

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

Ref.: AL BHR 1/2022
(Please use this reference in your reply)

21 February 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/20, 44/5 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention in Serbia of Mr. **Ahmed Jaafar Mohammed Ali**, and his extradition to Bahrain, on 24 January 2022, based on a red notice by the Interpol issued on Bahrain's request, and despite interim measures instructed by the European Court of Human Rights. Since his arrival in Bahrain, Mr. Ali, who may be facing death penalty, remains without access to legal assistance.

According to the information received:

Mr. Ahmed Jaafar Mohammed Ali (أحمد جعفر محمد علي) is a 49-year old national of Bahrain. He was allegedly a labour rights activist since 1994, for which reason he was arrested and allegedly subjected to torture during interrogations, in December 2007. After his release, Mr. Ali decided to leave Bahrain amid the 2011 uprising due to the shrinking civic space and the alleged crackdown on dissent, as he feared for his and his family's security.

From 2011 to 2021, Mr. Ali resided in Iran with his wife and four children, before moving to Serbia, in November 2021, to pursue higher education and allegedly seek asylum for him and his family.

On 3 November 2021, reportedly a few days following his arrival in Belgrade, Mr. Ali was arrested on the basis of a red notice issued by the International Criminal Police Organisation (Interpol) at the request of Bahrain, referencing an arrest warrant signed by the Public Prosecutor of Bahrain on 6 January 2015, laying out terrorism-related charges against Mr. Ali, including attempted murder of police officers, and manufacturing and possessing of explosives committed during the period from 2013 to 2015.

On the same day of his arrest, the High Court of Belgrade decided to detain Mr. Ali pending an extradition request, and he was transferred to the Belgrade District Prison. On 7 December 2021, the Court approved Mr. Ali's extradition to Bahrain, without a risk assessment to evaluate potential serious violations of his human rights in case of return.

Since his arrest in Serbia, and throughout the extradition proceedings, Mr. Ali was denied all contact with the outside world including with his family or his ex officio lawyer. In his letter to the judge, dated 20 December 2021, Mr. Ali explained the reasons why he left Bahrain, the serious human rights violations he feared if returned, and claimed his right to contact a lawyer in order to prepare his defence.

On 13 December 2021, Mr. Ali's lawyer appealed the extradition decision. The Court heard the case, a month later, on 17 January 2022, in the presence of Mr. Ali and a lawyer, appointed by the Serbian authorities, where they elucidated the request to seek asylum in Serbia, for fear of persecution if returned to Bahrain, due to his labour rights activism and his conviction of terrorism-related offenses that took place between 2013 and 2015, a period during which he was living in Iran. Despite the request made to the Court, Mr. Ali was not allowed access to asylum procedures in Serbia.

The next day, on 18 January 2022, the High Court of Belgrade rejected the appeal and informed the Ministry of Justice of its decision authorizing the extradition of Mr. Ali.

Having exhausted all domestic remedies, Mr. Ali's lawyer submitted an application to the European Court of Human Rights (ECtHR) requesting the review of the Serbian Court decision approving the extradition of Mr. Ali, invoking a potential violation of article 3 of the European Convention on Human Rights. In response, the ECtHR indicated that in the interests of the parties and to ensure proper proceedings, the Government of Serbia should refrain from extraditing Mr. Ali until 25 February 2022, at 5 p.m. CET, referring to rule 39 of the Rules of the Court. The ECtHR further requested information and clarification from the Serbian Government regarding legal mechanisms in Bahrain enabling the review of the life imprisonment sentences imposed on Mr. Ali and permitting the right to parole; his right to retrial as per Bahrain's diplomatic assurances to Serbia; the consideration of potential risks of torture or other forms of ill-treatment if returned to Bahrain; and on the asylum procedures made available to Mr. Ali in Serbia. The deadline for submitting the required information to the Court was set on 11 February 2022.

Despite the ECtHR interim measures, the Serbian Government decided to proceed with the extradition of Mr. Ali, on 24 January 2022, who reportedly left Belgrade airport at 5.10 a.m. CET, aboard a private jet, flight number ROJ23, which landed in Manama at 11.11 a.m. (Bahrain Time). It is reported that a Serbian High Court judge had sent a letter to the police, on 23 January 2022, mentioning the interim measures instructed by the European Court and requesting from the police to refer to the Ministry of Justice as the only competent authority in the case of extradition of Mr. Ali.

