

**Human Rights Council
Working Group on Arbitrary Detention**

ADVANCE UNEDITED VERSION

**Opinions adopted by the Working Group on Arbitrary
Detention at its seventy-third session,
31 August– 4 September 2015****No.23/2015 (Bahrain)****Communication addressed to the Government on 18 June 2015****Concerning Sheikh Ahmed Ali Al-Salman****The Government has not replied to the communication****The State is a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/30/69), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Sheikh Ahmed Ali Al-Salman is a 50 year old national of Bahrain. He is the Secretary General of the main opposition movement in Bahrain which is known as the Al-Wefaq National Islamic Society, and a key religious figure in the country. In 1994, Sheikh Ali Al-Salman was reportedly arrested, tortured and detained for months without trial and then deported and forced to live in exile for over 15 years. He has been arrested and interrogated at least four times since the uprisings which occurred in February 2011 in Bahrain.

4. On 28 December 2014, Sheikh Ali Al-Salman presented himself to the Criminal Investigation Directorate (CID) of the Ministry of Interior of Bahrain in response to a summons that had been delivered to his home address the day before. According to the source, the summons did not provide any information about the reasons for which Sheikh Ali Al-Salman's presence was requested. His lawyers were not allowed to accompany him during the interrogation, and he was held at the CID for over ten hours.

5. Sheikh Ali Al-Salman was arrested and detained the same day by the security forces of the Ministry of Interior on the instructions of the Public Prosecution. He was held at the CID for the first night of his detention, and was subsequently transferred to the East Riffa Police Station.

6. The arrest occurred two days after Sheikh Ali Al-Salman was re-elected as the Secretary General of Al-Wefaq. According to information received, he was targeted by the authorities on the basis of the public expression of his views and opinions as a political opposition leader, a Shi'a Muslim and a religious figure. In his public speeches and televised interviews, as well as in the speech delivered at his party's General Assembly upon re-election, Sheikh Ali Al-Salman reportedly called for the establishment of a democratic regime and the accountability of the Government before the Parliament. He was reported to have reaffirmed his party's determination to pursue power in Bahrain through peaceful means, to achieve the reform demands of the 2011 Arab Spring uprising and hold those responsible for human rights violations to account, while also stressing the need for equality for all in Bahrain, including the ruling family.

7. On 5 January 2015, Sheikh Ali Al-Salman was formally charged. The charges brought against him under various articles of the Bahrain Penal Code included: (i) inciting a change of regime by non-peaceful means (with a penalty of up to ten years' imprisonment); (ii) inciting hatred of a segment of society against another (with a penalty of up to two years' imprisonment and/or a fine not exceeding Bahraini Dinar (BD) 200); (iii) inciting others to break the law (with a penalty of up to two years' imprisonment and/or a fine not exceeding BD 200), and (iv) insulting the Ministry of Interior (with a penalty of up to three years' imprisonment or payment of a fine).

8. On 6 January 2015, Sheikh Ali Al-Salman's detention was extended for 15 days. During this time, he was interrogated by the Public Prosecution. The source claims that

some interrogation sessions lasted for 13 hours, and that the interrogation primarily concerned 18 speeches and one interview delivered between 2012 and 2014. Sheikh Ali Al-Salman had difficulty remembering specific details about the speeches but, according to the source, the Public Prosecution refused to provide him with the details on which it based its interrogation, and did not provide his lawyers with copies of the records of interrogation.

9. The source informs that Sheikh Ali Al-Salman and his legal representatives were not provided with any meaningful opportunity to examine the evidence on record in the Public Prosecution file, including the audio or video recordings of his public speeches, televised interviews, and the transcripts thereof, despite requests made by the defence to access this evidence. According to the source, Sheikh Ali Al-Salman never advocated the violent overthrow of the Government, and has always specifically denounced violence. In his last speech on 26 December 2014, two days before his arrest, Sheikh Ali Al-Salman said that he did not want Bahrain's opposition to carry arms like the opposition in other countries.

