

(Translated from Arabic)

Permanent Mission of the Kingdom of Bahrain to the United Nations

Geneva/Vienna

Clarificatory Memorandum

1. The cases in which Nabeel Ahmad Abdurrasoul Rajab was convicted on charges of propagating and broadcasting false and biased news, statements and rumours

Case No. 72123/2016

- The Public Prosecution received a police report in which the said person was said to have propagated and broadcast false and biased news, statements and rumours maligning and discrediting the Kingdom and challenging its trustworthiness by accusing its Government of pursuing a policy of repression, intimidation and detention of opponents and condoning criminal acts of murder and torture and sectarian practices by its officials. He was also said to have insulted the judiciary.
- On 14 June 2016, he was questioned by the Public Prosecution, in the presence of his lawyers, concerning statements that he was alleged to have made and interviews in which he was alleged to have participated. He declined to answer and the Public Prosecution therefore decided to remand him in custody pending investigation on charges of broadcasting, outside the country, false and biased news, statements and rumours concerning the internal situation in the Kingdom in such a way as to malign and discredit it.
- The case was brought before the court, which sentenced him to a term of two years' imprisonment without probation. His appeal was rejected, and the sentence upheld, by the appellate court. His appeal in cassation was deemed inadmissible in form by the Court of Cassation at its session on 15 January 2018.

Case No. 38288/2015

- In this case, the said person was referred to the High Criminal Court on 22 June 2016 on charges of propagating, in wartime, false and biased news and rumours and disseminating provocative propaganda, prejudicial to the military operations in which the Bahraini armed forces were engaged, in such a way as to weaken Arab national steadfastness and publicly defame foreign States and a statutory national authority. These acts constitute criminal offences under the provisions of articles 133, 215 and 216 of the Criminal Code. The court sentenced him to a term of five years' imprisonment, against which he lodged an appeal. The case was reviewed by the High Court of Appeal, which decided to adjourn its hearing of the closing arguments until 8 May 2018.

2. State of health and visits

Through its General Directorate of Reform and Rehabilitation and in collaboration with the Directorate of Health and Social Affairs, the Ministry of Interior is endeavouring to ensure a proper and healthy environment for all inmates of correctional and rehabilitation facilities. The provision of medical care begins as soon as the inmate is admitted to the facility, where he undergoes a medical examination by a competent physician in order to ascertain his state of health and diagnose any diseases from which he may be suffering. The treating physician informs the inmate of the results of the medical examination and prescribes appropriate treatment. Every facility has a clinic that operates round the clock to provide medical services for all the inmates and those whose state of health requires further treatment or follow-up are transferred to government hospitals in order to ensure that they receive the best health care in accordance with the provisions of the Reform and Rehabilitation Institution Act No. 18 of 2014 and Decision No. 131 of 2015 promulgating the implementing regulations therefor.



Mr. Nabeel Rajab was examined at the clinic in the correctional and rehabilitation facility.

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[REDACTED]

[REDACTED]

Comment

The Public Prosecution has not received any complaints from the said person on the matters referred to in the urgent appeal. However, on 30 June 2016, his lawyer lodged a complaint for the purpose of establishing the detriment that his client was suffering due to the ill-equipped nature of the detention facility in which he was being held in solitary confinement. A representative of the Public Prosecution went to that detention facility on the same day and heard the statements of the detainee, who repeated the substance of the complaint and requested that the number of visits he was allowed to receive be increased from one to two visits per week. He also requested permission to make daily telephone calls. [REDACTED]

██████████ The representative of the Public Prosecution inspected the detention facility, in which he found five rooms, each containing three beds. The said person had been accommodated alone in one of those rooms simply because no other detainees were being held in the facility. The inspection showed that he had a number of books and the facility, from which sunlight was not excluded, contained five bathrooms and a lounge with a television set and recreation equipment for detainees.

