Case summary:[[1]](#footnote-1) *Mr. Munir Al Adam (represented by the European Saudi Organization for Human Rights (ESOHR) and the Americans for Democracy & Human Rights in Bahrain (ADHRB)) v. Saudi Arabia*

Communication No. 38/2016

Date of communication (initial submission): 5 May 2016

Date of adoption of Views: 20 September 2018

Invoked provisions of the Convention: [4](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#4), [13 (1)](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#13), [15](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#15), [16](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#16), [25](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#25)

Provisions of the Optional Protocol: 2

Keywords: Disability; Torture resulting into disability; Imposition of a death sentence after unfair trial; right to access to medical treatment while in detention; incommunicado detention; right to a fair hearing by an independent and impartial tribunal; right to legal representation

Decision: The State party has failed to fulfil its obligations under articles 13 (1) read

 alone and in conjunction with article 4, 15, 16, and 25 of the Convention.

Full decision in PDF format: [Arabic](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/323/37/pdf/G1832337.pdf?OpenElement), [Chinese](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/323/38/pdf/G1832338.pdf?OpenElement), [English](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/323/39/pdf/G1832339.pdf?OpenElement), [Russian](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/323/41/pdf/G1832341.pdf?OpenElement) and [Spanish](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/323/42/pdf/G1832342.pdf?OpenElement)

**The facts as submitted by the author**

The author is Mr. Munir Al Adam, a 23-year-old Saudi man with a light but stable partial hearing impairment, acquired after an injury during his childhood. He claims that when he was in detention, Saudi security forces tortured him, that the authorities denied him treatment for the resulting injury, and that, as a result, he fully lost the hearing of his affected ear. He claims a violation by the State party of his rights under article [4](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#4), [15 paragraph 1](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#15), [16 paragraph 1](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#16) and 4, [article 25 (b)](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#25) and [13 paragraph 1](https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#13) of the CRPD. The OP entered into force for Saudi Arabia on 24 June 2008.

On 8 April 2012, Saudi security forces arrested the author at a checkpoint between Safwa and Awamia and transported him to the Al-Qatif police station. He was repeatedly subjected to a method of torture whereby the detainee is beaten by a stick on the sole of the feet (falaqa) and, as a result, he could not walk for days. The author remembers that on 20 May 2012, he was tortured in the presence of the detective Mohammed Fahed al Shneeber. After 2 weeks of detention in Al-Qatif, the author was transferred to the General Directorate of Investigation in Al Dammam where he was put in solitary confinement and severely tortured again. As a result, the hearing injury that he had suffered when he was a child started to aggravate. From that day, the author requested access to medical services. Four and a half months later, Saudi authorities transported the author to a military hospital in Dahran for a routine health check. The doctor said that the author suffered from hearing loss in his right ear of 70/110, and that an urgent surgery on his ear was necessary in order to prevent permanent and complete hearing loss. The prison administration left the author untreated for six months, during which his hearing progressively worsened. Six months later, the author was taken to another appointment where the doctor stated that his condition had worsened to the point that he could no longer hear from his right ear and that, at that point, surgery could not fix the author’s hearing.

State party’s authorities were made aware of the author’s deteriorating hearing in the medical report established by the doctor of the Al Damman Investigations Prison. However, they took no action in that regard. Additionally, since the beginning of his detention in April 2012, the author did not have access to a legal counsel. On 5 September 2016 approximately, the author was prosecuted before the Specialized Criminal Court in Riyadh. He was then allowed to appoint a lawyer but he has not been able to have any contact with this representative. The public prosecutor requested the death penalty against the author.

As to the exhaustion of domestic remedies with regard to the acts of torture, abuse and violence, and as to the State party’s failure to provide him with access to the medical treatment he needed, the author submits that his family did not presented a complaint to the Saudi Human Rights Commission, considering that it would have been futile and would have resulted in retaliation. Further, the author cannot apply for relief from the Saudi judicial system because it is complicit of the violations that he has suffered, as attested in several public reports. The author’s representative further submits that his family doesn’t have access to any medical certificate to substantiate the torture claims, as the Government of Saudi Arabia is complicit in the author’s abuse and state agents acting in their official capacity perpetrated it.

