

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL SAU 5/2016:

31 August 2016

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 26/12, 24/6, 26/7, and 25/13.

In this connection, we would like to bring information we have received to your Excellency's Government's attention concerning the widespread **allegations of torture and ill-treatment, including coerced extraction of confessions, lack of investigation and prosecution into such allegations, the limited or complete lack of medical care in detention, the use of corporal punishment and the imposition of the death penalty, inhumane detention conditions as well as the use of prolonged solitary confinement (including for juveniles).**

Some of the allegations below were the subject of previous communications. The case of Mr. Ali Mohammed al-Nimr was subject to previous communications sent on 22 March 2016 (see case no. SAU 2/2016, A/HRC/33/32) and 21 September 2015 (case no. SAU 6/2015, A/HRC/31/79). To date, no substantial reply to the communication of 22 March 2016 has been received and the reply of 28 December 2015 to the communication of 21 September 2015 is currently being translated. The case of Mr. Raef Badawi was also the subject of earlier communications sent on 11 December 2015 (case no. SAU 11/2015, A/HRC/32/53), 12 June 2015 (case no. SAU 3/2015, A/HRC/31/79), 22 January 2015 (case no. SAU 1/2015, A/HRC/29/50); 31 October 2014 (case no. SAU 13/2014, A/HRC/28/85), 31 January 2014 (case no. SAU 2/2014, A/HRC/26/21), and 12 July 2012 (case no. SAU 9/2012, A/HRC/22/67). We thank your Excellency's Government for the replies received on these communications but regret that they do not sufficiently address, inter alia, the concerns raised in relation to the imposed corporal punishment of public flogging which amounts to torture and ill-treatment under international law. Mr. Badawi was also the subject of Opinion No. 38/2015 of the Working Group on Arbitrary Detention issued on 4 September 2015 (A/HRC/WGAD/2015/38) in which they concluded that Mr. Badawi was arbitrarily detained and requested his immediate release.

According to the information received:

Background

Sources report that the use of torture and other ill-treatment is not confined to isolated incidents, but rather has been a cornerstone of the Saudi judicial system for decades, despite the fact that Saudi Arabia acceded to the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment in 1997 and Saudi Arabia's Criminal Procedure Code prohibits "torture" and "undignified treatment" (without however defining the terms). Security forces regularly use torture and other ill-treatment to coerce confessions or as reprisal for social and political activism, and judges routinely sentence prisoners to corporal and capital punishment based on confessions obtained through torture.

Torture and other ill-treatment in detention

Sources report that torture and other ill-treatment are commonly practiced in Saudi Arabia's prisons and detention centres, in particular at the branches of the Ministry of Interior's Criminal Investigation Department and the General Directorate for Investigation GDI (*Al-Mabahith*) detention centres.

Methods generally used by security forces include severe beatings and floggings, 'falaqa' (foot whipping), hanging and suspension in the air, subjection to extreme temperatures, food, sleep and light deprivation, cigarette burns, extraction of hand or toe nails, as well as electrocution.

A typical case of the torture and ill-treatment in Saudi Arabia is the case of Mr. Munir Al Adam, who was arrested on 8 April 2012 in relation with pro-democracy protests in 2011 (called, together with 23 other defendants, the "Awamiyah cell of 24"). Mr. Al Adam was repeatedly subjected to "falaqa" during his initial detention at the Al-Qatif police station, which made it impossible for him to walk for days. After two weeks, Mr. Al Adam was transported to the GDI (*Al-Mabahith*) detention centre in Al-Damman, where he was subjected to further torture, including kicking and severe beatings (including on his head), and crushing his fingers and toes by stepping on them with boots, leading to the loss of one finger and toe-nail. As a result, and following refusal of medical treatment by the detention authorities, Mr. Al Adam lost his hearing in one ear. Mr. Al Adam's trial commenced in September 2015 before the Specialised Criminal Court (SCC) in Riyadh. On 1 June 2016 he was convicted and sentenced to death.

Coerced confessions

Saudi officials routinely resort to torture and other ill-treatment to extract confessions. This practice is incentivized by the fact that nothing in the Saudi Criminal Procedure Code prohibits the use of coerced confessions as admissible

evidence in Saudi courts. The coerced confessions are often the sole basis for the conviction of suspects.

For example, Mr. Mojtaba Nader Abdullah Suwaiket, a student on his way to complete his studies in the United States, was arrested at King Fahd International Airport in Saudi Arabia on 12 December 2012, in relation with pro-democracy protests, and taken to the GDI (*Al-Mabahith*) detention centre in Al-Dammam city. There, he was subjected to torture, including suspension from his hands, severe beatings with cables and hoes, kicking with shoes, burning with cigarettes and being put in solitary confinement throughout the winter, in an attempt to extract a confession from Mr. Suwaiket. As a result, he suffers from a broken shoulder and sustained pain in back and knees. He has been deprived of any medical care. Mr. Suwaiket was later, on 1 June 2016, convicted as part of the “Cell of 24” and sentenced to death, based on the confession extracted under torture.

Lack of investigation and prosecution of alleged torture and other ill-treatment

While torture and other ill-treatment appear to be common practice in Saudi Arabia, there is a lack of prompt, impartial and effective investigation and punishment of perpetrators. Confessions extracted through torture are routinely relied upon for the conviction of defendants, and judges rarely, if ever, seek to authenticate the confessions presented or take steps to ensure that they were not obtained under duress.

In particular, allegations of torture and other ill-treatment brought forward by defendants before the Specialised Criminal Court (SCC), a court established in 2008 to try terrorism-related cases, and provided with codified jurisdiction in 2014 through enactment of the Penal Law for Terrorism and Its Financing (the anti-terror law), are routinely ignored and requests for investigations into the allegations are refused. Sources report that the Court in particular ignored allegations of torture and ill-treatment of several individuals related to the protests in 2011/2012. Despite complaints having been submitted and earlier confessions retracted before the Court, the Court did not order any independent medical examinations, and convicted numerous individuals and sentenced them to death, solely on the basis of confessions that were allegedly coerced.

By way of example, Mr. Ali Mohammed Al-Nimr, the nephew of Sheikh Nimr al-Nimr, a well-known Shia cleric who was executed in January 2016 in a mass execution, was arrested on 14 February 2012 for his participation in protests in Qatif, Eastern Province, in 2011. He was under 18 years old at the time of arrest. He was subsequently subjected to torture and other ill-treatment by the General Investigation Directorate (GDI), which forced him to confess the charges against him. When he raised complaints regarding his torture before the SCC, the court

failed to investigate the allegations and seemed to suggest that the defendant needed to provide proof for his allegations, thereby shifting the burden of proof to the defendant. Later, in May 2014, Mr. Al-Nimr was convicted and sentenced to death on the basis of his coerced confession alone (see also case no. SAU 2/2016 of 22/03/2016 and case no. SAU 6/2015 of 21 September 2015).

Death penalty

The frequency of executions in Saudi Arabia has been on a rapid uptick in recent years and shows no sign of slowing. In 2015 alone, Saudi Arabia executed 158 people, and by the end of May 2016, 94 persons were already executed. According to international standards on the right to life, the death penalty is only a lawful sanction when it meets stringent requirements, namely those of legality and fair trial, can be imposed for the most serious crimes only, must meet minimum standards of protection for vulnerable groups, and must not be applied arbitrarily. Moreover, certain circumstances surrounding the actual imposition or execution of the death penalty can also constitute cruel, inhuman or degrading treatment or punishment or even torture. As such, the harshness of the death penalty goes beyond the execution itself. Physical or mental torture or other cruel, inhuman or degrading treatment or punishment may be inflicted on a convict and his or her relatives awaiting execution at different stages of his or her time in detention.

For example, methods of execution employed in Saudi Arabia very often amount to torture and ill-treatment. A common practice is execution through beheadings (by a swordsman) followed by crucifixion – the public display of the body (see for example case no. SAU 2/2016 of 22 March 2016). Stoning and execution by firing squad are also possible. In other cases, the individual's hands and legs may be amputated following their execution by beheading, and the families denied to obtaining the body of the executed family member (see for example case no. SAU 5/2015 of 30 September 2015).

Saudi Arabia furthermore applies the death penalty to offences that do not meet the threshold of the “most serious crimes” under international human rights law, such as adultery, apostasy, drug-related offences, “witchcraft” and “sorcery”. In a mass execution on 2 January 2016, 47 individuals were executed, among them persons with psychosocial disabilities, non-violent protesters, individuals who were under the age of 18 at the time the crime was committed, and following judicial proceedings that did not meet due process and fair trial standards. Among those executed was the prominent Shia cleric, Sheikh Nimr al-Nimr, who had been convicted on a number of charges related to his political activism.

On 1 June 2016, in a case against 24 individuals tried in relation with the 2011 pro-democracy protests (the “Awamiyah cell of 24”), the Specialized Criminal Court (SCC) in Riyadh convicted and sentenced 14 of them to death, under the

‘Law for the Crimes of Terrorism and its Financing’ that had entered into force on 1 February 2016, in the largest mass-death-sentence ruling in Saudi history. The trial of the 24 individuals did not meet due process and fair trial standards, and the defendants were denied access to lawyers from the early moments of arrest and deprived of communication with the outside world.

