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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates 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

REFERENCE: 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 2/2013

10 May 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, 16/5, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning allegations of the arrest, detention and torture of Mr. **Naji Fateel**.

Mr. Naji Fateel is a board member of the Bahrain Youth Society for Human Rights (BYSHR). He is also an active blogger and social media user who publishes daily messages on human rights issues. It is reported that in recent times he has given daily speeches during marches in which he discusses the importance of documenting human rights violations and encourages people to form monitoring committees.

According to the information received:

At dawn on 2 May 2013, Mr. Naji Fateel was arrested at his home in the village of Bani Jamra. He was reportedly taken to the Criminal Investigation building, where he was handcuffed and blindfolded.

Sources inform that while in the Criminal Investigation building, Mr. Fateel was tortured in multiple ways. According to reports, he was the subject of electrocution to the back, left leg and genitalia; simulated drowning; beatings to the head, back and left leg, which reportedly was operated previously in relation to a work injury; suspension from the ceiling by hanging him from his hands without his feet touching the floor; sexual harassment and threats of rape; being refused permission to sleep, sit or lay down; and being made to stand up for prolonged periods of time.

It is reported that the resulting injuries were so severe that Mr. Fateel twice had to be taken to the Ministry of the Interior's hospital after losing consciousness.

It is further alleged that Mr. Fateel was insulted with political and sectarian language and that the threat was used against him that his wife's private photos, taken from a camera confiscated during a raid on Mr. Fateel's house, would be spread around.

Sources further inform that while he was in the Criminal Investigation building, Mr. Fateel's hands were handcuffed behind his back and he was blindfolded. The handcuffs and blindfold were allegedly kept in place until his transferral to Dry Dock prison.

It is further alleged that Mr. Fateel was taken to the Public Prosecutor's Office where he then refused to be interrogated without a lawyer present. Sources inform that he was consequently taken back to the Criminal Investigation building and subjected to a more severe beating, allegedly for having requested legal representation. He was allegedly taken back to the Public Prosecutor's Office during the morning of 4 May, where he signed documents without being given the opportunity to read them or have them read to him. It is reported that the Public Prosecutor charged Mr. Fateel with alleged "establishment of a group in order to disable the provisions of the Constitution" and order his imprisonment for a period of sixty days pending investigation under the terrorism law.

Sources further inform that Mr. Fateel was not permitted to contact the outside world until the evening of 4 May, at which point he was able to call his family and inform them where he was being held.

It is reported Mr. Fateel was transferred to Dry Dock prison at dawn on 5 May, where his handcuffs and blindfold were removed. He is reportedly suffering from injuries and severe fatigue.

Grave concern is expressed at the allegations that while in detention, Mr. Naji Fateel may have been subjected to treatment which, if found to be accurate, may amount to torture, an issue of particularly grave concern in the light of further allegations that this treatment may have been motivated by his legitimate and peaceful activities defending

human rights in Bahrain. Further concern is expressed at the allegations that he was denied the opportunity to seek legal representation.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Fateel is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of the person named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the ICCPR, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to draw your Government's attention to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;".

We would further like to draw the attention of your Excellency's Government to article 15 of the CAT, which provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be

invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

We also recall that paragraph 7c of Human Rights Council Resolution 16/23 urges States “To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;”

In connection to allegations received indicating that the situation of Mr. Fateel is linked to his human rights activities, we would like to refer your Excellency's Government to the fundamental principles set forth in 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be

protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would further like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the ICCPR, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Fateel in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?

3. Please provide details, including the legal basis and reasons, of the arrest and detention of the abovementioned person and how these measures are compatible with the aforementioned international human rights norms and standards.

4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

5. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

6. Please explain what measures have been taken to guarantee the physical and psychological integrity of Mr. Naji Fateel while in detention, including access to medical treatment, and to prevent the occurrence of any instances which may amount to cruel, inhuman or degrading treatment or torture.

7. Please explain what measures have been taken to ensure that human rights defenders in Bahrain are able to carry out their peaceful and legitimate activities without fear or violence or other restrictions.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Fateel are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

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

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of
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