

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

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

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Working Group on the issue of discrimination against women in law and in practice; 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; 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

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 218/2 G/SO 217/1 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) G/SO 214 (89-15)
BHR 6/2013

28 August 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; 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; 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 Human Rights Council resolutions 15/18, 16/16, 23/7, 16/4, 15/21, 16/5, 17/2, 16/23, and 23/25.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding allegations of arbitrary detention, torture and ill-treatment of Ms. **Rihanna Al-Musawi** and Ms. **Nafeesa Al-Asfoor**, and of lack of judicial safeguards while in detention; and of arbitrary detention of Mr. **Abas Al-Asfoor** whose whereabouts are currently unknown.

Allegations of arbitrary detention, and acts of torture and ill-treatment of activists and human rights defenders have already been the subject of previous communications by Special Procedures mandate-holders, including a joint urgent appeal sent on 30 July 2013 (UA BHR4/2013) 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; 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 regret that no response has been provided to the allegations of arbitrary detention, torture and ill-treatment of Ms. Zainab Al-Khawaja, Mr. Mahdi Abu Deeb and Mr. Mohamed Al-Maskati.

According to the information received:

On 20 April 2013, Ms. Rihanna Abdulla Al-Musawi, Ms. Nafeesa Al-Asfoor, Mr. Abas Ibrahim Ahmed Al-Asfoor were arrested at the Bahrain International Circuit on charges of attempting to commit a terrorist act at the Formula 1 race competition. The husband of Ms. Rihanna Al-Musawi was also arrested on 20 April 2013, but was released later that day. At the time of the arrest, Ms. Al-Musawi and Ms. Al-Asfoor were reportedly protesting peacefully, wearing t-shirts calling for the release of the imprisoned activist, Ms. Zainab Al-Khawaja and the photographer, Mr. Ahmed Humaidan, who had also been previously detained.

According to the women's counsel, Ms. Al-Musawi and Ms. Al-Asfoor were charged under the terrorism law (Law No. 58 of 2006) for allegedly attempting to detonate a homemade bomb during the Formula One race in Bahrain. The two women were accused of joining an illegal group, known as the "February 14" group and having knowledge of a terrorist plot without informing the authorities. They were taken into custody for an initial period of sixty days.

An official statement was reportedly posted on the webpage of the Ministry of Interior stating that: "On the second day of the Grand Prix, police assigned to the BIC gate stopped two girls who were acting suspiciously. After searching them it was found that one of them was carrying a pillow stuffed under her dress. The girl told police she was testing the security procedures as part of a recce for a terrorist act. The girls were referred to the Public Prosecutor."

On 29 April 2013, while in detention at Riffa Police Station, both Ms. Al-Musawi and Ms. Al-Asfoor were reportedly beaten during interrogations and threatened with electric shocks by masked men for the purposes of extracting confessions and also threatened with the arrest of relatives. Since their arrest, it is reported that lawyers acting for the two women have submitted requests to the Public Prosecution Service to formally represent the detainees; however, they have not received any response. It has been reported that both women have not been allowed to consult a lawyer in relation to their case, nor have they been able to receive visitors, including family members, while in detention. It is alleged the two women received a visitation ban lasting sixty days.

On 11 July 2013, it is reported that the trial of approximately fifty individuals began at the Fourth Criminal Court and that Ms. Al-Musawi gave evidence before the judge that she was tortured during detention, stripped of all her clothes twice and threatened with rape and electric shocks by male officers. It is also reported that she was still unable to officially appoint a lawyer and that the full details of her testimony were not recorded in the trial report except for a reference that she

received “improper moral treatment.” Ms. Al-Musawi reportedly testified that she was forced to stand naked in front of an open door so that others could see her, beaten on her legs and refused food and water during one entire day. She also reportedly informed the court that she was presented before one masked police officer five times and told that she must confess to the charges against her or suffer further, more severe forms of torture. It is also alleged that Ms. Al-Musawi fell unconscious during an interrogation at the Public Prosecutor’s Office, after only being allowed a fifteen minute break before being questioned, and was subsequently interrogated for several hours before a lawyer was allowed to be present.

On 18 July 2013, Ms. Al-Musawi reportedly embarked on a hunger strike in protest to ill-treatment suffered as a direct result of her testimony in court on 11 July 2013 relating to her alleged torture during detention. Although it is reported that Ms. Al-Musawi ended her hunger strike after receiving promises to improve her treatment in detention, according to information received, her situation has not improved. At her most recent court appearance on 25 July 2013, she could not speak as the judge only permitted lawyers to do so. Ms. Al-Musawi’s detention was extended on 4 August 2013 for a further forty-five days.

With regard to Ms. Al-Asfoor, it is reported that she has on-going health issues including recurring breast lumps, dislocation of jaw joints that causes friction between the jaw and head bones and requires her to wear a splint that stops her jaw from sliding out of place. Furthermore, she has allegedly suffered loss of consciousness several times, which has resulted in her breaking her foot and has lost weight while in prison. Moreover, her family has expressed their concerns regarding her current state of health to prison authorities, and although she had reportedly been transferred to the Bahrain Defence Force Hospital for preliminary examination, she allegedly received no treatment there or information regarding her tests. On 16 August 2013, Ms. Al-Asfoor reportedly telephoned her family informing them that she was transferred to the Fort Prison Hospital and that she would be held there for a period under observation. She has been allegedly diagnosed with anaemia.

