

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

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(Please use this reference in your reply)

11 November 2024

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 53/4, 54/14 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 situation of Mr. Aish Ali Hussain Al-Harbi, a Saudi asylum seeker currently detained in Iraq, who is at imminent risk of extradition to Saudi Arabia, where there are well-founded reasons to believe that he will risk being subjected to torture or other forms of ill-treatment, enforced disappearance, and arbitrary deprivation of life.**

According to the information received:

Mr. Aish Ali Hussain Al-Harbi is a Saudi citizen, born in Medina, Saudi Arabia, on 2 December 1973. Mr. Al-Harbi was one of the individuals responsible for the hijacking of a Saudi airline flight 115, departing from Jeddah to London, in mid-October 2000, forcing it to land in Baghdad. The passengers and cabin crew onboard were unharmed, as the hijackers justified their action as a form of protest against the human rights situation in their country.

At the time, diplomatic relations between Saudi Arabia and Iraq were cut following the Iraqi invasion of Kuwait in 1990. Upon their arrival in Baghdad, Mr. Al-Harbi and another individual involved in the plane hijacking were granted political asylum by the Iraqi authorities and the request for their extradition by Saudi Arabia was denied. They were provided with identity cards under aliases issued by the "Foreigner and Arab Citizens Affairs Department", now dissolved and replaced by the Permanent Committee of Refugee Affairs of the Ministry of Interior.

After the fall of Saddam Hussein in 2003, Mr. Al Harbi's associate was allegedly kidnapped and forcibly returned to Saudi Arabia under unclear circumstances, subjected to torture or other forms of ill-treatment, and sentenced to the death penalty. Since his trial, there has been no information on this individual's place of detention or whether he has been executed. His family remains unaware of his fate or whereabouts to-date.

On 17 July 2005, Mr. Al-Harbi was reportedly arrested and detained by the United States Armed Forces in Baghdad and interrogated about the flight diversion. During his detention, he was allegedly subjected to torture and held

for three years without charges or trial. He was eventually released on 27 September 2008.

In December 2008, Mr. Al-Harbi was arrested by the Iraqi security forces, reportedly on charges related to the hijacking of the plane as well as for affiliation with a terrorist organization and involvement in terrorist activities in Iraq including killing of army and police officers and kidnapping of civilians.

On 23 June 2010, during his trial before Al Rusafa Criminal Court in Baghdad, Mr. Al-Harbi denied any involvement with terrorist activities indicating that he merely worked as a guard in a political party called “the National Front for Free Iraqis” (الجبهة الوطنية لأحرار العراق). Mr. Al-Harbi reportedly stated to the judge that he was subjected to torture, during interrogations, in order to provide a confession, and threatened to be repeatedly tortured if he does not confess guilt. Despite his testimony, which was substantiated by a medical report presented to the judge, finding “impact of use of force on the body of the accused,” the court decided that the report provided by a secret informant and the confession of guilt were sufficient incriminating evidence against Mr. Al-Harbi. On this basis, he was sentenced to fifteen (15) years of imprisonment, referring to violations of the Counterterrorism Act No. 13 (2005), articles 4(1) and 2(1)(3)(8).

While being detained in Al Rusafa prison, Mr. Al-Harbi was transferred in July 2013 to a section reserved for detainees awaiting return, expulsion, or extradition. In March 2014, he was moved to Al Nasiriyah prison, where he was allegedly subjected to torture and other forms of ill-treatment before being brought back to Al Rusafa prison in 2021.

In 2021, the political asylum granted to Mr. Al-Harbi in 2000 by the Iraqi authorities was revoked. He remained an asylum seeker based on a request registered in 2013 with the United Nations High Commissioner for Refugees (UNHCR), application registration No. 281-13C01208, which is pending examination.

On 21 March 2022, Mr. Al-Harbi was informed by the prison administration that he would be extradited to Saudi Arabia. On 31 March 2022, Al Rusafa Criminal Court approved the extradition request made by the Saudi authorities. Mr. Al Harbi was reportedly brought before the court without the presence of a lawyer and invoked in his defence the asylum request pending before the UNHCR.

Subsequently, on 15 June 2022, the Rusafa Criminal Court of Appeal rejected the extradition request and overturned the decision of 31 March 2022.