3. Freedom of expression and opinion

Article 23 of the Constitution of the Kingdom of Bahrain stipulates that: “Freedom of opinion and of scientific research shall be guaranteed. Everyone shall have the right to express and propagate his opinion, orally, in writing or by any other means, in accordance with the legally specified conditions and procedures, without prejudice to the precepts of the Islamic faith or to national unity and in a manner that does not give rise to discord or sectarianism.” This signifies that all individuals are entitled to express and propagate their opinions in a manner that is consistent with the relevant legal, professional and ethical rules and does not incite racial or confessional hatred, jeopardize national security and public order, threaten the rights, reputation and dignity of others, breach public morals or violate any of the principles of human rights.

Pursuant to that constitutional text, numerous national legislative instruments have been enacted to guarantee freedom of expression. These include the Press, Printing and Publishing Regulatory Decree No. 47 of 2002 under which everyone has the right to express and propagate his opinion, orally, in writing or by any other means, in accordance with the conditions and procedures specified therein, and Act No. 34 of 2014, amending various

provisions of the Political Associations Act No. 26 of 2005, under which associations are permitted to publish periodic bulletins expressing their principles, objectives and programmes in conformity with the concept of freedom of opinion. Furthermore, article 69 bis of the Criminal Code stipulates that the restrictions imposed therein, or in any other legislative enactment, on the right to freedom of expression must be interpreted within the context needed to promote a democratic society in conformity with the National Action Charter and the Constitution. This is consistent with the provisions of the International Covenant on Civil and Political Rights under which everyone has the right to freedom of expression, with the proviso that its exercise may be subject to certain restrictions, “but these shall only be such as are provided by law and are necessary for respect of the rights or reputations of others or for the protection of national security or of public order or of public health or morals”. The International Covenant also requires States parties to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

In keeping with the above, the competent Bahraini authorities have not brought criminal proceedings against any natural or legal person in respect of his engagement in any political, human rights-related or public social activity. In fact, the Kingdom of Bahrain is making every possible endeavour to promote the principle of respect for the law, to uphold the concept of citizenship based on coexistence, tolerance and respect for others, and to provide an appropriate democratic environment.

With regard to freedom to express opinion, the Bahraini press has flourished and been considerably revitalized and expanded by virtue of the broader scope for freedom of opinion and expression that it has enjoyed since His Majesty King Hamad bin Isa Al Khalifa came to power in 1999 and launched his programme of reforms which have had a positive impact in terms of respect for political, civil, cultural and social human rights and freedoms, including the press and media freedoms which are limited only by professional and ethical dictates in conformity with the Constitution, national legislation and international human rights standards.

4. National legal remedies

The Kingdom of Bahrain has enacted legislation that addresses the crime of torture by amending the text of article 208 of the Criminal Code in a manner which, from the substantive and legal standpoints, is fully consistent with the definition contained in the Convention against Torture. In accordance with that amendment, it is now an imprescriptible criminal offence to inflict severe physical or mental pain or suffering on a person in order to obtain from him or a third person information or a confession, punish him or a third person for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind or motivated by vengeance. Other amendments have also been made to the Criminal Code in order to regulate, in an integrated manner, the protection of witnesses, victims, experts and anyone providing information relevant to legal proceedings. Such protection is provided through, inter alia, a change of identity, a change of place of residence, prohibition of disclosing any details of identity or place of residence, use of modern technological means to hear or record the testimonies of victims or witnesses by Ethernet transmission, and non-disclosure of the identity of a witness until such time as the court orders its disclosure when this would no longer put the witness at risk.

The national legislation provides means of legal redress for anyone whose rights and freedoms, as recognized by law or enshrined in the International Covenant on Civil and Political Rights, have been violated, even if the violation was committed by persons acting in their official capacity.

