

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

Ref.: AL SAU 1/2023
(Please use this reference in your reply)

16 February 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 44/5, 51/8, 44/8 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the administration of the death penalty in the Kingdom of Saudi Arabia in cases of crimes allegedly committed by offenders under the age of eighteen.

According to the information received:

Case of Mr. [REDACTED]

On 8 May 2017, Mr. [REDACTED] was arrested. He was fourteen years old. He was reportedly accused of shooting a police officer during the robbery of a jewelry store, tortured, forced to confess under torture and sentenced to death on 30 October 2019. The death sentence was upheld by the Court of Appeal in January 2021¹.

On 10 November 2021, the Supreme Court of Saudi Arabia overturned Mr. [REDACTED] conviction and sent the case back to the court of first instance, the Criminal Court of Tabuk, for retrial.

The first retrial hearing was held on 7 December 2021, and it was attended by Mr. [REDACTED] lawyer and representatives of the Human Rights Commission. The Public Prosecution Office again requested the death

¹ The case of Mr. [REDACTED] was brought to the attention of the Government of Saudi Arabia on different occasions. See, for example, and SAU 15/2021: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26914>; the Government's reply can be consulted here: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36835S>; and SAU 4/2021: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26054>; the Government's reply can be consulted here: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36149>. Most recently, the Working Group on Arbitrary Detention declared that the detention of Mr. [REDACTED] was arbitrary. See A/HRC/WGAD/2021/72: https://www.ohchr.org/sites/default/files/2022-01/A_HRC_WGAD_2021_72_SA_AEV.pdf

sentence. A second retrial hearing was held on 28 December 2021.

On 2 March 2022, Mr. ██████████ was again sentenced to death by the Criminal Court of Tabuk. At present, the sentence is said to be pending before the Supreme Court.

Case of Mr. ██████████

On 27 August 2014, Mr. ██████████ was arrested in the street allegedly without an arrest warrant.

He was brought to the Tarot Police Station and then to Dammam Investigations department. The family was informed of his whereabouts after three months following his arrest, a period during which Mr. ██████████ was unable to communicate with anyone. The family was able to visit Mr. ██████████ only in January 2015.

Mr. ██████████ was kept in solitary confinement for about six months, during which he was beaten and subjected to psychological torture. The treatment inflicted caused burns around the eye, a broken tooth and a knee injury, which led to his repeated transfer to the hospital.

In August 2017, Mr. ██████████ was brought to trial before the Specialized Criminal Court in Riyadh on several charges, including participating in demonstrations, marches and funerals, distributing water during demonstrations, forming a terrorist cell and attacking public property. Several of these charges against him referred to crimes committed when he was aged under 18.

Mr. ██████████ had access to a lawyer only once the trial had begun. During the trial, he informed the Court that he had been subjected to torture and was forced to sign confessions. He also asked for a medical report which was refused. No investigation was conducted into the allegations of torture.

In August 2018, Mr. ██████████ was sentenced to death. At present, the sentence is reportedly pending before the Supreme Court.

Case of Mr. ██████████

On 23 February 2017, Mr. ██████████ was arrested without an arrest warrant following a security forces' raid to his family's home in al-Awamiya.

Mr. ██████████ was kept in solitary confinement for a total period of time of nine and a half months. He was subjected to torture and other ill-treatments, forced to confess and denied access to a lawyer.

Mr. ██████████ had to be hospitalized on different occasions due to fainting, low blood pressure, weak heartbeat, and severe swelling in his right thigh apparently due to the ill-treatment inflicted.

In July 2019, after two years and five months of detention, Mr. ██████ was brought before the Specialized Criminal Court in Riyadh on different charges, including participating in demonstrations when he was 15 years old. The charges brought against ██████ referred to crimes allegedly committed when he was below the age of eighteen.

On 4 October 2022, Mr. ██████ was sentenced to death. At present, the sentence is pending before the Supreme Court.

Case of Mr. ██████

On 28 November 2017, Mr. ██████ was arrested together with his two brothers by Saudi security forces when they were at home. They were beaten and shot at.

While in custody, Mr. ██████ was subjected to beatings and electric shocks, forced to sign confessions and had to be hospitalized several times.

