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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; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24)
BHR 5/2013

14 August 2013

Excellency,

We have the honour to address you in our capacity 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; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 16/4, 15/21, 16/5, 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 **recommendations** endorsed by the National Assembly on 28 July 2013 and agreed to by His Majesty, King Hamad bin Isa Al-Khalifa, **to amend the 2006 Law on the Protection of Society from Acts of Terrorism which will severely compromise the enjoyment of human rights and fundamental freedoms in Bahrain.**

According to the information received:

On 28 July 2013, the National Assembly endorsed twenty-two recommendations to amend the anti-terrorism Law No. 58 of 2006, known as "Protecting Society from Terrorist Acts", in an extraordinary session. The recommendations were then submitted to His Majesty King Hamad bin Isa Al-Khalifa, who issued his directives to implement the twenty-two recommendations on 29 July 2013. The Law no. 58 of 2006 has been the subject of two earlier communications sent on 29 March 2006 (AL BHR 3/2006), and 30 June 2006 (UA BHR 5/2006), see A/HRC/4/26/Add.1, paras. 14-15. It is reported that these recommendations increase severely punishments laid out in the 2006 anti-terrorism law. It is further

reported that some of the recommendations have already been adopted, while the other recommendations could be imminently adopted.

These recommendations reportedly include provisions for revoking citizenship of those who carry out terrorist crimes, the imposition of harsher sentences on anyone involved in acts of terrorism and violence and on anyone inciting others to use violence, and banning sit-ins and public gatherings in the capital Manama. Reportedly, the provision providing for the revocation of citizenship would violate article 15 of the Universal Declaration of Human Rights, which provides that no one shall be arbitrarily deprived of his or her nationality and may have serious consequences for the enjoyment of human rights of those concerned.

It is also alleged that these recommendations give the security forces broad powers and further allow the authorities to impose a state of national safety (state of emergency) in order “to impose civic security and peace”.

It is reported that these recommendations may seriously affect fundamental freedoms and human rights in Bahrain, particularly for members of non-governmental organizations (NGOs), trade unionists, opposition parties and human rights defenders. Of particular concern is the reported recommendation that provides for legal actions against some “political” associations which “incite and support acts of violence and terrorism”, which is not further defined in the text.

It is further alleged that the recommendation to ban sit-ins, rallies and gatherings in Manama is drafted in general terms and may have a disproportionate effect on the ability of individuals, NGOs, human rights defenders, opposition parties and trade unionists to hold peaceful assemblies, and would leave them at risk of criminal prosecution while peacefully exercising their human rights, in particular the rights to freedom of peaceful assembly and of expression.

It is also alleged that the recommendation placed on individuals to “adhere to a balanced moderate discourse”, as well as the recommendation to inflict tough penalties on those who use social networks to disseminate “false information to foreign sides which plot against the country’s security and stability” may be used to silence dissenting voices and to prevent individuals from engaging with international bodies, including the United Nations human rights mechanisms.

These recommendations are reportedly endorsed in a context of deteriorating human rights situation in the Kingdom of Bahrain, where unnecessary and excessive use of force during protests has been used by security forces, trials before military courts, arrests of human rights defenders for activities in relation to their work have been carried out, and torture has taken place in detention.

This legislative development may be related to large demonstrations planned by opposition groups for the coming days as the trend appears to have been to respond with tough legislative reforms to large scale antigovernment protests as it happened in February 2011 when the authorities adopted a National Safety Law to prosecute those exercising their rights to freedom of peaceful assembly and of expression.

Without prejudging the accuracy of the information made available to us, we would like to express our grave concern about the imminent adoption of the recommendations to amend the anti-terrorism Law no. 58 of 2006, even more so when the definition of terrorism contained in Law no. 58 of 2006 is overly broad and has been subject to earlier communications (see above). Serious concerns are expressed particularly concerning the restrictions these amendments would introduce in relation to individuals' rights to freedom of peaceful assembly and of expression.

In this context, we would like to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "[e]veryone 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 also like to refer your Excellency's Government to article 22 of the ICCPR, which provides that "[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

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

We would also 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 resolution 22/6 adopted by the Human Rights Council on 21 March 2013, notably its operative paragraph 10 which calls upon States to ensure that measures to combat terrorism and preserve national security “(a) Are in compliance with their obligations under international law, in particular under international human rights law, and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights” and “(c) Prohibit and do not provide for, or have the effect of, subjecting persons to arbitrary detention, such as detention without due process guarantees, the deprivation of liberty that amounts to placing a detained person outside the protection of the law, or the illegal deprivation of liberty and transfer of individuals suspected of terrorist activities, nor the unlawful deprivation of the right to life or the trial of suspects without fundamental judicial guarantees”. Furthermore, operative paragraph 11 “[c]alls upon States to ensure that all legal

provisions and their application affecting human rights defenders are clearly defined, determinable and non-retroactive in order to avoid potential abuse to the detriment of fundamental freedoms and human rights, and specifically to ensure that [...] (i) Dissenting views may be expressed peacefully.”

In this context, we would like to remind your Excellency’s Government that article 2(2) of the Convention Against Torture, provides that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. In this regard we note that paragraph 2 of Resolution 16/23 of the Human Rights Council, which “Condemns in particular any action or attempt by States or public officials to legalize, authorize or acquiesce to torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions, and urges States to ensure accountability for all such acts;”

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 freedom of peaceful assembly and of expression in compliance with the above international instruments.

Moreover, since 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 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 full details on the aforementioned recommendations and explain how their provisions are in accordance with the Kingdom of Bahrain’s obligations under international human rights law and standards, particularly with regard to the rights to freedom of association and of peaceful assembly, and freedom of expression.
3. Please indicate whether any consultation has taken place with regard to these recommendations, particularly with civil society actors.

We undertake to ensure that your Excellency’s Government’s response to 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 to freedom of peaceful assembly and of expression are respected.

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

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opinion and expression

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