10. In addition, the source alleges that the prosecution witness was examined by the Public Prosecution without notification and in the absence of Sheikh Ali Al-Salman's legal representatives, despite a formal request having been made by the defence to attend the session. The source also informs that the Public Prosecution issued a number of incriminating public statements condemning Sheikh Ali Al-Salman, including false information, which resulted in the creation of a hostile public opinion against him, as evidenced by reports in the local media. The source states that this is contrary to the presumption of innocence of Sheikh Ali Al-Salman.

11. Sheikh Ali Al-Salman's legal representatives sought his release pending trial on two occasions, but a request submitted to the Chief General Attorney of the Public Prosecution was rejected on 8 January 2015. No reasons were given for this decision. A decision on the other application has yet to be made. The source submits that there was no justification for detaining Sheikh Ali Al-Salman as he presents no flight risk, and there is no risk of evidence-tampering or furthering offending by the accused.

Joint Urgent Appeal

12. On 16 January 2015, the Working Group and other mandates of the UN Special Procedures¹ transmitted a joint urgent appeal to the Government of Bahrain enquiring about the initial steps which it had taken to safeguard the rights of Sheikh Ali Al-Salman in compliance with international instruments. The joint urgent appeal also requested information regarding: (i) the allegations made by the source, (ii) the legal grounds for the arrest and detention of Sheikh Ali Al-Salman and how those measures are compatible with the UDHR and ICCPR, and (iii) what measures have been taken to ensure that individuals with dissenting political or religious views in Bahrain are able to carry out their work in a safe and enabling environment without fear of harassment and criminalisation.

13. On 12 February 2015, the Public Prosecution of Bahrain submitted a response to the joint urgent appeal, noting that the charges against Sheikh Ali Al-Salman² were based on an

¹ The Chair-Rapporteur of 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 rights to freedom of peaceful assembly and of association, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on minority issues.

² The Public Prosecution states that it charged Sheikh Ali Al-Salman with: advocacy of the use of force and threats to change the political regime; inciting hatred against a group of persons (those who have acquired Bahraini citizenship); instigating civil disobedience; commending acts which constitute criminal offences; and publicly insulting a State institution.

investigation which revealed certain recorded and published speeches made by him at public events. These speeches included giving permission for those hearing the statements to use force against the State, to carry out explosions, to use military force to achieve political demands, to not abide by the law regarding organised demonstrations, and to continue the activities of a body known as the Ulema Council in breach of a court order dissolving that body.

14. The Public Prosecution states that four lawyers attended the interrogation of Sheikh Ali Al-Salman, and that he was provided with legal safeguards such as meeting with his lawyers unaccompanied before every interrogation session, being informed of the charges against him at every session, and being permitted to meet with his family members while in custody. In addition, the Public Prosecutor notes that during the interrogations, Sheikh Ali Al-Salman was provided with the recordings of sermons and speeches made by him, and that his lawyers were present and were aware of the content of this evidence. While being questioned in the presence of his lawyers, Sheikh Ali Al-Salman acknowledged that he had delivered those sermons and speeches. Therefore, the allegation that Sheikh Ali Al-Salman's lawyers were unable to examine the evidence is untrue.

15. Further, the Public Prosecution clarifies that the statements which it released about Sheikh Ali Al-Salman included the charges and evidence, in order to clarify the legal basis on which proceedings were instituted against him.

16. Finally, the Public Prosecution notes that it ordered Sheikh Ali Al-Salman's remand in custody pending trial before the Criminal Court. The Court began its hearing of the case on 28 January 2015 when Sheikh Ali Al-Salman appeared, accompanied by his lawyers, and pleaded in his own defence. The hearing was adjourned until 25 February 2015 for further deliberation and Sheikh Ali Al-Salman was allowed to receive a copy of the case file in his place of detention.