Mr. ██████ was held in solitary confinement for approximately 3 months, a period during which he was unable to communicate with his family. While in detention, for a period of three years, he was prevented from hiring a lawyer.

In 2020, he was brought for trial before the Specialized Criminal Court. He was charged with joining groups via telephone programmes, possessing prohibited pictures, possessing weapons, joining a terrorist organization and harboring wanted persons. Some of the charges referred to acts imputed to him when he was below the age of eighteen.

Only after the first hearing, in October 2020, Mr. ██████ was able to benefit from a lawyer of his choice. Mr. ██████, however, could only attend two hearings of the trial as he was not transferred to the Court to participate in the other hearings.

On 13 October 2022, Mr. ██████ was sentenced to death. At present, the sentence is reportedly pending before the Court of Appeal.

Case of Mr. ██████

On 6 April 2017, Mr. ██████████² was arrested at gunpoint near the court in Qatif by armed forces without a warrant. Those arresting him did not inform him about the reason for his arrest. He was brought to the General Investigation Prison in Dammam.

Mr. ██████████ was held in solitary confinement and could receive no visits from his family for a period of five months. The family was only authorized to visit him after he signed confessions under coercion, which were later used in Court as evidence against him.

During the detention, Mr. ██████████ was subjected to psychological and physical torture. As a result, he lost consciousness and had to be hospitalized. The family was denied access to the results of the medical examinations he underwent.

The charges brought against Mr. ██████████, most of which referred to crimes allegedly committed when he was below the age of eighteen, included participating in funerals of people who were shot dead by the security forces in demonstrations and raids, participating in demonstrations and gatherings, chanting slogans, raising anti-state slogans, sedition, destabilizing security, seeking to destabilize the social fabric and national cohesion, advocating, participating in and inciting sit-ins, demonstrations and gatherings that affect the unity and stability of the Kingdom, joining a terrorist cell, monitoring and shooting security men, selling narcotic pills to three members of security forces, covering up wanted persons, financing terrorism and committing terrorist acts.

During the trial, Mr. ██████████ informed the Court that he was forced to sign the confessions. However, based these confessions, he was sentenced to death on 16 October 2022. At present, the sentence is pending before the Court of Appeal.

Case of Mr. ██████████

On 1 January 2021, Mr. ██████████ was arrested at his home after security forces raided it.

During his detention, he was held 270 days in solitary confinement, a period during which he was subjected to physical and psychological torture and forced to confess the crimes imputed to him. He was denied access to a lawyer and deprived of visits by family.

² The case of Mr. ██████████ was brought to the attention of Your Excellency's Government on 13 June 2022 with communication AL SAU 8/2022: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27339> ; the Government's reply is currently being processed: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37047>;

In May 2022, he was brought to trial before the Specialized Criminal Court on different charges, including following Facebook pages, communicating with a wanted person, training in the use of weapons, shooting and burning oil pipelines. Most of the charges referred to crimes allegedly committed when he was below the age of eighteen.

During trial, his lawyer was denied access to all the evidence against his client. Mr. ██████ informed the Court that he had been tortured and forced to confess.

On 13 October 2022, the Specialized Criminal Court sentenced him to death. At present, the sentence is pending before the Court of Appeal.

Case of Mr. ██████

On 23 October 2017, Mr. ██████ was arrested and kept in solitary confinement for approximately nine months.

Mr. ██████ was brought to trial before the Specialized Criminal Court on different charged, including joining a terrorist organisation, shooting, monitoring security forces, participating in protests, seeking to destabilize the social fabric by participating in sit-ins and demonstrations, covering up the sale of weapons, participating in the transfer of prohibited material, using social media to communicate with wanted persons. Some of the charges referred to crimes allegedly committed when he was below the age of eighteen.

In October 2022, the Specialized Criminal Court sentenced Mr. ██████ to death. At present, the sentence is reportedly pending before the Court of Appeal.

Treatment of bodies post-execution

It is submitted that the Kingdom of Saudi Arabia is currently holding 132 bodies of persons that have been subjected to capital punishment, including an unspecified number of bodies of minors.

While we do not wish to prejudge the accuracy of these allegations, we express our utmost concern at the imposition of the death penalty in the above-mentioned cases.

We recall that under international human rights law, the prohibition of the death penalty for crimes committed by persons below the age of eighteen at the time of the act is established in several international and regional human rights treaties, in particular in article 37 of the Convention on the Rights of the Child (the Convention), ratified by Saudi Arabia in 1996.

Under the Convention, 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; this

practice violates an existing norm of customary international law and renders the punishment tantamount to torture.

We therefore respectfully call on Your Excellency's Government to ensure that the above-mentioned individuals are re-tried in full compliance with international juvenile justice norms.

If proven to be correct, the allegations would also be in breach of article 37 of the Convention of the Right of the Child providing that every child "shall have the right to prompt access to legal and other appropriate assistance". The right to a fair trial, provided by article 10 of the Universal Declaration of Human Rights, includes a set of procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing. The Human Rights Committee has highlighted that, "in cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of fair trial is particularly important" (CCPR/C/GC/32, paragraph 59).

Within this context, we also recall the absolute prohibition of torture, set forth in articles 1 and 16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), acceded by Saudi Arabia in 1997, which also include the prohibition of the use of statements obtained under torture and other ill-treatment in any legal proceedings (article 15 of the CAT). All the allegations reported above in this respect should therefore be promptly and duly investigated (article 12 of the CAT). If confirmed, those responsible should be brought to justice and the victims should be afforded with redress and rehabilitation.

We also respectfully reiterate our calls to your Excellency's Government to consider strengthening legal, institutional and procedural safeguards to protect individuals against torture while they are held in custody; and to adopt without delay the necessary legislative measures to fully abolish the imposition of the death penalty for children for all crimes, including in relation to offences punished under *qisas* and *hudud*.

While noting that at least four of these individuals were charged with terrorism-related offences, we reiterate our concern about the extremely broad definition of terrorism contained in the Law on Combating Crimes of Terrorism and their Financing, and its severe punishments, including the death penalty for ambiguously defined offences, and urge your Excellency's Government to review the law to ensure its conformity with Saudi Arabia's international human rights obligations and the principle of legal certainty (SAU 12/2020, SAU 1/2022, SAU 5/2022, SAU 7/2022).

Lastly, we stress once again that the enforcement of any death sentence in contravention of a State's obligations under international law is tantamount to an arbitrary execution and hence unlawful.

We therefore respectfully call once again 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 Kingdom. Furthermore, we recommend a review of all current cases in which prisoners are facing the death penalty in order to ensure that international minimum standards are met in each case.

With regard to the allegations related to the treatment of bodies post-execution, including those of persons below the age of 18, we believe that the unspeakable anguish and acute mental distress that the circumstances of the execution, as well as the lack of information on the whereabouts of their relative, unfairly inflict on the families of those executed are an unjustifiable and useless pain.

As reported by the Secretary-General, the refusal to hand over remains to families are especially cruel features of capital punishment, highlighting the need for full transparency and avoidance of harm to innocent family members in the whole process³.

We therefore respectfully call on your Excellency's Government to ensure that all the bodies of persons who have been subjected to capital punishment are returned to their families without delay and that the relatives are provided with official, comprehensive and exhaustive information about the executions so that they can hopefully complete their grieving process.

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.

We are issuing this communication in order to safeguard the rights of the above individuals from irreparable harm and without prejudicing any eventual legal determination.

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 about the judicial processes initiated against these persons, from the day (and date) of their arrest and detention.
3. Please provide information on the factual and legal basis of their prosecution.
4. Please provide information about their treatment in detention, in particular the legal ground for their placement in solitary confinement.

