

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the human rights of migrants

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(Please use this reference in your reply)

22 November 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; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 44/5, 51/8, 45/3 and 43/6.

In this connection, we would like to bring to the attention of your Excellency's Government new information we have received concerning **the risk of imminent execution of Mr. Hussein Abo al-Kheir, a 57-year-old Jordanian citizen, for drug related offenses that does not meet the threshold for "most serious crimes" in a context that continues to indicate a highly alarming acceleration of executions, including of non-nationals, for this type of offence in the country.**

In this regard, we would like to reiterate our grave concern about the continued implementation of the death penalty for drug related offences, which has already been brought to the attention of your Excellency's Government in previous communications consistently throughout a number of years (UA SAU 12/2015, sent on 24 December 2015, AL [SAU 5/2016](#), sent on 31 August 2016, UA SAU 2/2022, sent on 25 February 2022 and AL SAU 8/2022, sent on 13 June 2022). Moreover, mandates of the United Nations special procedures have previously engaged with the Saudi Government on Mr. Abo al-Kheir's case raised in communication [UA SAU 7/2017](#), sent on 28 July 2017.

We would like to thank your Excellency's Government for the response dated [13 December 2017](#). We regret however that the response merely provided the applicable legal provisions in Saudi Arabia yet lacked precisions on how this normative framework has been adhered to in practice in the case of Mr. Abo al-Kheir.

We 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 drug related offenses, without exception. We also draw your attention to the recent opinion No. 36/2022 of the United Nations Working Group on Arbitrary Detention, which found the deprivation of liberty of Mr. Abo al-Kheir to be in contravention of articles 3, 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights, and arbitrary under categories I and III of its methods of work, and recommended his release.¹

¹ Opinion No. 36/2022 concerning Hussein abo al-Kheir (Saudi Arabia) adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March to 8 April 2022.

According to the information received:

On 18 May 2014, Hussein Abo al-Kheir, a Jordanian national born in 1965 and formerly residing in Aqaba, Jordan, where he works as a driver, was reportedly arrested as he crossed the Durra border from Jordan into Saudi Arabia by Saudi Border Guard/Customs officials from the Saudi Frontier Corp/customs. The border officials requested him to go to an office while they searched his car. Eventually, they handed him bags containing 2200 captagon or amphetamine pills, which they allegedly found in his car. Mr. Abo al-Kheir reportedly denied any knowledge of the drugs he was carrying. Mr. Abo al-Kheir was reportedly denied access to consular information when he was arrested.

Between 18 and 31 May 2014, Mr. Abo al-Kheir was reportedly held incommunicado at an undisclosed location by the Durra counter-narcotics authority, under the auspices of the General Directorate of Narcotics Control within the Saudi Ministry of Interior following his arrest under article 112 of the Code of Criminal Procedure (CCP) and article 142 of the Common Customs Act. During his detention, he could not communicate with the outside world and his fate and whereabouts were unknown to his family and his lawyer. These circumstances would amount to an enforced disappearance. While in detention, he was allegedly tortured and ill-treated, including being hung upside down by his feet and then beaten on his stomach, head, feet, hands and face while being verbally insulted.

On 27 May 2014, he reportedly signed a document confessing to the crimes he was accused of in order to bring the acts of torture against him to an end. He was only able to make contact with the outside world two weeks after his initial arrest. Mr. Abo al-Kheir's allegations of torture were reportedly not investigated, although he requested a medical report and submitted it to the court on 6 July 2017.

From 31 May 2014 to 29 January 2015, Mr. Abo al-Kheir was subsequently held in pre-trial detention at Tabouk Central Prison by the General Directorate of Prisons under the auspices of the Ministry of Interior.

On 29 January 2015, Mr. Abo al-Kheir was sentenced to death for drug trafficking after the trial allegedly failed to meet due process and fair trial standards. Since then, he has been on death row in Tabouk Central Prison.

On 1 July 2017, the Supreme Court reportedly overturned the sentence against Mr. Abo al-Kheir. However, on 26 November 2017, after the government requested a retrial, he was again found guilty and sentenced to death.

On 26 September 2019, persons associated with Mr. Abo al-Kheir were informed that the Supreme Court had upheld his death sentence and that he had exhausted his appeal rights.

During his detention since 2014, he has reportedly been deprived of access to information about his case, legal representation, medical care and communication with persons associated with him at regular intervals has not been facilitated. Persons associated with him have not been able to secure legal representation for him because of the reported risks to lawyers and stigma attached to working on this type of cases in Saudi Arabia. Due to the deprivation from medical assistance, Mr. Abo al-Kheir is in bad health state having not seen a doctor for more than seven years of detention, and he is now nearly blind. He is also reportedly suffering from the death row phenomenon, as he has faced uncertainty since 2019 as to when his execution might take place.

