

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention and the Special Rapporteur on extrajudicial, summary or arbitrary executions

Ref.: UA SAU 6/2022

(Please use this reference in your reply)

31 March 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 43/20, 42/22 and 44/5.

In this connection, we would like to bring to the attention of your Excellency's Government new information we have received concerning **Mr. Abdullah al-Howaiti**, who has been the subject of two previous communications by Special Procedures mandate holders (UA SAU 4/2021 and AL SAU 15/2021). These communications were based on credible allegations of the arbitrary arrest and torture of Mr. al-Howaiti to extract an incriminating confession, which led to his conviction and sentencing to death on 2 March 2022 by the Criminal Court in Tabouk for a crime he allegedly committed when he was a minor.

We would like to thank your Excellency's Government for the responses dated 15 April 2021 and 1 March 2022, respectively. We regret however that the responses merely provided the applicable legal provisions in Saudi Arabia, in particular pertaining to due process principles, and the prohibition of torture and other ill-treatment, yet lacked precisions on how this normative framework has been adhered to in practice in the case of Mr. al-Howaiti.

In this regard, we would like to reiterate our serious concern about the continuing implementation of the death penalty against juvenile offenders in cases of *qisas*, and reiterate our recommendation to your Excellency's Government to give serious consideration to the necessary legislative reforms to abolish the imposition of the death penalty for juveniles for all crimes, without exception. We also draw your attention to the recent opinion No. 72/2021 of the United Nations Working Group on Arbitrary Detention, which found the deprivation of liberty of Mr. al-Howaiti to be in contravention of articles 3, 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights, and therefore arbitrary, under categories I and III¹, and recommended his release.

According to the information received:

Mr. Abdullah al-Howaiti (عبد الله الحويطي) is a national of Saudi Arabia, born in 2002. He was arrested, on 8 May 2017, at the age of 14 years old, on charges

¹ Opinion No. 72/2021 adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021: https://www.ohchr.org/sites/default/files/2022-01/A_HRC_WGAD_2021_72_SA_AEV.pdf

of robbery and murder.

Mr. al-Howaiti has been arbitrarily detained and subjected to incommunicado detention and to acts of torture and other forms of ill-treatment with a view to force him to accept responsibility for the crimes imputed on him. He was convicted and sentenced to death on 30 October 2019, on charges of forming an armed criminal gang, attacking and robbing a jewelry shop, and killing a security guard using an automatic weapon. The death sentence was upheld by the Tabouk Court of Appeal in January 2021².

In November 2021, the Supreme Court overturned Mr. al-Howaiti's conviction and sent the case back to the court of first instance for retrial. As such, the Criminal Court in Tabouk conducted multiple hearings, attended by Mr. al-Howaiti's lawyer and representatives from the National Human Rights Commission, where the Public Prosecutor requested yet again the death penalty.

The Court did not initiate investigations into allegations of torture and coerced confessions, or verify the veracity of Mr. al-Howaiti's confession of guilt. As a result of the retrial, the Criminal Court in Tabouk sentenced once more Mr. al-Howaiti to death under *qisas* provisions, on 2 March 2022.

According to the information received, Mr. al-Howaiti suffered from a mental breakdown after the announcement of the verdict, confirming the death penalty against him, and was put in solitary confinement. After being informed about Mr. al-Howaiti's situation, his family tried to visit the prison, accompanied by the lawyer, but were refused access allegedly due to disciplinary measures applied against Mr. al-Howaiti.

Subsequently, Mr. al-Howaiti allegedly started a hunger strike, on 8 March 2022, in contestation of his conviction, and refused to take his blood pressure medication, which led to his collapse in prison. Once informed by the penitentiary medical service, the family of Mr. al-Howaiti called the director of the Prison in Tabouk, who reportedly decided to transfer Mr. al-Howaiti to a psychiatric hospital, on 11 March 2022.

During the first few days of his internment at the psychiatric hospital, Mr. al-Howaiti's family was not informed about the location where he was held. His family was later informed of his whereabouts and allowed to visit him.

With the confirmation of the death penalty, Mr. al-Howaiti has the right to appeal the verdict before the court of appeals, as the last step of litigation, after which the death sentence, if confirmed, would be final.

While we do not wish to prejudge the accuracy of the information received, we are deeply concerned by the continuing imposition and execution of the death penalty

² See SAU 4/2021: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26054>; Government's reply: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36149>.

against persons who were below 18 years of age at the time of committing the crime, which amounts to a serious violation of international human rights law. The requirement to abolish the death penalty for juveniles is based on the fact that their limited capacity has a direct impact on them effectively benefiting from the right to a fair trial, and that it is inherently cruel to execute children and would therefore amount to a violation of the prohibition of torture and cruel, inhuman and degrading treatment (A/67/279, para.62), as set out in articles 1, 2 and 16 of the Convention against Torture, ratified by your Excellency's Government on 23 September 1997. This prohibition is further 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 on 26 January 1996. If the above allegations prove to be accurate, they further constitute a flagrant violation of articles 3, 9 and 10 of the Universal Declaration of Human Rights (UDHR), which protect the right to life, the right to be free of arbitrary arrest or detention and the right of everyone to due process and fair trial respectively.

In addition, we would like to refer to the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty (Safeguards), which provide that capital punishment may be imposed only for the most serious crimes, and 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 emphasize that, under Principle 3 of the safeguards, persons who were under 18 years of age at the time of the commission of the crime may not be sentenced to death. We also reiterate that, given Mr. al-Howaiti's age at the time of the crime with which he was charged, the number of years he has spent in prison to date, while he may be innocent, and his reportedly deteriorating health, we recommend that he be released on bail immediately.

We are further alarmed that despite allegations of torture and ill-treatment perpetrated against Mr. al-Howaiti to coerce him into providing a confession of guilt, the court did not render his confession inadmissible nor did it instruct a prompt, thorough and independent investigation into these serious allegations. In this regard, we would like to remind your Excellency's Government of its obligation under article 15 of the CAT, which provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." In addition, we draw your Government's attention to article 12 of the CAT which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

In this connection, we would like to stress the fact that the anxiety created by the threat of death and the other circumstances surrounding an execution, inflicts great psychological pressure and trauma on persons sentenced to death. Therefore, a prolonged stay on death row, along with the accompanying conditions of detention, such as solitary confinement, constitutes a violation of the prohibition of torture.

We would like to underline that in its recent opinion No. 72/2021, the Working Group on Arbitrary Detention found that the deprivation of liberty of Mr. al-Howaiti, being in contravention of articles 3, 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights, was arbitrary, falling under categories I and III. In this connection, we would like to insist on the absolute necessity of granting defendants facing the death penalty, with, at least, the safeguards contained in article 14 of the International Covenant on Civil and Political Rights (ICCPR) during legal proceedings to ensure a fair trial, and reiterate the Working Group's request to take the steps necessary to remedy the situation of Mr. al-Howaiti, by immediately releasing him and according him an enforceable right to compensation and other reparations without delay, in accordance with applicable international norms.

In such circumstances, the execution of the death sentence, against Mr. al-Howaiti, which is resulting from an apparent lack of due process of law and unfair trial procedures could amount to an arbitrary and thus unlawful execution prohibited under international law. These allegations warrant a close attention to the case to avoid that an innocent person is wrongly sentenced and executed, and a thorough review of the entire case and evidence since arrest. For these reasons, we are concerned that the execution of the death penalty against Mr. al-Huwaiti could amount to an arbitrary execution. We also reiterate that only full respect for the most stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution. In the absence of a fair trial, the imposition of a death sentence constitutes a violation of the right to life.

We respectfully call on your Excellency's Government **to annul the death sentence imposed on Mr. al-Howaiti; to promptly and thoroughly investigate the allegations of torture, and to ensure that he is re-tried in conformity with international norms and standards. We also emphasize that the prosecution bears the burden of proof in establishing that evidence was not obtained by torture. Prosecutors and judges also share a responsibility in initiating investigation, including ex-officio, whenever there are reasonable grounds to believe that torture or ill-treatment has been committed.**

We also respectfully call on your Excellency's Government to adopt without delay the necessary legislative measures to abolish the imposition of the death penalty for children for all crimes, **including in relation to offences punished under *qisas* and *hudud*.**

Lastly, we 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 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 provide detailed information on the legal grounds based on which the supreme court has overturned the death sentence against Mr. al-Howaiti and ordered his retrial, and whether the allegations of torture against Mr. al-Howaiti have been considered in the court's decision.
3. Please provide detailed information on the judicial guarantees afforded to Mr. al-Howaiti to ensure that his retrial respected due process and fair trial principles, in accordance with international law.
4. Please provide detailed information on the measures taken by the court of first instance, during retrial, to ascertain that evidence presented by the police, including the confession of guilt by Mr. al-Howaiti, was obtained in full respect of the State's obligations pertaining to the prohibition of torture and other forms of ill-treatment.
5. Please provide detailed information on any investigation, which may have been undertaken, and any results thereof, concerning the allegations of torture and ill-treatment against Mr. al-Howaiti during interrogations. If no investigations have been initiated, please explain how this is consistent with Saudi Arabia's international human rights obligations under CAT.
6. Please provide detailed information on the current health condition of Mr. al-Howaiti, and explain his conditions of detention since the pronouncement of the death sentence on 2 March; the beginning of his hunger strike on 8 March; and his transfer to a psychiatric institution on 11 March 2022, and explain whether they are consistent with the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners (also known as "The Mandela Rules").
7. Please indicate what measures – legal, institutional and otherwise – are in place to ensure the protection of Mr. al-Howaiti's right to life in light of his alleged deteriorating health condition.
8. Please provide information on measures taken, or are foreseen, to abolish the imposition and implementation of the death penalty against juveniles, in compliance with international law obligations.

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 reserve the right to publicly express our concern about the death sentence and the fear of the possible execution of Mr. al-Howaiti, as we consider the information at hand to be sufficiently reliable and to raise 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. In the case of children, it is all the more concerning. 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 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.

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

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

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