

(Translated from Arabic)

Reply to the joint urgent appeal dated 29 June 2012 from 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 the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning allegations received by them of repeated restrictions on the holding of peaceful demonstrations and the excessive use of force by law enforcement officers during peaceful assemblies

Within the framework of the constructive cooperation between the Kingdom of Bahrain and the special procedures of the Human Rights Council, the joint urgent appeal was presented to the Kingdom's competent authorities, which have responded to the allegations set out in the appeal as part of their endeavour to respect and promote human rights. Indeed, the concerned authorities are keen for the facts to be clarified and were thus quick to express their readiness to reply to the joint urgent appeal. Accordingly, and in a spirit of transparency, they communicate the information below to the Special Rapporteurs whose signatures appear on the joint urgent appeal under discussion.

We wish to affirm at the outset that Bahrain is engaged in assuming its responsibilities, carrying out its mission of enforcing law and public order, looking after the supreme interest of citizens, strengthening public security, anchoring the foundations of stability, spreading confidence, protecting human life and the public and private interests of citizens and residents, and safeguarding national gains and achievements. In that context, it emphasizes that the protection of all rights and freedoms, above all freedom of opinion and expression and freedom of assembly, is a fundamental constitutional duty and a priority in the work of the security apparatuses.

We also wish to state that the allegation that the authorities in Bahrain restrict public freedoms and impose undue restrictions on the right to peaceful assembly is false and intended only to paint a deliberately negative and distorted picture of the progress, prosperity and secure environment enjoyed by Bahrain, an environment in which all freedoms and the rights of expression and assembly are guaranteed in accordance with basic human rights principles.

The above-mentioned joint urgent appeal contains a number of false allegations concerning exercise of the right to peaceful assembly and the use of excessive force against demonstrators. Following below is our reply to these allegations.

1. The allegation that the authorities in Bahrain restrict the right to peaceful assembly

We first of all assert that this allegation is false and devoid of all truth and that many of the incidents referred to in the appeal are non-specific and implausible. Whoever reported these incidents to the Special Rapporteurs deliberately presented them in a manner designed to serve his purpose, which is to portray the authorities in Bahrain as restricting the rights to freedom of peaceful assembly and of opinion and expression. On this basis, we wish to provide a fully objective and detailed account of the incidents mentioned in the appeal and of facts that the Special Rapporteurs' source omitted to state.

Contrary to the allegation that the State imposes restrictions on the freedom of peaceful assembly, we would point out that the Bahraini Ministry of the Interior gave its authorization for political associations, most notably Al-Wefaq National Islamic Society, to

stage the following six events during June 2012, on condition that security and public order were maintained and that property was safeguarded:

- A procession entitled “Decisions and sovereignty rest with the people”, on 1 June 2012
- A procession entitled “The people have chosen democracy”, on 8 June 2012
- A rally under the banner “The nation is for all”, on 11 June 2012
- A procession entitled “Freedom is my right”, on 23 June 2012
- A rally under the banner of “The International Day in Support of Victims of Torture”, on 27 June 2012
- A rally entitled “The martyrs are in our hearts”, on 29 June 2012

The dates of these events (which went ahead) are noticeably close to those of events for which the opposition provided notification and which were banned. It is therefore untrue to claim that freedom of political assembly is restricted, the evidence being that the above-mentioned events were permitted to take place close together.

The provider of information to the Special Rapporteurs clearly omitted to report many events that were authorized and to mention the scale of the infringements, security violations and damage to the public interest that occurred during those events, within the sight of the organizers, who made no attempt whatsoever to prevent these abuses.

We therefore wish to describe a few of the violations and infringements that occurred during those events staged by a number of political associations in June, as not only did the opposition associations taking part fail to comply with the laws and regulations; they also regarded those authorized events as justification and means for fomenting disorder, breaching security, disrupting calm and endangering lives and property in that some of these processions were punctuated by acts of rioting, vandalism and mayhem and attacks on security personnel. Furthermore, the event organizers failed to censure or put a stop to these acts but simply stood by and watched, meaning at best that the situation was beyond their control, notwithstanding that they had undertaken to ensure respect for law and public order before these events were authorized, pursuant to article 6 of the Public Meetings, Processions and Assemblies Act (Decree-Law No. 18 of 1973). Such abuses are not permitted under any of the domestic laws governing assemblies and processions. The acts concerned included the following: Molotov cocktails thrown by masked individuals were targeted at security personnel; busy main and secondary roads were blocked; stones, pieces of rubbish and metal objects were thrown at the family homes of security officers; checkpoints were operated on secondary roads in order to intimidate people; and bottles filled with coloured paint and chemical substances were thrown at security patrols to prevent them from discharging their functions.

All of these violations and infringements are documented and it is also worth mentioning that roughly 90 processions and assemblies to which the governing legal rules and conditions apply have taken place in Bahrain since the start of the present year. Some, however, persist in going too far by constantly organizing processions and assemblies in key areas of Bahrain in order to disrupt the lives of citizens and residents, deliberately selecting unsuitable locations, such as streets and districts vital to commerce and the service industries, disregarding others, inconveniencing them and preventing them from exercising their rights, including the rights to movement, work and tranquillity, in addition to causing damage to the national economy. These serve as grounds in any country for banning processions in accordance with the law.

We would also point out that the majority of these processions frequently breach security and public order and depart from their declared aims owing to the acts of violence

and vandalism committed by numerous participants and their targeting of the police, for which they are dealt with in accordance with the legal rules and procedures. As already indicated, acts of lawlessness such as these escape censure from the organizers and proponents of those processions and assemblies. Instead, they are often purposely justified and their perpetrators defended, which is a breach of the duties imposed on the organizers by law.

Banning orders are nonetheless based on objective grounds relating to each individual event, irrespective of earlier infringements.

2. Legal grounds for denying authorization to hold assemblies on 13, 15, 16 and 22 June 2012

Before reviewing the facts and grounds relating to the bans placed on the above-mentioned assemblies, it should be recalled that Bahrain, as an independent and sovereign State Member of the United Nations, is committed to the implementation of all laws. It is consequently the law that determines the legal conditions and the circumstances and grounds for refusing or banning any procession or assembly when to hold it would directly threaten security and order and inconvenience citizens. This political and legal reasoning is applied in all States brought together under the auspices of the United Nations and these grounds are provided for in all other comparable laws.

