

Mandates of 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 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; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL ARE 3/2017

3 May 2017

Excellency,

We have the honour to address you in our capacities as 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 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; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 25/2, 33/9, 25/18 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the conviction to ten years of imprisonment, torture and cruel treatment, and denial of access to medical treatment of Mr. **Nasser Bin Ghaith**, an Emirati scholar, economist and human rights defender, on the basis of legislation criminalizing expression of criticism towards the governments of the United Arab Emirates and of Egypt, as well as expression calling for greater respect for human rights and governmental accountability in the two countries.

Mr. Bin Ghaith was the subject of previous communications sent on 26 April 2011 (ARE 4/2011), 27 September 2011 (ARE 6/2011) and 25 November 2011 (ARE 8/2011), regarding his arrest and prosecution in the case known as 'UAE 5', and again in 27 August 2015 (ARE 3/2015), concerning his arrest on 18 August 2015 for the charges which now constitute the basis of his conviction, addressed herein. We regret that none of these letters was replied to by your Excellency's Government.

According to the new information received:

On 29 March 2017, Mr. Bin Ghaith was convicted by the Abu Dhabi Federal Appeal Court to ten years of imprisonment on the basis of provisions of the Penal Code, the 2012 Cybercrime Law, and the 2014 Counterterrorism Law. The conviction relates to posts Mr. Bin Ghaith had made on Twitter in which he expressed criticism about Emirati and Egyptian political leaders and their policies, deemed by the prosecution to be false and intended to 'harm the reputation and stature of the State'. Likewise, some charges relate to meetings that Mr. Bin Ghaith held in other countries of the region with political activists considered by the Emirati authorities as belonging to terrorists organizations.

During his trial, Mr. Bin Ghaith's fair-trial rights were allegedly not fully respected. According to reports, he was not allowed to meet with his lawyer and his family on several occasions, and relevant evidence presented by the defence was not admitted. In addition, an Egyptian judge was appointed as a head of the trial before the Federal Court of Appeal in Abu Dhabi, which appears to put the court in a biased and partial position given the fact that some accusations against Mr. Bin Ghaith's directly concern the Egyptian Government.

On 17 April 2017, Mr. Bin Ghaith issued an open statement in which he denounced the human rights violations he is being subjected to, and declared his intention to go on an open hunger strike.

Mr. Bin Ghaith has been detained for these charges since 18 August 2015. During this period he had allegedly been kept under solitary confinement in a secret location for nine months, where he was subjected to several other forms of torture and cruel treatment, including sleep deprivation and severe beatings. In May 2016, he was transferred to the maximum security wing of Al Sadr Prison in Abu Dhabi where the authorities allegedly continue to hold him in solitary confinement. He has also been reportedly denied access to needed medical treatment, and his health condition remains poor.

Grave concern is expressed about the conviction to ten years of imprisonment of Mr. Bin Ghaith on the basis of repressive legislation criminalizing the legitimate exercise of freedom of expression. We express concern at the use of national security and defamation provisions to target speech that is critical or dissenting, in particular about discussions of government policies which is a matter of public interest. Grave concern is also expressed at the allegations concerning violations of due-process during the trial of Mr. Bin Ghaith, as well as at the reports of torture, cruel treatment, the conditions of his confinement, his poor health, and the denial of access to adequate medical treatment while in detention.

These acts appear to contravene articles 5, 9, 10 and 19 of the Universal Declaration of Human Rights (UDHR), as well as articles 8, 12, 14, 20 and 32 of the Arab Charter on Human Rights, ratified by the UAE in 2008, which establish the prohibition of torture and arbitrary detention, as well as the rights to fair-trial and freedom of opinion and expression.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comment(s) you may have on the above-mentioned allegations.
2. Please provide details concerning the legal basis for the conviction of Mr. Bin Ghaith, and explain how this prosecution is compatible with articles 19 of the UDHR and 32 of the Arab Charter of Human Rights. In particular, please provide information about how Mr. Bin Ghaith's posts made online amount to "harming the reputation" of the State.
3. Please provide detailed information about the reasons for restricting the access of Mr. Bin Ghaith to his lawyer during the criminal procedures and for declining the admission of some evidence presented by his defense, and explain how this is compatible with due process and fair trial standards. Moreover, please provide information on the measures adopted by your Excellency's Government to ensure the respect of all due-process guarantees in Mr. Bin Ghaith's trial.
4. Please provide information on the allegations that Mr. Bin Ghaith has been subjected to torture or cruel, inhuman or degrading treatment or punishment. Please provide details of any prosecutions which have been undertaken in this regard, and whether penal, disciplinary or administrative sanctions have been imposed on the perpetrators.
5. Please provide information about the health situation of Mr. Bin Ghaith, including access to adequate health care, including possible measures taken to adequately monitor his hunger strike always respecting his autonomy and dignity.

We would appreciate receiving a response within 60 days.

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(s) responsible for 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.

Elina Steinerte
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

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to take this opportunity to draw your attention to relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer to articles 5, 9, 10 and 19 of the Universal Declaration of Human Rights (UDHR), which establish the absolute prohibition of torture and of arbitrary detention, as well as the rights to fair-trial and freedom of opinion and expression. These rights are similarly established under articles 8, 12, 14, 20 and 32 of the Arab Charter on Human Rights, which your Excellency's Government ratified on 15 January 2008. Furthermore, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which the UAE acceded on 19 July 2012.

We also wish to reiterate the principle enunciated in Human Rights Council resolution 12/16, which calls on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. This right applies online as well as offline. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 29(2) of the UDHR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We would further like to recall that international human rights law and standards require States to treat all persons under any form of detention or imprisonment with humanity and with respect for the inherent dignity of the human person (article 20, Arab Charter on Human Rights; Principle 1, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and General Assembly resolution 43/173 of 9 December 1988). More specifically, Rule 43 of the updated United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015) prohibits the use of prolonged solitary confinement under any circumstances.

With regard to the health situation of Mr. Bin Ghaith, and his access to adequate health care in detention, we refer to the Basic Principles for the Treatment of Prisoners, adopted by General Assembly resolution 45/111, underlining that prisoners should have access to the health services available in the country without discrimination on the grounds of their legal situation (Principle 9). In addition, the Mandela Rules recognize that the provision of health care for prisoners is a State responsibility, free of charge without discrimination and should pay special attention to those with special health care needs (Rules 24 and 25). With respect to allegations about a possible hunger strike, we would like to underline that the best way to try to end a hunger strike is to address the

underlying human rights violations that are the basis of the protest. Authorities have a duty to look for solutions to situations created by a hunger strike, including through good faith dialogue about the grievances, always respecting the wishes of individuals.

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice". Article 6 (b) and c) of the Declaration provides that everyone has the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, and to study, discuss, form and hold opinions on the observance of these rights. Article 12, paragraphs 2 and 3, provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.