

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 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

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(Please use this reference in your reply)

25 February 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 the right to freedom of opinion and expression; 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, 43/4, 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 two nationals of Saudi Arabia, reportedly facing the death penalty, after having allegedly been arbitrarily arrested and following a reportedly unfair trial marred by torture allegations. We would also like to welcome the release of a third national of Saudi Arabia whose case was previously brought to the attention of your Excellency's Government on different occasions¹.

According to the information received:

Case of Mr. Asaad Makki Shubbar

On 28 April 2017, Mr. Asaad Makki Shubbar, a member of the Shi'a minority, was reportedly arrested in Aseer Province, without a warrant being shown, held for more than 2 years without trial, including in solitary confinement, allegedly subjected to torture or other cruel, inhuman or degrading treatment or punishment and forced to sign confessions.

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>

In May 2019, he was charged, before the Specialized Criminal Court, with terrorism-related charges brought against him under a number of legal provisions, including the Law on Combating Terrorism Crimes and Financing.

In January 2021, Mr. Shubbar was sentenced to death. The sentence was upheld by the Specialized Appeals Court in July 2021.

On 27 August 2021, while the case was pending before the Supreme Court, a number of Special Procedures' mandate-holders addressed an urgent appeal to the Government of Saudi Arabia, calling on the relevant authorities to ensure that Mr. Shubbar would not be executed; to take all the necessary steps to address any allegation of torture, arbitrary detention and violation of fair trial and due process guarantees that he may have suffered; and calling, at a minimum, for a new trial to be conducted in full compliance with international legal norms and standards.²

According to the new information received, on 12 February 2022, the Supreme Court ratified the death sentence imposed on Mr. Shubbar. It is therefore feared that he could now be executed at any time.

Case of Mr. Aqil bin Hassan Al-Faraj

On 25 December 2013, Mr. Aqil bin Hassan Al-Faraj was arrested at a checkpoint in the Al Nasera neighborhood in Al-Qatif, Saudi Arabia, while driving a vehicle found to have an allegedly altered chassis number. He was brought to a police station and interrogated for three hours. At some point, his father received a telephone call for him to go and pick his son, but Mr. Al-Faraj was in fact kept in detention for interrogation.

Subsequently, Mr. Al-Faraj was reportedly held in solitary confinement for a period of approximately two and a half months, during which he was allegedly subjected to torture or other cruel, inhuman or degrading treatment or punishment, unable to communicate with his family or the outside world. According to reports, he was beaten, electrocuted, had cigarettes extinguished on his body, and placed in very cold cells. This caused him eyesight deterioration, permanent pain in the back and joints, and intense psychological distress.

Approximately five years after his arrest, Mr. Al-Faraj was brought to trial before the Specialized Criminal Court, on charges of participation in the establishment of a terrorist cell affiliated with a secret armed organization aiming at armed revolt; destabilizing internal security; killing personnel of security forces and inciting demonstrations; smuggling weapons and

² See UA SAU 10/2021: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26617>; and the reply of the Government of Saudi Arabia: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36594>

ammunitions; promoting and using drugs; covering up weapons and drug dealers; holding information against public order and security.

Once he became aware of the charges brought against him and the Public Prosecution's request that he be sentenced to the death penalty, Mr. Al-Faraj, who claimed he was not guilty, reportedly suffered from a nervous breakdown.

During the trial, Mr. Al-Faraj informed the court that he had been forced to sign a confession under torture. These allegations, however, were reportedly not investigated.

After three hearings, Mr. Al-Faraj was appointed an ex-officio defence lawyer, who only attended two subsequent court hearings. Therefore, the family decided to appoint a new lawyer, who was nonetheless unable to access sufficient information and the necessary documents to adequately defend Mr. Al-Faraj.

According to reports, the family petitioned different authorities, including the Royal Court, alleging that Mr. Al-Faraj had been tortured, that he was not guilty and submitting a travel record showing that he was outside the country at the time when many of the facts he had been charged of would have occurred. All family's petitions were reportedly left unanswered.

On an unspecified date, Mr. Al-Faraj was sentenced to death which was then upheld by the Court of Appeal on 1 June 2021, and it is now pending final confirmation by the Supreme Court. It is, however, feared that it could be enforced at any time in the very near future.

Case of ██████████

██████████ was reportedly arrested in 2012 in relation to protest-related offences allegedly committed when he was below the age of 18. It is submitted that he was tortured and ill-treated, forced to confess, denied adequate legal assistance during trial and sentenced to death.

On 3 March 2021, a number of Special Procedures' mandate-holders welcomed the commutation of the death sentence inflicted on ██████████, and two other persons, to 10 years' imprisonment, inclusive of time served. They considered it as an important step towards ensuring compliance of the Government of Saudi Arabia with international human rights obligations and urged the authorities to quash his conviction and release him.³

According to the new information received, on 2 February 2022, ██████████ ██████████ was released from prison.