The Public Meetings, Processions and Assemblies Act (Decree-Law No. 18 of 1973, as amended by Act No. 32 of 2006) governs the exercise of the right of assembly and establishes the legal rules and conditions for its exercise, the first of which is that the organizers of any assembly must provide the Head of Public Security with written notice of any assembly, pursuant to article 2 of Act No. 32 of 2006. The notice must also state the time, place and subject-matter of the meeting and whether it is intended to be a talk or a general discussion. The purpose of the notice is to enable coordination with the security authorities in the interest of ensuring the safety of participants in such assemblies. The conditions also specify the times and the places where public meetings are not permitted, such as near hospitals, airports, shopping malls and security-sensitive locations.

The competent authorities at the Ministry of the Interior thus examined the applications for the aforementioned assemblies and rejected them on legal grounds consistent with international norms, as follows:

- **13 June 2012**

The procession entitled “Stop the bloodshed”, organized by Al-Wefaq National Islamic Society to take place on 13 June 2012, from 4 p.m. to 6 p.m. in the capital Manama, starting in front of Bab al-Bahrain and ending at the Ra’s Rumman mosque, was banned on a number of grounds, some of them formal and others substantive. In terms of form, the application did not satisfy the above-mentioned legal conditions, as the notice failed to state the purpose of the procession. As to the substance, the planned route of the procession was unsuitable as it was in the heart of the capital, which is a key commercial area also close to the diplomatic quarter. Had it been authorized, it would have caused traffic jams and inconvenienced road users because there are no alternative roads or possible detours. The ban was also a preventive measure designed to ensure that the procession was not exploited in order to attack commercial premises and set alight vehicles belonging to citizens or residents.

The organizer (Al-Wefaq National Islamic Society) was informed of the banning order but paid no attention to it; the procession was organized, in contravention of the law, on Manama’s Imam Hussein Street and youngsters were incited and driven to foment chaos, intimidate people and clash with security forces. Approximately 35 men and women marched along Sheikh Abdullah Street in the Manama souk, in contravention of the law,

and scattered when they saw police. The event was documented and officially logged (report No. 1568/2012).

- **15 June 2012**

A speech rally entitled “Restore our stolen rights”, due to take place in Manama on 15 June 2012, was banned on several grounds. In terms of form, Al-Wefaq National Islamic Society delivered the notice of the rally by facsimile. The signatories were not present, which is contrary to the legal rules stating that organizers must deliver notices in person because it is impossible to verify the information contained in a facsimile or the identity of the signatories, or indeed whether the notice is connected with the association concerned. The submitted application also contravened the terms of article 5 of Decree-Law No. 32 of 2006, as it specified 3 p.m. to midnight as the time of the rally, which does not comply with the legally prescribed time limits. In terms of substance, the rally was set to take place (for an eight-hour period, as stated in the notification) in the midst of the capital, which is full of markets and shoppers, and could have caused an eight-hour traffic crisis. The priority was therefore to preserve public order and calm by avoiding any possibility of the rally being exploited for subversive activities in the heart of the capital.

Despite the decision to ban this rally and notwithstanding the notification of the decision through the legal channels and the arrangements made by the security forces to prevent any unlawful assembly, a group of individuals were seen setting up a large number of chairs and a stage on the site, i.e., in the Karbabad area, on the afternoon of the said day in preparation for an assembly (which had already been banned). They were warned that the assembly contravened the law and the municipality (the competent authority) was informed of the incident. When the group saw officers from the municipality approaching, they removed everything and that was the end of the matter, contrary to the allegation made in the appeal that security personnel had threatened to destroy the stage and chairs if they were not removed.

That evening, a group of persons gathered in the same place and were approached by security patrols, who issued several warnings and gave them time to disperse. Some of them did so, whereas others failed to react and were dealt with after they had attacked members of the police by pelting them with stones. Another group emerged from an alleyway to stir up chaos and were dealt with in accordance with the legal rules. The incident was documented and officially logged (report No. 1153/2012).

- **16 June 2012**

A ban was put in place on the same grounds, as the application did not meet the formal or substantive requirements; it was received by facsimile, without the individuals being present, and also provided an incorrect date, namely Thursday, 16 June 2012. The Thursday, however, fell on 14 June 2012.

- **22 June 2012**

A procession organized by Al-Wefaq National Islamic Society for 4 p.m. to 6.45 p.m. was banned. In short, the justifications for the ban were that the notice submitted by the Society did not satisfy the information and legal requirements under Decree-Law No. 32 of 2006. The notice was therefore deemed null and void, in accordance with article 3 of the Decree-Law. The intended route of the procession was also unsuitable and liable to cause breaches of security, block traffic in the area and on the streets along the procession route, and inconvenience road users. Nonetheless, although the organization submitting the notice was told to change the procession route to one of the other routes proposed in line with the law, it refused to do so. Al-Wefaq National Islamic Society had, in fact, previously held two assemblies on 3 and 24 February 2012 in the Northern Governorate, but multiple breaches of security and public order occurred. In particular, groups of youths came out

onto the main streets, deliberately causing traffic jams, throwing stones at passing cars, intimidating people and targeting the security forces by bombarding them with stones and dangerous objects. The Khamis police station was also attacked during the procession, as were commercial premises on Sheikh Salman Street.

Although Al-Wefaq National Islamic Society was informed of the decision to ban the procession, a decision that was also disseminated by the media, some 40 individuals came out and marched on Al-Bilad al-Qadim Street in defiance of the law and the banning order.

We wish to state that, although various assemblies and processions have been punctuated by acts of vandalism and violence, Bahrain's authorities are careful to ensure that individuals are able to exercise their legitimate rights of opinion and expression and of assembly in accordance with the law and in a manner that has no effect on the rights and interests of others. They do not take the step of banning any assembly unless there are substantive grounds and legal justifications for doing so, as is the case in the majority of countries where this right is regulated.

