

25 March 2021

To:

Senator the Hon Marise Payne, Minister for Foreign Affairs of Australia
Jeppe Kofod, Minister for Foreign Affairs of Denmark
Gudlaugur Thór Thórdarson, Minister for Foreign Affairs and Development Cooperation of Iceland

CC:

Ambassador Sally Mansfield, Permanent Representative of Australia in Geneva
Ambassador Morten Jespersen, Permanent Representative of Denmark in Geneva
Ambassador Harald Aspelund, Permanent Representative of Iceland in Geneva

Re: Lead on a resolution to address the human rights crisis in Saudi Arabia at the 47th session of the UN Human Rights Council

Dear Ministers,

We deeply appreciate your leadership on the human rights situation in Saudi Arabia at the UN Human Rights Council (HRC) at its 40th, 42nd and 45th sessions. Your leadership, individually, and collectively, has transformed the conversation on Saudi Arabia at the multilateral level. It has brought much needed attention to the concerns that the country is facing and identified clear benchmarks for improvement. We have seen the government react to this spotlight and international pressure in an attempt to burnish its image. As a result of such pressure, authorities have released several prominent human rights defenders including Loujain al-Hathoul and taken some initial steps to improve major human rights concerns related to the guardianship system and the death penalty.

As set forth in more detail in an annex to this letter, however, we have not seen institutionalized and sustained improvement on the benchmarks you have identified related to freedom of expression and human rights defenders; on the contrary, we have seen the situation in Saudi Arabia deteriorate, in particular with further harsh prison sentences against human rights defenders and prisoners of conscience. Additionally, with the scale of continuing repression on human rights defenders, there is a continuing lack of access to independent monitors and international organizations to the country. As a result, we count on your commitment and leadership to keep up the pressure and attention to secure such improvement, and for that reason, we **urge your governments to lead collectively on a resolution at the 47th session of the HRC in June 2021 to establish a monitoring and reporting mechanism on the human rights situation in Saudi Arabia.**

The 47th session will mark two years since the UN Special Rapporteur on extrajudicial, summary or arbitrary executions published her investigation into the murder of Saudi journalist Jamal Khashoggi. The Special Rapporteur [stated](#) following the end of the trial in December 2019 that “those who ordered the executions not only walk free but have barely been touched by the investigation and the trial”.

Furthermore, the Saudi government has failed the litmus test to immediately and unconditionally release all women’s rights activists and human rights defenders; instead they continue to prosecute and harshly sentence them for their peaceful activism. While we acknowledge the important reforms of the male guardianship system, women human rights defenders and independent civil society organisations must be able to carry out their work freely and without hindrance including by monitoring the implementation of the reforms and raising their concerns over areas that require further reforms. The government’s refusal to address this key concern of the arbitrary detention of

defenders raised in the three joint statements demonstrates its lack of political will to genuinely improve the human rights situation and to engage constructively with the HRC.

Initiating action on the situation in Saudi Arabia at the HRC's 47th session would send an important message to the Saudi authorities that positive reforms in relation to some human rights concerns are wholly inadequate as long as it continues escalating its crackdown against human rights defenders and critics, and violating the fundamental freedoms and human rights of its citizens and residents, with impunity. Maintaining the pressure on the authorities for further reforms is vital to ensure that reforms are institutionalized and maintained.

The sentencing and subsequent release of several women's rights activists, whose plight attracted significant attention around the world, highlights the importance of coordinated international pressure. In order to secure meaningful, concrete, and systematic gains, however, international pressure must be sustained. We recall that the situation in Saudi Arabia meets the objective criteria which your government committed to applying in deciding when a situation merits Council action and pledged to "take leadership and responsibility in initiating action when such criteria are met".

We remain available to discuss with you further on the issue.

