

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; 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 torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA SAU 2/2021

21 January 2021

Excellency,

We have the honour to address you in our capacity as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; 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 torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 41/18, 42/22, 43/4, 43/16 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged imminent deportation from Saudi Arabia to Yemen of Mr. [REDACTED] (also known as [REDACTED]), **a Yemeni blogger and human rights defender.**

We wish to place this communication in the context of communication UA SAU 10/2020 sent on 1 July 2020 whereby Special Procedure mandate holders expressed concerns regarding the alleged arbitrary arrest and detention of [REDACTED] and the risk of a return to Yemen, where Mr. [REDACTED] might face attacks and other forms of persecution because of threats to his life by Yemeni armed groups. We take note of the Government's reply of 28 August 2020; we regret however the absence of information in relation with question No. 3, on measures to prevent the deportation or transfer of [REDACTED] to a place where his personal security and integrity may be at risk.

According to the information received:

Mr. [REDACTED] fled Yemen for Saudi Arabia in June 2019 after having received death threats from armed groups. While in Saudi Arabia, Mr. [REDACTED] posted a video on social media advocating for respect for human rights with the following words: 'Everyone has rights and should be able to practice them freely, including gay people.'

On 6 April 2020, he was arrested by the police in Riyadh, where he was living as an undocumented migrant. According to information provided by your Excellency's Government on 28 August 2020, Mr. [REDACTED] was then charged for having committed cybercrimes punishable under Article 6 of the Cybercrime Act by publicly advocating homosexuality.

On 20 July, a Saudi court sentenced Mr. [REDACTED] to 10 months imprisonment and a fine of 10,000 Saudi Riyals (USD 2,700), as well as deportation to Yemen upon release.

According to information at our disposal, [REDACTED] is expected to be released from detention on 26 January, and subsequently deported to Yemen.

At the same time, the information available to us indicates that while in detention, Mr. [REDACTED] continued to receive death threats by Yemeni armed groups via social media and phone communications; threats that refer to possible violence against him if he returns to Yemen.

While we do not wish to prejudge the accuracy of these allegations, we wish to reiterate the concerns expressed in our previous communication (UA SAU 10/2020) that there are reasons to conclude that, if deported back to Yemen, Mr. [REDACTED] is at risk of being attacked and be subjected to other forms of persecution.

Should these allegations be confirmed, they would be in contravention of the rights of every individual to life, physical integrity, and the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as codified, inter alia, in Articles 3, 5, and 14 of the Universal Declaration of Human Rights (UDHR), and articles 3, 13, and 23 of the Arab Charter on Human Rights. Furthermore, we remind your Excellency's Government of its obligation, "not [to] 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" (Human Rights Committee, General Comment No. 20, para 9). This principle enshrined in article 3 of the Convention against Torture acceded by your Excellency's Government on 23 September 1997, is stronger than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status. In addition, we would like to draw the attention of your Excellency's Government to paragraph 16 of the Resolution A/RES/65/205 of the UN General Assembly, which "...recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement."

In connection with these allegations and the information received, we would also like to refer to articles 1, 2, 6, and 12 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, article 12 provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

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 Mr. ██████, 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 as to how comprehensive individual risk assessment are carried out by relevant Saudi authorities, both in terms of procedural safeguards and analysis of the country of return situation, so as to ensure that individuals will not be subjected to violations of their fundamental rights in transit or upon return.
3. Please provide information on the safeguards that are in place and the measures taken to protect the life and the physical and psychological integrity of Mr. ██████ and in particular on the measures considered to prevent his deportation or transfer to a place where his personal security and integrity may be at risk.

While awaiting a reply to this urgent communication, we respectfully urge your Excellency's Government to urgently halt the decision to deport Mr. ██████, and ensure a full and thorough individual assessment to evaluate the risks he may face upon return to Yemen, in respect of his fundamental safeguards and in compliance with international law.

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. We also believe that the wider public should be alerted to the potential implications of the above-mentioned 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.

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.

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.

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

Victor Madrigal-Borloz
Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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