In addition to the judicial authority, the Kingdom has established the following bodies and institutions which are mandated to safeguard these rights:

(a) The Special Investigation Unit

In the light of the findings of the Bahrain Independent Commission of Inquiry, which was mandated to investigate incidents of torture and cruel, inhuman or degrading treatment, the Kingdom emphasized its determination to address such incidents with all the legally available

material and other means and mechanisms needed to investigate them in an independent manner consistent with international standards. Accordingly, the Special Investigation Unit was established to examine and follow up on allegations of torture and ill-treatment and determine whether government officials are accountable for such acts, in which case the persons responsible are referred to the competent administrative authority so that criminal or disciplinary sanctions can be imposed on them. The Unit operates independently in conformity with international standards, and especially the Istanbul Protocol on the investigation and documentation of allegations of torture and ill-treatment, and is supported by the experts and the material and technical resources needed to enable it to conduct effective investigations in this field. Its organizational structure comprises four specialized sections: forensic pathology and psychiatric support; IT and administrative support; criminal investigation; communication and media. It is headed by a solicitor general, assisted by a number of experienced prosecutors, and investigates reports and complaints which are submitted to it by persons directly concerned or notified by any official or non-official body or which come to its knowledge through the information media, the Internet or the social media.

(b) The Office of the Ombudsman

This institution, which was established pursuant to Decree No. 27 of 2012, looks into complaints made against the personnel of any branch of the Ministry of Interior and also inspects prisons, remand and detention facilities and juvenile care centres.

(c) The Independent Prisoners' and Detainees' Rights Commission

This Commission, which was established pursuant to Decree No. 61 of 2013, oversees prisons, detention facilities, juvenile care centres and other places in which persons in conflict with the law can be held, such as hospitals and psychiatric clinics, in order to ensure that their inmates and detainees are not subjected to ill-treatment. Its staff include judges, members of the Public Prosecution and representatives of civil society organizations.

The **National Institution for Human Rights**, which was established pursuant to Act No. 26 of 2014 and enjoys legal personality and financial and administrative independence, is mandated to promote, develop and protect human rights and inculcate and raise awareness of their values. The **Ministry of Interior** is also active in this field through its Directorate of Audit and Internal Investigation, Directorate of Legal Affairs, Office of the Inspector General, Directorate of Preventive Security and Directorate of Military Courts, and the Ministry's Directorate of Complaints has a hotline number 80008008.

All the above-mentioned bodies are empowered, within their respective fields of jurisdiction, to receive reports and complaints and take decisions on questions of criminal and disciplinary accountability. They are easily accessible and can be contacted in various ways. Their operations are closely integrated through an exchange of information and notifications. Legal remedies and legal aid are readily available and the independence of the judiciary is guaranteed.

The Kingdom is diligently applying the international standards concerning the rights of prisoners and detainees, and especially their right of access to medical practitioners, lawyers and family members. These rights are exercised in conformity with Bahraini law and numerous steps have been taken to ensure that they are adequately protected in actual practice. By way of example, on 8 December 2011, H.E. the Minister of Interior signed a memorandum of understanding with the International Committee of the Red Cross (ICRC) under which the latter was granted access to prisons and detention facilities for purposes of inspection. The ICRC is therefore able to visit all the prisons and detention facilities in Bahrain and provide counselling or assistance in conformity with its mandate. In addition to the steps that have been taken to ensure the effective protection of the rights of detained suspects, the Kingdom's Government has implemented extensive reforms under which detention facilities can be inspected, without prior notice, by independent bodies such as the judiciary, the ICRC, the Ombudsman, the Prisoners' and Detainees' Rights Commission, the National Institution for Human Rights and authorized NGOs.

The Kingdom of Bahrain attaches high priority to the health care of prisoners and detainees. Section IV (arts. 28–35) of the Reform and Rehabilitation Institution Act No. 18 of 2014 is

devoted to health and social care and article 33 of Ministerial Decision No. 131 of 2015 promulgating the implementing regulations for that Act stipulates that: “The medical officer at the facility (centre for the accommodation of male or, as appropriate, female prisoners and persons held in pretrial detention) shall carry out a periodic medical examination on its inmates and shall provide them with any treatment that they require. An inmate may be admitted to a public or private hospital if so recommended by the medical officer.”

If the requisite treatment is not available at the facility, the inmate may therefore be transferred, at the request of the medical officer, to a public or private hospital. Such transfer is decided in the light of the medical reports issued by the physicians treating the inmates and the facility’s administration has no say in this matter.