Please accept the assurances of our highest consideration,

Signatories:

1. Access Now
2. ALQST for Human Rights
3. Americans for Democracy & Human Rights in Bahrain
4. Amnesty International
5. ARTICLE 19
6. Asian Forum for Human Rights and Development (FORUM-ASIA)
7. Association Nachaz-Dissonances
8. Avaaz
9. Cairo Institute For Human Rights Studies
10. Center for Democracy and Human Righjts in Saudi Arabia, CDHR
11. Committee to Protect Journalists
12. Commonwealth Human Rights Initiative (CHRI)
13. DefendDefenders (East and Horn of Africa Human Rights Defenders Project)
14. Democracy for the Arab World Now (DAWN)
15. Electronic Frontier Foundation
16. English PEN
17. Feminist Alliance for Rights (FAR)
18. Freedom House
19. Freedom Now
20. Human Rights Watch
21. humanrights.ch
22. Initiative Franco-égyptienne pour les Droits et les Libertés
23. Innovation for Change Middle East and North Africa
24. International Commission of Jurists
25. International Federation for Human Rights (FIDH)
26. International Service for Human Rights (ISHR)
27. Kenya Human Rights Commission

28. Legal Resources Centre
29. Ligue tunisienne des droits de l'homme
30. MENA Rights Group
31. Organisation Against Torture in Tunisia
32. PEN America
33. PEN International
34. Project on Middle East Democracy (POMED)
35. Rafto Foundation for Human Rights
36. Regional Coalition of Women Human Rights Defenders in MENA
37. Réseau des Organisations de la Société Civile pour l'Observation et le Suivi des Élections en Guinée (ROSE)
38. Scholars at Risk
39. SHOAA for Human Rights
40. Southern Africa Human Rights Defenders Network
41. The Gulf Centre for Human Rights (GCHR)
42. UIA-IROL (the Institute for the Rule of Law of the International Association of Lawyers)
43. Urgent Action Fund for Women's Human Rights
44. Vigilance for Democracy and the Civic State
45. West African Human Rights defenders Network
46. WHRD MENA Coalition
47. World Organisation Against Torture (OMCT)

Annex: Analysis of the human rights situation against the benchmarks set out in the three joint statements delivered by Iceland, Australia and Denmark

Prosecution of women human rights defenders

After three years of a prolonged and harrowing ordeal in detention, prominent woman human rights defender Loujain al-Hathloul was provisionally released on 11 February 2021. On 28 December 2020, the SCC sentenced al-Hathloul to five years and eight months in prison, a verdict that was widely condemned internationally. The sentence included a suspension of 2 years and 10 months. The sentence, which was appealed by al-Hathloul, places her under heavy restrictions following her release, including three years of probation and a five-year travel ban. Loujain's al-Hathloul's family is also under an arbitrary travel ban. Mayaa al-Zahrani was handed the same sentence, also on charges relating to her peaceful activism, but she remains in detention.

The trial of several women human rights defenders (WHRDs) arrested between May and July 2018, which began in Riyadh in March 2019, resumed in 2020 and resulted in a number of prison sentences being handed down following severely flawed trials. After months of delays and prolonged detention without their trials proceeding, on 25 November 2020 **Loujain al-Hathloul, Samar Badawi, Nassima al-Sadah, Nouf Abdelaziz** and **Mayaa al-Zahrani**, were brought before the Criminal Court in Riyadh in separate trial sessions. Loujain al-Hathloul's case was transferred to the Specialised Criminal Court (SCC) in December after the Criminal Court concluded that it was "outside its jurisdiction".

In March 2019, the authorities had intended to try the WHRDs in the SCC, but they pulled back at the last minute under international pressure and moved the trial to the Criminal Court in Riyadh, illustrating the fact that the Saudi judiciary lacks transparency. Foreign diplomats and international journalists were routinely barred from entering the courtroom to monitor the hearings. Several women activists faced charges of contacting foreign media, other activists and international human rights organizations including Amnesty International and Human Rights Watch. Some of them were also accused of "promoting women's rights" and "calling for the end of the male guardianship system."

Several WHRDs, including **Hatoon al-Fassi, Amal al-Harbi** and others who were temporarily released continue to face trial before the Criminal Court in Riyadh for their human rights work or expression.

Continued grossly unfair trials

Capital trials continued against detainees on charges that related to nothing more than peaceful activism and dissent. By November, those on trial facing the death penalty included prominent cleric **Salman al-Odah**, whose charges were connected to his alleged ties with the Muslim Brotherhood and public support for imprisoned dissidents, as well as **Hassan Farhan al-Maliki** who is being prosecuted on vague charges relating to the expression of his peaceful religious ideas.

A mass trial of 68 Palestinian, Jordanian and Saudi Arabian nationals facing trumped-up charges under the Counter-Terrorism Law continued into 2021. Two of the individuals on trial, **Mohammed al-Khudari and his son Hani al-Khudari**, were charged with "joining a terrorist entity" understood to be the Hamas de-facto authorities in Gaza. Both were forcibly disappeared during the first month of their detention and were detained incommunicado and in solitary confinement for two months.ⁱ

Harsh prison sentences against human rights defenders and prisoners of conscience

Despite the concern expressed in the previous joint statements about the persecution, harassment and intimidation of activists, journalists, dissidents and their family members and the call made to release all individuals detained for exercising their fundamental freedoms, human rights defenders and prisoners of conscience were sentenced to lengthy prison terms.

- Hassan Farhan al-Maliki's son, **al-Abbas Hassan al-Maliki**, who was arrested in September 2017 on account of a tweet about his father's arrest, was also brought before the SCC, and was sentenced on 6 September 2020 to a four-year prison sentence.
- On 17 November 2020, Salman al-Odah's brother **Khaled al-Odah** was sentenced to a five-year prison term followed by a five-year travel ban, on charges including "sympathising with his brother Salman al-Odah" and "mixing private and public business".
- Several other prisoners of conscience have been handed lengthy prison sentences since the resumption of the courts in August 2020. On 3 September, the SCC issued prison sentences against several detainees held arbitrarily since September 2017. Writer **Abdullah al-Maliki** was sentenced to seven years in prison on charges related to his cultural activities, such as "possession of banned books", and other charges including defending members of civil rights group the Saudi Civil and Political Rights Association (ACPRA). On the same day, the court sentenced **Ibrahim al-Harhi** to five years, writer **Ahmad al-Sawian** to three years, academic **Yousef al-Qassim** to five years, **Khaled al-Ojaimi** to three years and eight months and journalist **Fahad al-Sunaidi** to three and a half years on charges impinging on their freedom of expression.
- On 3 October, prison sentences were issued against three more detainees held arbitrarily since September 2017, with **Nayef al-Sahafi** sentenced to 10 years, **Mosad al-Kathiri** to three and a half years, and **Ali Badahdah** to six years.
- On 8 December 2020, the SCC sentenced dual US-Saudi citizen **Walid Fitaihi**, who was arrested on 5 November 2017 as part of the crown prince's so-called "anti-corruption drive", to six years in prison on vague charges including "breaking allegiance with the ruler". An appeals court later reduced the sentence to three years and two months.

Torture, ill-treatment and deaths in detention

While the joint statements called for an end to impunity for torture and extrajudicial killings, no independent investigations were opened and no perpetrators prosecuted for the many cases of alleged torture and deaths of several individuals following their deteriorating health in prison. Those who have been allegedly tortured with no investigations include: **Khaled al-Omeir**, **Mohammed al-Bajadi** and several women human rights defenders. Human rights defender **Abdullah al-Hamid** and journalist **Saleh al-Shehi** suffered from deteriorating health during their detention, and subsequently passed away.

Following increased international pressure, in December 2020, the Criminal Court in Riyadh had announced it would open an investigation led by the Public Prosecution into Loujain al-Hathloul's claim that she was tortured in detention, but at the session held on 22 December 2020, the judge closed the so-called investigation and denied that the torture had taken place without providing al-Hathloul with a copy of the decision.

In 2020, thousands of migrant workers were arrested and detained in Saudi Arabia after fleeing to the country from neighbouring Yemen.

