

Mandates of the Special Rapporteur on freedom of religion or belief; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 situation of human rights defenders; the Special Rapporteur on minority issues; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
AL SAU 5/2020

11 May 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on freedom of religion or belief; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on minority issues; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 40/10, 42/22, 34/18, 41/12, 42/16, 34/5, 34/6 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **judicial harassment and prolonged detention of Sheikh Mohammad bin Hassan al-Habib and of Mr. Murtaja bin Abdallah bin Ali Qureiris.**

Sheikh Mohammad bin Hassan al-Habib, is a 56-year old Saudi cleric based in Safwa City known for his advocacy in support of the human rights of the Shi'a religious minority in the Kingdom of Saudi Arabia and for his public criticism against the policies implemented by the Government in this regard.

Mr. Murtaja bin Abdallah bin Ali Qureiris, is a 19-year old student from Qatif. At the age of 10, he participated in protests taking place in Qatif, Eastern Province of Saudi Arabia in 2011 and 2012, in the context of the "Arab spring", demanding greater respect for the rights of the Shi'a religious minority in the country. His case was the subject of an opinion by the Working Group on Arbitrary Detention in its 77th Session of November 2016 (A/HRC/WGAD/2016/52), which found his detention arbitrary and called for his immediate release and compensation.

According to the information received:

Case of Sheikh Mohammad bin Hassan al-Habib

In December 2012, Sheikh Mohammad bin Hassan al-Habib was accused by the Saudi authorities of “insulting religious leaders” and “calling for sectarianism and disobedience” during one of his sermons delivered in July of the same year. The sermon was reportedly denouncing religious hatred and discrimination against the Shi’a minority in the country. He was forced to sign a pledge obliging him not to deliver sermons that could be considered “objectionable” by the Saudi authorities.

Sheikh al-Habib continued his advocacy in defence of the rights and freedoms of the Shi’a minority, and on 17 July 2015, following a series of attacks against Shi’a and Husayniya mosques, he delivered a sermon in which he made reference to the country’s school curriculums which, according to him, included discriminatory statements and perpetuated existing misconceptions and prejudice against members of the Shi’a religious minority, who are considered “infidels”.

On 8 July 2016, while traveling to Kuwait, he was arrested without a warrant at the customs of the Khafji border crossing, and on 21 July 2016, members of the Saudi intelligence services searched his house, without warrant, and confiscated his and his family’s personal belongings, including laptops and mobile phones.

Following his arrest, he was taken to the Mabatheth prison in Dammam city, where he was allegedly held incommunicado and in solitary confinement, and subjected to torture and other degrading treatment by members of the General Investigation Directorate during a period of four months. He was denied access to his family and lawyer, and he was not provided with any medical treatment, despite being affected with ongoing health problems as a result of being tortured.

On 27 October 2016, he was brought before the Specialised Criminal Court (SCC) in Riyadh, to be informed about the charges brought against him, namely the alleged violation of the terms of the 2012 pledge he had signed with regard to the content of his sermons. On 10 July 2017, he was acquitted on the grounds of insufficient evidence, but on 4 January 2018, the first instance court decision was overturned on appeal, and he was sentenced by the appeal chamber of the SCC to seven years of imprisonment for inciting sectarianism and sedition, under the counter-terrorism provisions of the Royal Decree No.44.

On 30 April 2018, while in detention, Sheikh al-Habib was further charged with supporting protests in Qatif Governorate, threatening the societal fabric and national unity, attempting to leave Saudi Arabia to Kuwait irregularly, and violating the Anti-Cyber Crime Law. On 26 August 2019, he was convicted by the SCC of these charges. It is reported that despite the challenges he faced in communicating with his lawyer, the latter filed a cassation request on 19 September 2019 and a formal objection before the Supreme Court on 12 January

2020, on his behalf. However, in March 2020, the Supreme Court upheld the SCC's initial verdict.

He remains in detention at Mabaheth prison in Dammam. Due to the COVID-19 outbreak, prisons visits have been reportedly suspended until further notice, and he has no access to appropriate medical care for his health conditions.

Case of Murtaja bin Abdallah bin Ali Qureiris

During the “Arab Spring” in 2011, at the age of 10, Mr. Murtaja bin Abdallah bin Ali Qureiris participated in rallies in Al-Qatif, including in children and youth bicycle protests.

He was identified from video footage by the security agencies, and on 20 September 2014, he was arrested without a warrant by the border police on the King Fahd causeway while he was travelling to Bahrain with his family. He was placed in detention at the Dar al-Moalahaza al-Ijtima'iyah juvenile detention center in Al-Dammam city, where he was allegedly held in solitary confinement for a month, and subjected to numerous interrogations without the presence of either a lawyer or a legal guardian, tortured and forced to sign a confession for his participation in the Qatif protests and in funeral processions for protestors killed by law enforcement officials during demonstrations. During the period of his solitary confinement, he was allowed one family visit, which lasted only a few minutes.

He remained in detention for four years, without access to a lawyer, until he was brought before the SCC in September 2018 to be tried on the grounds of “participation in a terrorist organization”, “throwing Molotov cocktails at a police station”, and “firing at security forces”, under the counter-terrorism provisions of the Royal Decree No.44, the Law on Firearms and Ammunitions and the Royal Decree No.38 on explosive materials. It is reported that the Court's prosecutor sought the death penalty against Mr. Qureiris, by invoking the Islamic law and a March 2011 edict by the Council of Senior Ulema's, which condemned the 2011 demonstrations for stirring discord and division in society.

On 16 June 2019, he was sentenced to twelve years imprisonment. The appeal has been suspended due to the ongoing COVID-19 outbreak. Mr. Qureiris is currently in detention at Al-Mabaheth prison, in Al-Damman city where he is allowed monthly family visits.

Without prejudging the accuracy of the received information, we express our serious concern at the persecution and ongoing detention of Sheikh Mohammad bin Hassan al-Habib and Mr. Murtaja bin Abdallah bin Ali Qureiris for their human rights advocacy and activism, including in the context of the 2011 protests in the Kingdom of Saudi Arabia, and in particular with regard to the promotion of the rights of the Shi'a religious minority. We are deeply concerned at the reported use of counter-terrorism

legislation to criminalize their right to freely express their views and criticism of Government policies, including for matters affecting the religious minority they both belong to, and at the use of torture and ill-treatment for the purpose of extracting confessions and possible incriminating evidence. The information received, if proven to be true, has also highlighted a number of troubling trends in the conduct of security and judicial authorities, which amount to serious human rights violations, including the absence of due diligence and of fair trial guarantees, violations of the rights of children in conflict with the law, the non-respect of human rights of prisoners, including with regard to access to adequate healthcare and the reported use of prolonged solitary confinement.

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

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 the observations of your Excellency's Government 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 detailed information on the factual and legal basis for the arrest, conviction and detention of Mr. Sheikh Mohammad bin Hassan al-Habib and Mr. Murtaja bin Abdallah bin Ali Qureiris, and how these are compatible with the international human rights principles and standards, in particular with regard to freedom of expression, freedom of peaceful association and assembly, freedom of religion or belief, as well as the rights of the child.
3. Please explain the reasons for the alleged serious violations of due process and fair trial guarantees, including the reported violations of the rights of the above-mentioned persons to legal representation, the delay in the judicial proceedings in the case of Mr. Qureiris, which resulted in his lengthy pre-trial detention, and the serious violations of his rights during the phase of investigation and while in detention, at the time when he was still a minor.
4. Please provide information as to whether the allegations of torture or other ill-treatment against Sheikh al-Habib and Mr. Qureiris, including being forced to sign a pledge and confession respectively, have been investigated as required under the Convention against Torture (CAT). If no investigation or inquiry has been carried out, or if they have been inconclusive, please explain the reason and how this is consistent with Saudi Arabia's international human rights obligations under the CAT.

5. Please provide information on the factual and legal grounds for placing both Sheikh al-Habib and Mr. Qureiris in a prolonged solitary confinement, and provide information on their current condition of detention, including material conditions, as well as with regard to contacts with their families, and on how these conditions are consistent with the provisions of the UN Standard Minimum Rules for the Treatment of Prisoners (“The Mandela Rules”).
6. Please provide details about the current status of physical and mental integrity of both Sheikh al-Habib and Mr. Qureiris and the measures taken to ensure their access to appropriate medical care, in particular for Sheikh al-Habib who is reportedly affected by ongoing health problems as a result of being tortured.
7. Please explain how the Government’s counter-terrorism legislation and policies ensure the protection of all human rights, including the rights to freedom of expressions, peaceful assembly and association and freedom of religion or belief, in compliance with international human rights law and the relevant United Nations Security Council resolutions, and ensure that human rights defenders in Saudi Arabia are able to carry out their legitimate advocacy work and activities, without fear of threats or acts of intimidation and harassment of any sort.
8. Please explain the reasons for which the Government of the Kingdom of Saudi Arabia has failed, to date, , to implement Opinion No. 52/2016 of the Working Group on Arbitrary Detention, which found the detention of Mr. Qureiris arbitrary and called for his immediate release and compensation

We would appreciate receiving a response within 60 days. Thereafter, 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.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence 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.

We would like to inform your Excellency’s Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order

to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to the regular procedure.

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

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Fernand de Varennes
Special Rapporteur on minority issues

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation above.

We would like to refer your Excellency's Government to articles 3, 8, 9, 10, 11, 13, 18, 19, 20 of the Universal Declaration of Human Rights (UDHR), which states that everyone has the right to life, liberty and security of person, that everyone has the right to an effective remedy by the competent national tribunals for acts violating their fundamental rights, that no one shall be subject to arbitrary arrest or detention, that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of their rights and obligations and of any criminal charge against them, that everyone charged with a penal offence has the right to be presumed innocent until proven guilty, that everyone has the right to leave any country, including his/her own, that everyone has the right to freedom of religion or belief and freedom of opinion and expression, that everyone has the right to freedom of peaceful assembly and association.

The prohibition of torture under article 5 of UDHR is universally binding, absolute and may not be derogated under any circumstance. It is peremptory norm that your Excellency's Government has accepted by ratifying the Convention against Torture (CAT) on 23 September 1997, and it includes also timely and appropriate healthcare and medical treatment while in detention. The Committee against Torture has considered the right to be subjected to an independent medical examination as a fundamental legal safeguard from the moment of deprivation of liberty. Prisoners should be able to have prompt access to an independent doctor at any time when requested by them, without conditioning such access on the permission or request of officials and irrespective of their detention regime. Access to timely and appropriate healthcare and medical treatment, including psychosocial services, are of particular importance in the context of complaints and allegations of torture or ill-treatment, for the purpose of assessing, documenting and promptly reporting on injuries or other health related consequences stemming from torture or ill-treatment (CAT/C/51/4).

In this regard, we refer to the United Nations Standard Minimum Rules for the Treatment of Prisoners ("the Mandela Rules"), adopted in General Assembly resolution 790/175, and in particular to Rules 24 to 3534 regarding States responsibility to provide health care for prisoners, including access to medication and treatment facilities, and examinations for signs of torture. Rule 27 in particular establishes that prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals and that clinical decisions may only be taken by health-care professionals and may not be overruled or ignored by non-medical prison staff.

We would like to respectfully remind your Government of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55), which in its Article 2 (1): "[n]o one shall be

subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief." In Article 4 (1), the General Assembly further states that: "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]" Furthermore, we would like to refer your Government to Article 4(2) according to which: "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter. According articles 6 (d) and (e), the right to freedom of thought, conscience, religion or belief includes also the freedom "to write, issue and disseminate relevant publications in these areas", and the freedom "to teach a religion or belief in places suitable for these purposes" and read in conjunction with the principles contained in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4), any statement or expressed opinion should fulfil the six part threshold test of context, content and form, speaker, intent, extent of the speech act, and likelihood/imminence, in order to be considered as a criminal offence.

Furthermore, we would like to recall that the General Assembly, in its resolution 63/181 paragraph 9 (j) urges States "To ensure that all public officials and civil servants, including members of law enforcement bodies, the military and educators, in the course of fulfilling their official duties, respect all religions or beliefs and do not discriminate for reasons based on religion or belief, and that all necessary and appropriate education or training is provided."

We also recall 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 must 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.

In addition, we would like to refer to the 2018 report by the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Counter Terrorism (A/HRC/40/52), and in particular paragraphs 75(a) to (i) on the impact of terrorism measures on civic spaces and human rights defenders. In its General Comment No. 34 on the right to freedom of opinion and expression, the Human Rights Committee has found that restrictions of the right to freedom of opinion and expression that a government seeks to justify on grounds of national security and counter-terrorism should adhere to the principle of proportionality, be designed and implemented in a way that respects the universality of human rights and the principle of non-discrimination, and should not be used to prosecute human rights defenders (CCPR/C/GC/34).

We wish to draw the attention of your Excellency's Government to the UN Declaration on Human Rights Defenders. In particular, articles 1, 2, 5, 6 and 12, which state that everyone has the right to promote the protection and realization of human rights, that the State has a prime responsibility and duty to protect, promote and implement all human rights, that everyone has the right to meet or assemble peacefully and to know, seek, receive, and impart information about all human rights.

Finally, we wish to refer to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in General Assembly resolution 47/135, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting them.