It is reported that Ms. Al-Musawi and Ms. Al-Asfoor are currently being held in a women’s detention centre, in Issa Town, south-west of the capital, Manama and that their trial has been adjourned until September.

With regard to Mr. Abas Al-Asfoor, no further information has been received as to his whereabouts after his detention.

Without prejudging the accuracy of these allegations, serious concern is expressed for the physical and psychological integrity of Ms. Rihanna Al-Musawi, Ms. Nafeesa Al-Asfoor and Mr. Abas Al-Asfoor. Grave concern is further expressed that the allegations of arbitrary detention, torture and ill-treatment and of lack of judicial safeguards could be related to their activities in the defence of human rights; and that these allegations could be revealing a consistent pattern of targeting women protestors in recent months. Further

concern is expressed that Mr. Abas Al-Asfoor may have been subjected to enforced disappearance.

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).

We would also 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, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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 the attention of your Excellency's Government to paragraph 8a of Human Rights Council Resolution 16/23, which reminds States that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture".

We would like to draw the attention of your Excellency's Government to article 12 of the Convention Against Torture, 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 Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture.

Moreover, we would like to bring to your Excellency's attention Article 4 (c & 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.

We also wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (ratified by your Excellency's Government on 18 June 2002), whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In general recommendation No. 19, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation; in paragraph 9, it makes clear that "under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation".

In this connection, we would like to draw the attention of your Excellency's Government to the Agreed Conclusions of the Commission on the Status of Women adopted in March 2013 (E/2013/27- E/CN.6/2013/11), whose paragraph 23 expressed deep concern about violence against women and girls in public spaces, including sexual harassment, especially when it is being used to intimidate women and girls who are exercising any of their human rights and fundamental freedoms. The Commission urges governments to, inter alia: (x) Prevent, investigate and punish acts of violence against women and girls that are perpetrated by people in positions of authority, such as teachers, religious leaders, political leaders and law enforcement officials, in order to end impunity for these crimes; ... (z) Support and protect those who are committed to eliminating violence against women, including women human rights defenders in this regard, who face particular risks of violence.

Furthermore, we would like to refer your Excellency's Government to article 2(3) of the ICCPR, which states: "Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy."

We would like to bring to the attention of your Excellency's Government 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 alleged lack of access to legal representation, we would like to refer your Excellency’s Government to article 14(3) of the International Covenant on Civil and Political Rights, which states: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.” In its General Comment No. 32, the Human Rights Committee further indicated that: “‘Adequate facilities’ must include access to documents and other evidence; this access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory.”

Furthermore, we would like to refer Your Excellency's Government to 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, and in particular 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 public statement issued by the Ministry of the Interior on the subject of the arrest of Ms. Al-Musawi and Ms. Al-Asfoor, we would like to refer your Excellency's Government to article 14(2) of the ICCPR, which states: “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to 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.
- 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 recall the right to freedom of opinion and expression 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 refer to 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.

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 relation to the allegations according to which the fate and whereabouts of Mr. Abas Al-Asfoor are unknown, we would like to bring to the attention of your Excellency’s Government the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which sets out necessary protection by the State, and in particular:

- article 2.1 (no State shall practice, permit or tolerate enforced disappearances);
- article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction);
- article 10 (right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest).

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, as 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, 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. Please provide the full details of any measure put in place to ensure the physical and psychological integrity of Ms. Rihanna Al-Musawi, Ms. Nafeesa Al-Asfoor, and Mr. Abas Al-Asfoor.
3. Please provide information on the whereabouts of Mr. Abas Al-Asfoor, and whether he has been given access to legal counsel and allowed to inform his relatives of his current situation. If his fate and whereabouts are unknown, please provide the details on any investigation or other inquiries which may have been carried out. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide information concerning the legal grounds for the detention of the aforementioned persons, including how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.

5. Please provide the details, and if available the results, of the medical examination, and any judicial or other inquiries which may have been carried out in relation to these cases. If no proceedings have taken place, or if they have been inconclusive, please explain why.

6. Please provide further information on the allegations of torture and ill-treatment of Ms. Rihanna Al-Musawi and Ms. Nafeesa Al-Asfoor, including the testimony of Ms. Al-Musawi before the Fourth Criminal Court and of lack of access to adequate medical care to Ms. Nafeesa Al-Asfoor.

7. Please clarify whether compensation has been made available to Ms. Rihanna Al-Musawi, Ms. Nafeesa Al-Asfoor and to Mr. Abas Al-Asfoor.

8. Please provide information about any measures taken to ensure that activists and human rights defenders can freely conduct activities in the defence of human rights in Bahrain without fear of harassment, intimidation, arbitrary detention, ill-treatment or threat of any kind.

9. Please provide the full details of any prosecution undertaken in relation to the present cases, including any penal, disciplinary or administrative sanction imposed on the alleged perpetrators.

We undertake to ensure that your Excellency's Government is 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.

We would like to bring to the attention of your Excellency's Government that should sources submit the allegations of enforced disappearance mentioned in this communication as a case to the Working Group on Enforced or Involuntary Disappearances, they will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by a separate correspondence.

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

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

Olivier de Frouville
Chair-Rapporteur of the Working Group on Enforced or Involuntary
Disappearances

Frances Raday
Chairperson-Rapporteur of the Working Group on the issue of discrimination
against women in law and in practice

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
association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

-

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Rashida Manjoo
Special Rapporteur on violence against women, its causes and consequences