

Mandates of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
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4 October 2017

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **transfer to solitary confinement of Mr. Mohamad Ismat Mohamad Shaker Az, for a lengthy period of two months, allegedly as a measure of retaliation after the issuance of Opinion No. 21/2017 by the United Nations Working Group on Arbitrary Detention.**

In Opinion No. 21/2017, the Working Group found that the detention of Mr. Az is arbitrary, in contravention of international human rights standards, as it had no legal basis, violated his right to freedom of expression and failed to respect the due process guarantees of a fair trial. The Working Group therefore concluded that the appropriate remedy would be to release Mr. Az immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

According to the new information received:

On 2 July 2017, Mr. Az was transferred to solitary confinement. He was detained in a room without air conditioning and developed, due to the extreme heat, rashes all over his body. Mr. Az was also threatened with a retrial of his case before the same court. Furthermore, he was told that the prosecutor would ask for an increased penalty, from 15 years to which he was sentenced in 2014, to life imprisonment.

Mr. Az suffers from a condition affecting his thyroid and has developed urinary, digestive and dermatological problems. He was presented to a general practitioner but has not been allowed specialised medical attention. Mr. Az has expressed to his family his desire to commit suicide on several occasions.

While we do not wish to prejudge the accuracy of these allegations, we express our very serious concern that Mr. Az was placed in isolation from other detainees (solitary confinement), that he was deprived of proper ventilation in his cell, that he was

not provided adequate medical care, and that he may be retried and given a longer sentence. Our concern in these regards is heightened by the fact that these new measures appear to have been taken in retaliation against Mr. Az, after his case was examined by the Working Group on Arbitrary Detention. Should this be the case, this is a matter of utmost importance that the Working Group is bringing up to the attention of Your Excellency's Government, and that it may publicly report to Human Rights Council. The placement of Mr. Az in solitary confinement constitutes an additional restriction on his right to liberty, indeed, a form of further punishment, protected by article 9 of the Universal Declaration of Human Rights. According to rules 43 to 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), prolonged solitary confinement in excess of 15 consecutive days is prohibited and may amount to torture or cruel, inhuman or degrading treatment or punishment.

In his report of the General Assembly of 5 August 2011 (A/66/268), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment defined solitary confinement, in accordance with the Istanbul Statement on the Use and Effects of Solitary Confinement, as the physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day. He outlined that while solitary confinement for short periods of time may be justified under certain circumstances, with adequate and effective safeguards in place, the use of prolonged or indefinite solitary confinement (i.e. in excess of 15 days under conditions of total or almost total isolation) cannot constitute a legitimate instrument of the State, as it may cause severe mental and physical pain or suffering. The Special Rapporteur stated that prolonged or indefinite solitary confinement challenges the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Furthermore, due to the prisoner's lack of communication, as well as the lack of witnesses inside the prison, solitary confinement may be conducive to other forms of abuse of power and prohibited violent treatment, such as torture or ill-treatment.

Paragraph 28 of the General Assembly resolution 68/156 (2014) emphasized that that conditions of detention must respect the dignity and human rights of persons deprived of their liberty. It called upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment, while noting in this regard concerns about solitary confinement, which, as indicated above, may amount to torture or other cruel, inhuman or degrading treatment or punishment.

Paragraph 6 of General Comment No. 20 of the Human Rights Committee (adopted at the 44th session of the Human Rights Committee, 1992) states that prolonged solitary confinement of the detained or imprisoned person, may amount to acts prohibited by article 7 of the ICCPR. That article prohibits torture and cruel, inhuman or degrading treatment or punishment. Principle 7 of the Basic Principles for the Treatment of Prisoners provides that "efforts addressed to the abolition of solitary confinement as a

punishment, or to the restriction of its use, should be undertaken and encouraged". (Adopted by the General Assembly by resolution 45/111 of 14 December 1990).

Last but not least, we wish to underline that Human Rights Council resolutions 12/2 and 24/24 call on Governments to **prevent and refrain from all acts of intimidation or reprisal against those who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights**. In his 2016 report on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/33/19), the Secretary-General reiterated the firm position of the United Nations that all such acts, no matter how seemingly subtle or explicit they may be, are without exception unacceptable and must be halted immediately and unconditionally, effective remedies must be provided and preventive measures adopted and implemented to prevent recurrence (para. 48).

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

In view of the seriousness of the matter, we would appreciate a prompt response on the steps taken by your Excellency's Government to ensure that the rights of this person are effectively upheld and protected in accordance with the commitment made by the UAE under the Convention Against Torture (CAT) that it ratified on 19 July 2012, and other fundamental and universally accepted human rights norms applicable to persons in detention, such as the Nelson Mandela Rules.

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 your observations on the following regards:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the motives for transferring Mr. Az to solitary confinement, after the Working Group on Arbitrary Detention found that his detention was arbitrary and requested his immediate release, and how this measure is compatible with the UAE's commitment under CAT and other norms of international human rights law.
3. Please provide information about the current conditions under which Mr. Az is detained, in particular with regard to air-conditioning and the necessary ventilation indispensable to maintain a healthy environment.

4. Please provide information on the current state of health of Mr. Az, and the nature of the medical care that he has been receiving. If he is denied access to specialized medical care, please explain why.
5. Please provide information on the steps undertaken by the Government to implement Opinion No. 21/2017 of the Working Group on Arbitrary Detention, in accordance with its obligations under international law. If Mr. Az is to remain in prison, please explain why.

While awaiting a prompt reply, we respectfully urge that effective measures be taken to halt the violations that Mr. Az is alleged to be subjected to, and to ensure that they do not recur, and in the event that investigations confirm that the allegations as described above are correct, ensure the accountability of any person found responsible of the alleged violations.

Given the importance of the matter raised in these allegations, we would appreciate a prompt response from Your Excellency's Government. We are considering seizing the Human Rights Council of the matter, as well as the Assistant Secretary-General for Human Rights as the senior official leading the efforts of the United Nations to address intimidation and reprisals. We are also possibly considering to publicly expressing our concerns in the near future. The information at hand appears indeed to us sufficiently reliable to indicate a matter warranting serious attention. Should we decide to express publicly our concerns, we will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question. 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
Chair-Rapporteur of the Working Group on Arbitrary Detention

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