

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
UA BHR 2/2018

14 February 2018

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 35/15, 26/7 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 re-sentencing to death of Mr. Maher Abbas Yousef al-Khabbaz, a 28-year-old, following a collective trial that did not meet fair trial and due process guarantees, in particular the use of confession obtained under torture as the main evidence. The Court of Cassation confirmed the death sentence, without questioning the evidence, in its decision of 29 January 2018.**

Mr. al-Khabbaz was the subject of a previous urgent appeal (case no. BHR 8/2014) sent to your Excellency's Government on 8 July 2014. We acknowledge receipt of your response dated 5 September 2014. However, we maintain and reiterate our concern, based on the previously received and the new information described below.

According to the information received:

On 19 February 2013, Mr. Maher al-Khabbaz was arrested and detained following his attendance at a public gathering in Sahla, Manama, five days earlier, on 14 February. During the first days of his detention, he was subjected to torture and ill-treatment, including beatings and threats, while being interrogated, and, as a result, signed a confession of killing a police officer during the 14 February gathering.

On 19 February 2014, Mr. al-Khabbaz was sentenced to death in a collective trial after being convicted on a number of charges, including the premeditated murder of the police officer with explosive materials and illegal assembly. One other co-defendant was also sentenced to death, while two men received life sentences and six others 10 years in prison.

A confession of guilt forced on him under torture was used as the main basis for Mr. al-Khabbaz' conviction and sentencing to death, even though he had reported the torture to the Court. His lawyer had also complained to the court about the admission of the forced confession into evidence in violation of the exclusionary rule, as well as the confessions of his co-defendants that had reportedly also been extracted under torture. Despite this, no investigations were initiated by the Judge into the allegations of torture nor were any steps taken to question the evidence presented or exclude his confession from evidence.

On 31 August 2014, the Bahrain Criminal Court of Appeal upheld the death sentence against Mr. al-Khabbaz by the lower court as well as the sentences issued against his co-defendants. The Appeal Court decision relied on the same evidence. It also relied, reportedly, on "secret evidence" that was never disclosed to his or their counsel.

On 1 December 2015, the Court of Cassation overturned the death sentence issued against Mr. al-Khabbaz due to concerns over the validity of the confessions used as evidence in the case and ordered that his conviction and those of his co-defendants be reviewed by the High Court of Appeal.

On 11 May 2017, the High Court of Appeal upheld the sentences issued by the Criminal Court of Appeal. It sentenced again Mr. al-Khabbaz to death together with one co-defendant; two co-defendants to life in prison; and the six other men to 10 years in prison. It sent back the case to the Court of Cassation for final confirmation.

On 29 January 2018, the Court of Cassation confirmed the sentences. The death sentence issued against Mr. al-Khabbaz is now pending ratification by the King, which can take place at any time, making his execution imminent.

Mr. al-Khabbaz is currently being held in solitary confinement in Al-Jaw prison.

Without making a judgment as to the accuracy of the information made available to us, we would like to express our most serious concern about the sentencing to death of Mr. al-Khabbaz following a collective trial that appears to have lacked the most important standards for fair trial and due process guarantees. We are particularly concerned that he was tortured and ill-treated during interrogation, and that his confession obtained under torture appears to have been used in court as the main source of evidence and thus as the main basis for his conviction, even after the Court of Cassation overturned the sentence and ordered a review by the High Court of Appeal.

The facts alleged indicate a prima facie violation of the rights to life, liberty and security of person, the right not to be deprived arbitrarily of one's liberty, the right to be free from torture and other cruel, inhuman and degrading treatment or punishment, and the right to a fair trial by an independent and competent court, as set forth in articles 6 (1) and (2), 7, 9, 14 of the International Covenant on Civil and Political Rights (ICCPR), as well as articles 1, 2 and 16 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), which were ratified by Bahrain on 20 September 2006 and 6 March 1998, respectively. 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. Moreover, article 15 of the CAT provides that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.

We would also like to bring to the attention of your Excellency's Government the United Nations Safeguards Protecting the Rights of those facing the Death Penalty (UN Safeguards), including article 5 which stresses that capital punishment may only be carried out pursuant to legal procedures which give all possible safeguards to ensure a fair trial. Only full respect for stringent due process guarantees distinguishes capital punishment as possibly permitted under international law from an arbitrary execution. Given the allegations described above, the implementation of his death sentence may constitute arbitrary execution under international law.

In view of the irreversibility of the punishment of the death penalty, we respectfully **urge your Excellency's Government to halt the execution of Mr. Maher al-Khabbaz and to ensure that, if credible evidence exists that he was involved in any criminal offence, he is re-tried according to standards that meet the most stringent criteria of fairness as required by international human rights law.** We further recommend that the Government of Bahrain establish an official moratorium on the death penalty, and consider its complete abolition.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 information about the trial de novo and the evidentiary basis of the findings and whether and in what they differ from the previous ones who were based on confessions obtained under torture.
3. Please provide information on the confirmation of the sentence by the Court of Cassation and its review of the legality of conclusions of the Court of Appeal. In particular, please provide information concerning measures applied in order to ensure that no statement resulting from torture was invoked as evidence in the proceedings, as required by Bahrain's commitment under ICCPR and CAT.
4. Please provide details of any investigation, judicial or otherwise, carried out in relation to the allegations that Mr. al-Khabbaz was tortured during interrogation and forced to confess against his will; if no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is consistent with the international human rights obligations of Bahrain under ICCPR and CAT.

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.

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 intend to publicly express our concerns in the near future as, in our view, the information upon which our concerns are based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the human rights implications of these concerns. Any public expression of concern on our part would 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  
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

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