3. Details of the legal basis for the use of force against protestors during the assembly held on 22 June 2012

One: Rules on the use of force

- Bahraini law regulates assemblies pursuant to the Public Meetings, Processions and Assemblies Act (Decree-Law No. 18 of 1973, as amended). Any assembly outside the scope of this Act is therefore unlawful and the competent security forces are bound to intervene in order to maintain public order and public morals in the country and to protect life, honour and property. They therefore take all necessary measures to achieve that end
- Article 180 of the Bahraini Penal Code of 1986 provides that: "If an officer of a public authority believes that five or more persons have gathered with the intention of creating unrest, he may, in such capacity, order them to disperse. Thereafter, he may take measures for the dispersal of those who fail to comply with the order by arresting them and he may use reasonable force against anyone who resists. He may not use firearms except in cases of extreme necessity or when a person's life is endangered."
- The Public Security Forces Act regulates the modus operandi of these forces and the use of force. Article 12 provides that members of the security forces, in the course of carrying out their duties and as necessary, are authorized to use the level of force required to perform those duties, provided that force is the only means open to them
- Article 13 of the Public Security Forces Act deals with the instances in which members of the public security forces may use arms, stating that they are authorized to carry arms and ammunition supplied to them by order of the Minister of the Interior and that these may be used only in the cases specified in the article, including:
 - To break up a gathering, demonstration or riot under the terms and within the limits prescribed in chapter I, part III, of the special section of the Penal Code (arts. 180–184)
 - In legitimate defence of one's self, honour or property or in legitimate defence of others or their honour or property

Two: Steps to be followed in breaking up gatherings or riots:

- (a) The head of the force must issue a verbal warning to the gathered crowd or demonstrators, ordering them to disperse in a timely manner and explaining the routes that they must follow as they disperse;
- (b) If they fail to comply, a sterner warning is given to the effect that recourse will be had to legitimate means if the order to disperse is not promptly obeyed;
- (c) In both of the above cases, the warning must be delivered in a clear and audible voice or by means guaranteeing that the warning is heard by the demonstrators;
- (d) Any use of force must be reasonably proportionate and commensurate and directed only at those who put up resistance;
- (e) The use of firearms is permitted only in the narrowest of circumstances, i.e., after a dispersal order and warnings have been issued, in cases of extreme necessity, or if human life is endangered, and only if no other option is available.

On the basis of the above legal provisions, the gathering staged by Al-Wefaq National Islamic Society on 22 June 2012 in the Northern Governorate was, as already stated, unlawful. Al-Wefaq's Secretary-General was informed of this decision but persisted in flouting the law, defying the authorities and inciting groups of youths to come out and disobey the banning order. Those involved were dealt with in stages in accordance with legal frameworks and international standards. No force was therefore used in the initial stages; on the contrary, force was used as a last resort after the failure of negotiations and attempts to convince the crowd that the gathering was unlawful. Furthermore, the gathering was not peaceful; security personnel were subjected to violence and had metal spikes, stones and rubbish thrown at them, which put them at risk. They were therefore forced to disperse the crowd using sound bombs and tear gas to the appropriate degree authorized by law. The security forces endeavour not to use arms except in cases of extreme necessity, which confirms that the allegation concerning the excessive use force by security personnel in confronting demonstrators in that and other incidents is false. Moreover, there is no record of reports having been submitted to the police station at the time by any of the named victims or their representatives. A report was, however, submitted to the Department of Public Prosecutions on behalf of Ali Salman and Shakir Mohamed Jafar AlMowali one month after the incident, on 22 July 2012.

4. Legal grounds for the arrest of Zahra Salman AlSheikh Ali, Sayed Hadi Sayed Ebrahim, AbdulRedha Hasan Salman, Elyas Husain Ali Rajab, Sayed Hameed Sayed Adnan, Jafar Ahmad AlHamran and Ali Khalil Mirza

- (a) Article 55 of the Code of Criminal Procedure of 2002 provides that: "In cases of flagrante delicto for serious or less serious offences carrying a penalty of imprisonment for a term of more than three months, a law enforcement official may arrest the suspect at the scene if there is sufficient evidence to charge him."
- (b) Article 178 of the Penal Code (Decree-Law No. 15 of 1976) provides that: "Anyone who participates in a gathering of five or more persons in a public place with the intention of committing offences or acts aimed at preparing or facilitating such offences or at undermining public security, even if in order to achieve a legitimate purpose, shall be liable to imprisonment for a term of up to two years and/or a fine of up to 200 dinars."
- (c) Article 221 of the Penal Code criminalizes and prescribes the penalty for assault of a public servant by providing that:

"Anyone who, by any of the acts stipulated in article 339, paragraph 1, assaults a public servant, or person assigned to perform a public service, while

engaged in or on account of performing his duties or providing service shall be liable to a penalty of imprisonment.

“The penalty shall be imprisonment for a term of up to 2 years or a fine of up to 200 dinars if the assault is of a lesser degree than that mentioned.

“The penalty shall be imprisonment for a term of up to 1 year if the assault is committed against a judge.

“It shall be regarded as an aggravating circumstance if any of the offences provided for in the preceding paragraphs is committed with premeditation or by more than one person or by a person carrying a weapon.”

The arrest of Zahra Salman AlSheikh Ali

This person was arrested on the aforementioned legal grounds. A short account of the incident and the circumstances of her arrest is as follows. After Al-Wefaq National Islamic Society was informed of the decision to ban the speech rally, entitled “Restore our stolen rights”, in the capital, Manama, on 15 June 2012, Zahra Salman AlSheikh Ali, together with 250 others, participated in a gathering assembled in contravention of the law near Karbabad beach with the intention of defying the banning order. They were informed that their assembly was unlawful by the security zone officer, who ordered them to disperse. They failed to comply with his orders, however, and insisted on gathering in that location, blocking the flow of traffic, which forced the security forces to intervene in order to disperse them and apply the law. All the while, the said person was among those participating in the unauthorized gathering and was taking photographs of the police. When one of them was dispatched to find out what she was doing, she used insulting words towards him. The officer present at the scene was summoned and he too attempted to reason with her in a respectful manner, but she grabbed him so hard by his uniform that he ended up with marks on his chest. She was arrested but struggled against the police officer in a bid to escape, biting his hand and attacking him. She was accompanied to the police station and subsequently referred to the Department of Public Prosecutions for having carried out acts constituting an offence against a public servant. She was temporarily detained and later released. Proceedings are ongoing and the matter is presently before the courts. We wish to state that there is no truth to the allegation that this person was subjected to pressure and threats, as she was humanely treated in accordance with international standards. Hence, there were legal grounds for her arrest and detention and there is nothing to indicate that any of the violations alleged in the appeal took place.