From March 2020, thousands of Ethiopian migrants, including pregnant women and children, were arbitrarily detained in harsh conditions in at least five detention centres across the country. Detainees said that they lacked adequate food, water, health care, sanitation facilities and clothes in severely overcrowded cells. The specific needs of pregnant and lactating women were not addressed. Children were detained in the same dire conditions as adults. Eight detainees said they had experienced and witnessed beatings by guards and two reported that guards had administered electric shocks as punishment. Detainees interviewed said that they had seen seven dead bodies of inmates. Three women said they had had contact with a female detainee whose baby had died in detention.ⁱⁱ

Death penalty

Saudi authorities have announced major positive changes in relation to the death penalty in recent months, which come in the context of a significant decrease in the use of the death penalty last year. Many of these changes outlined below have yet to be institutionalized as official Royal Orders or amendments to existing laws which need to be amended in line with recent announcements.

Moreover, courts continued to impose death sentences, and carried out scores of executions for a wide range of crimes by the beginning of 2021, highlighting the necessity for further reforms and a monitoring mechanism to uphold fair trial standards in capital cases as a first step towards ending the use of the death penalty.

According to the Saudi Human Rights Commission, a total of 27 individuals were executed in 2020, marking a significant and welcome reduction in comparison to previous years. It attributed that in part to a moratorium on executions for drug-related offences, "giving more non-violent criminals a second chance". This moratorium has not previously been announced officially and there have been no announcements of changes to the Saudi Drugs Control Law which still states that drug smuggling or related crimes are punishable by death. Overall, the death penalty remains in force and it is unclear whether the reason for the reduction in 2020 is related to the COVID-19 pandemic or the result of international pressure.

In February, the Saudi Human Rights Commission announced that the Specialized Criminal Court had commuted the death sentences of **Ali al-Nimr, Abdullah al-Zaher and Dawood al-Marhoon**, who were arrested as teenagers and convicted after unfair trials, and re-sentenced them to 10-year prison terms inclusive of time served, meaning that they could be released in 2022.

Moreover, in December 2020, the prosecution dropped their call for the execution of **Mohammad al-Faraj** and four other young men being tried in a mass trial. Mohammad al-Faraj and the young men belong to Saudi Arabia's Shi'a minority and are being tried for protest-related crimes. Mohammad al-Faraj was 15 years old when he was arrested for non-violent "crimes" he was accused of having committed when he was between 9 and 10 years old. In a new charge sheet presented in December 2020, the prosecution demanded prison terms for the young men. His trial continues before the Specialized Criminal Court.

The review of cases of juveniles on death row or facing the death penalty follows Saudi Arabia's governmental Human Rights Commission announcement in April 2020 with regards to the promulgation of a new Royal Order that purportedly would end the death penalty for child offenders in most cases and halt discretionary floggings. It portrayed this as a major step towards reform of the Saudi criminal justice system. However, the Royal Order contains notable exceptions for certain types of crimes, meaning flogging and executions of child offenders will continue in some cases.

Accountability for the murder of journalist Jamal Khashoggi

Despite the calls to establish truth and accountability for the murder of Jamal Khashoggi, no meaningful steps towards accountability have been taken by the Saudi authorities.

Instead, in December 2019, the SCC sentenced to death five out of 11 individuals accused of involvement in the murder, and three others to prison terms, in a trial shrouded in secrecy. Throughout the trial, the authorities failed to provide transparency and appeared to be protecting senior figures implicated in the murder from investigation and prosecution. Later, on 7 September 2020, the Criminal Court commuted the five death sentences to long prison terms. It also noted that jail sentences had been handed to three other defendants, and declared the case finally "closed".

The trial has been criticised for falling short of international standards and lacking transparency and impartiality. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated following the end of the trial that "those who ordered the executions not only walk free but have

barely been touched by the investigation and the trial". Therefore, we call for an impartial, independent, international investigation to resolve the still-unanswered questions of who planned and ordered Khashoggi's killing, and what happened to his body.

ⁱ *Saudi Arabia: Further information: Palestinian men face unfair trial: Dr. Mohammed al-Khodari and Dr. Hani al-Khodari* (MDE 23/2090/2020) <https://www.amnesty.org/en/documents/mde23/2090/2020/en/>

ⁱⁱ *Saudi Arabia: "This is worse than COVID-19": Ethiopians abandoned and abused in Saudi prisons* (MDE 23/3125/2020) <https://www.amnesty.org/en/documents/mde23/3125/2020/en/>