Corporal Punishment

The use of corporal punishment is widespread in Saudi Arabia and Saudi judicial authorities regularly sentence people to floggings/lashing, that are often carried out publicly, and amputations of limbs. This is exemplified by the case of Mr. Raef (Ra’id/Raed) Badawi, a well-known blogger, who was convicted in July 2013 and sentenced to 10 years in prison and 1,000 lashes in public for allegedly insulting Islam by setting up a website. Authorities began carrying out the sentence in January 2015 with the first 50 lashings, but have not continued since then (see also earlier communications –SAU 11/2015, SAU 3/2015, SAU 1/2015, SAU 13/2014, SAU 2/2014, SAU 9/2012). Mr. Badawi was also the subject of Working Group on Arbitrary Detention Opinion No. 38/2015 of 4 September 2015 (A/HRC/WGAD/2015/38).

Several sources report instances where women were sentenced to lashings and other corporal punishment for reporting rape, due to the fact that the court, according to an interpretation of Sharia law, may consider the rape to be the result of the woman’s unlawful “mingling with men”. Saudi courts have the competence of applying corporal punishment, including amputation, stoning, and flogging, to children. There are conflicting reports concerning the minimum age of criminal responsibility – reportedly it has been raised from 7 to 12 years of age, but it is unclear whether this is actually implemented in the judicial system. Determination of criminal responsibility, and therefore the allotment of corporal punishment, can even depend upon the judge’s perception of a child’s physical development.

Conditions of detention

Saudi detention centers are often overcrowded and the conditions in which the detainees live are often relatively poor. In May 2013, government officials recognized that detention centres in Riyadh, Mecca, and Jeddah had exceeded their capacity three times over. Reports also suggest that inmates have to take turns sleeping on the floor of their cells or the hallways, due to a lack of space. Bathrooms and other sanitary installations are mal-functioning and the quantity and quality of the food provided to inmates is insufficient. The guards at many detention facilities are not adequately trained, and access to medical assistance is limited.

Overcrowding and inhumane conditions are in particular reported for migrant or removal centres. By way of example, in June 2015, 396 migrant workers were allegedly detained in a 40x40 foot cell at an immigration detention centre in Riyadh. The drinking water provided was unsanitary and access to shower facilities and washing water was severely limited. Facilities are often marked by little air or daylight, insufficient nutrition and water, poor sanitary facilities, extreme temperatures and limited or complete lack of access to medical assistance.

Solitary confinement

Solitary confinement, including prolonged, is relied on frequently in the Saudi penal system. Solitary confinement is allowed under the 1978 Imprisonment and Detention Law as a disciplinary sanction and can be legally imposed for 15 days, increasable to 30 days. Solitary confinement is also allowed for children in detention. Solitary confinement is equally used as a means to extract confessions from detainees (see above).

In a particularly grave case, Mr. AlYazan Mohamed Farooq Al Jazaery, born on 12 April 1996, has been kept in solitary confinement for several years. Mr. Al Jazaery was arrested in Wadi Al Dawasir on 24 December 2010, when he was 15 years old, by officials of the Ministry of Interior. He was then transported to the Haer Prison and subjected to torture and other ill-treatment, including slapping, placing him in a very cold room with insufficient clothing, sleep deprivation and forced standing for long hours for a month and a half (he was only allowed to sit for one hour a day). Mr. Al Jazaery was placed in solitary confinement for 5 months, without access to his family or lawyer. He was then transported to the Thahban prison, where he was again put in solitary confinement for one month, after which he was placed in a cell with his father who was also detained there. After three months, Mr. Al Jazaery was transported back to Haer prison where he stayed for another month and a half, before being transported again to Thahban prison. After 15 days in solitary confinement, Mr. Al Jazaery was again placed in a cell with his father. On 31 August 2012, Mr. Al Jazaery was put again into solitary confinement, depriving him of his clothing and hygiene products and serving him expired food. Following a hunger strike, Mr. Al Jazaery's conditions improved slightly. On 6 March 2014, Mr. Al Jazaery was convicted and sentenced to 22 years in detention, and has remained in solitary confinement since 2013.

Serious concern is expressed about the alleged **torture and ill-treatment, including coerced extraction of confessions, lack of investigation and prosecution into such allegations, the use of corporal punishment and the imposition of the death penalty after unfair trials, inhumane detention conditions as well as the use of prolonged solitary confinement (including for juveniles)**. Grave concern is also expressed about detainees' physical and mental integrity as resulted from

abovementioned alleged violations, and at the limited or complete lack of medical care.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites relevant international human rights instruments and standards.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on any measures taken to ensure the physical and psychological integrity of all detainees in Saudi Arabia.
3. Please indicate what kinds of measures are being taken to ensure that any public officials are being investigated and prosecuted in relation with the above-mentioned allegations, and in particular please indicate what measures are being taken to investigate all allegations of torture and other ill-treatment in a prompt, impartial and effective manner.
4. Where available, please provide the details and the results of any such investigation, and judicial or other inquiries carried out in relation to the above-mentioned allegations.
5. Please indicate measures taken to avoid the reliance on coerced confessions in criminal trials. In this respect, please submit to these Rapporteurships and make publicly available all judgments by the Specialised Criminal Court in cases with a death penalty sentence (from 2012 onwards), and in particular any judgment in which evidence allegedly obtained under duress has been admitted or excluded, and the reasons thereof.
6. Please provide information about existing frameworks to guarantee access to adequate healthcare in detention, including medical screenings at arrest and after transfers to detention facilities, presence of health care personnel in detention facilities, and access to preventive, curative and palliative health services by detained individuals.
7. Please indicate what kinds of measures are being taken to incorporate the international standards about the absolute prohibition of torture in the criminal justice system.

8. Please indicate measures taken to ensure the compliance with existing international standards on safeguards and restrictions relating to the imposition of capital punishment.

We would appreciate receiving a response within 60 days.

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(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to remind your Excellency's Government to 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 codified, inter alia, the articles 1, 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Saudi Arabia acceded to on 23 September 1997, and referred to in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

We would also like to draw the attention of your Excellency's Government to article 15 of the CAT which provides that, "Each State Party shall ensure that any **statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture** as evidence that the statement was made" as well as to its article 12, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and its article 7, which requires State parties to prosecute suspected perpetrators of torture. In addition, we would like to refer Your Excellency's Government to the Guidelines on the Role of Prosecutors, and in particular to Guideline 16 which states that when prosecutors come into possession of evidence that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

In this context, we would also like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to 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."

We also recall paragraph 7c of the same resolution that urges States “To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment.”

With regards to the imposition of the **death penalty**, we would like to make reference to articles 6 and 7 of the Arab Charter on Human Rights, which your Excellency’s government ratified in 2009.

We would also like to refer to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/67/279), in which retentionist States are called upon to rigorously observe the restrictions and conditions imposed by articles 1,2 and 16 of the CAT. The death penalty has long been regarded as an extreme exception to the fundamental right to life. Countries that have not abolished the death penalty may only impose it for the most serious crimes. This provision has consistently been interpreted by international experts to mean that the death sentence may only be imposed in respect of offences that resulted in the loss of life (A/HRC/4/20, para. 53).

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 (intentional crimes with lethal or other extremely grave consequences), never against persons below 18 years of age at the time of the commission of the crime or persons with psycho-social disabilities, only after a legal process which upholds strict fair-trial guarantees, and that anyone sentenced to death shall have the right to seek pardon or commutation of sentence. It also reminds States that, where capital punishment occurs, it must be carried out so as to inflict the minimum possible suffering. The right to a fair trial, which is particularly important in death penalty cases, is also enshrined in the Arab Charter on Human Rights ratified by your Excellency’s Government in 2009 (see in particular articles 13, 16 and 17) and the Universal Declaration for Human Rights (see in particular article 10).

Regarding **corporal punishment**, we would like to draw the attention of your Excellency’s Government to paragraph 7a of Resolution 8/8 of the Human Rights Council which reminded Governments that corporal punishment, including of children, can amount to cruel, inhuman or degrading punishment or even to torture, and the Committee against Torture which has called for the abolition of corporal punishment. In

this context, we would also like to draw your Excellency's Government's attention to the Special Rapporteur on Torture's report to the 60th session of the General Assembly (2005), in which he, with reference to the jurisprudence of UN treaty bodies, concluded that: "any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment". He also noted that States cannot invoke provisions of domestic law to justify violations of their human rights obligations under international law, including the prohibition of corporal punishment and called upon States to abolish all forms of judicial and administrative corporal punishment without delay (para.28, A/60/316, 2005) (reaffirmed para. 28 of the 2012 report of the current Special Rapporteur against torture to the General Assembly A/67/279, 2012)

With regards to **detention conditions**, we would like to recall the Rules 12 to 21 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) which provide, inter alia, for appropriate accommodation, minimum cubic content of air and floor space, lightning and ventilation as well as requirements to be met regarding the personal hygiene of prisoners. We also refer to the Committee against Torture which has consistently found that conditions of detention can amount to inhuman and degrading treatment. We would like to recall that the Mandela Rules establish the provision of care for the physical and mental health of all prisoners, including sick prisoners, those who complain of illness, and any prisoner who may require it.

Finally, with regards to the **solitary confinement**, we would like to refer to the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), in which it is stated that indefinite and prolonged solitary confinement in excess of 15 runs afoul of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, due to the severe mental pain and suffering it may cause, and should be subject to an absolute prohibition. In addition, solitary confinement even of short duration is absolutely prohibited when applied to children. Moreover, due to the prisoner's lack of communication, and the lack of witnesses, solitary confinement enhances the risk of other acts of torture or ill-treatment.