In 2023, Mr. Al-Harbi had reportedly completed his 15 years imprisonment sentence, but was not released due to the alleged lack of legal grounds for him to remain in Iraq.

On 10 October 2024, despite the previous rejection of his extradition, Mr. Al-Harbi was summoned before the Al Rusafa Criminal Court and informed that his extradition to Saudi Arabia has been approved. The court indicated that a new request has been submitted by the Saudi judicial authorities, on

23 September 2024, requesting the extradition of Mr. Al-Harbi to face trial for terrorism related charges, referring to “committing the crime of remaining in conflict zones and participating in ongoing fighting.” Al Rusafa court assessed that the legal conditions for extradition were met, claiming that there was no proof of Mr. Al-Harbi’s asylum status and that, given his participation in conflict zones, article 31 of the Law of Combating Terrorist Crimes and its Financing was applicable. The court and invoked the Riyadh Arab Agreement for Judicial Cooperation between Iraq and Saudi Arabia and added that there was no justification for his continued presence in Iraq.

Mr. Al-Harbi was allegedly orally informed by the President of the court that he could not appeal this decision and that it would be enforceable within one month. Although the representative of the Saudi Arabian Embassy reportedly provided diplomatic assurances that Mr. Al-Harbi would not be executed, there are reasonable grounds to believe that he may be subjected to the death penalty, torture, and potentially enforced disappearance, if returned.

According to recent information, Mr. Al-Harbi has been transferred to Al-Rusafa Deportation Prison in Baghdad pending his imminent extradition to Saudi Arabia in disregard to his asylum status and to the credible risk of serious harm in the event of return.

While we do not wish to prejudge the accuracy of these allegations, we are deeply alarmed by the reported imminent extradition of Mr. **AlHarbi** to Saudi Arabia, which consists in a *prima facie* violation of the absolute and non-derogable prohibition against *refoulement*. In view of the fate of his associate, there are reasonable grounds to believe that, if extradited, Mr. Al-Harbi will be facing a real risk of arbitrary deprivation of life, torture and other forms of cruel, inhuman or degrading treatment or punishment, and enforced disappearance, in blatant contravention of Iraq’s international legal obligations under the International Covenant on Civil and Political Rights (ICCPR), articles 6, 7, and 10, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), articles 2, 3, and 16, as well as the International Convention for the Protection of All Persons from Enforced Disappearance, article 16. These treaties have been ratified and acceded to by the Republic of Iraq on 25 January 1971, 7 July 2011, and 23 November 2010, respectively. We also emphasize that these prohibitions are also recognized as norms of *jus cogens* applicable to all States, at all times, with no exception or limitation, even in situations of emergencies or threats to national security, regardless of treaty obligations.

We are deeply worried about the justification provided as grounds for the approval of Mr. Al-Harbi’s extradition stating an alleged lack of proof for his asylum status, which was previously presented to the court in 2022. In this regard, we recall that the risk of serious human rights violations, including the death penalty following an unfair trial, torture, and enforced disappearance, is a critical aspect of the absolute prohibition against *refoulement*. In addition, the protection against *refoulement* under international human rights law and as a norm of *jus cogens*, is broader than the protections provided under international refugee law, as it applies regardless of the person’s legal status and does not allow any exceptions, even if the person does not meet the conditions to obtain refugee status under article 33 of the 1951 Convention Relating to the Status of Refugees or under domestic law.

In addition, in its general comment No. 36 of the Human Rights Committee, states that the duty to respect and ensure the right to life requires State parties to refrain from deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that their right to life under article 6 of the Covenant would be violated (CCPR/C/GC/36 para. 30). In addition, States are required to “[a]llow all asylum seekers claiming a real risk of a violation of their right to life in the State of origin access to refugee or other individualized or group status determination procedures that could offer them protection against refoulement.” (Para. 31).

We also wish to draw the attention of your Excellency’s Government to article 3 of the CAT, which provides that “[n]o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”, and that, “[f]or the purpose of determining whether there are such grounds, 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 addition, the Committee against Torture general comment No. 4 on the implementation of article 3, states in paragraph 13 that “[e]ach case should be examined individually, impartially and independently by the State party through competent administrative and/or judicial authorities, in conformity with essential procedural safeguards, notably the guarantee of a prompt and transparent process, a review of the deportation decision and a suspensive effect of the appeal. In each case, the person concerned should be informed of the intended deportation in a timely manner...”. An individual risk assessment should be conducted in due consideration of the situations indicated as representing a risk of torture, in paragraph 29 of the General Comment, including “(d) whether the person has been judged in the State of origin or would be judged in the State to which the person is being deported in a judicial system that does not guarantee the right to a fair trial.”