On 27 January, the Serbian Government sent a clarification note to the ECtHR, explaining that the extradition final decision by Belgrade High Court was issued on 17 January 2022, and transferred to the Ministry of Justice for execution. The next day, the Ministry adopted the extradition order, prior to the instruction of interim measures, under the condition that Mr. Ali would be entitled to a re-trial in his presence before the competent court in Bahrain.

Upon his arrival in Bahrain, the Ministry of Interior of Bahrain issued a statement indicating the return of Mr. Ali, as a result of cooperation with Interpol, and confirming that he is facing three counts of life-imprisonment and ten additional years for terrorism-related offenses. The Court also decided to strip Mr. Ali of his Bahraini nationality, as part of the sentence against him.

On 29 January 2022, a statement was published by the Public Prosecution of Bahrain, stating that Mr. Ali was “found guilty of attempted murder of police officers, citizens and other terrorist offences...the convict was involved in managing and training terrorist cells, and manufacturing and preparing explosive materials with the aid of the Iranian Revolutionary Guard as well as other terrorist groups in Iraq and Bahrain.” Furthermore, the statement mentioned that the Prosecution initially requested the death penalty in the case of Mr. Ali, which was reduced to life sentence by the Court. Although the prosecution indicated that Mr. Ali would be allowed to pursue judicial proceedings and granted his legal rights, no clear information was made available about his potential retrial or the review of his sentences, which may exceed 80 years imprisonment.

Since the return of Mr. Ali in Bahrain, he was reportedly held in the custody of the Criminal Investigation Directorate (CID) for 24 hours, before being transferred to the Dry Dock detention centre, on 25 January, and subsequently to Jau Prison, on 5 February.

Throughout his detention, Mr. Ali was allowed to briefly call his family, on five occasions, for only a few minutes each, while requests for family visits have been declined, stating COVID-19 related restrictions. Mr. Ali has been further denied any contact with his lawyer or access to legal representation, and has been allegedly requested to sign paperwork to appeal his convictions, without the presence or advice of a lawyer.

On 8 February 2022, during the last call between Mr. Ali and his family, he reportedly demonstrated symptoms, such as a runny nose, cough and reported high temperature, suggesting he might have contracted COVID-19.

Mr. Ali was convicted and sentenced in absentia in a case about which Special Procedures’ mandate holders have previously expressed concern, in an urgent appeal (UA BHR 1/2017) sent on 19 January 2017, in particular concerning the irregularities in judicial proceedings and the use of false confessions extracted through torture as a basis for the ruling. Three of the persons convicted in this case were executed on 15 January 2017.

While we do not wish to prejudge the accuracy of these allegations, we are expressing our most serious concern about the denial of Mr. Ali’s due process and fair trial, including his right to be presumed innocent; his right to confidential and regular access to a legal counsel of his own choosing; his right to prepare and exercise his right to defence; and his right to contest the legality of his detention. These rights are set out in articles 9, 10 and 14 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Bahrain on 20 September 2006. The denial of these safeguards contravenes the fundamental requirements of due process, and is likely to lead to further violation of his rights, as it significantly increases the risk of torture and ill-treatment and the extortion of confessions serving as evidence for conviction,

and may lead to unfair sentencing, subsequent deprivation of liberty possibly for life or even the deprivation of life.

We are indeed further concerned by the possibility of imposing the death penalty in the present circumstances. According to the information available to us, other defendants convicted of the same charges, were sentenced to death in the past and three of them were executed in 2017. We wish to stress that when not legally prohibited, the death penalty may be imposed only following compliance with a strict set of substantive and procedural requirements and guarantees of a fair trial, 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.

We are also drawing Your Excellency's Government's attention to absolute and non-derogable obligation to prohibit torture and other forms of ill-treatment, as codified in articles 1, 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by the Kingdom of Bahrain on 6 March 1998. Confessions and other information extracted under torture or ill-treatment - as it is alleged to have occurred in this case - are not admissible into any legal proceeding, as their admission violates the rights to due process and a fair trial (CAT, article 15). Any conviction on this basis is unfair and the execution of any death sentence as a result, likely to be an arbitrary or summary execution.