Grounds for the arrest of the other persons mentioned

Following the ban on the procession to be staged by Al-Wefaq National Islamic Society on 22 June 2012, and notwithstanding that the banning order was notified to Al-Wefaq and disseminated in the media, some 40 individuals came out to march on Bilad al-Qadim Street, in defiance of the law and the banning order, with the intention of confronting the security forces in order to use the situation to advantage in the media and abroad. Ali Salman and Jawad Fairoos were at the head of the marchers. After they had crossed the Khamis roundabout, security personnel entered into discussion with them and warned them that they would have to disperse because their gathering was unlawful. Although they were given time to do so, they failed to disperse and resolutely carried on with the procession, in contravention of the law. They were therefore tackled in accordance with the legal rules (by means of tear gas). As they were running away, one of them, Ali Mohamed Jafar AlMowali, fell to the ground and sustained an injury to the back of his head. He was taken to Sulaimaniya hospital by ambulance.

The persons listed below were later arrested for engaging in subversive activities, assaulting security officers, assembling unlawfully and fomenting chaos. Legal measures were taken and they were turned over to the Department of Public Prosecutions. They are:

- **Jafar Ahmed Juma and Sayed Hameed Adnan Kazem**

Arrested under the Penal Code for participating in a gathering and throwing stones and metal spikes at the forces on the scene;

- **AbdulRedha Salman Saleh**

Arrested under the Penal Code for participating in a gathering;

- **Hasan Abdullah Hasan Abdullatif**

Arrested under the Penal Code for participating in a gathering, attempting to barricade the street with a water tank and throwing stones at the forces present at the scene;

- **Sayed Hadi Ebrahim AlAlawi**

Arrested under the Penal Code for participating in a gathering and committing criminal offences;

- **Ali Khalil Mirza**

Arrested under the Penal Code for participating in a gathering;

- **Elyas Hasan Ali Rajab**

Arrested under the Penal Code for participating in a gathering.

It is worth mentioning that all measures taken against the above persons were true to the provisions of the Constitution and Bahraini law, which guarantee the protection of human rights and are compatible with the international norms set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. They were treated humanely; their statements were taken by competent officers in rooms fitted with visual recording equipment; they were taken to see a forensic physician for a health check; they were asked if they had been assaulted by security forces when being placed under arrest; they were at liberty to contact their relatives or lawyers; and the entire matter was referred to the Department of Public Prosecutions.

5. Physical and psychological integrity of Zahra Salman AlSheikh Ali

We wish to inform you that when this person was arrested and temporarily detained on 16 June 2012, she was given an external examination, in accordance with the legal detention procedures, and was found to have no visible injuries. She was also examined on the same day by a doctor at the health centre attached to the Ministry's Health and Social Services Department.

She started a hunger strike on the day following her detention and refused to eat or drink or receive intravenous solutions, despite all attempts to convince her to do so. She was therefore transferred to the Bahrain Defence Force Hospital on 19 June 2012, where all of the medical procedures required in such cases were taken.

Zahra Salman returned to the health centre on 2 July 2012 complaining of high blood pressure, from which she said she had suffered for three years, and she was given appropriate treatment. She again visited the health centre on 4 July 2012 complaining of a headache and disturbance of blood pressure. The necessary action was taken and appropriate treatment was dispensed.

Concerning the statement in the joint urgent appeal that this person was denied visits by her family and lawyer, it has been established that she was permitted to contact her

family (her mother) on the day of her detention. We would also state that she received a family visit once a week, in conformity with the law, as follows:

- On 20 June 2012, six members of her family visited her
- On 27 June 2012, six members of her family visited her
- On 4 July 2012, six members of her family visited her

There is no record of any request made to visit her by her lawyer.

There is nothing to indicate that any of the violations alleged in the appeal took place.

6. Measures taken to ensure that the legitimate right to assembly peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed

The Constitution of the Kingdom of Bahrain of 2002 guarantees the right of peaceful assembly under the terms of article 28, paragraph (b), which permits public meetings in accordance with the conditions and situations prescribed by law, provided that the purpose and means of the meeting are peaceful and do not prejudice public morals.

The Public Meetings, Processions and Assemblies Act (Decree-Law No. 18 of 1973, as amended by Act No. 32 of 2006) regulates the exercise of this right in that individuals are able to exercise their right to assemble peacefully, provided that the safety of participants is preserved and that there is no breach of order or public security and no impairment of the rights of others. The rule is that public meetings are permitted and may not be banned unless they are likely to give rise to breaches of security or public order.

The Act specifies the times and the places where public meetings are not permitted, such as near hospitals, airports, shopping malls and security-sensitive locations.

The Act also states that participants in an assembly may not carry weapons, whether firearms, knives, incendiary materials, sticks or solid or sharp instruments not normally carried, and sets out penalties for any person who contravenes its provisions.

We refer to Order No. 57 of 2011, which describes the duties and responsibilities of the committee provided for in article 6 of the Public Meetings, Processions and Assemblies Act (Decree-Law No. 18 of 1973, as amended by Act No. 32 of 2006).

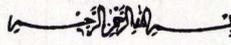
Pursuant to article 6 of the said Decree-Law, every public meeting must have a committee composed of a chairperson and at least two members. The committee must ensure that order is maintained during the meeting and prevent any departure from the laws or from the object of the meeting as stated in the notice. It must also prevent any speech or discussion that breaches public order, offends morals or amounts to an incitement to crime. The aforementioned Order spells out in detail the obligations and responsibilities of this committee.

As to practicalities, the Ministry of the Interior examines notices submitted in accordance with the legal rules set out in the Public Meetings, Marches and Assemblies Act. In the event of approval, the necessary arrangements are put in place to guarantee the safety of participants in the assembly and of citizens and residents. Patrols from the General Directorate of Traffic are also arranged so that traffic can be organized to avoid bottlenecks. Members of the community police are likewise effectively deployed, as are security patrols to protect against infiltration. These arrangements are coordinated with the organizers of the assembly.

In conclusion, we affirm that the State is committed to and intent on ensuring that citizens exercise their right to express their opinions as part of responsible freedom. This

regulation is designed to strike a balance between exercising the right to express opinions by peaceful and legal means and avoiding damage to the public interest, disruption to facilities and inconvenience to citizens and residents, while also ensuring that they are not prevented from exercising their rights.

We additionally wish to thank the Special Rapporteurs concerned with the joint urgent appeal dated 29 June 2012 for their interest in the human rights situation in the Kingdom of Bahrain and express our appreciation for the substantial part they play in this sphere. We wish to emphasize our constant and enduring desire to cooperate with all Special Rapporteurs in any matter aimed at entrenching human rights principles, which is the approach and policy routinely followed by the Kingdom of Bahrain in its respect for human rights.



REGISTRY

البعثة الدبلوماسية لدى الأمم المتحدة في جنيف

لدى الامم المتحدة

/ 2 AUG 2012

جنيف / فيينا

Geneva, 2nd August 2012
1/5(4) - 347 (sr)

Recipients :SPD.....

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Chair-Rapporteur of the Working Group on Arbitrary Detention

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

Ms. Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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Excellencies,

With reference to your joint urgent appeal, ref. UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24) BHR 5/2012, of 29th June 2012, on the allegations that you have received regarding repeated restrictions on the holding of peaceful demonstrations and the excessive use of force by law enforcement officers during peaceful assemblies.

In this regards, I would like to enclose herewith the response of the Ministry of Social Development of the Kingdom of Bahrain to the aforementioned urgent appeal, in Arabic languages.

Please accept, Excellencies, the assurances of my highest consideration.

Budoor AHMED
Chargé d'affaires a.i.

وكل هذه الانتهاكات والتجاوزات موقفة والجدير بالذكر ان مملكة البحرين شهدت منذ بداية العام الجاري نحو (٩٠) مسيرة وتجمعا تنطبق عليها الضوابط والاشتراطات القانونية الناطمة. إلا أن إصرار البعض على المبالغة في تنظيم مسيرات وتجمعات في مختلف مناطق مملكة البحرين الحيوية وبشكل مستمر يهدف عرقلة الحياة العامة للمواطنين والمقيمين والتعمد إلى اختيـار الأماكن غير المناسبة كالشوارع والمناطق ذات المجال الحيوي سواء التجاري أو الخدمي دون الأخذ بعين الاعتبار مصالح الناس وتعطيلها ومنع الآخرين من ممارسة حقوقهم كحقوقهم في التنقل والعمل وحقوقهم في السكنية، فضلا عن إلحاق الضرر بالاقتصاد الوطني وهذه الأسباب من ضمن المبررات التي يستند إليها قرار منع أي مسيرة وفقا للقانون في أي بلد.

كما تشير إلى أن معظم هذه المسيرات غالبا ما تشهد إخلالا بالأمن والنظام العام وخروجاً عن الأهداف المعلنة من خلال ارتكاب عدد من المشاركين فيها لأعمال عنف وتخريب واستهداف لسلامة رجال الشرطة حيث يتم التعامل معهم وفق الضوابط والإجراءات القولية. وكما اشرنا سابقاً أن مثل هذه الأفعال الخارجة عن القانون لا تجد أية إدانة من قبل المنظمين والداعين لتلك المسيرات والتجمعات بل غالبا ما يُعتمد إلى التبرير لها والدفاع عن مرتكبيها وهو ما يمثل إخلالاً من جانب المنظمين بالواجبات المفروضة عليهم قانوناً.

وعلى الرغم من ذلك فإن قرارات المنع تكون لأسباب موضوعية لكل فعالية على حده، دون النظر للتجاوزات السابقة.

٢- بالنسبة للأمن القانوني التي تم بموجبها منع التجمعات يوم ١٢ و ١٥ و ١٦ و ٢٢ يونيو

٢٠١٢:

قبل استعراض الحقائق والمبررات التي تم منع التجمعات آنفة الذكر بموجبها، لا بد من التنكير بان مملكة البحرين كدولة عضو في منظومة الأمم المتحدة مستقلة وذات سيادة تلتزم بتنفيذ كافة القوانين. وبالتالي فإن القانون هو الذي حدد الشروط القانونية وحالات الرفض والأسباب التي تنظم مسألة الرفض أو منع أي مسيرة أو تجمع متى ما وجدت في إقامتها تهديدا مباشرا للأمن والنظام وتعطيل مصالح المواطنين. فهذا المنطق السياسي والقانوني مطبق في كافة الدول المنضوية تحت مظلة الأمم المتحدة وهذه الأسباب منصوص عليها في كل القوانين الأخرى المقارنة.

فقد نظم المرسوم بقانون رقم (١٨) لسنة ١٩٧٢ بشأن الاجتماعات العامة والمسيرات والتجمعات المعدل بموجب القانون رقم (٣٢) لسنة ٢٠٠٦، ممارسة الحق في التجمع ووضع الضوابط والشروط القانونية لممارسته، وأولها وجوب أن يقوم منظمي أي تجمع بإخطار رئيس الأمن العام كتابيا بالتجمع وفق المادة (٢) من المرسوم بالقانون آنف الذكر، على أن يتوافر في هذا الإخطار الشروط التي حددتها المادة (٣) من القانون رقم (٣٢) لسنة ٢٠٠٦ ومنها وجوب أن يبين في الإخطار زمان ومكان وموضوع الاجتماع، وما إذا كان الغرض من الاجتماع محاضرة أو مناقشة عامة والتصد من الإخطار هو التنسيق مع الجهات الأمنية لتأمين المشاركين في هذه التجمعات.

ومن هذه الشروط أيضاً ما يحدد الأوقات والأماكن التي لا يجوز فيها عقد الاجتماعات العامة كالأماكن القريبة من المستشفيات أو المطارات أو المجمعيات التجارية والأماكن ذات الطابع الأمني.

أي تجمع إلا عند وجود أسباب موضوعية ومبررات قانونية لذلك شأنها شأن معظم الدول التي تنظم هذا الحق .

٣- تفاصيل الأسس القانونية التي تم بموجبها استخدام القوة ضد المتظاهرين خلال التجمع المقام

يوم ٢٢ يونيو ٢٠١٢ :

أولاً : بالنسبة لضوابط استخدام القوة:

- تشير إلى أن القانون البحريني قد نظم التجمعات بموجب المرسوم بقانون رقم (١٨) لسنة ١٩٧٣ بشأن الاجتماعات العامة والمواكب والتجمعات وتعديلاته، وعليه فإن أي تجمع خارج نطاق هذا القانون يعد تجمع غير قانوني ويستلزم تدخل قوات الأمن المختصة بالمحافظة على النظام والأمن العام والآداب داخل البلاد وحماية الأرواح والأعراض والأموال ولهذه القوات اتخاذ كافة التدابير اللازمة لتحقيق ذلك.

- وقد نصت المادة (١٨٠) من قانون العقوبات البحريني لسنة ١٩٧٦، على أن: " إذا رأى أحد رجال السلطة العامة أن خمسة أشخاص أو أكثر قد تجمهروا بقصد أحداث شغب جاز له بصفته هذه أن يأمرهم بالتفرق وله بعد ذلك أن يتخذ من التدابير لتفريق الذين خالفوا الأمر بإلقاء القبض عليهم واستعمال القوة في الحدود المعقولة ضد من يقاوم ولا يجوز له استعمال أسلحة نارية إلا عند الضرورة القصوى أو عند تعرض حياة شخص للخطر".

- وقد نظم قانون قوات الأمن العام طريقة تعامل هذه القوات واستخدام القوة، فقد نصت المادة (١٢) على أن لأعضاء قوات الأمن في سبيل تنفيذ واجباتهم وكلما دعت الحاجة حق استعمال القوة بالقدر اللازم لتنفيذ تلك الواجبات وبشرط أن تكون القوة هي الوسيلة الوحيدة لذلك.

.. كما أشارت المادة (١٣) من قانون قوات الأمن العام إلى الحالات التي يجوز فيها لأعضاء قوات الأمن العام استعمال السلاح فيها ، حيث بينت أن لأعضاء قوات الأمن العام حق حمل السلاح والنخيرة المسلمة لهم بأمر من وزير الداخلية ولا يجوز لهم استعماله إلا في حالات محددة وردت في المادة المذكورة على سبيل الحصر ، ومنها :

- فض تجمهر أو تظاهر أو شغب بالشروط وفي الحدود المنصوص عليها في الفصل الثالث من الباب الأول من القسم الخاص من قانون العقوبات (المواد ١٨٠، ١٨١، ١٨٢، ١٨٣، ١٨٤).
- الدفاع المشروع عن النفس أو العرض أو المال أو عن نفس الغير وعرضه وماله.

ثانياً: الخطوات التي يلزم مراعاتها لفض حالات التجمهر أو الشغب:

١. بوجه رئيس القوة تحذيراً شفوياً للمتظاهرين أو المتظاهرين يأمرهم فيه بالتفرق في خلال مدة مناسبة مبيناً لهم الطرق التي ينبغي سلوكها أثناء تفرقهم.
٢. في حالة عدم الامتثال للتحذير يتم توجيه إنذاراً مشدداً بأنه سيتم اللجوء للوسائل القانونية المشروعة إذا لم يتم الإذعان لأمر التفرق في خلال فترة زمنية وجيزة.
٣. يراعى في الحالتين السابقتين أن يكون التحذير والإنذار بصوت واضح ومسموع أو بوسيلة تكفل وصوله إلى أسماع المتظاهرين.

٤. استخدام القوة في الحدود المعقولة بالنسبة والتناسب ويوجه لمن يقاوم مع المتجمهرين فقط دون ماعداه.

٥. لا يجوز استعمال الأسلحة النارية إلا في أضيق الحدود وذلك بعد استنفاد التدابير أمر التفريق التحذير وعند الضرورة القصوى أو عند تعرض حياة شخص للخطر وأن تكون هي الوسيلة الوحيدة لذلك.

استنادا على ما سبق من نصوص قانونية، وحيث انه كما سبق ان بينا ان التجمهر الذي قامت به جمعية الوفاق يوم ٢٢ يونيو ٢٠١٢ في المحافظة الشمالية، هو تجمهر غير قانوني. وحيث تم إبلاغ أمين عام جمعية الوفاق بهذا القرار الا انه اصر على مخالفة القانون وعدم احترامه وتحدي السلطات وقام بتحريض المجموعات الشبانية للخروج وعدم الانصياع لقرار الرفض. كما ان مراحل التعامل معهم تمت وفق الاطر القانونية والمعايير الشرطية الدولية فلم تستخدم القوة في المراحل الاولى من التعامل بل كانت اخر الخيارات بعد فشل التفاوض ومحاولة إقناعهم أن التجمهر غير المشروع. بالإضافة إلى أن تجمهرهم لم يكن سلميا اتصف بالتعامل العنيف مع رجال الأمن وقنقهم بالأسياخ الحديدية والحجارة والمخلفات المتنوعة مما شكل خطرا على قوات الأمن، لذا اضطرت قوة حفظ النظام الى تفريقهم باستخدام القنابل الصوتية والغاز المسيل للدموع بالقدر المناسب والمخول بموجب القانون حيث تحرص قوات الأمن على عدم استخدام السلاح إلا في حالات الضرورة القصوى. هذا يؤكد عدم صحة ادعاء استخدام رجال الامن القوة المفرطة في مواجهة المتظاهرين في تلك الواقعة في غيرها في الواقع، كما لم يثبت تقدم أي ممن وردت أسماؤهم كضحايا أو ممثلهم ببلاغ لمركز الشرطة في حينها، إلا أنه تم تقديم بلاغ لدى النيابة العامة بإسم المدعو/علي سلمان وشاكر محمد جعفر الموالي بعد شهر من الواقعة بتاريخ ٢٢/٧/٢٠١٢.

٤- ويشان الأسس القانونية التي استند إليها القبض على كلا من: المدعوة/زهرة سلمان الشيخ علي، والمدعو/سيد هادي سيد إبراهيم، والمدعو/عبد الرضا حسين سلمان، والمدعو/الياس حسين علي رجب، والمدعو/سيد حميد سيد عدنان، والمدعو/جعفر احمد الحمزان، والمدعو/علي خليل مبردا:

- طبقا لنص مادة (٥٥) من قانون الإجراءات الجنائية لسنة ٢٠٠٢ فإن: " لأمور الضبط القضائي في الجنايات والجنح المتلبس بها التي تزيد مدة الحبس فيها على ثلاثة أشهر أن يقبض على المتهم الحاضر الذي توجد دلائل كافية على اتهامه."
- ووفقا لنص المادة (١٧٨) من قانون العقوبات الصادر بموجب المرسوم بقانون رقم (١٥) لسنة ١٩٧٦ بإصدار قانون العقوبات والتي تنص على: " كل من اشترك في تجمهر في مكان عام مؤلف من خمسة أشخاص على الأقل، الغرض منه ارتكاب الجرائم أو الأعمال المجهزة أو المسهلة لها أو الإخلال بالأمن العام ولو كان ذلك لتحقيق غرض مشروع، يعاقب بالحبس مدة لا تزيد على سنتين وبغرامة لا تجاوز مائتي دينار أو بإحدى هاتين العقوبتين ."
- واستنادا لنص المادة (٢٢١) حيث جرمت فعل التعدي على الموظف العام وبيئت عقوبته حيث نصت على: "يعاقب بالحبس من تعدى بأي فعل من الأفعال المنصوص عليها في الفقرة الأولى

بالفرار، علما انه أثناء ذلك سقط احد الأشخاص ويدعى / علي محمد جعفر الموالي على الأرض مما ادى إلى إصابته في مؤخرة رأسه وقد تم نقله بواسطة سيارة الإسعاف إلى مستشفى السلمانية. كما تم القبض على المبينة أسماؤم تاليا لما قاموا به من أعمال تخريبية واعتداء على رجال الأمن وتجمعهم غير القانوني وإثارتهم للقوضى وتم إتخاذ الإجراءات القانونية وعرضهم على النيابة العامة وهم :-

- المدعو/ جعفر احمد جمعة ،و المدعو/ سيد حميد عدنان كاظم: تم القبض عليهم وفقا لقانون العقوبات إثر قيامهما بالمشاركة في تجمهر وقذف القوة المتواجدة بالحجارة و الأسيخ الحديدية .
- المدعو/ عبد الرضا سلمان صالح : القي القبض عليه إثر قيامه بالمشاركة في تجمهر وفقا لقانون العقوبات.
- المدعو/ حسن عبد الله حسن عبد اللطيف: تم القبض عليه وفقا لقانون العقوبات إثر قيامه بالمشاركة في تجمهر ومحاولة إغلاق الشارع بواسطة خزان ماء وقذف القوة المتواجدة بالحجارة .
- المدعو /سيد هادي إبراهيم الطوي : قبض عليه إثر قيامه بالمشاركة في تجمهر وإرتكابه جرائم جنائية.
- المدعو علي خليل ميرزا : قبض عليه إثر قيامه بالمشاركة في تجمهر وفقا لقانون العقوبات.
- المدعو/ الياس حسن علي رجب : تم القبض عليه إثر قيامه بالمشاركة في تجمهر وفقا لقانون العقوبات. والجدير بالذكر إن جميع الإجراءات التي تم اتخاذها في مواجهة المذكورين أعلاه كانت وفق احكام الدستور والقانون البحريني الذي يضمن حماية حقوق الانسان .والتي جاءت متوافقة مع المعايير الدولية المنصوص عليها في كل من الإعلان العالمي لحقوق الإنسان والعهد الدولي الخاص بالحقوق المدنية والسياسية. حيث تم معاملتهم بصورة إنسانية، وتم اخذ أقوالهم من قبل الضباط المختصين وفي الغرف المجهزة بالتسجيل المرئي، كما تم عرضهم على الطبيب الشرعي للتأكد من سلامتهم. كما تم سؤالهم ان تم الاعتداء عليهم من قبل قوات الامن عند القبض عليهم. كما منحوا حرية الاتصال بنوابهم أو بمحاميههم وتم إحالة الموضوع بالكامل إلى النيابة العامة.

• يشان سلامة المدعوة زهرة سلمان الشيخ على الجنسية والتقمية . تفيدكم انه لدى إيداع المذكورة مركز التوقيف والحبس الاحتياطي في يوم ١٦ يونيو ٢٠١٢، تم إيقاع الكسوف الظاهري عليها وذلك طبقا للإجراءات القانونية المتبعة عند الإيداع، حيث ثبت عدم وجود إصابات ظاهرة، كما تم فحص المذكورة في ذات اليوم من قبل طبيب المركز الصحي التابع لإدارة الخدمات الصحية والاجتماعية بالوزارة . وقد بدأت المذكورة الإضراب عن الطعام من اليوم التالي لتوقيفها ورغم كل محاولات إقناعها لتناول الطعام أو الشراب أو تزويدها بالمحلول الوريدي فكلت ترفض . لذا تم إحالتها إلى مستشفى قوة دفاع البحرين يوم ١٩ يونيو ٢٠١٢ حيث تم إتخاذ كافة الإجراءات الطبية اللازمة في مثل حالتها.

