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HIGH COMMISSIONER FOR HUMAN RIGHTS

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; 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) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)
BHR 4/2013

30 July 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; Special Rapporteur on the independence of judges and lawyers; 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, 17/2, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged lack of legislative safeguards in place in the Kingdom of Bahrain as well as allegations of torture or other cruel, inhuman or degrading forms of treatment, in particular with relation to the cases of Ms. **Zainab Alkhawaja**, Mr. **Mahdi Abu Deeb** and Mr. **Mohamed Al-Maskati**. Ms. Alkhawaja is a prominent human rights defender and blogger who has been active in calling for political reform and democracy in the Kingdom of Bahrain. Mr. Abu Deeb is the President of the Bahraini Teacher's Association. Mr. Al-Maskati is the President of the Bahrain Youth Society for Human Rights.

Both Ms. Alkhawaja and Mr. Abu Deeb were previously the subject of an urgent appeal sent by to your Excellency's Government on 9 September 2011, 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 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. While we thank your Excellency's Government for its responses of 15 and 21 December 2011, we remain concerned at the issues expressed therein, namely their arrests and subsequent detention, as well as stigmatization and harassment allegedly directed towards them.

Mr. Al-Maskati was the subject of a communication sent to your Excellency's Government on 5 March 2010, 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, to which a reply was received on 27 October 2010. He was the subject of another communication sent on 12 April 2011 to your Excellency's Government, to which a response was received on 7 June 2011, as well as of a joint urgent appeal sent on 18 October 2012, by 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 association; and the Special Rapporteur on the situation of human rights defenders. While we thank your Excellency's Government for its response of 19 November 2012, we remain concerned at the issues raised, including the criminal charges and the threats made against Mr. Al-Maskati following his participation at the 21st session of the Human Rights Council.

According to the information received:

On 27 February 2013, it is reported that Ms. Alkhawaja was arrested by security forces during a peaceful sit-in in front of the Royal Palace in Al Qudaybiyah. Sources inform that the demonstration was intended to request that the authorities hand over the body of a protester allegedly killed during a demonstration on 14 February 2013. On 22 May 2010, she was sentenced to three months imprisonment on charges of taking part in an illegal gathering and insulting a police officer. It is reported that she is serving this sentence at Hoorah Detention Centre.

On 25 June 2013, sources inform that Ms. Alkhawaja was sentenced to two additional months in jail on charges of assaulting two policewomen inside the detention centre. It is reported that Ms. Alkhawaja had tried to defend a fellow inmate from the officers. However, despite the police officers' confirmation that surveillance footage of the incident exists, it is reported that a request from Ms. Alkhawaja's legal defence to submit it as evidence was met with a letter from the prison which reportedly stated that there was no closed-circuit television footage. Sources inform that a request that this letter be put on file was also rejected.

On 5 April 2011, Mr. Abu Deeb, president of the Bahraini Teacher's Association, was arrested on charges of "incitement of hatred of the political regime" and "advocating regime change through the use of force". He was convicted and is currently serving a five-year sentence at Jaw Prison. There have been allegations of torture, or other cruel, inhuman or degrading forms of treatment being used against him since the beginning of his detention. It is reported that he was

receiving medical treatment at Salmaniya Medical Complex, but this was allegedly stopped in October 2012. On 21 October 2012, an appeal court reduced the sentence of Mr. Abu Deeb. It is alleged that he has had access only to a prison doctor since then as he reportedly refuses to be seen at the military hospital in al-Riffa'a, where he was allegedly tortured or subjected to other forms of cruel, inhuman or degrading treatment. It is further alleged that Mr. Abu Deeb was given a contaminated bottle of water sometime in May 2013, and that since then his health has deteriorated. Sources also allege that on 6 June 2013, he was denied visitation rights due to his refusal to remove his medical shoes, which are a health requirement due to the alleged torture he was subjected to in the past.

On 1 July 2013, sources inform that the Court of Cassation in Manama rejected a request by Mr. Abu Deeb's defence team that previous verdicts should not be implemented until allegations of torture, or other cruel, inhuman or degrading forms of treatment against him whilst in detention are investigated. It is reported that Mr. Abu Deeb suffers from high-blood pressure and diabetes, as well as injuries which allegedly result from ill-treatment he was subjected to.

According to sources, on 16 October 2012, Mr. Al-Maskati was summoned to Al Hooraa police station where he was allegedly detained overnight. The following day he appeared before the Bahraini Public Prosecutor on charges of "participation in illegal protests". These charges reportedly relate to a peaceful demonstration which called for human rights and democracy in the Kingdom of Bahrain held in Manama on 12 October 2012. It is reported that he was released on bail on this occasion, but the charges have remained pending against him since then.

On 19 June 2013, Mr. Al-Maskati appeared before the Lower Criminal Court on these same charges. According to the information received, the case was then postponed until 9 July 2013. It is reported that Mr. Al-Maskati's lawyer asked for witnesses, and the judge in the case postponed it until 10 September 2013, so that witnesses could be called.

Profound concern is expressed at the allegations of torture, or other cruel, inhuman or degrading forms of treatment against Mr. Abu Deeb. Further serious concern is expressed at the procedural irregularities alleged during the trials of Ms. Alkhawaja, Mr. Abu Deeb and Mr. Al-Maskati, and further concern is expressed at the possibility that the irregularities may be connected to their peaceful and legitimate work in defence of human rights in the Kingdom of Bahrain, and in the case of Mohamed Al-Maskati, may be a form of reprisal for his co-operation with the United Nations.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their 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).

In this connection, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of the persons 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).

Concerning the allegations of torture and ill-treatment of Mr. Abu Deeb, 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 the attention of your Excellency's Government 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. Furthermore, we would 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 wish 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 like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the ICCPR, which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

We would also 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 addition, 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 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 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully;

- 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 resolution 12/2 of the Human Rights Council (A/HRC/RES/12/2), which, inter alia, “condemns all acts of intimidation or reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (OP 2) and “calls upon all States to ensure adequate protection from intimidation or reprisals for individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (...)” (OP 3).

Furthermore, we would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular principle 6, which states: “The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.”

We would also like to refer your Excellency's Government to the Guidelines on the Role of Prosecutors, 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, and in particular guideline 12, which states: “Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring

due process and the smooth functioning of the criminal justice system.”; and guideline 13, which states: “In the performance of their duties, prosecutors shall: (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination; (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect.”

Regarding the allegations of torture and ill-treatment in particular, we would like to refer your Excellency's Government to the Guidelines on the Role of Prosecutors, and in particular guideline 15, which states: “Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.”

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 the above-mentioned persons 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. Please provide the details, and where available the results, of any investigation, medical examinations and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide information concerning the legal grounds for the arrest and detention of Ms. Zainab Alkhawaja, Mr. Mahdi Abu Deeb, and Mr. Mohamed Al-Maskati and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
4. Please provide information concerning any steps that have been taken by your Excellency's Government to ensure that Mahdi Abu Deeb, and all detainees in the Kingdom of Bahrain, receives the medical attention and medication that he requires while in detention.

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 the above mentioned persons 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

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Maina Kiai
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