

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL SAU 8/2022
(Please use this reference in your reply)

13 June 2022

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 42/22, 44/5 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Youssef Muhammad Mahdi Al-Manasif**, a national of Saudi Arabia, for whom the public prosecution has demanded *taazir* death penalty, after being reportedly arbitrarily arrested and tortured, for crimes he allegedly committed when he was a minor.

According to the information received:

Mr. Youssef Muhammad Mahdi Al-Manasif is a national of Saudi Arabia, born on 8 September 1996, in Qatif (national identification number #1092803624).

On 6 April 2017, when Mr. Youssef Muhammad Mahdi Al-Manasif was 20-years old, he was arrested by armed forces, reportedly at gunpoint, near the court in Qatif, Saudi Arabia. He was brought to the General Investigation Prison in Damman. At the time of the arrest, he was not informed of the reasons for his arrest nor was he presented with a warrant.

On 30 September 2019, the Public Prosecution charged Mr. Youssef Muhammad Mahdi Al-Manasif of joining an armed organization; spying and firing at security forces; planning to target the Awamiya police station; participating in acts of vandalism during demonstrations taking place in Saudi Arabia, such as raising anti-State banners and burning tires; protecting wanted persons; participating, promoting and inciting sit-ins; financing terrorism by receiving and transporting tires to the sites of demonstrations; possession and use of firearms and ammunition; promotion of narcotic pills; and consumption of cannabis.

Furthermore, a number of charges brought against Mr. Youssef Muhammad Mahdi Al-Manasif reportedly related to events taking place when he was still a minor, in the years 2011, 2012 and 2013 (*1432 AH and 1435 AH*); when he was between 15-years old and 17-years old. Notably, the funeral of Zuhair Al-Saeed which took place in 2011 (*1432 AH*), when he was 15-years old; the funeral of

Ali Al-Manasif, Hassan Zahri, and Khaled Al-Labad in 2012 (1433 AH), when he was 16-years old; and the funeral of Morsi Al-Ribbah in 2013 (1434 AH), when he was 17-years old.

Mr. Youssef Muhammad Mahdi Al-Manasif was held in solitary confinement for five months upon his arrest. His family was informed of his arrest and transfer to the General Investigation Prison in Dammam; they were however only allowed a visit five months later. During his detention, he was reportedly subjected to physical and psychological torture and was forced to sign a self-incriminating confession. The torture resulted in his hospitalization after he lost consciousness due to severe beating. Mr. Youssef Muhammad Mahdi Al-Manasif was examined in the medical hospital and has since suffered from back-pain. His family never received the results of the examination, nor did they obtain corresponding photos or his medical file.

On 20 September 2019, Mr. Youssef Muhammad Mahdi Al-Manasif's trial began alongside five other presumed offenders, who are facing similar charges. Mr. Youssef Muhammad Mahdi Al-Manasif confirmed before a judge that he had been forced to sign the incriminating confession under duress and asked that the investigator be summoned to take his testimony. Additionally, he requested for a register displaying the length of time he was detained in solitary confinement to be presented before the judge; no investigation has been initiated by the court up to this date.

The Public Prosecution recommended that he be sentenced to death in a *sharia* prescribed way, the *Haraba* death penalty (*tazir*). The allegations made against Mr. Youssef Muhammad Mahdi Al-Manasif, reportedly lack consistent evidence, such as any physical evidence of the weapon he was charged with using, or information pertaining to his whereabouts at the time of the alleged offences. The recommendation of the Public Prosecutor would have solely relied on statements extracted under torture. The trials are ongoing with the next session scheduled on 30 July 2022.

While we do not wish to prejudge the accuracy of the information received, we are deeply concerned at the allegations of arbitrary detention and the request for the imposition of the death penalty against Mr. Youssef Muhammad Mahdi Al-Manasif, a person who was below 18 years of age at the time of committing the crime. We recall that the imposition of the death penalty on minors constitutes a flagrant violation of international human rights law.

If the allegations before us proved to be accurate, they would appear to be in contravention of the right to life; to be free from torture or cruel, inhuman or degrading treatment or punishment, to liberty and security, and to a fair trial, enshrined in articles 3, 5, 9, 10 and 11 of the Universal Declaration of Human Rights (UDHR). The mentioned allegations may also violate articles 7, 12 and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and article 37 of the Convention on the Rights of the Child (CRC), ratified by your

Excellency's Government on 23 September 1997 and on 26 January 1996 respectively. We recall that the right to life is a *jus cogens* norm from which no derogation is permitted.

We note with concern that the crimes charged against Mr. Mahdi Al-Manasif do not appear to have resulted in the loss of life and that the death penalty was imposed for, inter alia, terrorism and drug related charges. We remind your Excellency's Government that these crimes fail to meet the threshold of most serious crimes, meaning that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life. Echoing our previous communications (OL SAU 12/2020, UA SAU 1/2022, UA SAU 7/2022), we further reiterate our concern about the overly broad definition of "terrorism" under the Law on Combating Crimes of Terrorism and its Financing. We recall that the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism during his visit to Saudi Arabia in 2017 also expressed concern about the legislative framework for counter-terrorism, including fair trial provisions (A/HRC/40/52/Add.2).

We are further alarmed that despite allegations of torture and ill-treatment perpetrated against Mr. Mahdi Al-Manasif to coerce him into providing a confession of guilt, the judge did not render his confession inadmissible, nor did it instruct a prompt, thorough and independent investigation into these serious allegations. In view of the allegations that Mr. Mahdi Al-Manasif's rights to fair trial and due process have been violated, we highlight 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. In the absence of the latter, the imposition of a death sentence constitutes a violation of the right to life.

Finally, we express our concern at the continuing reports of the imposition and execution of the death penalty on individuals in Saudi Arabia in circumstances in which the guarantees governing the death penalty under international law appear to have been flagrantly disregarded, including in cases repeatedly brought to your attention by United Nations Special Procedures mandates (SAU 7/2022; SAU 6/2022; and SAU 5/2022).

Under these circumstances, we respectfully call on your Excellency's Government **to halt any step that might be presently considered or taken toward the imposition of the death penalty in Mr. Mahdi Al-Manasif's case; to investigate fully the allegations of torture and to ensure that further trial proceedings in his case are in conformity with international law and standards.**

In view of the irreversibility of the punishment of the death penalty and the ongoing development of an emerging customary law standard prohibiting the death penalty as a form of cruel, inhuman, or degrading punishment,¹ we respectfully reiterate our call on your Excellency's Government **to consider establishing an official**

¹ Report of the former Special Rapporteur on Torture, A/67/279.

moratorium on all executions as a first step towards fully abolishing the death penalty in the country. We also express our readiness to support the relevant authorities in any effort in this regard.

We are issuing this appeal in order to safeguard the rights of Mr. Mahdi Al-Manasif from irreparable harm and without prejudicing any eventual legal determination.

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.

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 information on the legal and factual grounds for the arrest, detention and charges brought against Mr. Mahdi Al-Manasif, and clarify if an arrest warrant was provided and the reason why he was held in solitary confinement for a prolonged period of time. Please also clarify if he was able to effectively exercise his right to legal assistance from the moment of arrest.
3. Please explain the steps taken to provide legal assistance to Mr. Mahdi Al-Manasif and clarify if he was permitted to challenge the lawfulness of his arrest and detention before a judicial authority.
4. Please provide detailed information on the judge's effort to assess the conditions under which the evidence against Mr. Mahdi Al-Manasif was produced. Please explain why his request for an impartial investigation into his treatment and detention does not seem to have been acted upon. If no investigation was carried out, please explain why, and how this is consistent with Saudi Arabia's international human rights obligations under the aforementioned human rights instruments. Please explain which steps were taken by the judge in response to the allegations of torture and ill-treatment and subsequent forced confession.
5. Please explain why Mr. Mahdi Al-Manasif's family are being refrained from accessing his medical file and examination results.
6. Please explain, in view of the nature of the offenses alleged and Mr. Mahdi Al-Manasif's age at the time of the events, how the death penalty, if imposed, would comply with the principles of legality, necessity, proportionality and non-discrimination and the principles set

out in the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty.

7. Please detail how many individuals are currently being held on death row for acts committed when they were minors.
8. Please provide detailed information on any measures taken or envisioned to be taken to restrict the scope of application of the death penalty in Saudi Arabia.

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(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted a joint allegation letter 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 to the allegation letter 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.