**The complaint**

The author submits that, prior to detention, he already had a partial hearing impairment of his right hear. He submits that the acts of torture during detention worsened his disability. In this connection, he alleges that the State officials further damaged his already affected hearing in violation of article 15 of the Convention and that the treatment he received from the security forces and prison authorities amounted to acts of abuse and violence, in violation of article 16 of the Convention. Also, by failing to provide him with the medical treatment he needed, the State party violated the author’s rights under article 25 (b) of the Convention.

The author further claims that by denying him access to a lawyer during his detention, the State party’s authorities have interfered with his rights to due process, including his right to consult with a legal counsel. He submits that when his trial started, he was finally granted access to a lawyer, but that all his requests to meet him were rejected. The author also submits that no measures were taken to enable him to take part efficiently to the procedure despite his hearing impairment and considers that the whole situation amounted to a violation of his rights under article 13 (1) of the Convention, read alone and together with article 4.8.

**State’s party observations on admissibility**

The State party submits that the communication should be held inadmissible on three grounds. It first argues that the complaint was not accompanied by a signature from the victim or the victim’s family and therefore does not comply with the requirements of article 2(b) of the Optional Protocol, submitting that “nothing prevents the complainant from submitting a communication himself or from providing a signed authorization for representation to the author of the communication”.

The State party then informs that the same matter is pending before 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 Special on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It considers that the Committee is therefore precluded from pursuing a concurrent investigation.

The State party finally submits that the author failed to exhaust all available domestic remedies, while “effective means of redress are available for the author” and that the complaint is not supported by any evidence.

**Author’s comments on the State party’s observations on admissibility**

The author submits that the arguments of the State party as to the inadmissibility of his complaint are not valid. Regarding the State’s first argument, the author’s representative submits that the objection of the complaint not being signed by the author or his family member is factually moot because the initial complaint was submitted together with a handwritten power of attorney, in Arabic, clearly signed by “the family of the detainee Munir Al Adam”. The author’s representative then recalls that the author is detained incommunicado, without the possibility to meet with his lawyer and to provide a signed authorization or to submit his communication by himself.

Regarding the State party’s second argument, his representative recalls that the parallel considerations of this case by extra-conventional procedures or mechanisms established by the Human Rights Council should not be regarded as “investigation or settlement” as intended by the Protocol, following the jurisprudence of the Human Rights Committee and the Committee against Torture. The author argues that the same jurisprudence is applicable to the Committee in so far as the wording of article 2(c) of the OP is very similar to the corresponding provisions of the Convention against Torture and the Optional Protocol to the International Covenant on Civil and Political Rights.

As regards the need to exhaust domestic remedies, the author’s representative submits that under article 2(d) of the OP, the rule is waived when recourse to the national justice system is “unlikely to bring effective relief.” He then argues that the State’s assertion that “effective means of redress are available” to the author is contradicted by the testimonies of his family, according to which the author is held in 24-hour solitary confinement and subjected to abusive and inhuman treatment, while sentenced to death. The author’s family adds that, although they have brought his case before the Ministry of Interior investigator, the Court hearing his case, and the Saudi Human Rights Commission, none of these authorities has taken any action in that regard.

The author further reiterates the reference to public reports documenting the complicity of the judicial system of the State party in human rights abuses, in particular, with regard to “the arbitrary nature of Saudi justice” and the “abusive exercises of legal power by Saudi Arabia’s terrorism tribunal, the Specialized Criminal Court”, concluding that no meaningful domestic remedies are available to the author, and the exception of article 2(d) of the Optional Protocol applies.

**Additional information submitted by the author and interim measures requested by the Committee**

On 25 May 2017, the author’s representative informed the Committee that the Specialized Criminal Court in Riyadh approved the death sentence against the author, based on confessions extracted under torture. On 26 May 2017 the Committee requested the State party not to carry out the death sentence of the author while his case is under consideration by the Committee.

