

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 the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

REFERENCE:
UA BHR 3/2018

29 March 2018

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 the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 33/30, 34/18, 34/5 and 33/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the ill-treatment and sentencing of Mr. Nabeel Rajab.

Mr. **Nabeel Rajab** is President of the Bahrain Center for Human Rights and a Founding Director of the Gulf Centre for Human Rights. Mr. Rajab has allegedly been in detention since 13 June 2016.

Mr. Rajab was the subject of Opinion No. 12/2013 of the Working Group on Arbitrary Detention (A/HRC/WGAD/2013/12). He was also the subject of thirteen previous communications (sent on 6 October 2004, case no. BHR 6/2004; 25 July 2005, case no. BHR 3/2005; 5 March 2010, case no. BHR 1/2010; 22 March 2011, case no. BHR 4/2011; 16 June 2011, case no. BHR 12/2011, 9 September 2011, case no. BHR 18/2011; 24 July 2012, case no. BHR 6/2012; 23 May 2013, case no. BHR 3/2013; 14 October 2014, case no. BHR 13/2014; 15 April 2015, case no. BHR 2/2015; 14 December 2015, case no. BHR 10/2015; 4 July 2016, case no. BHR 3/2016). The last communication was sent on 22 May 2017, case no. BHR 5/2017. We thank your Excellency's Government for the replies received, including the last substantive reply received on 20 July 2017 regarding BHR 5/2017. We remain, however, concerned about Mr. Rajab's sentencing and the alleged conditions of his detention.

According to the new information received:

On 25 October 2017, Mr. Nabeel Rajab was transferred to Jaw prison from the Ministry of Interior Hospital in al-Qalaa where he had been detained since April 2017 due to health complications arising from alleged poor conditions of detention and lack of medical care. On his arrival at Jaw prison, he was allegedly

searched in a humiliating manner and his hair was forcibly shaved off. That night as he slept, prison guards raided his cell and searched him again.

On 15 January 2018, following an appeal submitted by his defence team, the Court of Cassation upheld Mr. Nabeel Rajab's sentence to two years in prison on charges of "disseminating false news, statements, and rumours about the internal situation of the Kingdom that would undermine its prestige and status". The charges relate to his participation in televised interviews in which he discussed the human rights situation in Bahrain.

On 21 February 2018, the Bahraini Criminal Court, in a parallel case, sentenced Mr. Rajab to five years in prison on charges of "spreading false rumours in time of war", "insulting public authorities" and "insulting a foreign country" in relation to Twitter posts about Bahrain's participation in Saudi Arabia's war on Yemen. During the hearing, his lawyer was not permitted to speak.

Serious concern is expressed at the sentencing of Mr. Rajab to two and five year prison sentences on the basis of repressive and overbroad legislation that criminalizes the legitimate exercise of his right to freedom of opinion and expression, in trials that seemingly failed to respect due process guarantees.

Grave concern also expressed at allegations of mistreatment of Mr. Rajab on his arrival and while in detention at Jaw prison which may amount to cruel and degrading treatment. As a result of his continued incarceration, further concern is expressed over the conditions of detention of Mr. Rajab going forward and the impact on his physical and mental integrity, especially in light of the determination of the Working Group on Arbitrary Detention's that he should be released.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to articles 7, 9, 10, 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Bahrain acceded on 20 September 2006, which prohibit torture and cruel, inhuman or degrading treatment and guarantee the rights to liberty and security of person, to be treated with humanity and respect for the inherent dignity of the human person, to due process, and to freedom of opinion and expression.

In this regard, we would also like to bring to your Excellency's Government's attention 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. While noting that article 19, paragraph 3, of the ICCPR provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, it calls on States to refrain from imposing restrictions that are not consistent with paragraph 3 of that article, including on discussion of government policies and political debate and reporting on human rights, government activities and corruption in government.

We would like to recall articles 7, 9 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Bahrain acceded to on 6 March 1998, which state that each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment and which require the investigation and prosecution of alleged offences.

In this connection, we would like to draw your attention to article 12 of the International Covenant on Economic, Social and Cultural Rights, which Bahrain acceded to on 27 September 2007. This includes the obligation of States to respect the right to physical and mental health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees to preventive, curative and palliative health services. The revised UN Standard Minimum Rules for the Treatment of Prisoners, usually referred to as the Nelson Mandela Rules (rules 22–26; 52; 62; and 71, para. 2), further establish States' responsibility to provide healthcare for prisoners. Inter alia, prisoner should be ensured continuity of medical treatment and care (Rule 24, (2)) and should receive prompt access to medical attention in urgent cases, including transfer to specialized institutions or civil hospitals for those requiring specialized treatment (Rule 27).

We would finally like to refer to the UN Declaration on Human Rights Defenders, in particular articles 1, 2 and 6(b) which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms and that everyone has the right freely to publish, impart or disseminate to others views, information and knowledge on all 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 the above-mentioned person 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 detailed information on how the detention and charges against Mr. Rajab are in conformity with international human rights law, especially with regards to articles 9, 10 and 19 of the ICCPR. Please further explain how the restrictions of the right to freedom of expression and opinion represented by these charges are necessary and proportionate to the aims listed in article 19(3) of the ICCPR.
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to alleged ill-treatment of Mr. Rajab in detention. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide details of Mr. Rajab's health status that prompted his transfer to the Ministry of Interior Hospital in April 2017 and indicate the results of medical examinations that supported his transfer back to Jaw prison months later.
5. Kindly indicate the specific measures currently taken at Jaw prison to ensure the continuation of medical treatment and care for Mr. Rajab since his transfer back to prison on 25 October 2017.
6. Please indicate what measures have been taken to ensure that human rights defenders in Bahrain are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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.

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

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