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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences.

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24) G/SO 214 (89-15)
BHR 1/2012

20 January 2012

Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 16/4, 15/21, 16/5, 16/23, and 16/7.

In this connection, we would like to bring to your Excellency Government's attention information we have received concerning the excessive use of force during peaceful demonstrations, and targeted measures against human rights activist and blogger Ms. **Zainab Al Khawaja**, school teacher, Ms **Massoma Al Sayed**, and human rights activists Mr. **Nabeel Rajab** and Mr. **Sayed Yousif Al-Mahafdha**.

Ms. Al Khawaja has been the subject of previous communications sent by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders on 21 January 2008; by the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, 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 on 12 April 2011; and by 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 situation of human rights defenders, the Special Rapporteur on torture and other cruel, inhuman or

degrading treatment or punishment and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on 9 September 2011.

We acknowledge receipt of replies transmitted to two of these communications by your Excellency's Government by way of letters dated 3 March 2008 and 7 June 2011, respectively. We regret that to date no reply has been transmitted concerning the communication dated 9 September 2011.

According to the information received:

On 15 December 2011, Ms. Zainab Al Khawaja and Ms. Massoma Al Sayed were allegedly arrested while staging a peaceful sit-in at a roundabout in Budaiya. This protest was part of a series of protests taking place that day along the main highway leading towards Manama. It is reported, that riot police responded to the peaceful protest, staged by several women, by deploying tear gas causing the protestors to leave the roundabout.

Ms. Al Khawaja, whose husband, uncle and father are all in jail allegedly as a result of their human rights activities, remained sitting at the roundabout at which point tear gas was sprayed directly in her face causing her to lose her vision for approximately one hour. She was reportedly approached by a female police officer and handcuffed. It is alleged that she was then hit in the face and dragged along the ground into a police vehicle, and her head scarf was allegedly removed during her arrest. Ms. Al Sayed was reportedly arrested a few metres away from Ms. Al Khawaja on the roundabout.

It is reported that both women were then taken to Budaiya police station before being brought before the public prosecutor and interrogated for approximately two hours. It is reported that during Ms. Al Khawaja's interrogation the prosecutor refused to take note of the name of the policewoman who allegedly beat Ms. Al Khawaja and refused to see the video footage of the arrest. It is alleged that the interrogations were not recorded as per recently issued recommendations of the Bahrain Independent Commission of Inquiry.

It is alleged that both women were subjected to ill-treatment while in detention by individuals whose identities are known. Ms. Al Khawaja was reportedly beaten on her head, legs and arms at the police station and Ms. Al Sayed was kicked and had red marks around her wrists from the handcuffs.

It is reported that both women have been charged with taking part and calling for an illegal gathering and assaulting a female police officer while a third charge of inciting hatred against the regime has been brought against Ms. Al Khawaja. They may reportedly face up to two years imprisonment based on these charges.

On 20 December 2011, it is reported that Ms. Al Khawaja and Ms. Al Sayed, who had been detained in a women's detention facility in Isa Town, were released on

bail. The charges against them have not been dropped and their trial has reportedly started on 17 January 2012, before being postponed for procedural reasons till 27 February 2012.

On 6 January 2012, Mr. Nabeel Rajab, President of the Bahrain Center for Human Rights, and Mr. Sayed Yousif Al-Mahafdha, a member of Bahrain Center for Human Rights were reportedly severely beaten by policemen in Manama while they were participating in a peaceful demonstration calling for the release of political prisoners and human rights activists. Mr. Rajab was kicked, punched and beaten all over his body, notably on the face and back, while lying on the ground. Mr. Al-Mahafdha was also injured with a stun grenade in his leg and arm; while individuals that gathered in solidarity outside Mr. Rajab's house were subject to tear gas. Mr. Nabeel Rajab, who filed a complaint about the incident, reportedly spent several hours in the hospital.

Concern is expressed that the arrest, detention and charges brought against Ms. Al Khawaja and Ms. Al Sayed may be directly related to the legitimate exercise of their rights to peaceful protest, freedom of assembly and freedom of expression. Further concern is expressed regarding the allegations of ill-treatment to which the two women were subjected while in custody. Concerns are also expressed about the excessive use of force against Mr. Rajab and Mr. Al-Mahafdha during the 6 January 2012 demonstration which may be directly related to their human rights activities.

We would 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 International Covenant on Civil and Political Rights (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 also wish to appeal to your Excellency's Government to ensure that the right to freedom of peaceful assembly, as recognized under article 21 of the ICCPR, is enjoyed free of arbitrary restrictions. In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular paragraph 7 of the preamble, where it recognizes that, "exercising the rights to freedom of peaceful assembly and of association free of restrictions, subject only to the limitations permitted by international law, in particular international human rights law, is indispensable to the full enjoyment of these rights, particularly where individuals may espouse minority or dissenting... political beliefs". In this context, we would like to recall operative paragraph 1 of the same resolution that, "Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely,... 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 this connection, 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; and

- 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.

In addition, we would like to refer to the 2006 report to the General Assembly (A/61/312) (of the Special Representative of the Secretary-General on the situation of human rights defenders) and in particular to paragraph 98 which states that “in conformity with article 15 of the Declaration [on Human Rights Defenders], the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human

Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. The Special Representative also advises all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials."

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of Ms. Al Khawaja, Ms. Al Sayed, Mr. Rajab and Mr. Al-Mahafdha. 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 Universal Declaration of Human Rights (UDHR), the ICCPR, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

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 Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, 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 and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."

We would also like to bring to your Excellency's Government's attention to article 7 (c) of the International Convention on the Elimination of all forms of Discrimination against Women, which requires States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

We would like to draw the attention of your Excellency's Government to article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women. We would also like to draw the attention of your Excellency's Government to article 4 (c) and article 4 (d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of states to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms. (adopted by General Assembly resolution 48/104 on 20 December 1993).

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Al Khawaja, Ms. Al Sayed, Mr. Rajab and Mr. Al-Mahafdha are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

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:

1. Are the facts alleged in the above summary of the cases accurate?
2. Has a complaint been lodged by or on behalf of Ms. Al Khawaja, Ms. Al Sayed, Mr. Nabeel Rajab and Mr. Sayed Yousif Al-Mahafdha?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to these case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators, particularly those who have been identified as having assaulted Ms. Al Khawaja and Ms. Al Sayed while in custody?

5. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators, particularly those who have been identified as having assaulted Mr. Nabeel Rajab and Mr. Sayed Yousif Al-Mahafdha?
6. Please advise if Ms. Al Khawaja and Ms. Al Sayed have received medical care for their injuries, including access to an independent and qualified medical professional.
7. Please provide the full details of the legal basis on which Ms. Al Khawaja and Ms. Al Sayed were arrested and charged.
8. Please provide information on how your Excellency's Government ensures that the rights to freedom of peaceful assembly are guaranteed.

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

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

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freedom of opinion and expression

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