On 18 November 2022, Mr. Abo al-Kheir was reportedly transferred to a “death cell.” As the death sentence against Mr. Abo al-Kheir is already final, there are fears that the Saudi authorities intend to carry out his execution immediately and without warning.

It is further reported that Mr. Abo al-Kheir is one of a disproportionate number of foreign nationals sentenced to death in Saudi Arabia for drug related offences. The execution announcement comes at a time when at least 17 individuals - including ten foreigners - have reportedly been executed in the past week, including two other Jordanian nationals.

While we do not wish to prejudge the accuracy of these allegations, we are gravely concerned at the risk of impending execution of Mr. Hussein Abo al-Kheir, despite the fact that his drug-related charges do not fall within the category of “most serious crimes,” required under international law for the imposition of the death penalty. We further deplore the recent executions of 15 individuals, including ten non-nationals, since 10 November 2022.

Without making any judgment as to the accuracy of the information made available to us, the above allegations appear to be a blatant violation of the right to be treated without distinction of any kind, including based on national origin, and the right of every individual to life, liberty and security as set out in articles 2, 3 and 9 of the Universal Declaration of Human Rights (UDHR) and the guarantee that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment in article 5 of the same. The lack of facilitating consular information on arrest may further amount to a violation of article 36 of the Vienna Convention on Consular Relations. We remind that the right to life is a *jus cogens*, peremptory norm from which no derogation is permitted, as well as the prohibition of torture and enforced disappearance.

We reiterate our deep concern that in the case of Mr. Hussein Abo al-Kheir, the death penalty was not imposed for offenses corresponding to the most serious crimes which, under international law, provide for intentional killing, also enshrined in Article 10 of the Arab Charter on Human Rights, which Saudi Arabia ratified. We would like to refer your Excellency’s Government to the report of the former Special Rapporteur on extrajudicial, summary or arbitrary executions, indicating 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](#), paragraphs 39-53). As has already been communicated to your Excellency's Government, **drug crimes do not meet this internationally recognized threshold**. In this connection, we also note, based on the long experience of this mandate, and a careful review of studies and evidence, **that the death penalty has never been proved to be an effective deterrent for crimes, including drug crimes** ([A/HRC/42/28](#), para 10.).

We note that the use of torture-tainted evidence allegedly serving to convict Mr. Abo al-Kheir and sentence him to death, is in stark contrast to the right to fair trial under international law. In light of the alleged torture for confessing to drug smuggling between 18 May and 27 May 2014, we reiterate that the Human Rights Committee has found that the use of torture or other forms of cruel, inhuman or degrading treatment to extract a confession not only violates the prohibition against torture but also the prohibition on self-incrimination and the right to a fair hearing.² Where the accused person challenges the voluntariness of the confession, the burden of proof lies with the prosecution to prove that it was made as a result of the free will of the accused person.

Apart from the fact that a death sentence in connection with drug related offenses constitutes *per se* a violation of international law, we are concerned by the allegations that no legal representation has been provided during the legal proceedings in his case which may have led to the inaccurate consideration of available evidence. With reference to paragraphs 4 and 5 of the United Nations Safeguards for the Protection of the Rights of Persons Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, we would like to recall that in the case of offenses that in fact reach the threshold of the most serious crimes, which does not appear to be the case in this instance, the death penalty can 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, and 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.

We recall that the Working Group on Arbitrary detention found Mr. Abo al-Kheir's detention arbitrary and without legal basis, and in contravention of articles 3, 6, 8, 9, 10 and 11 of the Universal Declaration of Human Rights. We are also concerned by his incommunicado detention and the fact that his physical and mental health status seemingly is constantly deteriorating. We reiterate the Working Group's request to take the steps necessary to remedy the situation of Mr. Abo al-Kheir, by immediately releasing him and according him an enforceable right to compensation and other reparations without delay, in accordance with applicable international norms.

² Communication No. 1280/2004, *Tolipkhuzhaev v Uzbekistan*, Views adopted by the Human Rights Committee on 22 July 2009, paras. 8.3-8.4.

Moreover, in particular over the first two weeks of his detention, Mr. Abo al-Kheir has been subjected to enforced disappearance, bearing in mind that, in order to constitute an enforced disappearance, the deprivation of liberty must be followed by a refusal to acknowledge such deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law, regardless of the duration of the said deprivation of liberty or concealment.

