

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: UA
SAU 9/2014:

28 August 2014

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 24/7, 22/20, 26/7, 25/5, and 26/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the case of **Sheikh Nimr Baqir Al-Nimr**, who is reportedly at risk of imminent execution in Saudi Arabia.

According to the information received:

On 8 July 2012, the Shi'a cleric Sheikh Nimr Baqir Al-Nimr was arrested without charge by Saudi Arabian security forces in al- Awwamiya, in Eastern Province, while he was travelling home by car from his farm. During his arrest, Sheikh Nimr Baqir Al-Nimr sustained gunshot wound to his leg. His family was reportedly allowed to visit him only in mid-July for 15 minutes. Since his transfer to the Security Forces Hospital in Riyadh on 24 July 2012, no visit from his relatives has been allowed. While in detention, it is reported that Sheikh Nimr Baqir Al-Nimr has not received adequate healthcare and the assistance of a lawyer.

On 25 March 2013, the case of Sheikh Nimr Baqir Al-Nimr was sent to the Specialized Criminal Court where the prosecution accused him of *haraba* or banditry, which carries the death penalty.

In a hearing that took place in August 2014, Saudi prosecution allegedly demanded “death by crucifixion” for Sheikh Nimr Baqir Al-Nimr under new accusations, including “igniting sectarian incitements” and “aiding terrorists”, as well as “offending Gulf leaders and scholars” and “waging war on God”. After having received the list of accusations during his hearing, Sheikh Al-Nimr requested a period of time to prepare his defense, including the appointment of a lawyer.

Over the past years, Sheikh Nimr Baqir Al-Nimr, 55 years-old, has been denouncing the Saudi Arabian government over discrimination faced by members of the Shi’a community.

While we do not wish to prejudge the accuracy of these allegations or to express an opinion on whether or not the detention of Sheikh Nimr Baqir Al-Nimr is arbitrary, the above allegations appear to be in contravention of the right not to be deprived arbitrarily of his liberty as set forth in article 9 of the Universal Declaration of Human Rights (UDHR) as well as the right to fair proceedings before an independent and impartial tribunal, as set forth in article 10 of the UDHR.

Furthermore, we would like to express concern that the death penalty may have been imposed and be carried out against Sheikh Nimr Baqir Al-Nimr, after proceedings which did not comply fully with international human rights law standards regarding the imposition of the death penalty in countries which have not yet abolished it. We further express serious concern at the allegation that the ongoing trial of Sheikh Nimr Baqir Al-Nimr does not meet the international standards relating to the right to a fair trial and that he is being denied the medical care he needs. Concern is expressed that Sheikh Nimr Baqir Al-Nimr had no full and privileged access to his legal representative.

In this connection, we would like to bring to the attention of your Excellency’s Government that article 3 of the UDHR guarantee the right of every individual to life, liberty and security. According to article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, capital punishment may only be carried out pursuant to all possible safeguards to ensure a fair trial, including legal assistance at all stages of the proceedings. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from a summary execution.

We would also like to respectfully remind your Excellency’s Government that, “in countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences” (Safeguard 1 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty, approved by Economic and Social Council resolution 1984/50 of 25 May 1984). Further jurisprudence by the United Nations Human Rights Treaty Bodies holds

that the “most serious crimes” provision should be understood to mean that only the crime of intentional killing may be punishable by death.

Furthermore, the allegations of lack of adequate medical treatment appear to be in contravention with your Excellency’s Government’s responsibility to respect and fulfil Sheikh Nimr Baqir Al-Nimr’s right to the enjoyment of the right to the highest attainable standard of physical and mental health, including access to medical care while in detention, as enunciated in the United Nations Standard Minimum Rules for the Treatment of Prisoners, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and Basic Principles for the Treatment of Prisoners.

The above allegations appear also to be in contravention with the right to be assisted by a lawyer, as set forth in Principle 1 of the Basic Principles on the Role of Lawyers

We would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 8, which states: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

While we do not wish to prejudge the accuracy of these allegations, we wish to recall articles 18 and 19 of the UDHR. Moreover, article 2 (1) of the 1981 Declaration of the General Assembly (A/RES/36/55) maintains the principle of non-discrimination on the grounds of religion or other belief. It is also important to note the fact that Sheikh Nimr Baqir Al-Nimr belongs to Shi’a Islam and not part of the majority or officially recognized religion, should not result in any impairment of the enjoyment of any right to freedom of religion or belief as stressed in Para.9 of Human Rights Committee general comment 22. In this regard we also recall the international standards for the protection of the rights of minorities, including the Declaration of the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities, which requires States to (Art. 4.1) take measures to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

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, and of the irreversibility of the punishment of the death, we call upon your Excellency’s Government to halt the execution of Sheikh Nimr Baqir Al-Nimr and place a moratorium on all the executions. Additionally, we would appreciate a response on the initial steps taken by your Excellency’s Government

to safeguard the rights of the members of civilians and religious communities, particularly Shi'a Islam, in compliance with international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.

2. Please provide information concerning the legal grounds for the arrest and detention of Sheikh Nimr Baqir Al-Nimr; and how these measures are compatible with international norms and standards as stated, *inter alia*, in the UDHR.

3. Please provide information on the crime that Sheikh Nimr Baqir Al-Nimr was found guilty of. Please clarify how this is compatible with the aforementioned "most serious crimes" provision under international human rights law. Please specify what was the evidence used, based on which Sheikh Nimr Baqir Al-Nimr is being prosecuted.

4. Please provide detailed information on each stage of the judicial proceedings conducted against Sheikh Nimr Baqir Al-Nimr; and indicate how they comply with the requirement and guarantees of a fair trial and due process under international human rights law.

5. Please explain how the respect of international standards with regard to fair trial and due process guarantees is ensured during court proceedings in Saudi Arabia, including for persons belonging to minorities. .

6. Please provide information as to whether the court had the discretion to give a lesser sentence in the case of Sheikh Nimr Baqir Al-Nimr, and whether there are, any provisions for appeal or pardon from this judicial decision.

7. Please provide detailed information on the measures taken to ensure the right to freedom of religion or belief in line with Saudi Arabia's international human rights obligations.

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.

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.

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

IZSÁK Rita
Special Rapporteur on minority issues

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions