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PROCEDURES SPECIALES DU
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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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Health (2002-7) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)
ARE 3/2014

16 April 2014

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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to Human Rights Council resolutions 24/7, 24/6, 25/18, 17/2, 25/13, and 25/2.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning allegations of the **arbitrary arrest, detention and torture of Mr. Osama Al-Najjar**.

Mr. Osama Al-Najjar is an activist, blogger and architectural engineer from the Emirate of Ajman. He is the son of Mr. Hossain Al-Najjar, one of the 94 persons tried in a case referred to as the "UAE 94", who is currently serving an 11-year prison sentence for his peaceful activities.

Mr. Osama Al-Najjar has actively defended his father and the other persons of the UAE 94 on *Twitter*. Mr. Al-Najjar also met with the United Nations Special Rapporteur on the independence of judges and lawyers, Ms. Gabriela Knaul, during her recent visit to the United Arab Emirates between 28 January and 5 February 2014.

Mr. Hossain Al-Najjar was the subject of previous communications sent to your Excellency's Government on 16 April 2013 (ARE 1/2013) and 6 August 2013 (ARE 4/2013) by the 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; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. We thank your Excellency's Government for the responses transmitted on 10 June 2013 and 20 November 2013. We nevertheless wish to reiterate our concerns at the sentencing of 69 of the 94 accused, despite consistent concern surrounding irregularities in the proceedings, and at the lack of thorough investigations of the serious allegations of ill-treatment directed towards the defendants whilst in detention which, if corroborated, would amount to torture. We would also like to remind your Excellency's Government that the Working Group on Arbitrary Detention adopted an opinion on 22 November 2013, finding that the deprivation of Mr. Hossain Al-Najjar's liberty as a result of such sentencing is arbitrary according to international law (Opinion No. 60/2013).

According to the information received:

On 16 March 2014, following a radio interview where the Ruler of the Sharjah Emirate stated that "families of those arrested [in the UAE 94 case] should not fill their children with hate and malice against the country", Mr. Osama Al-Najjar responded on his *Twitter* account: "Your highness, we do not hate our country and we do not forget the injustice we have faced even if our mothers do. Those who were unjust to my father owe him 20 months of prison and harassment".

On 17 March 2014, at approximately 4:00 p.m., Mr. Osama Al-Najjar was driving home after having visited his father in Al-Razeen prison, when about a dozen men wearing civilian clothes and driving six civilian cars reportedly arrested him. Mr. Al-Najjar was then allegedly transferred to one of the six cars and requested to give the password of his mobile phone. When Mr. Al-Najjar refused to comply, the men allegedly started beating him. The men then took him to his home and conducted a full search of his house until 7:00 p.m. They reportedly confiscated all of his electronic devices. Allegedly, they did not present him with an arrest warrant.

Following the search of his house, it is alleged that Mr. Al-Najjar was blindfolded and handcuffed, and transferred to a secret detention centre in the Emirate of Abu Dhabi, which is controlled by the State Security services. Mr. Al-Najjar was allegedly placed in a wheelchair, as he could not move due to the beatings he had received, and was interrogated by two State Security officers. It is further alleged that during the interrogation, Mr. Al-Najjar's wrists and ankles were cuffed and he

was beaten on all parts of his body, including his face and ears. He was also beaten on the legs with plastic covered wires.

Following the beatings, it is reported that Mr. Al Najjar, who had recently undergone a surgery, started to bleed heavily. At his insistence, Mr. Al-Najjar was taken twice to a doctor at the detention centre. The doctor allegedly did not provide him with any medical care but requested an immediate transfer of Mr. Al-Najjar to a hospital because of the hemorrhage. Despite the doctor's request for transfer, Mr. Al-Najjar was taken for further interrogations. He was reportedly forced to stand up for prolonged periods and exposed to extremely cold temperatures. It is alleged that he was interrogated and tortured for four days and was only taken to his cell for prayers and meals.

On 19 March 2014, Mr. Al-Najjar was allegedly transferred to the State Prosecution's office for interrogation without the presence of his lawyer. He was allegedly informed by the Prosecutor that he had to wait at least two weeks to meet with his lawyer.

On 21 March 2014, Mr. Al-Najjar was reportedly transferred to Al-Wathba prison in Abu Dhabi. Shortly before his transfer, Mr. Al-Najjar was supposedly brought to a military hospital where he received medical care. According to the sources, the doctor at the military hospital prescribed him medication, which has not been provided to Mr. Al-Najjar to this date. He is currently detained in an overcrowded and dirty cell that does not have sufficient sanitary facilities.

Mr. Al-Najjar is allegedly charged with "belonging to Al-Islah", a long-standing civil society organization in the UAE, "offending the State via *Twitter*", "instigating hatred against the State via *Twitter*", and "spreading false information that his father was tortured in Emirati jails". His case is allegedly still pending for prosecution.

Serious concern is expressed for the physical and psychological integrity of Mr. Al-Najjar, in particular regarding his alleged torture and denial of medical treatment in detention. Further serious concerns are expressed that his arrest and detention may be related to his legitimate activities in advocating for justice and human rights in the UAE, including his peaceful exercise of the right to freedom of opinion and expression, and his cooperation with the United Nations and its human rights mechanisms, in particular the Special Rapporteur on the independence of judges and lawyers.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Al-Najjar 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.

In addition, we would like to recall that the right to liberty and security of person is also enshrined in the Arab Charter on Human Rights, which was ratified by the United Arab Emirates in 2008. In particular, article 14 of the Charter states that: “1. Every individual has the right to liberty and security of person and no one shall be arrested, searched or detained without a legal warrant. 2. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law. [...] 5. Anyone arrested or detained on a criminal charge shall be brought promptly before a Judge or other officer authorized by law to exercise judicial power, and shall be entitled to trial within a reasonable time, or to release. The release may be subject to guarantees to appear for trial. It shall not be a general rule that persons awaiting trial shall be held in custody. 6. Anyone who is deprived of his liberty by arrest or detention shall be entitled to proceedings before a court, in order that a court may decide without delay on the lawfulness of his arrest or detention, and order his release if the arrest or the detention is not lawful. 7. Anyone who is the victim of unlawful arrest or detention shall be entitled to compensation.”

Regarding allegations that Mr. Al-Najjar did not have proper access to a lawyer, we would like to refer your Excellency's Government to Article 16 of the Arab Charter on Human Rights which stipulates that: “The accused shall be presumed innocent until proven guilty at a lawful trial. During the investigation and the trial, the accused shall be entitled to the following minimum guarantees: 1. To be informed promptly and in detail, in a language which he understands, of the nature and cause of the charge against him.; 2. To have adequate time and facilities for the preparation of his defense and to contact his relatives.; 3. To be tried in his presence in front of a judge, and to defend himself or through legal assistance of his own choosing or with the assistance of his lawyer, with whom he can freely and confidentially communicate.; [...] 6. Not to be compelled to testify against himself or to confess to guilt. [...]”

The right to be assisted by a lawyer is also set forth in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular in the following principles:

- Principle 1, which states: “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings”;

- Principle 5, which states: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”;

- Principle 7, which states: “Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”; and

- Principle 8, which states: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

Regarding the allegations of torture and ill-treatment, 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 further like to draw the attention of your Excellency’s Government to article 12 of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), acceded to by your Excellency’s Government on 19 July 2012, 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 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.”

In this context, we would further like to draw the attention of your Excellency's Government to article 14 of the CAT, which provides that victims of torture should have the right to redress and adequate compensation. In this regard, we would also like to remind you that paragraph 7e of Human Rights Council resolution 16/23, which urges States "(t)o ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation, and urges States to establish, maintain, facilitate or support rehabilitation centres or facilities where victims of torture can receive such treatment and where effective measures for ensuring the safety of their staff and patients are taken."

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances of the case with a view to ensuring Mr. Al-Najjar's right to the enjoyment of the highest attainable standard of physical and mental health, which is reflected, inter alia, in article 25(1) of the Universal Declaration of Human Rights, which provides that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services." We would also like to draw your Excellency's Government's attention to the Standard Minimum Rules for the Treatment of Prisoners (approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). Rule 22(2) provides that, "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers". Rule 25(1) provides that, "The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed".

We also wish to draw the attention of your Excellency's Government to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173, which states that: "A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge" (Principle 24). Furthermore, we wish to refer to the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, according to which "Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation" (Principle 9).

We would also like to refer your Excellency's Government to article 19 of the Universal Declaration of Human Rights which provides that "[e]veryone has the right to

freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

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.

We also wish to recall the provisions of Human Rights Council resolution 24/24, which, inter alia, reaffirms the right of everyone, individually and in association with others, to unhindered access to and communication with international bodies, in

particular the United Nations, its representatives and mechanisms in the field of human rights, and regional mechanisms, and calls upon all States to review legislation, policies and practices that have the effect of undermining unhindered access to and communication with international bodies, and to avoid adopting any such new legislation. States should ensure accountability for any acts of intimidation or reprisal by ensuring impartial, prompt and thorough investigations of any alleged acts of intimidation or reprisal in order to bring the perpetrators to justice, to provide access to effective remedies for victims in accordance with their international human rights obligations and commitments; and to prevent any recurrence. (resolution 24/24, Ops 1, 2 and 5)

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 and freedoms of Mr. Al-Najjar.

Moreover, it is our responsibility under the mandate 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 accurate?
2. Has a complaint been lodged by or on behalf of Mr. Al-Najjar for his alleged torture and ill-treatment?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the allegations of torture and ill-treatment.
4. Please provide the full details of any prosecutions which may have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators of torture and ill-treatment?
5. Please provide information concerning the legal grounds for the arrest and detention of the Mr. Al-Najjar and how these measures are compatible with international and regional human rights standards as enshrined, inter alia, in the UDHR and the Arab Charter on Human Rights. In particular, please provide information on whether Mr. Al-Najjar has had access to family members, legal counsel, and medical personnel.
6. Please provide details of any measures taken to ensure that Mr. Al-Najjar has immediate access to medical care and treatment, including the medication prescribed by the military hospital doctor.

7. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in a safe and enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

8. Please indicate whether redress and the right to fair and adequate compensation, including the means for as full rehabilitation as possible, have been provided to the victim.

We undertake to ensure that your Excellency's Government's response will be available 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. Al-Najjar 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.

Given the seriousness of the allegations, we would like to inform your Excellency's Government that we might consider issuing a press release on the issues contained herein.

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

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Margaret Sekaggya
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