In addition to these serious concerns, is the concern of what seems to be an abusive application of national counter-terrorism legislation and the instrumentalization of international security cooperation mechanisms in this context. United Nations Human Rights Council, General Assembly and Security Council have urged States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law, including human rights law, of which due process guarantees are a critical part.

That Mr. Ali was deprived of his nationality in the name of countering terrorism has been a long-standing concern for UN Human Rights Mechanisms, for the Office of the High Commissioner for Human Rights, and for our mandates. Numerous recommendations to abolish this policy have been made over the years. International law has a well-established role in limiting States' regulation of nationality. International courts and tribunals have long recognised that international law imposes express limits on States' powers, both through customary international law and treaty obligations. We are also concerned by the reported lack of due process guarantees in the proceedings against Mr. Ali in Bahrain. All individuals, regardless of the severity of the charges brought against them, have a right to due process and fair trial. Provisions within many universal terrorism-related conventions require compliance with the right to a fair trial and the rule of law. The right to a fair trial is recognized not only in human rights treaties but also within international humanitarian law, international criminal law, counterterrorism conventions and customary international law (see A/63/223).

We emphasize again that the imposition, and subsequent execution of a death sentence, upon the conclusion of a trial in which due process and fair trial standards have not been respected would constitute an arbitrary killing for which the State is responsible.

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 detailed information about the factual and legal ground of the charges filed against Mr. Ali.
3. Please explain how Mr. Ali was able to commit the offence he has been accused, tried and sentenced for, although, according to the information in our possession, he was living in Iran during the period of 2011-2021.
4. Please provide detailed information about the conditions of detention of Mr. Ali, during the initial phase of his detention upon his forcible return to Manama by Serbian authorities; and which authorities conducted his interrogations.
5. To what extent was Mr. Ali's lawyer present during the investigation and in particular during the interrogations? Please also explain whether Mr. Ali was requested to sign appeal documents without the presence of his lawyer.
6. Please provide detail about the conditions under which the incriminating evidence against Mr. Ali has been obtained, including alleged forced confessions by other defendants, which were apparently part of the evidence retained by the court against him.
7. Please provide detailed information on the steps taken to ensure that criminal proceedings against Mr. Ali are fully compliant with the norms of due process recognized in international law, and observant of fundamental safeguards, including unrestrained and confidential access to a lawyer of his own choice, including during his interrogation and other critical phases of his investigation, regular contact with his family, and the possibility to contest the legality of his detention before a court. Please explain how the judicial proceedings in this case are compatible with the international human rights obligations of Bahrain under the ICCPR and the CAT.
8. Please provide information on the legal and factual grounds on which Mr. Ali was stripped of his Bahraini nationality, and how this is compatible with international human rights law binding on Bahrain. Please explain whether in case of retrial or appeal, Mr. Ali would be considered as a Bahraini national.

9. Please provide information in details of how your Excellency's Government's counter-terrorism efforts comply with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123, 72/180 and 73/174 in particular with international human rights law, refugee law, and humanitarian law contained therein.

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

We are informing your Excellency's Government that in absence of a prompt and detailed response to this communication, indicating the action taken to ascertain that the proceedings against Mr. Ali are adhering to Bahrain's international legal obligations, given that Mr. Ali's is at risk of long term deprivation of liberty and possibly of his life, we reserve the right to express publicly our concern in this and past similar cases. Any public expression of concern on our part will indicate that we have been in contact with Your Excellency's Government, on several occasions, to clarify the matter and share our recommendations.

We would like to inform your Excellency's Government that a similar letter was sent to the Government of Serbia.

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

Nils Melzer

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

Morris Tidball-Binz

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

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"; article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Bahrain on 20 September 2006, which provides 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".

We would also like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Bahrain ratified on 6 March 1998. We would also like to emphasise that "[A]ll methods of torture are subject to the same prohibition and give rise to the same legal obligations, regardless of whether the inflicted pain or suffering is of a "physical" or "mental" character, or a combination thereof" (A/HRC/43/49).

