

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on freedom of religion or belief

REFERENCE:
UA BHR 1/2018

7 February 2018

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 33/30, 27/1, 35/15, 34/18, 26/7, 31/3, 34/19 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information received concerning **the sentencing to death of Messrs. Mohamed AbdulHasan Ahmed Kadhem AlMutaghawi, Fadhel Sayed Abbas Hassan Radhi and Sayed Alawi Husain Alawi Husain** along with three other individuals. The six men were convicted by the Bahraini Military High Court on 25 December 2017 in a collective trial that reportedly did not meet fair trial and due process guarantees. Alleged breaches include enforced disappearance, torture to extract confessions and denial of access to legal representation until the late stages of the trial.

Mr. Sayed Alawi Husain and Mr. Fadhel Sayed Radhi were the subject of two urgent procedure communications from the Working Group on Enforced or Involuntary Disappearances, respectively, sent to the Government of Bahrain on 24 November 2016 and 22 May 2017 (cases nos. 10006726 and 10007453).

Two related communications were transmitted to your Excellency's Government by several special procedures mandates of the Human Rights Council on 9 June 2017 (case no. BHR 6/2017) and 22 May 2017 (case no. BHR 5/2017), respectively, raising concerns over allegations of severe infringements on the right to life, the right not to be subjected to torture and ill-treatment, and the rights to freedom of religion or belief, freedom of expression and freedom of peaceful assembly and of association in Bahrain,

as well as concerns over reported killings, injuries sustained and arbitrary detention of individuals in the context of protests that took place in the city of Duraz. We thank you for the responses received on 6 July 2017 to the former communication and on 20 July 2017 to the latter.

According to the information received:

On 25 December 2017, Messrs. Mohamed AbdulHasan AlMutaghawi, Fadhel Sayed Radhi and Sayed Alawi Husain were sentenced to death by the Bahraini Military High Court along with three other men. They were sentenced in a collective judgment of 18 individuals on charges of participating in a terrorist cell and the attempted assassination of the Bahrain Defence Forces' Commander-in-Chief. Of the other defendants, seven were sentenced to seven years in prison and five were acquitted. The 13 convicted individuals were in addition stripped of their nationality.

The collective trial began on 24 October 2017. It was the first trial of civilians by a military court in Bahrain since 2011, after the King of Bahrain amended the constitution to allow for the military trial of civilians in the beginning of 2017. The trial was held amidst allegations of breaches of fair trial and due process guarantees, including enforced disappearances, torture by military officials to extract confessions and denial of access to legal representation until the late stages of the trial. The Court decision was appealed by all 13 convicted individuals. The hearing on appeal took place on 10 January 2018. No information is currently available on its outcome.

Individual cases

Mr. Mohamed AbdulHasan AlMutaghawi ([REDACTED]) was detained in 2015 on the charge of unlawful assembly and released pending trial after one week. He was convicted and sentenced to one month in prison at the end of 2016 but not detained at that time to serve his sentence. During a peaceful demonstration in the city of Duraz, on 23 May 2017, Mr. AlMutaghawi was again arrested by police forces. His photo was published the following day, as part of a statement issued by the Ministry of the Interior (MoI) on the suppression of the demonstration, indicating that he was a wanted person who had been apprehended. His family, who had not been informed, first learned of this arrest through this publication. According to the same publication, Mr. AlMutaghawi was sentenced to seven months in prison for inciting hatred against the government, unlawful assembly for the purpose of committing crimes and breaching security, and attacking a public servant. No information was provided on any legal proceedings that resulted in this sentencing. He was subsequently forcibly disappeared for seven months with only being allowed to

make one short phone call to his family, during which he was not allowed to disclose his location. He only reappeared during the trial before the military court. It is reported that during the seven months Mr. AlMutaghawi was subjected to torture and ill-treatment for the purpose of obtaining a forced confession to be used as evidence against him in court. Mr. AlMutaghawi's family filed a complaint before the MoI's Office of the Ombudsman two weeks after his arrest. They continued to frequently contact the Office requesting information on his location and updates on his case, only to be informed that the Ombudsman had sent several reports enquiring about Mr. AlMutaghawi's case to the MoI without providing any details. Mr. AlMutaghawi was the only defendant not present at the appeals hearing of 10 January 2018 and the location of his detention remains unknown to date. Furthermore, his family and legal representative are currently denied all contact with him.

Mr. Fadhel Sayed Radhi () was taken by Bahraini riot police and security officers dressed in civilian clothes from his home in the city of Hamad on 28 September 2016. The officers did not present any search or arrest warrant nor did they provide any information on the reason for his arrest. He was forcibly disappeared for eight subsequent months, during which period he was only allowed to make five short phone calls to his family without being allowed to disclose his location. It is reported that he was held in solitary confinement for six of the eight months in a cell measuring around one square meter. He was denied access to legal representation during this period. Government officials refused to inform his family of his detention location or of the charges brought against him. After their repeated requests, they were only informed that his case was pending with the Terrorism Division and that for this reason he was subject to certain specific restrictions. The family subsequently filed a complaint before the MoI Ombudsman's Office; however, they were informed that the Office was unable to intervene in the case because it fell under the responsibility of the Terrorism Division.

Mr. Sayed Alawi Husain () was taken from his place of work in the city of Galali by four armed men dressed in civilian clothes on 24 October 2016, at approximately 4 p.m. He was subsequently forcibly disappeared for an undetermined length of time, during which period he was only allowed to make one brief phone call to his family without being allowed to disclose his location. Despite repeated requests by his family to the authorities, including the MoI, Office of the Ombudsman, the Criminal Investigations Division and the Office of the Public Prosecutor, to be informed of the location of his detention and to visit him, no precise information was provided and no visit granted. Some of these authorities denied that Mr. Husain had been taken into the Government's custody. It is reported that Mr. Husain was subjected to acts of torture and ill-treatment during interrogation,

and was held in solitary confinement for six months in a cell measuring around one square meter. During the same period he was also denied access to legal representation.

