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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 Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; 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 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 (53-24)
BHR 16/2011

8 July 2011

Dear Ms. Radhi,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; 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 torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 17/2, 16/4, 15/21, and 16/23.

In a joint communication dated 18 March 2011 sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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, we drew your Government's attention to the situation of a number of individuals, including to the case of **Mr. Mohammed al-Buflasa**, which read as follows:

It is also reported that on 15 February 2011, Mr. Mohammed al-Buflasa, a former military officer was detained by the Bahrain Defense Forces after he spoke at the Pearl Roundabout, criticizing the Government and supporting the protesters. His fate and whereabouts remained unknown until after 17 days when on 4 March 2011, authorities announced that Mr. al-Buflasa was to face trial for "breaching the Bahrain Defense Force law" without providing further information. Reportedly, on 17 March 2011, the General Command of the Bahrain Defense Force issued a statement about the detention of several leaders "of the sedition ring who had called for the downfall of the regime and had intelligence contacts with foreign countries [...], incited [...] for the killing of citizens and the

destruction of public and private property, resulting in the undermining of the social peace, the loss of innocent lives and the terrorizing of citizens and residents.”

We thank your Government for having provided us with a response to our allegations in a letter dated 20 April 2011. However, no reference was made with regard to the specific case of Mr. al-Buflasa.

In this connection, we would like to draw the attention of your Government to the new information we have received concerning Mr. al-Buflasa’s continued detention in the Kingdom of Bahrain after having served his sentence.

According to the new information received:

With regard to the circumstances of Mr. al-Buflasa’s arrest, it is reported that he had protested against corruption within the Government and the lack of equal economic opportunities, calling for political reforms and co-existence between Shi’a and Sunni communities.

It is alleged that Mr. al-Buflasa was brought on trial before a military court in around mid-March 2011. He was sentenced to a two-month imprisonment. Reportedly, his lawyer was absent during the trial and was only allowed to visit Mr. al-Buflasa in mid-May 2011. On 15 April 2011, Mr. al-Buflasa’s detention was extended for another 45 days by an order of a military prosecutor. Upon expiry of this detention period on 1 June 2011, the Bahraini authorities failed to release Mr. al-Buflasa.

Mr. al-Buflasa’s lawyer has been unable to obtain any information on any legal basis justifying his continued detention or the possibility of a new trial. He has lodged complaints to the director of the military judiciary about Mr. al-Buflasa’s continued detention. He has also requested the authorities to provide him with a copy of Mr. al-Buflasa’s case file, including the charges and the trial verdict in the original case. To date, these efforts have been unsuccessful.

It is further reported that Mr. al-Buflasa was ill-treated by the prison authorities after his lawyer’s visit in mid-May 2011. He was allegedly beaten on his eyes, ears and arms. Moreover, we are informed that Mr. al-Buflasa has been denied family visits. Since 1 June 2011, Mr. al-Buflasa has gone on hunger strike to protest against his continued detention after having served his sentence.

Concern is expressed at the allegation that Mr. Mohammed al-Buflasa’s arrest and detention may be a direct result of his exercise of the right to freedom of opinion and expression as well as the right of peaceful assembly. Similarly, concern is expressed about the physical and mental integrity of Mr. Mohammed al-Buflasa due to the allegation that he has been ill-treated by the prison authorities and he is currently on a hunger strike.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Mohammed al-Buflasa is arbitrary or not, we would like to appeal to your 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 14 of the International Covenant on Civil and Political Rights (ICCPR), and articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

Regarding the allegations indicating that Mr. al-Buflasa was arrested as a direct result of his legitimate exercise of the right to freedom of opinion and expression as well as the right of peaceful assembly, we would like to appeal to your 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.”

In addition, we would like to appeal to your 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.”

With regard to the fact that Mr. al-Buflasa was brought to trial before a military court, we wish to stress that everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures in accordance with para. 5 of the Basic Principles on the Independence of the Judiciary (adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985). We would further like to draw your Government’s attention to para. 22 of General Comment No. 32, in which the Human Rights Committee stated that “[t]rials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.” The same view was held in the Committee’s communication No. 1172/2003 (*Madani vs. Algeria*), in which it added that “[t]he State party must further demonstrate how military courts ensure the full protection of the rights of the accused pursuant to article 14.”

In this regard, we are concerned at the information received indicating that fair trial safeguards have not been observed, notably the right of Mr. al-Buflasa to have adequate time and facilities for the preparation of his defense and to communicate with a counsel of his own choosing and his right to defend himself through legal assistance according to article 14(3)(b) and (d) of the ICCPR. Concerning the allegations that the

accused's lawyer has not been provided with a copy of Mr. al-Buflasa's case file, including the charges and the trial verdict in the original case, we wish to refer to the Human Rights Committee's General Comment No. 32 on article 14. The Committee has interpreted the words "adequate facilities", indicating that they must include access to documents and other evidence, adding that such "access must include all materials that the prosecution plans to offer in court against the accused or that are exculpatory", (CCPR/C/GC/32, para. 33).

After Mr. al-Buflasa had served the initial prison term, the military prosecutor reportedly extended his detention for another 45 days, but has failed to order his release upon expiry of the 45-day period. In this regard, we wish to refer your Government to the Guidelines on the Role of Prosecutors (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 to principle 12 which stipulates that "Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system."

We would also 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).

In this context and with respect to the allegations according to which Mr. al-Buflasa was ill-treated by the prison authorities after his lawyer's visit in mid-May 2011, we would like to draw your Government's attention 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, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

With respect to the allegations according to which Mr. al-Buflasa has been denied family visits, we would also like to draw your Government's attention to principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 which states that, "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world [...]". We would also like to draw your Government's attention to rule 37 of the Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which provides that "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits."

We urge your Government's authorities to order the immediate release of Mr. Mohammed al-Buflasa and to take all necessary measures to guarantee that his rights and

freedoms are fully 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 Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Government to safeguard the rights of Mr. Mohammed al-Buflasa 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. Has a complaint been lodged by or on behalf of the alleged victim? In that case, please explain how it has been addressed.
3. Please provide information on the legal basis for the detention of Mr. Mohammed al-Buflasa and how this is compatible with the norms and standards contained *inter alia* in the ICCPR and UDHR.
4. Please explain the reasons justifying the trial of Mr. Mohammed al-Buflasa before a military court. Please explain to what extent the fair trial rights and safeguards of Mr. al-Buflasa have been observed, notably his rights to consult and communicate with his lawyer and to have adequate time and facilities to prepare his defense in compliance with the international standards as set forth *inter alia* in the ICCPR as mentioned above. Please also clarify whether he has had access to his family.
5. 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.
6. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
7. Please provide information on the measures taken to ensure the safety of Mr. Mohammed al-Buflasa.

We undertake to ensure that your 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.

Please accept, Ms. Radhi, the assurances of our highest consideration.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

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Special Rapporteur on the independence of judges and lawyers

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