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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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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 1/2014

10 January 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 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 24/7, 16/4, 24/5, 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 concerning the situation of Mr. Ahmad Fardan, Bahraini national, photojournalist and photographer working for the agencies Nur Photo, Demotix and Sipa.

According to the information received:

On 26 December 2013, at about 2:30 a.m., Mr. Fardan was arrested by officers in plain clothes following a raid on his home in Abu Saibah village, west of the capital Manama. The arresting officers did not present an arrest warrant or identification document, nor did they explain the reason of his arrest. They have reportedly confiscated Mr. Fardan's computer and cameras. It is reported that Mr. Fardan was taken to the Criminal Investigations Directorate (CID) in Manama where he was held incommunicado. He was reportedly beaten during

interrogation until he passed out and was subsequently taken to Salmaniya Medical Complex where X-Rays revealed he had sustained two broken ribs. The following day he was reportedly transferred to al-Qal'a Prison hospital where he remained until 31 December 2013. It is reported that during this time, Mr. Fardan was denied access to a lawyer, and was not allowed visits by family albeit two short phone calls made to his family.

On 1 January 2014, Mr. Fardan was brought before the Public Prosecutor who ordered his detention for 45 days on a charge of "intending to participate in gatherings". He was reportedly transferred to Dry Dock Prison in Manama where his family visited him for the first time on 5 January. It is reported that Mr. Fardan's lawyer was not present at the proceedings before the Public Prosecutor. No information is available regarding the date of his trial.

It is reported that Mr. Fardan has been photo-documenting demonstrations in Bahrain and was the 2013 winner of the annual Freedom House photo contest, dedicated to highlighting images of repression and freedom. Mr. Fardan had reportedly been campaigning for the release of his friend and fellow photographer Mr. Ahmed Humaidan, who has reportedly been held since December 2012 on allegedly trumped-up charges of attacking a police station. It is reported that on 8 August 2013, Mr. Fardan was briefly arrested, beaten and threatened with death if he did not cooperate by providing photos of anti-government demonstrators. He was reportedly released a few hours later after sustaining several injuries.

In view of the allegations according to which Mr. Fardan was subjected to beating and was held incommunicado, serious concern is expressed about his physical and mental integrity. Further grave concerns are expressed that the arrest and detention of Mr. Fardan might be linked to his peaceful and legitimate activities in documenting demonstrations in Bahrain.

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) as ratified by the Kingdom of Bahrain in 2006.

We should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. Ahmad Fardan. 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) as ratified by the Kingdom of Bahrain in 1998.

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."

Furthermore, we would also like to draw the attention of your Excellency's Government to paragraph 7.c of Human Rights Council Resolution 8/8 of 18 June 2008, which reminds all States that "Prolonged incommunicado detention may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person".

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 further like to refer to Human Rights Council resolution 21/12 on safety of journalists (A/HRC/RES/21/12) adopted on 27 September 2012, which "condemns in the strongest term all attacks and violence against journalists, such as torture, extrajudicial killings, enforced disappearances and arbitrary detention, as well as intimidation and harassment;" and "calls upon States to ensure accountability through the conduct of impartial, speedy and effective investigations into such acts falling within their jurisdiction, and to bring to justice those responsible and to ensure that victims have access to appropriate remedies."

We would like to appeal to your Excellency's Government to refer to article 21 of the International Covenant on Civil and Political Rights, 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 interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.

In this connection, we would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 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 also wish 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 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; and

- 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.

With regards to the role of media and human rights defender in monitoring demonstrations, we would like to refer to the Guidelines on Freedom of Peaceful Assembly of the Office for Democratic Institutions and Human Rights (ODHIR) of the

Organization for Security and Cooperation in Europe (OSCE), available at <http://www.osce.org/odihr/66042> and to (my) 2007 report to the General Assembly (of the Special Representative of the Secretary-General on the situation of human rights defenders) (A/62/225, paras. 91 and 93) that underline how “monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. [...] The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly. [...] Journalists as well have an important role to play in providing independent coverage of demonstrations and protests. [...] The media must therefore have access to assemblies and the policing operations mounted to facilitate them.

We would further like to refer your Excellency's Government to article 14(1) of the International Covenant on Civil and Political Rights, which states: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” Article 14(3) of the ICCPR further 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 defence and to communicate with counsel of his own choosing; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”

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: “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: “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: “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: “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.”

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 Mr. Ahmad Fardan 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 summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim regarding alleged treatment in custody?
3. Please provide information concerning the legal grounds for the arrest and detention of Mr. Ahmad Fardan and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the UN Basic Principles on the Role of Lawyers.
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide the full details of any prosecutions which have been undertaken regarding alleged treatment in custody. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
6. Please indicate whether steps have been undertaken to provide compensation to the victim or the family of the victim.
7. Please provide information on the measures taken to ensure the safety of Mr. Ahmad Fardan.

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. Ahmand Fardan 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.

Mads Andenas
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
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Margaret Sekaggya
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