**State’s party reiteration of observation on the admissibility of the communication and lack of observations on the merits**

Although the State party was requested to submit its observations on the merits, on 19 June 2017, it sent observations, reiterating its position that the communication should be held inadmissible under article 2 (b), (d) and (e) of the OP, and asserts that “means of domestic redress are available” to the author, providing a list of the domestic authorities to which it considers that the author could address his case. Despite various reminders sent to the State, the Committee regrets that its observations on the merits have not been received. In the absence of State’s comments on merits, the Committee must give due weight to those of the authors’ allegations that have been properly substantiated.

**Author’s comments on State party’s observations**

The author submits that State party’s observations do not demonstrate that credible domestic alternatives are available to the author. In particular, in relation to the Human Rights Commission and the National Society for Human Rights, the author’s representative reiterates that the author’s family has already officially reported his case to the first, to no avail. He submits that both of these official human rights organs suffer from a lack of institutional independence and power to confront the state security sector, concluding that it would be unreasonable to expect that an appeal to the National Society for Human Rights would be relevant in the author’s case.

Regarding the State party’s argument that the author had had access to a public prosecutor paid by the State party, the author’s representative submits that the formal courtroom presence of a defence attorney is irrelevant to the matters raised in the communication.

The author’s representative further expressed his fear that the State party would probably execute the author in the near future, in disregard of the interim measures requested by the Committee. On 25 May 2017, the Specialized Criminal Court upheld the death sentence on appeal. On 12 June 2017, the State party transferred the author to solitary confinement. Since then, his family has not been able to visit or speak to him on the phone. The author’s representative further informs that the State party has stepped up the pace of its executions. On 23 July, the High Court confirmed the author’s death sentence. This ruling is final and cannot be appealed.

**Reiteration of Interim Measures and additional information submitted by the author**

On 10 August 2017, the Committee reiterated the request for interim measures to the State party to remain in effect until the examination of the complaint by the Committee. On 20 October 2017, the author’s representative informed the Committee that on 18 October 2017, the author was released from solitary confinement and that the following day, he received the first visit from his family since June 2017.

**Committee’s consideration of admissibility**

The Committee recalls that extra-conventional procedures or mechanisms established by the Commission on Human Rights or the Human Rights Council, and whose mandates are to examine and report publicly on human rights situations in specific countries or territories, or cases of widespread human rights violations worldwide, do not generally constitute an international procedure of investigation or settlement within the meaning of article 2(c) of the OP. Accordingly, the Committee considers that the examination of the author’s case by the Special Rapporteurs does not render the present communication inadmissible under article 2(c) of the OP.

Secondly, taking into account that the author was detained incommunicado and that “communications may be submitted by or on behalf of individuals or groups of individuals”, the Committee concludes that the communication was submitted to it in accordance with the rules.

The Committee then notes that, according to the State party, the author failed to exhaust all available domestic remedies. Noting all the arguments provided by both parties involved and that the State party did not provide any information that would demonstrate the availability and efficiency of the remedies it refers to in the case of the author, the Committee concludes that the remedies referred to by the State would not be available for the author and that the communication is admissible under article 2(d) of the OP.

The Committee finally notes the State party’s submission that the complaint is not supported by any evidence and should therefore be held inadmissible for lack of substantiation. It however notes the author’s claim that, by failing to provide him with access to the medical treatment he required following the torture he was subjected to, the State party violated his rights as enshrined in the Convention, as he did not have the possibility to exercise his right to access to justice on an equal basis with others. The Committee considers that, for the purposes of admissibility, the author has sufficiently substantiated his claims under articles 13 (1), 15, 16, 25, read alone and in conjunction with article 4 of the Convention. Consequently, the Committee declares the communication admissible and proceeds to its examination on the merits.

**Committee’s consideration of the merits**

Since the State party has not submitted any observations on the merits of the communication, due weight must be given to the author’s claims insofar as they have been substantiated.

