

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 situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA BHR 11/2017

31 October 2017

Excellency,

We have the honour to address you in our capacity 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 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, 34/18, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning allegations of torture and other ill-treatment of Mr. Ibrahim Jawad 'Abd Ullah Sarhan, a Bahraini lawyer, as well as threats of prosecution against him for charges related to the expression of a legal opinion denouncing human rights violations.**

According to the information received:

On 23 May 2017, Mr. Sarhan gave an interview to the satellite broadcaster Al Mayadeen, in which he referred to a recent crackdown of a demonstration in the town of Duraz by Bahraini authorities. Mr. Sarhan said on the air that five persons had been killed during the clashes between demonstrators and the police, and expressed his view that the authorities had committed violations of human rights.

On the early morning of 24 May 2017, Mr. Sarhan received a call from the National Security Agency (NSA) summoning him to appear immediately at their premises in the city of Muharraq for questioning. At around 11.00 a.m., Mr. Sarhan arrived with his attorney at the NSA facilities. They were both stripped of all their personal possessions and the attorney was ejected from the building. Mr. Sarhan was then taken by force to a dark room equipped with cameras where there were five security agents waiting for him.

Mr. Sarhan was then allegedly beaten for around half an hour by the agents, who stroke him on the face and body, and forced his legs apart in order to kick him in the genitals. Then the agents began interrogating him, raising the subject of his interview the previous day. When his responses failed to satisfy the agents, he was

hit again in the face and genitals, being kept from falling by two officers who held him on the side.

During the interrogation, which lasted several hours, Mr. Sarhan was reportedly stripped down to his underwear and at several points threatened with rape. He was also given electrical shocks and repeatedly insulted. The agents also attempted to force him to disclose information about opposition activists, including the Al-Wefaq National Islamic Society, which he legally advised before its forced dissolution in 2016, and they threatened to close the law firm where he currently works.

Lastly that day, Mr. Sarhan was told that he would be investigated and charged with “inciting antipathy against the regime”, allegedly in reference to article 165 of the Penal Code, which criminalizes “incitement to antipathy and contempt for the ruling system through the media.” After this, Mr. Sarhan was allowed to go home, being warned that he would be summoned again soon.

On 31 May 2017, Mr. Sarhan allegedly received a call from the NSA summoning him again. Upon arrival that morning, he was again brought into a room with five officers, one of whom presented himself courteously and said that during the previous summons “some things happened to you which should not happen.” He also said that he hoped he would cooperate with him so that “this does not happen again”. This officer reportedly then tried to recruit Mr. Sarhan as an informer by offering him positions within the government, which he declined, and then allowed him to leave but warned that he would be summoned again. Since then, Mr. Sarhan has not been detained nor summoned by the authorities.

We express grave concern at the allegations of torture and other cruel, inhuman or degrading treatment, as well as threats of prosecution, against Mr. Sarhan, which appear to be related to the expression of legal views denouncing human rights violations in Bahrain. We furthermore wish to express our most serious concern at the growing number of cases of alleged use of torture and other cruel, inhuman or degrading treatment against, as well as criminalization of, persons expressing criticism or dissent in Bahrain. Finally, we express our concern at article 165 of the Penal Code, the text of which lends itself for prosecuting persons who legitimately express criticism and dissent towards the Government.

While we do not wish to prejudge the accuracy of the information we received, we would like to draw the attention of your Excellency’s Government to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as enshrined in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Bahrain acceded on 6 March 1998, and article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Bahrain acceded on 20 September 2006. We moreover recall that everyone has the right not to be deprived arbitrarily of liberty and to

fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the ICCPR.

We would similarly like to recall article 19 of the ICCPR, which establishes the right of freedom of opinion and expression, and determines that limitations to this right must be determined by law, conform to a strict test of necessity and proportionality, and be applied only for those purposes for which they were prescribed and be directly related to the specific need on which they are predicated. Furthermore, we also wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Finally, we would also like to make reference to the fundamental principles set forth in articles 1 and 2 of the UN Declaration on Human Rights Defenders, which provide for the right to promote and to strive for the protection and realization of human rights and fundamental freedoms.

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 urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Sarhan in compliance with international instruments.

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 matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on any measures taken to ensure the physical and psychological integrity of Mr. Sarhan, including measures to prevent acts amounting to torture or other cruel, inhuman or degrading treatment, as well as arbitrary detention.
3. Where available, please provide the details and the results of any investigation and judicial or other inquiries carried out in relation to the allegations of torture and other cruel, inhuman and degrading treatment of Mr. Sarhan.

4. Please provide information on any criminal procedures pending against Mr. Sarhan, including their legal grounds and their compatibility with international norms and standards as stated in the ICCPR.
5. Please explain how article 165 of the Criminal Code is compatible with article 19 of the ICCPR and other relevant applicable standards. In particular, please explain what is the threshold to consider that an opinion or a statement can be deemed to “incite others to develop hatred or hostility towards the system of government”, and how this is compatible with Bahrain’s obligations under international human rights law.

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 of 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.

We would like to inform your Excellency’s Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

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