While we do not wish to prejudge the accuracy of these allegations, we express grave concern that Messrs. Mohamed AbdulHasan AlMutaghawi, Fadhel Sayed Radhi and Sayed Alawi Husain, and three other co-defendants, were sentenced to death for offences that do not seem to meet the threshold of "most serious crime" as required by international law for crimes carrying the capital punishment; that they were tried and sentenced in a collective trial involving 18 persons; that they were tried by a military court whereas they are civilians; and that their trial does not seem to have met fair trial and due process guarantees provided for by international human rights law. In addition, we express concern at the allegations that they were forcibly disappeared; that they were held in solitary confinement in very small cells for prolonged periods of time; that they were interrogated and subjected to torture and ill-treatment to obtain confessions, which may have been used as evidence against them in court and resulted in their death sentences; and, that they were denied access to a lawyer from their arrest onwards, which undermined their right to adequately prepare their defence. We are further concerned that Mr. AlMutaghawi continues to be detained in an undisclosed location, that he does not have access to legal counsel and his family is not allowed to visit him.

In view of the irreversibility of the punishment of the death penalty, we respectfully urge your Excellency's Government to **halt the executions of Messrs. Mohamed AbdulHasan AlMutaghawi, Fadhel Sayed Radhi and Sayed Alawi Husain as well as of the three other men sentenced to death** in the same trial, and to ensure that, if credible evidence exists that they were involved in serious offences, they be retried by a civilian tribunal providing all fair trial and due process guarantees as required under international human rights law. Given the allegations described above, the implementation of their death sentences may constitute arbitrary executions under international law, and therefore be unlawful. We further recommend that the Government of the Kingdom of Bahrain establish an official moratorium on the death penalty, and consider its complete abolition.

The above allegations, if confirmed, indicate a prima facie violation of articles 6, 7, 9, 14, 18, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Kingdom of Bahrain on 20 September 2006. These provisions, binding on Bahrain, guarantee the right to life, the right to be free from torture or cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, and not to be arbitrarily arrested or detained, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, including the right to be informed promptly and in detail of the nature and cause of the charges brought against the accused, to have adequate time and facilities for the preparation of his/her defence and to communicate with counsel of his/her own choosing, as well as the rights to

freedom of religion or belief, freedom of expression and freedom of peaceful assembly and association.

These allegations would further contravene the absolute 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), which Bahrain ratified on 6 March 1998. Article 12 of the CAT requires the competent authorities to undertake a prompt and impartial investigation whenever there are reasonable grounds to believe that torture has been committed, and article 7 requires that States parties prosecute suspected perpetrators of torture.

These allegations would in addition contravene the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which sets out the necessary protection responsibility of the State; in particular that no State shall practice, permit or tolerate enforced disappearances (article 2), that any person deprived of liberty shall be held in an officially recognized place of detention (article 10.1) and that an official up-to date register of all persons deprived of their liberty shall be maintained in every place of detention (article 10.3).

Lastly, United Nations Security Council resolutions 1373 (2001), 1456(2003), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017) and 2370 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolution 49/60, 51/210, 72/123 and 72/180 require that States ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

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

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 detailed information concerning the legal grounds for the arrest, detention, prosecution, and sentencing to death of Messrs. AlMutaghawi, Radhi and Husain by the Military High Court and the three other co-defendants; as well as for the conviction and sentencing to seven years in prison of the seven other individuals tried in the same case. Please also explain how these measures are compatible with the international

human rights law obligations of Bahrain, in particular under the ICCPR and CAT.

3. Please provide information on the amendment of the constitution in early 2017, and its rationale, that allows for the military trial of civilians and how this is compatible with international human rights law and standards, in particular the above-mentioned obligations undertaken by Bahrain under the ICCPR and CAT.
4. Please explain why these three persons, and perhaps the other co-defendants, were forcibly disappeared for several months and denied effective contact with their families and lawyers, and how this is compatible with Bahrain's international human rights obligations under the Conventions it has ratified.
5. Please provide information, including to their families and lawyers, on the current location of Messrs. AlMutaghawi, Radhi and Husain, and explain why their right to receive visits continues to be restricted.
6. Please provide detailed information about measures under consideration, if any, to revise counter terrorism and security related legislation, including rules and procedures related to arrest, detention, investigation and the jurisdiction of military courts, and ensure their compliance with Bahrain's international human rights obligations and relevant United Nations Security Council resolutions, including those stated above.
7. Please provide detailed information and, where available, the results, of any investigation, and judicial or other inquiries carried out in relation to the allegations of torture and that confessions extracted from the detainees under duress may have been used as incriminating evidence during their trial and led to their sentencing to death. If no inquiries have taken place, or if they have been inconclusive, please explain why.
8. Please also provide information on safeguards in place to guarantee fair trial and due process, in particular in death penalty cases, and how they were effectively enforced in the above-mentioned trial, specifically vis-à-vis its collective nature.
9. Please provide detailed information on the appeals process pending before the Military High Court, including on the procedure and duration of this process, as well as which other options are available to the above-mentioned individuals to request annulment of their sentences.

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 responsible of the alleged violations.

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.

Given the seriousness of the case, and the concerns over the numerous violations of international human rights law, we may choose to publicly express our concerns in the near future as, in our view, the information upon which our concerns is based appears to be sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be informed about these concerns, and the human rights implications in these cases. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issues 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
Vice-Chair of the Working Group on Arbitrary Detention

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism

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

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief