

King Shaikh Hamad bin 'Issa Al Khalifa
Office of His Majesty the King
P.O. Box 555 Rifa'a Palace
Manama
Bahrain
Fax: +973 1766 4587



London, 07 November 2017

Dear King Khalifa,

We write to make representations regarding the conviction and sentencing of Sayed Nazar Naama Baqquer Ali Yusuf Alwadaei, Hajar Mansoor Hasan and Mahmood Marzooq Mansoor on 30 October 2017. The defendants are close relatives of Sayed Ahmed Alwadaei, the founder of BIRD in London, United Kingdom.

Grave concerns have been raised by lawyers in the case regarding the fairness of the criminal proceedings these three individuals have been subject to, potentially rendering the conviction and sentence received, three years in prison, unlawful.

We respectfully remind King Khalifa that the Government of Bahrain is obligated to respect, uphold and implement within its territorial jurisdiction all individual rights guaranteed by international and regional instruments to which it has acceded. Of particular significance to the matters detailed below are the rights guaranteed by the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), and the Arab Charter on Human Rights (ACHR). We further highlight the obligation of UN Member States to cooperate in the protection and promotion of human rights.

BACKGROUND

In 2011, Bahrain witnessed a wave of Arab Spring protests. Hundreds of thousands of Bahrainis protested in support of democratic reforms and against human rights abuses. The Government of Bahrain responded to the protests with lethal force; protesters were shot in the streets and a number were tortured to death in Bahraini prisons, as the Bassiouni Commission concluded. For joining these protests and speaking to international media, Sayed Ahmed Alwadaei was arrested, tortured and sentenced by a military court to six months in prison. The sentence was later quashed by a civilian appeals court, and in 2012 he came to the UK, where he was granted refugee status. The UK government recognised that Mr Sayed was at risk of persecution in Bahrain due to his political activities. In the UK, Mr Alwadaei co-founded the London-based Bahrain Institute for Rights and Democracy (BIRD), a non-profit human rights organisation. In 2015, the Bahraini government stripped him of his citizenship, rendering him stateless.

In October 2016, Mr Alwadaei protested against King Hamad of Bahrain's visit to 10 Downing Street. Hours later, his wife, Duaa Alwadaei, who was due to return from a visit to family in Bahrain, was detained along with her infant son at Bahrain International Airport by Bahraini security forces. She was interrogated over seven hours, during which government officers threatened her and her family, as well

Bar Human Rights Committee of England and Wales (BHRC), 53-54 Doughty Street, London WC1N 2LS
Chair: Kirsty Brimelow QC | Vice-Chairs: Blinne Ní Ghrálaigh & Schona Jolly

coordination@barhumanrights.org.uk | www.barhumanrights.org.uk
+44 (0) 20 7404 1313 ext. 359 | +44 (0) 7854 197862

as Mr Alwadaei's family. Mrs Alwadaei was told she would not be leaving Bahrain. However, after days of international pressure and the intervention of the US embassy – the couple's infant son is a US citizen – Mrs Alwadaei was able to leave Bahrain and the family was reunited in London.

The threats against Mr and Mrs Alwadaei's families were followed through in March 2017. Duaa Alwadaei's brother Nazar Alwadaei and cousin Mahmoud Marzooq were arrested on 2 March; her mother Hajar Mansoor Hassan was arrested on 5 March. The three allege that they were ill-treated, tortured and extensively interrogated without the presence of their lawyers. Mrs Hassan required hospitalisation on the first day of her detention. Police interrogated them about Mr Alwadaei's life and work in the United Kingdom. They were forced to sign coerced confessions implicating them in a "fake bomb" incident in January 2017, and subsequently charged under Bahrain's anti-terrorism law. The Ministry of Interior's own forensic reports found no DNA or fingerprints, nor any other form of physical evidence, tying the three defendants to the January 2017 incident. The timing of interrogations and the detention of the aforementioned three individuals coincide with Mr Sayed Alwadaei's attendance at the 34th session of the UN Human Rights Council, held in Geneva, Switzerland, from 27 February to 24 March 2017.

In March 2017, six UN human rights experts expressed "grave concern" at the arbitrary detention and torture of Mr Alwadaei's family. They said, "these measures apparently aim to intimidate and impair the human rights activities of Mr. Sayed Ahmed Mustafa Mohamed al-Wadaei, and that they may have occurred, at least in part, in reprisal for Mr. Sayed Ahmed Mustafa Mohamed al-Wadaei's cooperation with the human rights mechanisms of the United Nations, in particular his attendance to the 34th session of the Human Rights Council."

Unable to exact "punishments" against Mr Alwadaei for his human rights work based in the UK, the Government of Bahrain has pursued a pattern of reprisals against his family.

FAILURE TO COMPLY WITH FAIR TRIAL SAFEGUARDS

There are significant grounds to believe that judicial proceedings have not complied with the essential guarantees of a fair trial and due process. The failures are potentially so serious that any sentence would be unlawful. In particular the court has convicted the three accused solely on the basis of uncorroborated challenged confessions without carrying out any proper investigation into allegations of torture and coercion .

The right to liberty and security, and to fair proceedings is enshrined in articles 3, 9 and 10 of the UDHR, articles 9 and 14 of the ICCPR, to which Bahrain acceded in 2006, and articles 13, 14 and 16 of the ACHR. The absolute and non-derogable prohibition of torture and other ill-treatment is codified in articles 2 and 16 of the CAT, which Bahrain ratified in 1998, and article 7 of the ICCPR. Article 15 of CAT confirms the obligation to exclude statements extracted under torture, and article 12 and 13 the duty to investigate complaints promptly and impartially.

The prohibition against torture is widely accepted to have attained the status of jus cogens norm; the Committee Against Torture (CAT) opines that the safeguards to including those measures in articles 3 to 16 of the CAT are rules of customary international law which have also attained the status of jus cogens norms. The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) specifically provide at Rule 1: "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification."

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), Principle 6 confirms, cruel, inhuman or degrading treatment or punishment should

be “interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.”

A thorough investigation should be initiated immediately or without delay as soon as there is suspicion or an explicit allegation and must be reported ex officio to the relevant authorities. Article 14(g) of the ICCPR and article 16(6) of the ACHR outline the fundamental and basic principle that no one must be “compelled to testify against himself or to confess guilt”. Principle 21 of the UN Body of Principles specifically prohibits undue advantage of a detained person for the purposes of compelling them to confess. Further, that “[n]o detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.” As reiterated by the Special Rapporteur on Torture “[t]he inadmissibility of evidence obtained under torture is one of the most crucial safeguards in the criminal justice system.”

In May 2017, the UN Committee Against Torture expressed concern at the “widespread use of forced confessions as evidence in [Bahraini] courts and at the absence of information of any cases in which officials have been prosecuted and punished for extracting confessions in violation of article 15 of the Convention.” The concluding remarks of the committee render objective evidential support to the accounts of Nazar Alwadaei, Mahmoud Marzooq and Hajar Mansoor Hassan summarised above.

Article 16 of the ACHR provides for the right to a lawyer of one’s choosing. Principle 17 of the UN Body of Principles and the Nelson Mandela Rules, Rule 61 affirm the entitlement to legal counsel, promptly and without delay. The UN Special Rapporteur on extrajudicial, summary and arbitrary executions also clearly confirms “proceedings in which, for example, the defendant has not been provided ... with legal representation as required, cannot be considered as fair”. The Human Rights Committee has stated that the protection of the detainee requires prompt and regular access to lawyers. This is echoed by the Committee Against Torture. The Special Rapporteur on Torture has said access to a lawyer should be provided within 24 hours. Bahrain has breached Nazar Alwadaei, Mahmood Marzooq and Hajar Mansoor Hassan’s fair trial rights by interviewing and interrogating them without a lawyer making the consequential legal proceeding unlawful.

BREACHES OF ISTANBUL PROTOCOL

Special Rapporteurs have highlighted the importance of forensic medical science as a crucial tool in addressing torture and specifically the “fundamental importance” of the Istanbul Protocol for the prevention of torture and other ill-treatment. The CAT reaffirmed that investigations into allegations of torture “should include as a standard measure an independent physical and psychological forensic examination as provided for in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).”

The Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, clearly requires “[t]he investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.”

The Nelson Mandela Rules require prisoner file management systems to ensure a secure audit trail including records of “Requests and complaints, including allegations of torture or other cruel, inhuman or degrading treatment or punishment, unless they are of a confidential nature; and Information on the circumstances and causes of any injuries or death and, in the case of the latter, the destination of the

remains” [Rule 6 and 7(d) and (f)]. Further that “[e]very prisoner shall be granted access to the records pertaining to him or her...” [Rule 9].

Although a complaint was submitted on 9 March 2017 to Bahrain’s Special Investigation Unit (SIU) on behalf of Hajar Mansoor Hassan, it does not appear to have been fully or properly investigated: on 13 March 2017, Mrs Mansoor was transferred to the SIU building for an interview, which her lawyer attended. No further investigative steps or results were announced after this meeting. In September 2017 Mrs Mansoor’s lawyer was informed by the SIU that her case was closed. The SIU has refused, to date, to disclose any details relating to its “investigation” or conclusion. Complaints on behalf Hajar Mansoor, Nazar Alwadaei and Mahmood Marzooq were also submitted to the Ombudsman of the Ministry of Interior. There has been no disclosure of any investigation or conclusions by the Ombudsman with respect to the allegations made by Mrs Mansoor. In the cases of Mr Alwadaei and Mr Marzooq, the Ombudsman refused to accept their complaints citing alleged errors in procedure, even though the same procedure had been used to submit Mrs Mansoor’s complaint. The apparent failure to properly and fully investigate the allegations of torture does not comply with the Istanbul Protocol and thus breaches the procedural obligations under article 12 of the CAT.

REPRISALS FOR SAYED AHMED MUSTAFA MOHAMED ALI ALWADAEI’S HUMAN RIGHTS WORK

The United Nations Special Procedures “underline that Human Rights Council resolutions 12/2 and 24/24 call on Governments to prevent and refrain from all acts of intimidation or reprisal against those who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights. Moreover, in his 2016 report on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/33/19), the Secretary-General reiterates his firm position that all such acts, no matter how seemingly subtle or explicit, are without exception unacceptable and must be halted immediately and unconditionally, effective remedies provided and preventive measures adopted and implemented to prevent reoccurrence. (para. 49)”

Further that articles 19, 21 and 22 of the ICCPR, guarantee the right to freedom of opinion and expression, the right of peaceful assembly and the right to freedom of association, respectively. The Special Procedures stated “[i]n this connection, we reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on (i) discussion of government policies and political debate; reporting on human rights; political activities; peaceful demonstrations, and expression of opinion and dissent.” The Human Rights Committee recall “detention may be arbitrary by virtue of the fact that it represents punishment for freedom of expression, in violation of article 19.”

The arrest, detention and mistreatment of Mr Alwadaei’s family as a response to Mr Alwadaei’s human rights work is clearly in breach of Bahrain’s international obligations.

CONCLUSION

For the reasons outlined therein, we respectfully submit that the conviction of and sentences passed on 30 October 2017 against Sayed Nazar Naama Baqquer Ali Yusuf Alwadaei, Hajar Mansoor Hasan and Mahmood Marzooq Mansoor may violate the rights guaranteed by the UDHR, the ICCPR, the CAT, and the ACHR, to which the Government of Bahrain is a party. In line with its obligation to cooperate in the protection and promotion of human rights, we urge the Government of Bahrain to review these cases and a full and proper investigation be undertaken into all torture allegations, and stay their sentences pending such review and investigation.