Further comments from the Source

17. The Government's reply to the joint urgent appeal was forwarded to the source for comment on 19 March 2015. The source provided the following additional information:

18. The source states that the Criminal Court controlled the access of Sheikh Ali Al-Salman to his legal representatives throughout the trial, with visit requests delayed at crucial moments when Sheikh Ali Al-Salman and his lawyers wanted to discuss and prepare for the cross-examination of the prosecution witness and before the pleadings session.

19. The source alleges that the Court refused to play video recordings of Sheikh Ali Al-Salman's public speeches, despite the fact that those speeches were the key evidence submitted by the Public Prosecution in support of the charges. The Court gave no justification for this refusal, even though Sheikh Ali Al-Salman's lawyers had argued that the prosecution witness misrepresented the content of the speeches. The prosecution witness was the investigation officer from the Ministry of Interior who had prepared the report which resulted in the charges against Sheikh Ali Al-Salman.

20. In addition, according to the source, when the prosecution witness was called for cross-examination, the Court refused to put the vast majority of questions from the defence team to the witness. Since the defence team was not given any meaningful opportunity, either by the Public Prosecution or before the Court, to challenge the legitimacy of the evidence provided by the prosecution witness, Sheikh Ali Al-Salman's lawyers filed a criminal complaint for perjury and falsification against the prosecution witness. However, shortly after the complaint was filed, the Public Prosecution closed the complaint without any further action.

21. The source states that the Court refused to call witnesses requested by Sheikh Ali Al-Salman's lawyers who subsequently lodged a complaint to the President of the Supreme Council of the Judiciary requesting the disqualification of the Court Panel members to hear the case. No action has been initiated to respond to this complaint or to remedy the situation.

22. Further, according to the source, Sheikh Ali Al-Salman's lawyers were constantly interrupted during the trial. They were subjected to unprecedented searches before entering the courtroom in an attempt to humiliate and intimidate them in preparing and conducting the defence of Sheikh Ali Al-Salman. Al-Wefaq leaders were not allowed to attend the trial.

23. In the last session, Sheikh Ali Al-Salman requested the right to address the Court directly in regard to the charges against him. According to the source, the Court granted this request. However, immediately after Sheikh Ali Al-Salman argued that the charges against him related to a popular movement seeking democracy in Bahrain, the Court refused to allow him to continue his address. According to the source, the minutes of the court sessions were inaccurate in material details and failed to reflect what happened in the courtroom, including the final address. The source contends that the court minutes were composed of information dictated by the Court to the court clerk rather than what was actually said by the witnesses or the defence team.

24. The source notes that, on 16 June 2015, Sheikh Ali Al-Salman was convicted on charges including publicly inciting hatred, disturbing the public peace, inciting non-compliance with the law, and insulting the Ministry of Interior, and was sentenced to four years' imprisonment.

25. The source submits that the detention of Sheikh Ali Al-Salman is arbitrary and falls under category II and III of the Working Group's categories of arbitrary detention. The source is of the view that the arrest and detention of Sheikh Ali Al-Salman resulted from the exercise of his right to freedom of opinion, the expression of his political views, his right to assemble and associate with others through his active participation in the main Bahraini opposition movement, and his right to equal protection of the law as guaranteed by articles 7, 19, 20 and 21 of the UDHR, and articles 19, 21, 22, 25 and 26 of the ICCPR.

26. Finally, the source argues that Sheikh Ali Al-Salman has not been afforded due process and a fair trial, in violation of articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR. The source submits that the trial of Sheikh Ali Al-Salman was not fair because: (i) he was denied access to his lawyers during interrogation, (ii) he was not given any meaningful opportunity to examine the evidence or the records of interrogation, and (iii) his lawyers were constantly interrupted at court, and the witnesses that they called were not summoned to court.

Working Group's regular communication

27. According to information received from the source, Sheikh Ali Al-Salman's case is regarded as representative of violations of international human rights standards which regularly occur in Bahrain. The source therefore requested the Working Group to review the case under its regular communication procedure so that an Opinion could be rendered in relation to whether or not the detention was arbitrary.

28. On 18 June 2015, the Working Group transmitted the allegations from the source to the Government of Bahrain under its regular communication procedure, requesting the Government to provide detailed information by 17 August 2015 about the current situation of Sheikh Ali Al-Salman, and to clarify the legal provisions justifying his continued detention. The Working Group also requested the Government to provide details regarding the conformity of Sheikh Ali Al-Salman's trial with international law.

29. According to paragraph 23 of the revised methods of work of the Working Group, the Government is required to respond separately for the urgent action procedure and the regular communication procedure. The Working Group did not receive a response from the Government to this regular communication. However, while not obliged to do so, the Working Group has decided, in rendering its Opinion, to take into account the information received from the Government in response to the joint urgent appeal.³

Discussion

30. The Working Group notes that, although the Government submitted some information in response to the joint urgent appeal, it has not rebutted many of the *prima facie* credible allegations made by the source.

31. In assessing the credibility of these allegations, the Working Group has referred to its previous opinions concerning recent individual communications received from various sources regarding the violation of human rights in the Kingdom of Bahrain.⁴ In these cases, findings have been made about the use of arbitrary detention (including detention resulting from the peaceful exercise of the rights to freedom of opinion and expression, and peaceful assembly and association) and the lack of a fair trial, demonstrating that these are systemic problems in the administration of criminal justice in Bahrain.

32. While the Public Prosecution has provided the Working Group with information about the proceedings, it has not refuted the allegations that the arrest, detention and prosecution of Sheikh Ali Al-Salman was directly related to the public expression of his opinions as a political opposition leader, a Shi'a Muslim and a religious figure. In particular, the Working Group takes note of the fact that the arrest of Sheikh Ali Al-Salman took place two days after he was re-elected as the Secretary General of Al-Wefaq, and after having made statements calling for the establishment of a democratic regime and for greater accountability of the Government.⁵

33. The Working Group concludes that there is a violation of Sheikh Ali Al-Salman's rights to freedom of religion or belief, freedom of opinion and expression, freedom of peaceful assembly and association, and the right to take part in government under articles 18, 19, 20 and 21 of the UDHR, and articles 18, 19, 21, 22 and 25 of the ICCPR,⁶ and that the case falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

34. The Public Prosecution has failed to rebut the allegations that Sheikh Ali Al-Salman was not provided with the guarantees necessary for his defence. In particular, although the Public Prosecution has stated that lawyers attended the interrogation of Sheikh Ali Al-Salman, that he was provided with legal safeguards, and was provided with the recordings

³ According to paragraph 16 of its revised methods of work, the Working Group may render an Opinion on the basis of all the information it has obtained. In this case, in order to give the Government every opportunity to respond to the source's allegations, the Working Group has exercised its discretion to take the information submitted by the Government in response to the joint urgent appeal into account.

⁴ See, for example, Opinion Nos. 6/2012, 12/2013, 22/2014, 25/2014, 27/2014, 34/2014, and 37/2014.

⁵ As the joint urgent appeal pointed out, Sheikh Ali Al-Salman's right to strive for the promotion of human rights is protected by 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 articles 1, 5, 6, 7, 8, 9 and 12.

⁶ There was no suggestion by the Government that these freedoms should be limited in this case to protect national security, public safety, public order, public health, morals, or the fundamental rights and freedoms of others. Articles 18(3), 19(3), 21 and 22(2) of the ICCPR allow limitations on these grounds, but these have not been raised in this case.

of speeches made by him, it has provided no documentary evidence to support these assertions.⁷ While the Public Prosecution has clarified that the statements which it released about Sheikh Ali Al-Salman included information about the charges and evidence against him, it has not rebutted the allegations that incriminating and false public statements were made contrary to the presumption of innocence which is afforded to all persons charged with a criminal offence.

