Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL BHR 1/2020

5 February 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/15, 40/16 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. Mohammed Ramadan and Mr. Husain Moosa Ali Moosa Hasan Mohamed, two Bahraini nationals who were again sentenced to death in January 2020.

In this connection, we would like to note that the case of the two individuals was raised in a urgent appeal addressed to your Excellency’s Government in December 2018 (UA BHR 6/2018). We thank your Excellency’s Government for the replies dated 7 and 11 February 2019 where it was stated that the two individuals concerned, together with ten others, were charged with the premeditated murder of a police officer and the attempted murder of a number of police officers by detonating an explosive device; causing an explosion for terrorist purposes, acquisition and possession of an explosive device and materials for its detonation; acquisition of molotov cocktails for terrorist purposes; and with participation in an unlawful gathering in order to perpetrate the crimes of attacking persons, threatening public order and security, and using violence in the context of the gathering.

We regret that the replies did not fully address the concerns raised in the communication.

The replies indicate that the two individuals concerned were convicted on the basis of their confessions but then also say that convictions were based on “a great deal of evidence other than their statements”. The replies, however, failed to provide any detail in this regard and therefore it appears that the two cases were only based on the confessions of the accused, without any other corroborating evidence.

It is also said that Mr. Mohamed Ramadan was examined by a forensic physician but it is not clear whether this was a qualified, independent and impartial medical
assessment, conducted in accordance with the minimum international standards and principles for clinical forensic assessment of victims.  

On the other hand, no medical examination appears to have been conducted on Mr. Husain Moosa Ali Moosa Hasan Mohamed.

It is therefore unclear what “reports of physicians from the Ministry of Interior” were found by the Special Investigation Unit and why they “had not been submitted previously”. In this regard, we wish to stress that States have an obligation to put in place and apply an effective process of evidence collection that accords with the Istanbul Protocol to comply with their obligation to investigate allegations of torture and other ill-treatment.

We would be grateful if these points, together with those raised in the questions at the bottom of the present communication, could be clarified by Your Excellency’s Government.

According to the information received:

Mr. Mohamed Ramadan and Mr. Husain Moosa Ali Moosa Hasan Mohamed were arrested in February 2014 and accused of the killing of a police officer in a bomb attack. They were subjected to torture and forced to make a confession.

In December 2014, they were convicted on terrorism-related charges and sentenced to death. Their conviction was upheld by the Court of Appeal in March 2015 and confirmed by the Court of Cassation in November 2015.

In March 2018, the Special Investigation Unit (SIU) of the Office of the Public Prosecution and the Ministry of Justice requested that the cases be returned to the Court of Cassation for re-examination in light of new evidence, including in relation to the allegations of torture.

In October 2018, the Court of Cassation quashed the death sentences and referred the cases back to the Court of Appeal.

In January 2020, the Court of Appeal again sentenced the two men to death.

While we do not wish to prejudge the accuracy of the information provided, we would like to reiterate the concerns previously expressed in the above-mentioned two cases in relation to the allegations of arbitrary detention, torture and convictions following trials that, if confirmed, would be in breach of international standards of fair trial and due process, in contravention with articles 7, 9, 10, 14 and 18 of the

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International Covenant on Civil and Political Rights (ICCPR) and articles 2, 15 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which were ratified by the Kingdom of Bahrain on 20 September 2006 and 6 March 1998 respectively.

According to article 15 of the CAT, admission of evidence obtained under torture into any proceeding is prohibited without exception. In this connection, we stress that, according to articles 7 and 12 of the CAT, State parties to the Convention have a positive obligation to conduct prompt and impartial investigation whenever there are reasonable grounds to believe that acts of torture have occurred, with a view to establishing facts, legal responsibilities, direct and supervisory, and to bringing those responsible to justice.

Should the death penalty be imposed in these circumstances, it would constitute an arbitrary killing.

In this context, we respectfully urge Your Excellency’s Government to promptly intervene to halt the execution of the two men, to suspend the death sentences against them pending the undertaking and completion of a full and independent investigation into the allegations that they were tortured, and to ensure that they are retried in accordance with the international law and standards subscribed by the Kingdom of Bahrain. We also call on your Excellency’s Government to establish a moratorium on executions with a view to fully abolishing the death penalty.

In connection with the above alleged facts and concerns, please refer to the Annex on Reference to international human rights law attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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/or comment(s) you may have on the above-mentioned allegations.

2. Please provide the details of the proceedings held before the Court of Appeal, following the decision of the Court of Cassation in 2018, and explain how they were compatible with Bahrain’s international human rights obligations.

3. In particular, please explain in detail the findings of the Special Investigation Unit and elaborate on how the Court of Appeal assessed the new evidence related to the allegations of torture, previously not taken into consideration. Please explain the reasoning followed by the Court of Appeal to again sentence the two individuals to death.

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 may publicly express our concerns in the near future in this case as, in our view, the information made available to us appears to be sufficiently reliable and indicates a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential human rights implications of these allegations. The press release will indicate that we have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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
Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency’s Government to article 3 of the Universal Declaration of Human Rights which states that “Everyone has the right to life, liberty and security of person”.

Furthermore, article 6 (1) of the International Covenant on Civil and Political Rights states that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.

Pursuant to article 5 of the United Nations Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by Economic and Social Council resolution 1984/50 of 25 May 1984, “(c)apital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the [ICCPR], including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings”.

Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) states that: “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever (…) may be invoked as a justification of torture (…)”.

Article 7 of the CAT also states that: “The State Party (…) shall (…) submit the case [of torture] to its competent authorities for the purpose of prosecution (…)”.

Article 12 of the CAT further provides that: “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”.

Article 14 of the CAT states that:” Each State Party shall ensure (…) that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. (…)”.

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 (…)”.

5