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

While we do not wish to prejudge the accuracy of the above-mentioned allegations and having taken note of the reply of your Excellency's Government to urgent appeal UA SAU 10/2021, we nevertheless wish to respectfully reiterate the concerns expressed therein in relation to the case of Mr. Shubbar.

We also wish to respectfully express our concern at the reported case of Mr. Al-Faraj who appears to have been sentenced to death without due process and fair trial, including lack of access to adequate legal assistance, therefore contrary to Article 10 of the Universal Declaration of Human Rights (UDHR); could not resort to any remedy to challenge the lawfulness of his detention (Article 9, UDHR); and was allegedly subjected to torture or other cruel, inhuman or degrading treatment or punishment and was forced to sign a confession under torture, contrary to Articles 1, 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. We remind your Excellency's Government that the right to a fair trial is one of the fundamental guarantees of human rights and the rule of law. It comprises various interrelated attributes and is often linked to the enjoyment of other rights, such as the right to life and the prohibition against torture (OL SAU 12/2020). When confronting the challenge of terrorism in particular, the Human Rights Committee has stressed the importance of developing and maintaining effective, fair, humane, transparent and accountable criminal justice systems which provide access to a fair and public hearing and to independent and adequate legal representation in accordance with obligations under international law (HRC, General Comment No. 32, CCPR/C/GC/32).

We wish to stress that, when not legally prohibited, the death penalty may only be imposed pursuant to a final judgment rendered by a competent court following compliance with a strict set of substantive and procedural requirements and guarantees of a fair trial.

We wish to emphasize that the right against the arbitrary deprivation of life is a rule of customary international law, in addition to a general principle of international law and a rule of jus cogens. It is included, among others, in Article 3 of the UDHR, which is widely regarded as setting out rules of general international law⁴. Any death sentence enforced in contravention of a State's obligations under international law is tantamount to an arbitrary execution and hence unlawful. Furthermore, anyone sentenced to death shall have the right to seek pardon or commutation of sentence.

We also wish to stress 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.

⁴ A/68/382: <https://undocs.org/A/68/382>; or A/HRC/44/38: <https://undocs.org/A/HRC/44/38>

We note that we have previously addressed our concerns 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 the recommendations of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism further to his visit to Saudi Arabia in 2017.⁵

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.⁶ 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 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.

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. Asaad Makki Shubbar and Mr. Aqil bin Hassan Al-Faraj which, based on the information available to us, would constitute arbitrary executions; **to annul the death sentence** imposed against them; **to investigate fully, meticulously and thoroughly the allegations of torture that they may have suffered and to ensure that they are re-tried** in conformity with international law and standards promptly.

We also wish to welcome the release of [REDACTED]. We would like to reiterate that the prohibition of death penalty sentences and executions for crimes

⁵ A/HRC/40/52/

⁶ A/73/361, para. 34.

committed by persons below the age of 18 at the time of the offence 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 an obligation to treat everyone under the age of 18 as a child. Children should never be subject to the death penalty nor to arbitrary arrest; these practices violate existing norms of customary international law and renders the punishment tantamount to torture. Within this context, we wish to note that the allegations of torture reportedly inflicted against ██████████ should be fully investigated. If found to have occurred, those responsible should be brought to justice and ██████████ should be granted access to redress, reparations and rehabilitation, as appropriate.

We hope that the release of ██████████ will help impress a renewed impetus to the country's reform efforts with a view to establishing a verifiable, unequivocal and definitive end to the reportedly continuing practice of sentencing juvenile offenders to death. We therefore respectfully call again on your Excellency's Government **to prohibit the death penalty for children for all crimes**, including in relation to offences punished under *qisas* and *hudud*.

Lastly, we wish to 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.

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/or comment(s) you may have on the above-mentioned allegations, particularly in relation to steps taken, or envisaged to be undertaken, towards the possible abolition of the death penalty for children for all crimes.
2. Please provide information on the existing procedures for persons sentenced to death to seek clemency or a pardon, and also provide detailed information on how Mr. Shubbar can access such procedures.
3. Please explain whether Mr. Al-Faraj's arrest and subsequent detention are in compliance with international human rights law and standards; and please explain whether his 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 allegedly

suffered by Mr. Al-Faraj. If no investigation was conducted, please explain why.

4. Please provide information on the current conditions of detention of Mr. Al-Faraj, including with regard to whether he can have contacts with his family and lawyers, and please explain how these conditions are consistent with the provisions of the Standard Minimum Rules for the Treatment of Prisoners (“The Mandela Rules”).
5. Please provide detailed information about the review process that led to the welcomed decision to release ██████████ and on steps taken to investigate the allegations of torture allegedly inflicted upon him, to bring to account any personnel found responsible, directly or through supervision, and to afford him redress, reparation and rehabilitation.
6. 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 cases through its regular procedure in order to render an opinion on whether the deprivations of liberty reported above were 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.

We may issue public statements on the cases mentioned above as we believe that the public should be informed about them. Any public statement on our part will 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 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
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Fernand de Varennes
Special Rapporteur on minority issues

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental
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Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment