

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

Ref.: UA USA 20/2023

(Please use this reference in your reply)

10 August 2023

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 49/10, 51/8, 45/3 and 44/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged forcible repatriation by your Excellency's Government of **Mr. Ghassan Abdallah Ghazi al-Sharbi**, who was cleared for release and transferred from the detention facility at the U.S. Naval Station Guantánamo Bay to the Kingdom of Saudi Arabia on 8 March 2023. We are profoundly concerned that Mr. al-Sharbi was repatriated against his will and has since reportedly been subject to enforced disappearance, held in secret, incommunicado detention, and subject to torture and ill-treatment. We underscore in this regard your Excellency's Government's continuing international law obligations to Mr. al-Sharbi and other former Guantánamo Bay detainees previously in your extended custody—obligations that apply extraterritorially and call for providing full reparation and remedy for serious violations of international human rights law and international humanitarian law, including the use of extraordinary rendition, torture, cruel, inhuman, and degrading treatment, enforced disappearance, arbitrary detention and the possibility that Mr. al-Sharbi may be subjected to execution.

We note in this regard the findings of the Joint study on global practices in relation to secret detention in the context of countering terrorism of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism; the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances represented (A/HRC/13/42), as well as the follow-up report by the Special Rapporteur on the promotion and protection of human rights while countering terrorism (A/HRC/49/45). We further echo the findings and recommendations of the Special Rapporteur on the promotion and protection of human rights while countering terrorism from her technical visit to the United States, particularly as regards the rights of former detainees who have been repatriated or resettled.¹

¹ See Technical Visit to the United States and Guantánamo Detention Facility by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 14 June 2023, paras. 52-65 [hereinafter U.S. & GTMO Technical Visit].

According to the information received:

Mr. Ghassan Abdallah Ghazi al-Sharbi is a 48-year-old man of Saudi nationality. He was captured by Pakistani security services in March 2002 and rendered to Guantánamo Bay in June 2002, where he was held for nearly 21 years without trial. Mr. al-Sharbi initially faced charges of conspiracy to commit terrorism and provision of material support for terrorism, but these charges were dropped in 2008, allegedly due to the evidence against him having been obtained through torture.

On 4 February 2022, the Periodic Review Board (PRB) —the interagency panel charged with reviewing whether continued detention of particular detainees remains necessary to protect against a continuing significant threat to the national security of the United States—determined by consensus that Mr. al-Sharbi’s continued detention was unnecessary, considering, among other factors, his “lack of a leadership or facilitator position in al-Qaeda or the Taliban,” “the efficacy of rehabilitation programs and measures they can take to mitigate any future threat,” and his “engagement with medical staff to improve his physical and mental health issues.”² In the PRB clearance determination, the board recommended certain conditions for transfer: “[i]mplementation of a comprehensive set of security measures including monitoring, travel restrictions and continued information sharing.”³

After 4 February 2022, Mr. al-Sharbi was therefore eligible for transfer, subject to your Excellency’s Government arranging the logistics of his release as well as all associated agreements to apply after his transfer in respect of the stated PRB requirements, and other considerations including the principle of non-refoulement, which applies as a matter of treaty-based and customary international law, and forms part of jus cogens, to any such transfer by your Excellency’s Government. During this time, Mr. al-Sharbi repeatedly asserted to his counsel and other defense lawyers, the U.S. Joint Task Force, and the U.S. Department of State, credible fears for his life and safety were he to be returned to the Kingdom of Saudi Arabia. It is alleged that he also made these assertions to the International Committee of the Red Cross (ICRC). It is further alleged that Mr. al-Sharbi went on hunger strike, refused to leave his cell or speak with his counsel, and attempted to take his own life while in the Guantánamo Bay detention facility, and that the guard force subjected him to physical violence, including beatings, pepper spray, and restraints on a stretcher, before sending him to the Kingdom of Saudi Arabia.

At the same time, Mr. al-Sharbi’s lawyer allegedly spoke with your Excellency’s Government’s Office of the Special Representative for Guantánamo Affairs multiple times by both phone and email, emphasizing that Mr. al-Sharbi had serious concerns regarding his physical safety and mental health in Saudi Arabia and insisting that he would rather stay in the

² Period Review Board Determination, 4 February 2022, Unclassified Summary of Final Determination, <https://int.nyt.com/data/documenttools/220204-upr-isn682-sh2-final-determination/3d6c2cf5b89eb428/full.pdf>.

³ Periodic Review Board Determination, 4 February 2022, Unclassified Summary of Final Determination.

Guantánamo Bay detention facility until a suitable alternative country for resettlement was identified. According to the information received, Mr. al-Sharbi's counsel also sent a full list of questions and assurances to the Special Representative for Guantánamo Affairs were he to be repatriated, including seeking assurances that he would not be imprisoned but rather reunited with his family. In written exchanges shared with the Experts, the Special Representative for Guantánamo Affairs explained to Mr. al-Sharbi's counsel that per standard practice, humane treatment assurances would be obtained and that as with any transfer, Mr. al-Sharbi would be subject to the receiving country's domestic laws and procedures, which could include custodial measures for an indeterminate period of time as the State assessed whether charges might be brought under the applicable domestic laws.

On 8 March 2023, the U.S. Department of Defense announced that Mr. al-Sharbi had been repatriated to the Kingdom of Saudi Arabia. Mr. al-Sharbi's lawyer was formally notified of his release through a press release on that date. The press release stated that your Excellency's Government "completed the requirements for responsible transfer" and "appreciate[d] the willingness of the Kingdom of Saudi Arabia, and other partners to support ongoing U.S. efforts toward a deliberate and thorough process focused on responsibly reducing the detainee population and ultimately closing the Guantanamo Bay facility."

It is alleged that Mr. al-Sharbi was detained upon his transfer to Saudi custody and forcibly disappeared thereafter, and that his current whereabouts in the Kingdom of Saudi Arabia are unknown to his counsel, family, and friends, nor have his family or counsel been able to visit him wherever he is being detained. There are serious concerns that he may be or has already been subjected to torture and cruel, inhuman, and degrading treatment, life imprisonment. We are also concerned that any legal process related to terrorism may potentially lead to a sentence of execution, due to his criticism of the Saudi regime.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our deep concern at Mr. al-Sharbi's forced repatriation to the Kingdom of Saudi Arabia and his subsequent alleged enforced disappearance and incommunicado and secret detention. Should they be confirmed, the fact alleged would contravene your Excellency's Government's international law obligation of *non-refoulement*, the cornerstone principle whereby no one shall be returned to a country where they would face violations of their right to life, torture, cruel, inhuman, or degrading treatment or punishment, enforced disappearance and other irreparable harm. We remind your Excellency's Government that *non-refoulement* is a *jus cogens* and treaty law obligation and requires individuated assessments specific to detainees and in line with international human rights law. We observe that UN experts have issued multiple assessments and communications to the Kingdom of Saudi Arabia regarding credible allegations of arbitrary detention, the imposition of the death penalty for offenses not reaching the threshold of most serious crimes, enforced disappearance, solitary confinement, torture and ill-treatment, forced confessions, flagrant fair trial violations and disproportionate sentencing including life

imprisonment and the death penalty, all under the pretext of counter-terrorism.⁴ In this regard, we underscore that enforced disappearance constitutes a unique and integrated set of acts and omissions that pose a grave threat to life and involve a violation of the right to life (CCPR/C/GC/36 para. 58).

We remind your Excellency's Government that article 3 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was ratified by the United States on 21 October 1994, provides that no State party shall expel, return ("refouler"), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. Article 3 further stipulates that the competent authorities "shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights". In this regard, paragraph 9 of general comment 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in which the Human Rights Committee states that State parties "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement." Furthermore, paragraph 9 of the Resolution A/RES/61/253 of the UN General Assembly urges States "not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture."

In light of the possibility that Mr. al-Sharbi may be subjected to execution in the Kingdom of Saudi Arabia, we further stress that the obligation not to extradite, expel or otherwise transfer in article 6 of the ICCPR is broader in scope than the principle of non-refoulement in international refugee law, as it may also require the protection of aliens not entitled to refugee status. Therefore, the principle of non-refoulement under international human rights law applies to any form of removal or transfer of persons regardless of their legal status. In addition, principle 5 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions establishes that no one shall be returned or extradited against his or her will to a country where there are substantial grounds for believing that he or she may be subjected to extra-legal, arbitrary or summary execution in that country.

We would also like to draw your Excellency's Government's attention to 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), which states that, in countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes. The latter has consistently been interpreted to mean that the death sentence may only be imposed in respect of offences that result in the loss of life.

In addition, it must be recalled that the prohibition of enforced disappearance has also attained the status of *jus cogens*, and article 8 of the Declaration on the Protection of All Persons from Enforced Disappearance, which enshrines customary international law, establishes that no State shall expel, return (refouler) or extradite a

⁴ See, e.g., SAU 1/2023; SAU 8/2022; SAU 5/2022; SAU 2/2022; SAU 14/2021; see also A/HRC/40/52/Add.2.

person to another State where there are substantial grounds to believe that this person would be in danger of enforced disappearance.

We reiterate the importance of securing each individual's informed consent as your Excellency's Government negotiates arrangements for release, whether to a home country or third country—with full recognition of the international human rights law obligations adhering before, during, and after each transfer. We echo in this regard the finding of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, putting into question “the genuine nature of detainee consent to the countries selected for either resettlement or repatriation” and we reiterate the need for transparent transfer notification processes that honestly inform the detainee of the nature of the legal status, housing, health care, and other factors, including with regard to security measures, such as surveillance, to be expected upon arrival.⁵ We are seriously concerned that Mr. al-Sharbi's express dissent was wholly disregarded by your Excellency's Government. We also further observe that although the International Committee of the Red Cross conducts confidential pre-departure interviews with detainees subject to their consent, their recommendations to authorities are non-binding and can be overridden by your Excellency's Government. We underscore that the *non-refoulement* obligation and the obligation to ensure the humane treatment of detainees lie squarely with your Excellency's Government.