³ See Report of the Secretary General, The question of the death penalty (A/HRC/48/29): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/379/41/PDF/G2137941.pdf?OpenElement>

5. Please provide information the steps taken by the judicial authorities hearing the cases, following the claim made by the defendant that they were tortured or otherwise ill-treated to extract confessions of guilt from them.
6. Please explain how the imposition of the death penalty in the above-mentioned cases is compatible with Saudi Arabia's international obligations, particularly as they arise from the prohibition of the death penalty for children as set forth in the Convention of the Rights of the Child.
7. Please provide information on whether the Government has envisaged or is considering envisaging to abolish the death penalty for all crimes committed by persons under the age of 18.
8. Please provide detailed information on the management of the bodies of persons executed and please how this complies with international norms and standards.
9. Please provide information on the current state of physical and mental integrity of these individuals and please explain whether they have had access to adequate medical care, as appropriate
10. Please explain whether the deprivation of liberty of the above-mentioned individuals was following international human rights law and standards; and please explain whether their respective trials were conducted in a manner consistent with international due process and fair trial standards.

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 having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We may consider expressing publicly our concern in this case, since we believe that the issue of the death penalty in any country is of utmost importance as it gives the state the authority to deprive someone of his or her life. Aso, given that it concerns everyone's most fundamental right, we consider that the general public should be informed. Any public expression of concern on our part will indicate that we have been in contact with Your Excellency's Government, on several occasions, to clarify the matter and share our recommendations.

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

Mumba Malila

Vice-Chair of the Working Group on Arbitrary Detention

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

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 refer your Excellency's Government to: articles 9 of the Universal Declaration of Human Rights (UDHR) which state that "No one shall be subjected to arbitrary arrest, detention or exile"; article 10 of the UDHR which establish the right of everyone to due process and fair trial; and article 3 of the UDHR, which protect the right to life.

We also wish to recall article 1 and 16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), which establish the absolute right of everyone to be free from torture and other cruel, inhuman and degrading treatment or punishment. In this regard, we wish to point out that Saudi Arabia is obliged to investigate, promptly and ex officio, all allegations of torture and ill-treatment and other serious human rights violations wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction (article 12). In addition, confessions and other information extracted under torture or ill-treatment are not admissible into any legal proceeding, as their admission violates the rights of due process and a fair trial (article 15).

Furthermore, we would like to refer to article 37 of the Convention on the Rights of the Child which state that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. (...); (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

In addition, we would like to refer to the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty, which provide that capital punishment may be imposed only for the most serious crimes, 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. And that persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death.

We recall 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 (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).

In its general comment no. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14(3)(b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. They should also be able “to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter” (CCPR/C/GC/32, para. 34).

The Committee further notes that “In cases of trials leading to the imposition of the death penalty scrupulous respect of the guarantees of fair trial is particularly important. The imposition of a sentence of death upon conclusion of a trial, in which the provisions of article 14 of the Covenant have not been respected, constitutes a violation of the right to life (article 6 of the Covenant)” (CCPR/C/GC/32, para. 59).

Furthermore, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, resolution 67/187 adopted in 2012, note in principle 2, that “States should consider the provision of legal aid their duty and responsibility”. When it comes to children, the Guidelines indicate in principle 11 that “legal aid provided to children should be prioritized, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children”.

We wish to echo the concerns expressed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, in his report on the country-visit to Saudi Arabia, with regard to the use of detention for prolonged periods of time, the use of torture, the use of coerced confessions and the lack of accountability, as well as the failure of Saudi Arabia to provide minimum procedural safeguards during detention and interrogation, and its judicial practice of admitting coerced confessions into evidence, which, in the SR’s view, amount to a systematic and flagrant denial of justice (A/HRC/40/52/Add.2).

We would specifically like to underline 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. Moreover, the law must be formulated with sufficient precision so that the individual can regulate his or her conduct accordingly. We also 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, 8, 13, 15 16, 32 which safeguard the rights to life, liberty and security of person, to be brought promptly before a judge, to not be subjected to torture or cruel, inhuman or degrading treatment, to be treated with humanity while in detention and to be compensated in circumstances of unlawful arrest or detention, and the right to information and to freedom of opinion and expression.

We also respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All of these resolutions require that States ensure that any measures taken to combat terrorism or violent extremism, including incitement of and support for terrorist acts, must comply with all of their obligations under international law. As the General Assembly noted in the United Nations Global Counter-Terrorism Strategy, effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing. We would like to emphasize that any restriction on freedom of expression or information that a government seeks to justify on grounds of national security or counter terrorism, must have the genuine purpose and the demonstrable effect of protecting a legitimate national security interest.