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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 situation of human rights defenders

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
BHR 11/2012

9 November 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; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the **alleged banning of all public rallies and gatherings in Bahrain and the arrest and detention of Mr. Sayed Yousif AlMuhafdhah, acting Vice President and Head of the Documentation Unit of the Bahrain Centre for Human Rights (BCHR), and of Ms. Jalila Al-Salman, Vice-president of the Bahrain Teachers Society (BTO).**

Mr AlMuhafdhah and Ms. Al Salman along with a number of other human rights defenders, were the subject of a communication sent to your Excellency's Government on 18 October 2012, by the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion and the Special Rapporteur on the rights to freedom of peaceful assembly and association, highlighting serious concerns about threats of reprisals faced by the defenders who had participated in the 21st session of the UN Human Rights Council in September 2012.

According to the information received:

On 2 November 2012, Mr. Sayed Yousif AlMuhafdhah was arrested by security forces in al-Diraz, west of Manama, while documenting the injury of a man who was shot at a protest earlier that day. Mr. AlMuhafdhah was subsequently transferred to Budaiya Police Station where he was reportedly interrogated about his presence at the injured man's door. Earlier in the day he had posted photos on

Twitter of security forces allegedly attacking protesters with teargas in the village of Bilad al-Qadeem. In the morning of 3 November 2012, Mr. AlMuhafdhah was brought to the Public Prosecutor's office where it was declared that he would remain in detention for seven days on charges of "participation in illegal protests". His case is due to be heard on 10 November 2012.

A few days before Mr. AlMuhafdhah's arrest, on 30 October 2012, the Interior Minister Sheikh Rashid Al Khalifah announced a ban on all public rallies and gatherings stating that they were associated with violence, rioting and attacks on public and private property. In his address, the Minister reportedly stated that "repeated abuse" of the rights to freedom of expression could no longer be accepted and protests would be permitted only once security and stability were sufficient to maintain national unity. He further added that any "illegal rally or gathering would be tackled through legal actions against those calling for and participating in it." The protests, which the Interior Minister said had called for the overthrow of the State and leading national figures, were "devoid of respect and intended to humiliate", and therefore "jeopardized civil peace and disturbed security and general order".

Demonstrations were last banned during the three-month state of emergency declared by His Excellency King Hamad in March 2011. At least 35 people, including five police officers, were reportedly killed during that time with hundreds injured and thousands imprisoned.

One of those imprisoned during that time was Ms. Jalila Al Salman. She was initially arrested at her home in Manama on 29 March 2011 by over 40 security officers and transferred to the Criminal Investigations Directorate (CID) for a week where she was reportedly held in solitary confinement and beaten. On 6 June 2011, she appeared before the National Safety Court of First Instance on charges of "inciting hatred of the regime" and "attempting to overthrow the ruling system by force" and "encouraging illegal protests". The National Safety Court sentenced her to three years in prison, and she was reportedly released on bail in August 2011 after she went on hunger strike.

Following the issuance of the report of the Bahrain Independent Commission of Inquiry, decisions taken by the National Safety Courts were subject to review. Following a number of appeals, the Court of Appeal upheld the guilty verdict facing Ms. Al Salman but reduced the sentence from 3 years to 6 months on 21 October 2012. Ms. Al Salman has already spent 163 days in prison in total, and according to the most recent ruling she must remain in prison for a further 2 weeks.

According to reports, prior to the current ban, organizers of demonstrations and gatherings in Bahrain were required to apply for permission from the authorities before proceeding, in accordance with the Code on Public Meetings, Processions and Gatherings. The Code imposes significant restrictions with organizers having to fulfil numerous requirements including being a resident of the area where the meeting will take place. If permission was not granted by the authorities the

rallies were considered illegal. Several rallies have already been banned this year on the grounds that the location and timings of the rallies could have disturbed traffic.

Concern is expressed that the banning of public gatherings and rallies may represent a direct attempt to stifle freedom of opinion and expression in Bahrain. Serious concern is further expressed that the arrest and detention of Mr. Sayed Yousif AlMuhafdhah and Ms. Jalila Al Salman may form part of an alleged campaign of judicial harassment to intimidate and silence human rights defenders in the country.

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 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 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 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 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 appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in 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 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 the context of the arrest of Mr. Sayed Yousif AlMuhafdhah and Ms. Jalila Al Salman, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "Calls 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."

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 details, and where available the results, of any judicial investigation, or any criminal charges, medical examinations, and other inquiries carried out in relation to the cases of Mr. AlMuhafdhah and Ms. Jalila Al Salman.

3. Please provide the details of the prosecution against Mr. AlMuhafdhah and Ms. Jalila Al Salman, specifically how it is compatible with the international norms and standards of the right to freedom of opinion and expression and the right to peaceful assembly and of association.

4. Please provide the legal basis for the ban on public rallies and gatherings and how it is compatible with the international norms and standards of the right to freedom of opinion and expression and the right to peaceful assembly.

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 individuals 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
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