كما راجعت المدعوة زهرة سلمان المركز الصحي يوم ٢ يوليو ٢٠١٢ بشكوى ارتفاع ضغط الدم حيث أفادت بأنها تعاني من مرض ضغط الدم منذ ٢ سنوات، وقد تم صرف العلاج المناسب لها. كما كان للمذكورة زيارة أخرى للمركز الصحي يوم ٤ يوليو ٢٠١٢. بشكوى الصداع واضطراب في مستوى ضغط الدم حيث تم إجراء اللازم وصرف العلاج المناسب لها.

إما بشأن ما ورد في النداء العاجل بشأن حرمان المذكورة من زيارة العائلة والمحامي، فقد ثبت إنه تم السماح للمذكورة للاتصال بعائلتها (والدتها) يوم توقيفها. كما نفيد إن المذكورة قد تلقت زيارة العائلة طبقاً للقوانين مرة واحدة في الأسبوع كالتالي:

- يوم ٢٠ يونيو ٢٠١٢ زارها ٦ من أفراد عائلتها.

- يوم ٢٧ يونيو ٢٠١٢ زارها ٦ من أفراد عائلتها.

- يوم ٤ يوليو ٢٠١٢ زارها ٦ من أفراد عائلتها.

كما لم يثبت وجود أي طلب زيارة من قبل المحامي الخاص بها. وليس هناك ما يشير إلى أي من الانتهاكات المدعاة الواردة في النداء.

٦- بالنسبة للإجراءات المتخذة لضمان احترام ممارسة الحق المشروع في التجمع السلمي وضمان السلامة الجسدية والنفسية للممارسين هذا الحق.

كفل دستور مملكة البحرين لسنة ٢٠٠٢ حق الاجتماع السلمي وفقاً لنص المادة (٢٨) حيث أوضحت الفقرة (ب) الاجتماعات العامة وفقاً للشروط والأوضاع التي يبينها القانون، وعلى أن تكون أغراض الاجتماع ووسائله سلمية ولا تتقي الآداب العامة.

ويتولى قانون الاجتماعات العامة والمسيرات والتجمعات الصادر بموجب المرسوم بقانون رقم (١٨) لسنة ١٩٧٣ بشأن الاجتماعات العامة والمواكب والتجمعات والمعدل بموجب القانون رقم (٣٢) لسنة ٢٠٠٦ تنظيم ممارسة هذا الحق، بحيث يتمكن الأفراد من ممارسة حقهم في التجمع السلمي مع الحفاظ على سلامة المشاركين في التجمع وعدم الإخلال بالنظام والأمن العام وعدم المساس بحقوق الآخرين. فالأصل إن الاجتماعات العامة مباحة ولا يجوز منعها إلا إذا ترتب على ذلك إخلال بالأمن أو النظام العام.

فقد حدد القانون المذكور الأوقات والأماكن التي لا يجوز فيها عقد الاجتماعات العامة كالأماكن القريبة من المستشفيات أو المطارات أو المجمعات التجارية والأماكن ذات الطابع الأمني.

كما بين القانون عدم جواز حمل المشاركين في التجمع للأسلحة سواءً الأسلحة النارية أو الأسلحة البيضاء أو المواد الحارقة وكذلك العصي والأدوات الصلبة أو الحادة غير المعتاد حملها في الأحوال العادية. كما نص القانون على العقوبات المقررة لمن يخالف أحكامه.

وتشير إلى القرار رقم (٥٧) لسنة ٢٠١١ بشأن تحديد واجبات ومسئوليات اللجنة المنصوص عليها في المادة (٦) من المرسوم بقانون رقم (١٨) لسنة ١٩٧٣ بشأن الاجتماعات والمسيرات والتجمعات المعدل بقانون رقم (٣٢) لسنة ٢٠٠٦.

فقد أوجبت المادة (٦) من المرسوم القانون المذكور أن يكون لكل اجتماع عام لجنة مؤلفة من رئيس وعضوين على الأقل، وعلى لجنة الاجتماع المحافظة على النظام فيه ومنع كل خروج على القوانين أو على الصفة المبينة للاجتماع في الإخطار، وأن تمنع كل خطاب أو نقاش يخالف النظام العام أو

الأداب أو يشتمل على تحريض على الجرائم. وقد صدر القرار المذكور لبيان وتفصيل التزامات ومسئوليات هذه اللجنة.
ومن الناحية العملية تقوم وزارة الداخلية بفحص الإخطارات المقدمة وفقاً للضوابط القانونية الواردة في قانون الاجتماعات العامة والمسيرات والتجمعات وفي حال عدم المنع يتم عمل الترتيبات اللازمة التي من شأنها تكفل سلامة المشاركين في التجمع والمواطنين والمقيمين على حد سواء بحيث يتم ترتيب دوريات تابعة للإدارة العامة للمرور وذلك من أجل تنظيم المرور تجنباً لحدوث الاختناقات المرورية وإيضاً يتم ترتيب أفراد من شرطة خدمة المجتمع مع الفعالية وترتيب دوريات أمنية لحمايتها من أي اختراق، حيث يتم ذلك بالتنسيق مع منظمي التجمع.

وختاماً إذ نؤكد على تمسك الدولة وحرصها على ممارسة المواطنين لحقوقهم في التعبير عن آرائهم في إطار من الحرية المسئولة، فإن هذا التنظيم يراعي تحقيق التوازن بين ممارسة حرية التعبير عن الرأي بالأساليب السلمية والقانونية وتجنب الإضرار بالمصلحة العامة أو تعطيل المرافق المختلفة أو الإضرار بمصالح المواطنين والمقيمين أو منعهم من ممارسة حقوقهم.

كما نود أن نتقدم بالشكر إلى المقررین الخاصین المعنیین بالنداء العاجل المشترك المؤرخ في ٢٩ يونيو ٢٠١٢ على اهتمامهم بالأوضاع الحقوقية في مملكة البحرين منميين دورهم الكبير في هذا المجال، وتود التأكيد على حرصنا الدائم المستمر في التعاون مع كافة المقررین الخاصین في كل ما من شأنه إرساء لمبادئ حقوق الإنسان فهو نهج وسياسة تنتهجها مملكة البحرين في احترامها لحقوق الإنسان.