In light of the deteriorating mental and physical health condition of Mr. Abo al-Kheir on death row which seems to have accelerated his ageing process, we note that the Human Rights Committee has held that “failure to provide individuals on death row with timely notification about the date of their execution constitutes, as a rule, a form of ill-treatment,” (CCPR/C/GC/36, para. 40). Older detainees disproportionately suffer from mental health conditions, including anxiety related to their deprivation of liberty and their detention conditions.

Furthermore, the allegations raised in Mr. Abo al-Kheir’s case may allude to presumption that the reasons for his detention may be linked to a discriminatory application of the death penalty for drug offences on foreign nationals. We note with concern that whilst they make up only 32 percent of the population, non-Saudi nationals represent 73 percent of those executed for drug offences.

Furthermore, paragraph 7 of the above-mentioned Safeguards establishes that **anyone sentenced to death shall have the right to seek pardon or commutation of the sentence and that pardon or commutation may be granted in all cases of capital punishment.**

We are gravely alarmed by the execution of over 130 individuals by Saudi authorities in 2022 so far. We regret to observe the failure to reduce the scope of the death penalty, and to establish a moratorium on the use of the death penalty for drug offences despite an announcement made by the Saudi Arabian Human Rights Commission on 18 January 2021 proposing such moratorium. We regret that there has been no official indication that this moratorium has been brought into law. In this connection, we regret that under the 2005 law on the Control of Narcotic and Psychotropic Substances, the death penalty remains a valid sentence in law for those who commit drug offences including trafficking, with intent to supply. We recall 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. We reiterate that any measures to abolish the death penalty should be seen as progress towards the realization of the right to life and that, by extension, the resumption of executions results in less protection of the right to life (see Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/69/265).

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, 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, we call upon the judiciary and all relevant institutions to ensure Mr. Hussein Abo al-Kheir is not executed. His execution, on the facts available to us, would constitute a flagrant violation of applicable international human rights standards and would thus be an arbitrary execution.

In the context of repeated reporting on the imposition of the death penalty and the speedy implementation of executions, we once again call on Saudi Arabia to reconsider its longstanding position on the death penalty, particularly in relation to drug offenses, which constitutes a per se violation of international law, in light of mounting evidence of its ineffectiveness as a deterrent. We urge your Excellency's Government to impose a moratorium on all death sentences pending such necessary review.

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 actions taken by the Government of your Excellency in follow-up to the recommendations made in Opinion 36/2022 of the Working Group on Arbitrary Detention.
3. Please provide detailed information on the extent to which the execution of the death penalty in the case of Mr. Hussein Abo al-Kheir for drug related offenses, and in light of the alleged irregularities in his trial, is consistent with international human rights law, including the United Nations Safeguards for the Protection of the Rights of Persons Facing the Death Penalty.
4. Please indicate why, allegedly, no investigation was carried out into the allegations of torture committed by Saudi prison authorities and why Mr. Hussein Abo al-Kheir was allegedly not provided with legal counsel and consular information throughout the judicial proceedings in his case.
5. Please provide information as to why coerced confessions appear to have been accepted as a basis for sentencing Mr. Abo al-Kheir to death.
6. Please indicate the reasons why no medical assistance was provided to Mr. Abo al-Kheir throughout his detention, despite the fact that his mental and physical health has deteriorated and he is nearly blind as a result of the injuries sustained during the alleged torture by Saudi prison authorities.

7. Please provide information on any efforts envisaged to remove the death penalty in Saudi Arabia at least for drug offences and/or to reduce the scope of application of the death penalty. Please also provide detailed information on how many individuals are currently held on death row with drug related charges.

While awaiting a reply, we ask that prompt steps be taken to stop the execution of the death penalty against Mr. Hussein Abo al-Kheir. In the light of this case, we also recommend that similar judicial process in capital punishment cases for drug related charges be thoroughly reviewed to prevent any future risk of arbitrary death sentences and executions.

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.

We may continue to publicly express our concerns in the near future on this case, which in our view merits prompt and undivided attention, as Mr. Hussein Abo al-Kheir's life is at stake, and the execution of a death penalty is irreversible. We also believe that this matter is one of public concern and that the public should be informed about it, and about its human rights implications. Any public expression of concern from our part would indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

A copy of this letter will be sent to the Government of the Kingdom of Jordan.

Please accept, Excellency, the assurances of our highest consideration.

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Mumba Malila

Vice-Chair of the Working Group on Arbitrary Detention

Aua Baldé

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Special Rapporteur on the human rights of migrants