torture or other cruel, inhuman or degrading treatment or punishment. If no investigation was conducted, please explain why.
3. Please provide information on the current conditions of detention of Mr. Sultan and Mr. Thamer, including with regard to contacts with their families and lawyers, and how these conditions are consistent with the provisions of the Standard Minimum Rules for the Treatment of Prisoners ("The Mandela Rules").
4. 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.
5. Please provide information in details of how your Excellency's Government's counter-terrorism efforts comply with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34, General Assembly resolutions 49/60, 51/210, 72/123, 72/180 and 73/174 in particular with international human rights law, refugee law, and humanitarian law contained therein.

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 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.

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

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