We also like to bring to your Excellency's Government attention the legal and procedural safeguards against torture and ill-treatment including the right to legal counsel and to contact one's family from the outset of arrest provided in the UN Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment (Body of Principles). According to body of principles the "Communication of the detained or imprisoned person with the outside world, and in particular his family ... shall not be denied for more than a matter of days." (Principle 15). Notwithstanding, the right to immediately inform a person of his choice of the arrest (Principle 16.1) and to further correspond with family "detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world." (Principle 19). We also refer to paragraph 28 of the General Assembly resolution 68/156 (2014) which emphasises that conditions of detention must respect the dignity and human rights of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment.

We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolutions 35/34 and 22/6 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

Regarding Mr. Ali's nationality stripping, we respectfully remind your Excellency's Government that the right to nationality is enshrined in article 15(1) of

the UDHR, while article 15(2) UDHR prohibits of its arbitrary deprivation. All of the principal international and regional human rights treaties implicitly recognise this prohibition by proscribing discrimination on various grounds in respect of the right to nationality. More recent treaties, such as the Convention on the Rights of Persons with Disabilities, recognise the prohibition in express terms (article 18-1).

Beyond this treaty framework, the United Nations has also repeatedly and regularly confirmed the prohibition against the arbitrary deprivation of nationality, including by way of resolutions of the General Assembly, the Human Rights Council and its predecessor the UN Commission on Human Rights (UNGA, Resolution 50/152, UN Doc. A/RES/50/152, 9 February 1996, para. 16; UN Commission on Human Rights, ‘Resolution on Human Rights and Arbitrary Deprivation of Nationality’, 1997/36, 11 April 1997, preamble). The UN Secretary General has also issued multiple reports dedicated to the subject (A/HRC/10/34, A/HRC/13/34 or A/HRC/25/28). The issue is regularly revisited given the UN’s deep concern that the arbitrary deprivation of nationality may impede an individual’s full enjoyment of their broader and essential human rights (A/HRC/RES/20/5). The prohibition has also been examined and upheld by the International Law Commission (‘Draft Articles on the Expulsion of Aliens’, 2014).

Arbitrary deprivation of citizenship is therefore a violation of international law, and it is our clear view that the widespread use of citizenship stripping in the name of countering terrorism works against the spirit and intention of the International Covenant on Civil and Political Rights and the UDHR.

Furthermore, we refer to article 9 of the CCPR, taking into account the Human Rights Committee (HRC) general comment No. 35 (2014) on liberty and security of person. The State should, inter alia, ensure that, in practice, all persons deprived of their liberty are informed promptly of their rights and guaranteed all fundamental legal safeguards from the very outset of detention, including prompt access to counsel of their own choosing and confidential meetings with counsel. The State should also ensure that any failure in that regard constitutes a violation of procedural rights entailing appropriate sanctions and remedies. In addition, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9(3) and 9(4) of the Covenant. Judicial oversight of detention is a fundamental safeguard of personal liberty and is essential in ensuring the legality of detention and the right to Habeas Corpus, consequently the right to an effective remedy as stated under article 8 of the Universal Declaration of Human Rights and article 2(3) of the Covenant. We also recall paragraph 27 of General Assembly Resolution 68/156, which, “[r]eminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that secret places of detention and interrogation are abolished.”

We would also like to underline conclusion of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, calling on States to “[E]nsure that all detainees are held in accordance with international human rights standards, including the requirement that all detainees be held in regularized facilities, that they be registered, that they be allowed contact with the outside world (lawyers, International Committee of the Red

Cross, where applicable, family), and that any form of detention is subject to accessible and effective court review, which entails the possibility of release”.

We would also like to reiterate the Ruling of the European Court of Human Rights in *Vinter and Others v UK (2013)*, which concluded that “[A] whole life prisoner is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence will take place or may be sought. Consequently, where domestic law does not provide any mechanism or possibility for review of a whole life sentence, the incompatibility with article 3 on this ground already arises at the moment of the imposition of the whole life sentence and not at a later stage of incarceration. The Court elaborated on this standard in the *Trabelsi v Belgium* (September 2014) by holding that the necessary review mechanism must enable the national authorities to ascertain, on the basis of objective, pre-established criteria of which the prisoner had precise cognisance at the time of imposition of the life sentence, whether, while serving his sentence, the prisoner has changed and progressed to such an extent that continued detention can no longer be justified on legitimate penological grounds.

Lastly, we would like to draw the attention of your Excellency’s Government to paragraph 8a of Human Rights Council Resolution 16/23, which reminds States that “Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture.”