We are particularly concerned by the fact that neither Mr. al-Sharbi's family nor counsel have been able to ascertain his fate and identify his whereabouts, including after outreach to your Excellency's Government. We observe that your Excellency's Government's alleged failure to share this information with Mr. al-Sharbi's counsel evinces a failure to follow up on the conditions of his repatriation and the well-being of Mr. al-Sharbi, including to ensure compliance with any humane treatment and other assurances. We note that Mr. al-Sharbi's physical and mental health is likely vulnerable to deterioration given his status as a torture victim and survivor stemming from his time in your Excellency's Government's custody, and prior state of anxiety and despair as evidenced by his alleged attempted suicide. We underscore that your Excellency's Government has an unequivocal legal obligation, including under article 14 of the Convention Against Torture, to provide Mr. al-Sharbi with redress and reparation, including full torture rehabilitation. Moreover, where a transfer is made that is not compliant with the terms of the agreement made by your Excellency's Government and international law, and where there can be no certainty in preventing ongoing ill-treatment, your Excellency's Government must seek to find another second transfer solution.

In addition, we express our profound concern regarding the serious allegations of physical violence against Mr. al-Sharbi while he was still in your Excellency's Government's custody—including allegations of physical beatings, pepper spray, and undue restraints on a stretcher, allegedly perpetrated by the Joint Task Force at the Guantánamo Bay detention facility after his clearance for release and prior to his actual transfer. We reiterate in this context the finding of the Special Rapporteur on the promotion and protection of human rights while countering terrorism that the present conditions in totality constitute “ongoing cruel, inhuman, and degrading

⁵ Technical Visit to the United States and Guantánamo Detention Facility, para. 56.

treatment at the Guantánamo Bay detention facility, and may also meet the legal threshold for torture.”⁶ The present allegations of physical beatings, pepper spray, and undue restraints against Mr. al-Sharbi, if true, would appear to corroborate such a finding in his individual case. We underscore to your Excellency’s Government the utmost importance of the guard force at the Guantánamo Bay detention facility complying with relevant international norms and standards when resorting to the use of force and restraints, including in compliance with the principles of necessity and proportionality.⁷

Finally, we would like to draw the attention of your Excellency’s Government to States’ obligations to provide victims of human rights violations with effective remedies. International standards recognize the right of victims—including families—to adequate, effective and prompt reparation, which should be proportionate to the gravity of the violations and the harm suffered. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in 2006, provide that victims of a gross violation of international human rights law or of a serious violation of international humanitarian law must be guaranteed equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. We also bring to the attention of your Excellency’s Government the right to a remedy for victims pursuant to article 13 of the Convention Against Torture. We take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture,” and “(t)o ensure that victims of cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation.”

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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

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 fundamental rights of Mr. al-Sharbi in compliance with international instruments. We remain available to provide technical assistance to your Excellency’s Government in order to support full compliance with your obligations under international law, including international human rights law, international humanitarian law, and international refugee law.

⁶ Technical Visit to the United States and Guantánamo Detention Facility, para. 49.

⁷ Technical Visit to the United States and Guantánamo Detention Facility, para. 18; see UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules); Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

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 *non-refoulement* and any other risk assessment carried out by U.S. authorities to ascertain the risk of Mr. al-Sharbi being subjected to torture and ill-treatment, violations of his right to life, or enforced disappearance in the Kingdom of Saudi Arabia, and how this decision is compatible with the applicable international law standards.
3. Please provide the details of the agreement concluded by your Excellency's Government with the Kingdom of Saudi Arabia to repatriate Mr. al-Sharbi, including any diplomatic assurances made regarding mental and physical health care, including torture rehabilitation, housing, education and employment, family unification, and security measures, including potential monitoring and surveillance—as well as any financial support provided by your Excellency's Government to support such basic guarantees. This should include information on any agreement regarding the Periodic Review Board recommendation of a “comprehensive set of security measures including monitoring, travel restrictions and continued information sharing.”
4. Please indicate whether your Excellency's Government was notified in advance of the Saudi Government's intention to detain and potentially prosecute Mr. al-Sharbi. Please provide any details therein.
5. Please provide any measures undertaken by your Excellency's Government to establish Mr. al-Sharbi's fate and whereabouts after his arrival in the Kingdom of Saudi Arabia and to inform his family and counsel accordingly.
6. Please provide the details of any measures which have been taken, or which are foreseen, for the purpose of protecting Mr. al-Sharbi from further infliction of any form of ill-treatment, including consideration of resettlement and other alternative measures, and any further violation of his right to life. This includes any information concerning the prospect to (re)settle Mr. al-Sharbi in agreement with the Kingdom of Saudi Arabia and any efforts made to locate a third country in which he will be humanely treated in full respect of his human rights.

While awaiting a reply, we urge that all necessary interim measures be taken to establish and disclose Mr. al-Sharbi's fate and whereabouts, prevent any irreparable harm to the life and personal integrity of Mr. al-Sharbi, 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 case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such urgent appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the present communication and the regular procedure.

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 appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please note that a related communication is being sent to the Government of the Kingdom of Saudi Arabia.

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

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

Matthew Gillett
Vice-Chair on communications of the Working Group on Arbitrary Detention

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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