

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

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 promotion and protection of human rights and fundamental freedoms while countering terrorism; 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) Terrorism (2005-4) G/SO 214 (53-24)
BHR 7/2013

4 October 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 promotion and protection of human rights and fundamental freedoms while countering terrorism; 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, 22/8, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received the alleged sentencing of Mr. **Naji Fateel** to 15 years imprisonment.

Naji Fateel is a board member of the Bahrain Youth Society for Human Rights (BYSHR) and a blogger who has been active in reporting human rights violations in Bahrain. It is reported that before his arrest and detention he had been giving daily speeches during marches in which he discussed the importance of documenting human rights violations and encouraged people to form monitoring committees.

He was previously the subject of an urgent appeal sent on 10 May 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; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment. This communication dealt with serious allegations of torture against Mr. Fateel whilst he was

in detention awaiting trial. It also dealt with Mr. Fateel's lack of access to a lawyer whilst being interrogated. We appreciate the reply received from your Excellency's Government on 5 June 2013. However, concern is expressed that the allegations of torture contained therein have not been adequately addressed, as the physician who examined Mr. Fateel may not have been impartial. Further, it should not have been necessary that Mr. Fateel request a lawyer during his interrogation, but rather legal assistance should have been offered to him.

Amendments to the Anti-Terrorism law No. 56 were the subject of an urgent appeal sent 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 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 on 14 August 2013. We thank your Excellency's government for the reply received on 4 September 2013.

According to the information received:

After his arrest on 2 May 2013, Mr. Fateel was originally charged with "establishing a group for the purpose of disabling the constitution" under Article 6 of the Anti-Terrorism law. However, these charges were reportedly dropped subsequently, and on 22 May 2013 Mr. Fateel was sentenced to six months in prison for "attendance at illegal gatherings".

On 11 July 2013, Mr. Fateel was summoned to appear before the Fourth Criminal Court, and was again charged under Article 6 of the Anti-Terrorism law.

On 29 September 2013, Mr. Fateel was reportedly sentenced to 15 years in prison under Article 6 of the Anti-Terrorism law, on the charges which had previously been dropped.

In the interim, allegations that Mr. Fateel was tortured during interrogation in the Criminal Investigations Directorate (CID) have continued unabated, and it is further reported that photographic evidence of this torture exists.

It is reported that an appeal trial will take place on 18 November 2013.

Concern is expressed at the harsh sentencing of Mr. Fateel, particularly in light of the possibility that new amendments to the anti-Terrorism law may not be in conformity with guidelines laid out by the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism. Deep concern is felt that allegations of torture against Mr. Fateel may not have been investigated properly, and further concern is expressed that these allegations, if shown to be true, and taken together with allegations that he was not offered legal counsel during interrogation, would severely compromise Mr. Fateel's right to a fair trial. Further concerns are expressed at the severity of the sentence handed down to Mr. Fateel.

We would like to draw your Excellency's attention to General Assembly resolution 66/171 and Human Rights Council resolution 19/19, whose paragraph 1 reaffirms "that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law."

We would like to draw your Excellency's Government attention to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/61/267, paras. 10-11), in which the Special Rapporteur "recognizes States' right and duty to protect individuals, both their citizens and others, from violence, including terrorist attacks. States therefore have an obligation to take effective counter-terrorism measures. At the same time, States must respect their international human rights obligations in all the measures that they take to counter terrorism. The Special Rapporteur would like to stress that these two requirements placed on States are not mutually exclusive. In human rights law, the extreme and difficult situations States may face are recognized by allowing for certain limitations and derogations in extraordinary circumstances. It is undeniable that a successful counter-terrorism strategy includes a preventive dimension. As such, terrorist groups, organizations or entities which are involved in the planning or preparation of terrorist acts must be prevented from carrying them out and should be sanctioned even if a planned terrorist act is not committed or attempted. This implies that it is permissible to take measures such as criminalizing preparatory acts of terror planned by groups, which in turn implies the need to take measures that interfere with the freedom of peaceful assembly and the freedom of association. States must not, however, abuse the necessity of combating terrorism by resorting to measures that are unnecessarily restrictive of human rights. Clear safeguards must be put in place by the law, to prevent abuse (of the limitations) and, if abuses do occur, to ensure that remedies are provided."

Importantly, the trial has been condemned for its failure to meet internationally accepted legal standards of a fair trial and due process guarantees. Specifically, Mr. Fateel was not allowed to appear before the court during the hearing. Furthermore, the lawyers representing Mr. Fateel have requested that the judges be disqualified on the grounds of bias.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned person 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 (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

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 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.
- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- 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 9 para. 1 which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
- 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 draw your Government's attention to article 12 of the Convention Against Torture (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. We would also like to draw your Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, 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 (the Istanbul Principles) as a useful tool in efforts to combat torture".

We would also like to draw your attention to the right to a fair trial as one of the fundamental guarantees of human rights and the rules of law embodied in article 14 of the International Covenant on Civil and Political Rights. In his report on the protection of human rights and fundamental freedoms while countering terrorism (A/63/223, para. 31), the Special Rapporteur on the promotion and protection of human rights while countering terrorism notes that article 14(3)(g) of the International Covenant on Civil and Political Rights is also invoked where "methods violating the provisions of article 7 (torture and any other inhumane treatment) are used in order to compel a person to confess or testify." In that report, the Special Rapporteur further stresses that the practical implementation of article 14 (3)(g) of the Covenant is dependent on safeguards and procedural rules that ban in law and practice statements made involuntarily (A/63/223, para. 32).

We would also 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 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 to freedom of association, as recognized in article 22 of the ICCPR, 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.”

With regard to the alleged failure to investigate the allegations of torture properly, we would like to draw your Excellency’s Government attention to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/22/52, para. 28), in which the Special Rapporteur stated that “Where a plausible allegation is made that public officials have committed (or been complicit in the commission of) gross or systemic human rights violations, the executive authorities of the State(s) concerned are obliged under international law to carry out proprio motu an effective official investigation which is begun promptly, secures all relevant evidence, and is capable of leading to the identification and, where appropriate, the punishment of the perpetrator(s) and those on whose authority the violations were committed. Any deficiency in the investigation which undermines its ability to establish the identity of the persons responsible will risk falling foul of the requisite legal standard.”

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 person 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 full details and results of the medical examination carried out on Mr. Najj Fateel, and explain how it complies with his right to have allegations of torture or other cruel, inhuman or degrading treatment examined in a fair, independent and impartial manner.
3. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

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 person 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

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

Ben Emmerson
Special Rapporteur on the promotion and protection of human rights and
fundamental freedoms while countering terrorism

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