In this context, paragraph 16 of the UN General Assembly resolution 65/205 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 wish to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance and in particular article 8, which outlines the obligation of States not to expel, return or extradite a person to another State where there are substantial ground to believe that they would be in danger of enforced disappearance.

We further insist that the existence of a mutual agreement allowing extradition does not absolve the Iraqi Government from its obligations under international law. In this regard, we underline that the restrictions of rights justified on grounds of national security or counterterrorism outlined in the Riyadh Arab Agreement on Judicial Cooperation, must have the genuine purpose and have the demonstrable effect of protecting a legitimate national security interest (general comment No. 34, CCPR/C/GC/34). Furthermore, in applying such restrictions, States have the burden of proof in demonstrating that any such restrictions are compatible with the ICCPR provisions, including the right to life and to be free from torture and other forms of ill-treatment.

In addition, we reiterate our concerns previously raised (IRQ 3/2024) regarding Iraq's Anti-Terrorism Law No. 13 of 2005, on the basis of which Mr. Al-Harbi appears to have been sentenced to 15 years imprisonment. The law contains a definition of terrorism that is vague and overly broad and is not limited to conduct that is genuinely terrorist in nature. We recall that, to comply with the elements identified by the Security Council in its resolution 1566 (2004), the definition of terrorism and terrorism offences must be confined to acts that are 'genuinely' terrorist in nature and be set out in precise and unambiguous language that narrowly defines the punishable acts. We also respectfully remind your Excellency's Government of the "principle of legal certainty" under article 15 of the ICCPR, which requires that criminal laws be sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse.

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 these resolutions require that States ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

We further remind your Excellency's Government 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. In addressing the challenge of terrorism, 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 (general comment No. 32).

In light of the above, we would like to respectfully urge your Excellency's Government to immediately take all necessary measures to halt the extradition of Mr. **Al-Harbi** pending a thorough individual assessment to ascertain the risks he may be facing if extradited to Saudi Arabia, in full respect of his legal and procedural safeguards, as well as to explore, where appropriate, his resettlement to a third country, where his fundamental rights could be protected.

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, we would appreciate as soon as possible a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 measures taken to investigate the allegations of torture to extract a confession of guilt against Mr. Al-Harbi during his interrogations in 2008-2009, and his subsequent detention, as well as the dismissal by the court of his testimony and medical report providing proof of torture. If no investigation has been undertaken, please explain why.
3. Please provide information on the safeguards provided to Mr. Al-Harbi in his 2010 trial, and the subsequent judicial proceedings to examine the extradition request against him. In particular, please explain how Mr. Al-Harbi was allowed to exercise his rights to habeas corpus and to defense.
4. Please provide information on the legal grounds for the continued detention of Mr. Al-Harbi, after completing his 15-years imprisonment sentence in 2023.
5. Please detail the legal grounds for the decision approving the extradition of Mr. Al-Harbi to Saudi Arabia, despite credible risks to his physical and mental integrity, and explain the legal process that led to this decision, including any appeals or reviews that have been conducted.
6. Please provide detailed information, where available, on any risk assessment carried out by the Iraqi judicial authorities to ascertain the possible risk Mr. Al-Harbi may face, including being subjected to torture or cruel, inhuman or degrading treatment or punishment, arbitrary deprivation of life, as well as enforced disappearance, if he is extradited to Saudi Arabia, and how this assessment is compatible with international standards.
7. Please provide information on the measures taken to ensure respect for the principle of non-refoulement, as enshrined in article 6 of the ICCPR, article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 16 of the International Convention on the Protection of All Persons from Enforced Disappearance and article 8 of the Declaration on the Protection of All Persons from Enforced Disappearance.
8. Please indicate how Iraq's Anti-Terrorism Law No. 13 of 2005 will be amended to comply with international human rights law, including the principle of legality.

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 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 accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on extrajudicial, summary or arbitrary executions

Gabriella Citroni

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

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