

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 SAU 5/2023

(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 your Excellency's Government custody on 8 March 2023.

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."¹ In the PRB's clearance determination, the Board recommended certain conditions for transfer: "[i]mplementation of a

¹ 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>.

comprehensive set of security measures including monitoring, travel restrictions and continued information sharing.”²

After 4 February 2022, Mr. al-Sharbi was eligible for transfer, subject to the United States 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 international law 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.

According to the information received, during that time, Mr. al-Sharbi and his counsel repeatedly voiced to the United States Government credible fears for Mr. al-Sharbi’s life and safety, including risk of enforced disappearance and torture if he were to be repatriated to Saudi Arabia. The Government of the United States explained in reply that per standard repatriation practice, humane treatment assurances would be obtained, and as with any transfer, Mr. al-Sharbi would be subject to domestic laws and procedures upon transfer.

On 8 March 2023, the U.S. Department of Defense announced that Mr. al-Sharbi had been repatriated to Saudi Arabia. On that day, Mr. al-Sharbi’s lawyer learned about the repatriation through a press release. The press release stated that the United States Government “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 Guantánamo Bay facility.” It is alleged that, upon his arrival to Saudi Arabia, Mr. al-Sharbi was then immediately detained and forcibly disappeared and that his current fate and whereabouts are unknown to his counsel, family, and friends, nor has his family or counsel have not been able to visit him wherever he is being held. There are serious concerns that he may be or has already been subjected to torture and cruel, inhuman, and degrading treatment and life imprisonment. We are also concerned that any legal process related to terrorism may 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 express our deep concern at Mr. al-Sharbi’s alleged enforced disappearance, torture and cruel, inhuman, and degrading treatment, secret and incommunicado detention, life imprisonment, and execution. Should they be confirmed, the fact alleged would contravene, inter alia, articles 3, 5, 8, 9, 10, and 19 of the Universal Declaration of Human Rights (UDHR), articles 5, 6, 8, 13, 14, and 16 of the Arab Charter on Human Rights (ACHR) and articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which was ratified by Saudi Arabia on 23 September 1997. They would also contravene principles 10, 11 and 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

² Periodic Review Board Determination, 4 February 2022, Unclassified Summary of Final Determination.

We would first like to recall that the absolute prohibition of enforced disappearance has attained the status of *jus cogens*. We would like to draw your attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances,³ which provides that no order or instruction of any public authority, civilian, military, or other, may be invoked to justify an enforced disappearance (article 6). Furthermore, no circumstances whatsoever, whether a threat of war, a state of war, internal political instability, or any other public emergency, may be invoked to justify enforced disappearances (article 7), and the right to a prompt and effective judicial remedy must be guaranteed as a means of determining the whereabouts or state of health of persons deprived of their liberty.

The Declaration further sets out the necessary protection relating to the rights to be held in an officially recognized place of detention; to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons (article 10). Moreover, States should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance (article 14). Article 13 also stipulates that steps shall be taken to ensure that all involved in the investigation, including the complainant, relatives, counsel, witnesses, and those conducting the investigation, are protected against ill-treatment, intimidation, or reprisal. Article 19 establishes that the victims or family relatives have the right to obtain redress, including adequate compensation.

We would also like to recall that the Guiding Principles for the Search for Disappeared Persons of the United Nations Committee on Enforced Disappearances⁴ establish that the search for the disappeared should be undertaken without delay (principle 2); respect the right to participation of the family of the disappeared (principle 5); be considered a continuing obligation (principle 7); and be interrelated with the criminal investigation (principle 13). We wish to stress that in accordance with the jurisprudence of the Working Group on Arbitrary Detention, enforced disappearances constitute a particularly aggravated form of arbitrary detention. In this regard, we remind the Government of your Excellency that article 3 of the UDHR enshrines the right to liberty and security of the person and article 9 prohibits arbitrary arrest, detention or exile.

We further 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

³ Declaration on the Protection of all Persons from Enforced Disappearance

⁴ [CED/C/7*](#)

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 also explained that the right to communicate with counsel enshrined in article 14(3)(b) requires that the accused is granted prompt access to counsel. Counselors 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).

On these grounds, we are concerned that the detention of Mr. al-Sharbi merely due to his status as a former detainee at Guantánamo Bay or due to his criticism of your Excellency’s Government, as alleged, would constitute a blatant violation of, inter alia, due process and fair trial guarantees under international law. We emphasize in this regard that Mr. al-Sharbi was cleared for release by the United States Government, including for his “lack of a leadership or facilitator position in al-Qaeda or the Taliban” and he was never tried during his 21 years in U.S. custody. We echo in this context the broader systematic concerns expressed by the former 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 and coerced confessions, and the lack of accountability, as well as the failure of your Excellency’s Government to provide minimum procedural safeguards during detention and interrogation, which amount to a systematic and flagrant denial of justice (A/HRC/40/52/Add.2).