35. The Public Prosecution has not addressed the source's claims that Sheikh Ali Al-Salman was not given any meaningful opportunity to challenge the evidence provided by the prosecution witness or to call his own defence witnesses. It has also not addressed allegations made in relation to: (i) interruptions of Sheikh Ali Al-Salman's lawyers and the searches that they were subjected to before entering the courtroom, (ii) the restrictions placed on Sheikh Ali Al-Salman when he attempted to address the court at the end of the trial, and (iii) failure by the Public Prosecution to follow up the criminal complaint made in relation to the prosecution witness, and the lack of action on the request by Sheikh Ali Al-Salman's lawyers that members of the Court be disqualified from hearing the matter.

36. The Working Group considers that there is a violation of Sheikh Ali Al-Salman's right to a fair trial, particularly the presumption of innocence under article 14, paragraph 2 of the ICCPR, and the right to adequate time and facilities for the preparation of his defence under article 14, paragraph 3(b) of the ICCPR. In addition, principle 21 of the Basic Principles on the Role of Lawyers requires competent authorities to ensure that lawyers have access to appropriate information, files and documents in their possession or control in sufficient time to enable the lawyers to provide effective legal assistance. The allegations made by the source also disclose a violation of the right of Sheikh Ali Al-Salman under article 14, paragraph 3(e) of the ICCPR to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

37. The Working Group concludes that the breaches of articles 9, 10 and 11 of the UDHR and articles 9 and 14 of the ICCPR in the case of Sheikh Ali Al-Salman are of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III of the categories applicable to the consideration of cases submitted to the Working Group.

38. The alleged actions and conduct of the Public Prosecution contravene the duty to ensure due process as set forth in guidelines 12 and 13 of the Guidelines on the Role of Prosecutors. Guideline 12 requires prosecutors to perform their duties fairly, and to respect and protect human dignity and uphold human rights, thus contributing to ensuring due process. Guideline 13(a) requires prosecutors to carry out their functions impartially and to avoid discrimination, including on political and religious grounds. The alleged actions and conduct of the Criminal Court contravenes the duty to decide matters impartially and fairly in accordance with principles 2 and 6 of the Basic Principles on the Independence of the Judiciary.

⁷ See the Working Group Opinion No. 41/2013 (Libya) which recalls that, where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he was entitled, the burden to prove the negative fact asserted by the applicant is on the public authority, because the latter is "generally able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law ... by producing documentary evidence of the actions that were carried out": *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, ICJ, Judgment, 30 November 2010, para. 55. A similar approach has been adopted by Human Rights Committee, according to which the burden of proof cannot rest on the author of the communication alone, given that the author and the State Party do not always have equal access to the evidence, and frequently the State party alone has the relevant information: *Butovenko v. Ukraine*, HRC No. 1412/2005, para. 7.3; *Medjnoune v. Algeria*, HRC No. 1297/2004, para. 8.3; *Conteris v. Uruguay*, HRC No. 139/1983, para. 7.2; *Bleier v. Uruguay*, HRC No. 30/1978, para. 13.3.

39. The Working Group recalls that this is only one of several opinions finding the Kingdom of Bahrain in violation of its international human rights obligations. The Working Group reminds the Kingdom of Bahrain of its duties to comply with international human rights standards not to detain arbitrarily, to release persons who are arbitrarily detained, and to provide compensation to them. The duty to comply with international human rights rests not only on the Government but on all officials, including judges, prosecutors, police officers and security forces.

Disposition

40. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Sheikh Ali Al-Salman, being in contravention of articles 9, 10, 11, 18, 19, 20 and 21 of the UDHR and articles 9, 14, 18, 19, 21, 22 and 25 of the ICCPR, is arbitrary, falling within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

41. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Sheikh Ali Al-Salman without delay and bring it into conformity with the standards and principles in the UDHR and the ICCPR.

42. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to release Sheikh Ali Al-Salman immediately, and to accord him with an enforceable right to compensation in accordance with article 9, paragraph 5, of the ICCPR.

[Adopted on 2 September 2015]