Regarding articles 15 (1) and (2) of the Convention, the Committee recalls that once a complaint about ill-treatment contrary to article 15 has been filed, a State must investigate the complaint promptly and impartially. Despite clear signs that the author was tortured and complaints by his family and representatives in this connection, the State has not presented any information to demonstrate that its authorities have conducted an effective investigation into those specific allegations. The Committee observes that none of these allegations have been refuted by the State and that due weight must be given to the author’s allegations, concluding that the facts before it violates the author’s rights under article 15 of the Convention.

Regarding article 16, the Committee notes that the State party has not contested the information concerning the author’s conditions of detention in solitary confinement, and the abuse, violence and torture he has been subjected to. The Committee, recalling that persons deprived of their liberty may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty, considers that the treatment the author received while in detention violates his right to be treated with humanity and with respect for the inherent dignity of the human person and amount to violence and abuse, in violation of article 16 of the Convention.

On article 13(1) of the Convention, the Committee recalls that it entails the respect of all components of the right to fair trial, including the right to be represented and not to be submitted to any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt. In this connection, the Committee recalls that in cases involving capital punishment, it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings, and that information obtained as a result of torture must always be excluded from the evidence. In this case, the State is under the obligation to take all procedural accommodation necessary to enable his effective participation in the process, taking into account his hearing impairment. By not taking any measure in that regard, the State violated the author’s rights under article 13(1), read alone and in conjunction with article 4 of the Convention.

As regards the complaint under article 25, the Committee recalls that in compliance with article 25(b) of the Convention, States parties have the obligation to “provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities […]”. In the light of this provision, read in conjunction with article 14, para 2, the Committee recalls that States parties have a special responsibility to uphold human rights when prison authorities exercise significant control or power over persons with disabilities who have been deprived of their liberty by a court of law. In the present case, the author had to wait for more than four months before getting access to the health services; the authorities of the State party did not enable him to access the surgery he needed to avoid the full loss of his right ear despite having been informed of the urgency of this intervention; and, as a consequence, the author indeed fully lost the hearing of his right ear. The Committee therefore concludes that the State party violated article 25(b) of the Convention.

**Conclusion and recommendations**

The Committee is of the view that the State party has failed to fulfil its obligations under articles 13 (1) read alone and in conjunction with article 4, 15,16, and 25 of the Convention and therefore makes the following recommendations to the State party:

**(a) Concerning the author:** the State party is under an obligation:

(i) To provide him with an effective remedy, including an impartial, effective and thorough investigation into the torture claims, prosecution of those responsible and effective reparation to the author and his family, and an adequate monetary compensation for the loss of the hearing of his right ear following the denial of access to the medical services he needed;
(ii) To review his conviction with the guarantees enshrined in the Convention, including through the exclusion of the evidence obtained under torture; the permanent suspension of solitary confinement; the full access to his representatives; the provision of adapted procedural accommodations to ensure that the author can effectively take part to the procedure; and the access to health services needed by the author;

**(b) General measures:** the State party is under an obligation to take measures to prevent similar violations in the future. In this regard, the Committee requires the State party to:
(i) Establish a clear prohibition of any act of torture in the justice and prison system;
(ii) Establish mechanisms to effectively and independently report and investigate allegations of torture;
(iii) Ensure the timely access to medical services in the context of detention, in compliance with article 25 of the Convention.
(iv) Give due consideration to abolishing the death penalty.
(v) Provide sufficient, regular training on the scope of the Convention and its Optional Protocol to judges, other judicial officers and prison officials.

In accordance with article 5 of the Optional Protocol and rule 75 of the Committee’s rules of procedure, the State party should submit a written response to the Committee in six months’ time that includes information on any action taken in the light of the present Views and recommendations of the Committee.

1. This case summary has been prepared by the International Disability Alliance. For more information on how to lodge individual communications under the Optional Protocol to the CRPD, consult IDA’s factsheet available on [IDA’s disability rights litigation website.](http://www.internationaldisabilityalliance.org/en/disability-rights-litigationhttp%3A/www.internationaldisabilityalliance.org/en/disability-rights-litigation)  [↑](#footnote-ref-1)