We would like to remind your Excellency’s Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as an international norm of jus cogens, and as reflected, inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156. We underline that the Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. We are especially concerned that Mr. al-Sharbi is a highly vulnerable torture victim survivor whose tenuous state of mental and physical health may drastically deteriorate in confinement, particularly without the minimum procedural safeguards including meaningful access to counsel or family. The rights to counsel and to family are well-settled under international human rights law and vital to ensuring that the rights of persons deprived of their liberty are respected. We emphasize in this regard principle 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which stipulates that “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.” We also note that former detainee families and relatives can be affected in turn by past and ongoing torture and/or ill-treatment and are victims and rights-holders themselves.

We underscore that the international human rights law obligations of your Excellency’s Government extend to the fulfillment of Mr. al-Sharbi’s fundamental

social, economic, civil, and political rights. These basic guarantees include the right to health care and meaningful access to medical and psycho-social health services and torture rehabilitation, the right to culturally and socially appropriate housing, the right to education, training, and support to enable meaningful work, access to food, the right to have a family life including family reunification, and the right to freedom of movement.

Within this context we reiterate our concerns expressed in communications SAU 1/2023; SAU 8/2022; SAU 5/2022; SAU 2/2022; SAU 14/2021 as well as in the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his visit to Saudi Arabia (A/HRC/40/52/Add.2) regarding allegations of arbitrary detention, solitary confinement, torture and ill-treatment, forced confessions, and fair trial violations and disproportionate sentencing including life imprisonment and the death penalty, all under the pretext of counter-terrorism. We also reiterate our concerns about the extremely broad definition of terrorism contained in the Law on Combating Crimes of Terrorism and their Financing, and its apparent legal authorization of up to ninety-day incommunicado detention periods, up to one-year pretrial detention periods (both which can seemingly be further extended), serious restrictions to the right of access to counsel and other fair trial standards, and severe punishments, including the death penalty for ambiguously defined offences, in potential contravention of your Excellency's Government's international human rights obligations and the principles of legal certainty, necessity, and proportionality (SAU 12/2020, SAU 1/2022, SAU 5/2022, SAU 7/2022, A/HRC/40/52/Add.2). Furthermore, we highlight that a number of the rights violations identified here constitute jus cogens norms which fully apply, without distinction, to the treatment of any person detained. We also echo the findings of the Special Rapporteur on the promotion and protection of human rights while countering terrorism from her technical visit to the United States and Guantánamo Bay, particularly her observations regarding the obligations of countries of nationality to former Guantánamo Bay detainees and their families, across the full spectrum of political, civil, economic, social, and cultural rights.

In addition, we 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 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.

Finally, we express concern about the undisclosed terms of Mr. al-Sharbi's repatriation, and any diplomatic assurances made therein to the United States, including as alleged with regard to humane treatment, as well as potentially with regard to rehabilitation and reintegration services. In this context, we would like to draw the attention of your Excellency's Government to paragraph 16 of General Assembly Resolution 65/205, which "recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement." We emphasize the importance of diplomatic assurances being written, specific, transparent, and subject to post-transfer oversight for veracity.

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 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.

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 fate and whereabouts of Mr. al-Sharbi and, in particular, on the place where he is being held and elements relating to his state of health. Kindly clarify the measures undertaken to search for him, establish his fate and whereabouts and guarantee to any person with a legitimate interest, such as relatives and his council and access to such information.
3. Please provide details on the factual and legal grounds for Mr. al-Sharbi's ongoing detention. Please explain how this is compatible with your Excellency's Government's international human rights law obligations.
4. Please provide information on the exact location of detention of Mr. al-Sharbi since his repatriation to your Excellency's Government's custody, the legal grounds for his ongoing detention, and any notifications of his confinement that were made to his family, his

counsel, and to the United States Government. Please explain how this is compatible with your Excellency's Government's international human rights law obligations.

5. Please provide information on the conditions of Mr. al-Sharbi's confinement and how they are in line with the well-settled prohibitions of arbitrary deprivation of liberty and torture and ill-treatment.
6. Please provide information of any measures which have been taken, or which are foreseen, for the purpose of providing Mr. al-Sharbi with meaningful access to family and counsel and safeguarding his fundamental due process and fair trial rights under international law.
7. Please provide information, where available, on any agreement concluded by your Excellency's Government to repatriate former detainees from Guantanamo Bay to the Kingdom of Saudi Arabia, including any assurances entered into for Mr. al-Sharbi's humane treatment, rehabilitation, and reintegration, as well as specific social, economic, legal, and other public services and benefits agreed upon, such as health care, housing, and financial support. 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."
8. Please provide information, on what information has been provided to the transferring State (here the United States) to address whatever assurances were given in respect of the humane treatment for Mr. al Sharbi.

While awaiting a reply, we urge that all necessary interim measures be taken to establish and disclose the fate and whereabouts of Mr. al-Sharbi and to prevent any irreparable harm to his life and personal integrity, 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 would also like to inform your Excellency's Government that given the allegations of enforced disappearance, the Working Group on Enforced or Involuntary Disappearances may decide to transmit this case through its humanitarian procedure.

The Government is required to respond separately to the present communication and the humanitarian 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 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 United States of America.

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

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