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the principles and international standards applicable to this communication: the right to life; to be free from torture or cruel, inhuman or degrading treatment or punishment, to liberty and security, and to a fair trial, enshrined in articles 3, 5, 9, 10 and 11 of the Universal Declaration of Human Rights (UDHR). We also refer to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and further refer to articles 7, 12 and 15 of CAT and article 37 of the Convention on the Rights of the Child (CRC), ratified by your Excellency's Government on 23 September 1997 and on 26 January 1996 respectively.

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, 6, 8, 13, 14, and 16, which provide that everyone has the right to life, liberty and security of person, that the death penalty shall only be imposed for the most serious crimes, that no one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment and to freedom from arbitrary arrest or detention.

Imposition of the death penalty against a minor

The prohibition of executions for crimes committed by persons under the age of 18 is provided in several international and regional human rights treaties, in particular in article 37 of the CRC. The Committee on the Rights of the Child, in its General Comment No. 10 on children's rights in juvenile justice, has concluded that article 37(a) of the CRC indicates that a death penalty may not be imposed for a crime committed by a person under 18 regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction. This is also reiterated in principle 3 of the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by the Economic and Social Council on 25 May 1984 (resolution 1984/50).

Charges not reaching the threshold for most serious crimes

The above-mentioned Safeguards indicate that, in countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes. In this regard, the former Special Rapporteur on extrajudicial, summary or arbitrary executions indicated that "*the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting these provisions is that the death penalty can only be imposed*

in such a way that it complies with the stricture that it must be limited to the most serious crimes, in cases where it can be shown that there was an intention to kill which resulted in the loss of life” (A/HRC/4/20, paras. 39-53). In this connection, we also note, based on the long experience of the signing mandates, and a careful review of studies and evidence, that the death penalty has never proven to be an effective deterrent for crimes, including drug related crimes (A/HRC/42/28, para. 10).

Fair trial and due process guarantees

Given allegations of irregularities and lack of fair trial and due process guarantees in Mr. Mahdi Al-Manasif’s case, the above Safeguards provide that capital punishment may only be carried out after a legal process which gives all possible safeguards to ensure a fair trial, including the right to adequate legal assistance at all stages of the proceedings (safeguard 5), and that “capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts” (safeguard 4).

In light of the allegations concerning torture and forced confession in the course of Mr. Mahdi Al-Manasif’s arrest and detention, 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.” Given that forced confessions constitute a blatant violation of fair trial rights, if these allegations prove to be accurate the imposition of a death sentence in Mr. Mahdi Al-Manasif’s case would constitute a violation of his right to life.

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 behavior 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.

It has been 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, proportionality and non-discrimination. We stress that 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

² A/73/361, para. 34.

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.

We recall that States also hold the duty to ensure that “any person who alleges that their human rights or fundamental freedoms have been violated by measures taken or means employed to counter terrorism or violent extremism conducive to terrorism has access to justice, due process and an effective remedy.” It is therefore important, consistent with States' obligations under international law, to develop and maintain effective, fair, humane, transparent, and accountable criminal justice systems (A/HRC/45/27, para. 3).

We also wish to draw the attention of your Excellency's Government to article 9 of the UDHR which provides for the absolute prohibition of arbitrary arrest and detention. We wish to reiterate that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension.³ Furthermore, anyone deprived of his or her liberty has the right to take proceedings before a court in order to challenge the legality of his or her detention, in accordance with articles 3 and 9 of the UDHR and principles 11 and 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. We also recall that solitary confinement for a time period in excess of 15 consecutive days is deemed as prolonged solitary confinement.⁴

We further refer 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. 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. The Government must ensure that complainants are not subject to reprisals and that victims of torture or ill-treatment receive adequate reparation.

Reducing the scope of imposition of the death penalty

Finally, we stress that the General Assembly has consistently called upon all States to establish a moratorium on executions with a view to abolishing the death penalty since its resolution 62/149 of 18 December 2007 (para.7) and most recently, in its resolution 73/175 of 17 December 2018 (para. 7), called upon all States to respect the safeguards guaranteeing protection of the rights of those facing the death penalty.⁵ Any measures to abolish the death penalty should be seen as progress towards the realization of the right to life (A/69/265, para. 99).

³ See, inter alia, principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37) as well as principles 7 and 8 of the Basic Principles on the Role of Lawyers.

⁴ See A/63/175, para. 56 and A/66/268, para. 61 as well as rule 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

⁵ See A/HRC/WGAD/2020/92