

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

REFERENCE:
UA THA 5/2018

7 December 2018

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 **Mr. Hakeem Ali Mohamed Alaraibi**, a refugee and former member of Bahrain's national football team, who is at imminent risk of being deported from Thailand to Bahrain despite the clear possibility of being persecuted and tortured. It is alleged that steps to execute the extradition order may be in process as a court hearing is scheduled at Bangkok Criminal Court later today or on 10 December.

According to the information received:

Back in 2012, Mr. Alaraibi was arrested and tortured by the Bahraini authorities reportedly due to the political activities of a family member. During his detention, it was reported that he was blindfolded and had his legs beaten. In January 2014, he was sentenced in absentia to 10 years imprisonment on charges of vandalising a police station. Mr. Alaraibi states he was playing in a televised football game at the time of the alleged crime. As a result of his conviction in absentia and the alleged torture he suffered during detention, Mr. Alaraibi fled to Australia in May 2014 and claimed asylum.

In November 2017, Mr. Alaraibi was granted refugee status and permanent residency in Australia. His protection visa is valid until 30 November 2022 and allows Mr. Alaraibi to remain in Australia indefinitely and to travel to and from Australia, so long as he does not travel to the country which he has sought protection from (Bahrain).

Since moving to Australia, he has spoken out in the media about the torture he reportedly suffered while in custody in Bahrain. He has also been a vocal critic of Sheikh Salman Al Khalifa, the president of the Asian Football Federation, who is also a cousin of the Bahraini king, Hamad bin Isa Al Khalifa.

On 27 November 2018, Mr. Alaraibi, together with his wife, boarded a plane from Melbourne to Bangkok for a holiday. Mr. Alaraibi was traveling on travel documents issued by the Australian Government. He was arrested upon arrival that evening at the Bangkok Suvarnabhumi Airport.

Mr. Alaraibi was reportedly detained under an Interpol Red Notice, following an arrest warrant issued by Bahraini authorities. The Red Notice against Mr. Alaraibi appears inconsistent with the INTERPOL Executive Committee's formal policy (June 2014) with respect to refugees and the warrant should not have been issued in this case. Mr. Alaraibi was informed by Thai immigration officials that he would be returned to Bahrain and they contacted the Bahraini Embassy.

On 1 December, around 10:00 pm, he and his wife were taken from the airport to a room in the Immigration Detention Centre in Bangkok's Suan Phlu district. Around 11.50am on 3 December, three officials wearing dark blue uniforms came to the room and took Mr. Alaraibi away. His wife pleaded for him to be allowed to take his cellphone with him, but it was disallowed. The officials also confiscated his Australian travel document.

Mr. Alaraibi is currently detained at the 3rd Immigration Division Bureau. The immigration police justified his detention by citing Articles 19 and 20 of Thailand's 1979 Immigration Act (the "Act"), which allows the authorities to detain an alien for up to seven days to inspect whether he/she is forbidden to enter the Kingdom.

On 3 December, in accordance with the Act, the Immigration Bureau filed an application to extend his detention for twelve more days, until 14 December 2018. Under this Act, Mr. Alaraibi can only challenge the detention order once the detention period expires.

On 7 December, around 11.30 am, the Ratchadapisek Criminal Court in Bangkok issued an arrest warrant for him based on the request from the Attorney General's Office. It is reported that this was issued on the basis of a warrant by Bahrain which was allegedly shared with Thailand. After this brief hearing, Mr. Alaraibi was granted access to a lawyer.

It is expected that Mr. Alaraibi will be brought by the police to court again this afternoon or on 10 December, while Thai authorities determine whether to comply with Bahrain's extradition request. Thailand's Extradition Act (2008) requires hearings to be conducted and provides for an appeal process.

While we do not prejudge the accuracy of the information we have received, we would like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of the person named above. We would like to stress that

each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We express great alarm as this case appears to be in contravention of the principle of non-refoulement as set forth in article 3 of the Convention against Torture (CAT), signed by Thailand on 1 November 2007, which provides that “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”; and that, “[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”. We would also like to refer to paragraph 9 of the General Comment No. 20 of the Human Rights Committee, which states that State parties “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement”.

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 related to the imminent extradition of Mr. Alaraibi from Thailand to Bahrain.
2. Please provide the details and, where available, the results of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to these allegations. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide information on the risk assessment carried out by Thai authorities to ascertain whether Mr. Alaraibi is at risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment, if he is extradited and how this decision is compatible with the international standards mentioned above.

4. Please provide information on the legal grounds for the arrest and detention of the aforementioned individual and explain how these measures are compatible with international norms and standards, as stated, inter alia, in the UDHR and the ICCPR.
5. Please indicate which concrete measures are being taken by your Excellency's Government to fulfil its obligations under the principle of non-refoulement.

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 may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 urgent 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

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