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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; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1)
BHR 7/2012

9 August 2012

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; and Special Rapporteur on the rights to freedom of peaceful assembly and of association pursuant to Human Rights Council resolutions 15/18, 16/4, and 15/21.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the situation of Mr. [REDACTED], aged 15, Mr. [REDACTED], aged 15, Mr. [REDACTED], aged 20, and Mr. [REDACTED], aged 20.

According to the information received:

On 23 July 2012, Messrs [REDACTED], [REDACTED] and [REDACTED] were arrested during a reportedly peaceful anti-government demonstration in Bilad al-Qadeem, west of Manama. They were first brought to a police station in Gudaibiya neighbourhood, then to the Criminal Investigation Department for questioning, and finally to the Public Prosecutor Office for further questioning. They were subsequently charged with rioting and "illegal gathering", and are reportedly detained in the Dry Dock prison in Manama. Their detention was extended until 23 September 2012.

It is reported that Messrs [REDACTED], [REDACTED] and [REDACTED] were not allowed to contact their lawyers, nor speak to their respective families, until 48 hours after their arrest. No lawyer was reportedly present during the interrogations.

Serious concerns are expressed that the arrest and detention of Messrs [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

██████████, and the charges brought against them, may be linked to the exercise of their rights to freedom of opinion and expression, and of peaceful assembly. Further concerns are expressed about the physical and psychological integrity of the four detainees, especially Messrs ██████████ and ██████████ who are children.

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 relation to the detention of Messrs ██████████ and ██████████ ██████████, we would further like to remind your Excellency's Government that in accordance with article 37(b) of the Convention on the Rights of the Child (CRC) “[n]o child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

Furthermore, article 37(d) of the CRC provides that “[e]very child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.” In its General Comment No. 10, the CRC Committee clarified that “[e]very child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours” (CRC/C/GC/10, 9 February 2007, p. 18). The Committee also recommended that States Parties “ensure by strict legal provisions that the legality of a pre-trial detention is reviewed regularly, preferably every two weeks” (*Ibid.*)

We would also like to recall article 19 of the 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.”

In this connection, we wish to reiterate the principle enunciated in Human Rights Council resolution 12/16 which calls on States, while noting that article 19, paragraph 3, of the ICCPR provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression

of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We would also like to draw the attention of your Excellency's Government to article 13 of the Convention on the Rights of the Child which provides that:

1. The child 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 the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals

We would also like to refer to paragraph 5(f) of the Human Rights Council Resolution 12/16, which calls upon States to enable children to exercise their right to express their views freely, including through school curricula that encourage the development of and respect for different opinions, and to have their views taken into account in all matters affecting them, the views of the child being given due weight in accordance with the age and maturity of the child. Moreover, we would like to refer to

We would further like to refer to article 21 of the ICCPR, which provides that "[t]he 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 or the protection of the rights and freedoms of others.

In this context, we would also like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... 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."

Finally, we would like to highlight the thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/27), in which he called States to "ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals" (para. 84(c)). In addition, the Special Rapporteur stated that "States should facilitate and protect peaceful assemblies" (para. 89).

In view of the urgency of the matter, we would appreciate a prompt response on the initial steps taken by your Excellency's Government to safeguard the rights of Messrs [REDACTED], [REDACTED], [REDACTED] and [REDACTED] 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 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. Please confirm the legal basis of the arrest and detention of Messrs [REDACTED], [REDACTED], [REDACTED] and [REDACTED], and the charges brought against them. Please indicate how these measures are compatible with international human rights norms and standards.

We undertake to ensure that your Excellency's Government's response to 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 Messrs [REDACTED], [REDACTED], [REDACTED] and [REDACTED] 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

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