

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as First Vice-Chair of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 26/7, 26/12, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **imminent execution of Mr. Husain Abu al Khair, a Jordanian national sentenced to death for drug trafficking by a Saudi court.**

According to the information received:

On 18 May 2014, Mr. Husain Abu al Khair, a 50-year-old Jordanian national, was travelling from Jordan to Saudi Arabia as driver for a Saudi woman when border police officers arrested him for possession of narcotic pills. During his arrest, Mr. Al Khair was subjected to torture; the police officers allegedly hanged him upside down from his legs and beat him on his abdomen, head, hands, and face, forcibly extracting a confession from him. They then transported him to Tabouk prison where he continued to be subjected to torture during the twelve days he was held there. When he was later presented to the court, Mr. Al Khair and his family affirmed that he had no knowledge that the drugs were in the vehicle.

Saudi prison officials refused to permit Mr. Al Khair to contact his family for the first two months of his detention.

In May 2015, the Tabouk criminal court sentenced Mr. Al Khair to death by beheading after a trial that did not respect basic procedural safeguards. In particular, Mr. Al Khair did not have access to legal representation throughout the proceedings. He was only allowed to contact a lawyer after his sentence. An

appeal was filed by the lawyer and the decision is pending. The Saudi authorities also failed to inform the Jordanian embassy of the detention of their national.

The judge also reportedly ordered that Mr. Al Khair's body should not be returned to his family after the execution. It is further alleged that the judge who tried Mr. Al Khair is not a fully-certified judicial officer, but a religious cleric who had merely taken courses administered by the Ministry of the Interior.

We express grave concern that the death penalty may be carried out against Mr. Husain Abu al Khair for alleged drug trafficking, an offence, which, even it was established, does not meet the threshold of "most serious crimes", as provided for under international human rights law. We are further concerned that the death penalty was imposed following judicial proceedings that do not appear to have fulfilled the most stringent guarantees of fair trial and due process, particularly in connection to the defendant's right to defense, notably his access to legal counsel. We are also seriously concerned that Mr. Al Khair may have been subjected to torture and/or cruel, inhuman or degrading treatment during following his arrest and police custody, and that his initial detention appears to have been arbitrary. We are also concerned that Mr. Al Khair may not have been granted the possibility to request consular assistance from the Jordanian authorities.

Without expressing at this stage an opinion on the facts of the case, the above allegations appear to be in contravention of the rights of every individual to life, to physical and mental integrity, not to be arbitrarily deprived of his or her liberty, and to fair proceedings before an independent and impartial tribunal established by law, in accordance with articles 3, 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 5, 6, 13, 14 and 16 of the Arab Charter on Human Rights (ACHR), to which Saudi Arabia is a State Party since 2009. The right to have access to a lawyer is also enshrined in the UN Basic Principles on the Role of Lawyers.

Article 6 of the ACHR, states that the sentence of death may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court. Furthermore, anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Moreover, as stressed in article 5 of the Safeguards guaranteeing protection of the rights of those facing the death penalty, capital punishment may only be carried out pursuant to legal procedures which give all possible safeguards to ensure a fair trial. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution.

In addition, we are drawing your Excellency's Government's attention to the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Saudi Arabia ratified on 23 September 1997. With regard to sentences imposing the death penalty, the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/67/279) calls upon retentionist States to rigorously observe the restrictions and conditions imposed by articles 1 and 16 of the CAT.

In view of the urgency of the matter, and of the irreversibility of the punishment of the death penalty, we respectfully call upon your Excellency's Government, as a matter of urgency to halt the execution of Mr. Husain Abu al Khair, which, on the facts available to us may constitute a violation of applicable international human rights standards, and thus an arbitrary execution. We further appeal to Saudi Arabia to annul the death sentence against the aforementioned individual and to ensure a re-trial in compliance with international standards.

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

It is our responsibility under the mandate 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 observations on any additional information and any comment you may have on the above mentioned allegations.

We also take this opportunity to inform your Excellency's Government that a copy of this letter will be shared with the authorities of the Hashemite Kingdom of Jordan.

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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First Vice-Chair of the Working Group on Arbitrary Detention

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