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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 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 the independence of judges and lawyers

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)
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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; and Special Rapporteur on the independence of judges and lawyers pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/4, 15/21, 16/5, and 17/2.

In this connection, we would like to bring to your Excellency Government's attention to the information we have received concerning acts of intimidation, excessive use of force and arbitrary detention against those who peacefully exercise their rights to freedom of association, of peaceful assembly and of expression.

According to the information received:

Detention and trial of Mr. Al-Bajady

On 21 March 2011, Mr. **Mohammed Salih Al-Bajady** was arrested in Buraydah, one day after having participated in a peaceful protest in Riyadh. On 10 April 2012, Mr. Mohammed Salih Al-Bajady was convicted by the Specialized Criminal Court in Riyadh of being a member of the human rights NGO Saudi Civil and Political Rights Association (ACPRA), harming the reputation of the State, calling on the families of political detainees to protest and hold sit-ins,

contesting the independence of the judiciary, and having banned books in his possession. He was reportedly sentenced to four years in prison followed by a five-year travel ban. The Specialized Criminal Court was reportedly established in October 2008 to try individuals suspected of terrorism-related charges.

According to the information received, his legal defence team has not been allowed to visit him since his arrest, nor has it been able to attend his trial. His lawyers have allegedly been told by the Court that their right to represent Mr. Al-Bajady is not recognized by the Court.

Mr. Al-Bajady is reportedly in very poor health at al-Ha'ir prison as a result of a hunger strike he started on 21 February 2012 to denounce his arbitrary detention and the alleged ill treatment he has been subjected to while in detention. It is reported that on 10 April 2012, a representative of the Ministry of Interior told the press that Mr. Al-Bajady was not on hunger strike and in good health.

Mr. Mohammed Salih Al-Bajady has been the subject of a previous communication sent by 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 Working Group on Arbitrary Detention on 7 April 2011. We regret that to date no reply has been received.

Excessive use of force during a sit-in by female students of the University of King Khaled in Abha

On 10 March 2012, a sit-in organized by **female students** of the University of King Khaled in Abha to protest against alleged mismanagement by the administration board of the University which ended the cleaners' contracts, resulting in the accumulation of piles of garbage, was reportedly met with excessive use of force. The police and the Committee of the Promotion of Virtue and Prevention of Vice reportedly used spraying water to disperse the sit-in. 53 students were injured; one protester died in the hospital after an epileptic seizure and another one had to abort after the demonstration was dispersed.

Charges by Specialized Criminal Court in the case of Mr. Fadhil Ali Al-Sulaiman

Mr. **Fadhil Ali Al-Sulaiman** has been charged by the Specialized Criminal Court with demonstrating, resisting arrest and injuring the security forces in relation to his participation in two peaceful assemblies in Hofuf on 4 and 11 March 2011. Mr. Al-Sulaiman reportedly suffers from aggravated injury in the palm of his hand because of a lack of necessary treatment in the prison. According to the information received, Mr. Al-Sulaiman was arrested on 17 March 2011, and has

been detained since. It is alleged that when his car was stopped by security forces, they also assaulted him and caused several fractures to his hand.

Alleged imposition of travel bans on human rights defenders

On 21 and 25 March 2012, prosecutors imposed a travel ban on rights activists Mr. **Muhammad Fahd al-Qahtani** and Mr. **Walid Abu al-Khair** for “security reasons.” A few days later, human rights defender Mr. **Mukhlif Shammari** was also the subject of a Government’s decision banning him from travelling for ten years starting from his release date from prison last February 2012.

It is reported that these travel bans, which are not subject to judicial review, form part of a campaign aimed at quelling peaceful political dissent. It is further reported that the aforementioned targeted measures are indicative of specific repression of those exercising their rights to freedom of association, of peaceful assembly and of expression.

Should this information be corroborated, grave concern is expressed that individuals exercising their rights to freedom of association, of peaceful assembly and of expression are subject to intimidation, excessive use of force and arbitrary detention. Serious concern is expressed that the aforementioned individuals are prosecuted in relation to the exercise of their fundamental rights and freedoms before special courts which allegedly do not observe the defendants’ procedural safeguards.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Messrs. Mohammed Salih Al-Bajady and Fadhil Ali Al-Sulaiman 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).

We also wish to appeal to your Excellency’s Government to ensure that the right to freedom of association and of peaceful assembly, as recognized under article 20 of the UDHR, is enjoyed free of arbitrary restrictions.

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular paragraph 7 of the preamble, where it recognizes that, “exercising the rights to freedom of peaceful assembly and of association free of restrictions, subject only to the limitations permitted by international law, in particular international human rights law, is indispensable to the full enjoyment of these rights, particularly where individuals may espouse minority or dissenting... political beliefs”. In this context, we would like to recall operative paragraph 1 of the same resolution 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.”

We would further 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 UDHR which provides that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Moreover, we would like to recall the principle enunciated in Human Rights Council Resolution 12/16, which calls on all States to refrain from imposing restrictions on 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.

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, and in particular to 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.

In addition, we would like to refer to the 2006 report to the General Assembly (A/61/312) (of the Special Representative of the Secretary-General on the situation of human rights defenders) and in particular to paragraph 98 which states that “in conformity with article 15 of the Declaration [on Human Rights Defenders], the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. We also advise all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials.”

While we believe that the aforementioned individuals and human rights defenders should not be prosecuted and sanctioned in relation to the legitimate exercise of their fundamental rights and freedoms, we wish to stress that under article 10 of the UDHR, “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” Concerning the allegations that the Mohammed Salih Al-Bajady and Fadhil Ali Al-Sulaiman have been referred to the Specialized Criminal Court, reportedly established to try individuals on terrorism-related charges, we wish to draw your Excellency’s Government attention to the Basic Principles on the Independence of the Judiciary, endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular, principle 5 stipulates that “[e]veryone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.”

Furthermore, criminal proceedings before special courts do not discharge States of their duty to ensure that the defendants’ procedural rights are respected. A fundamental element of the right to a fair trial and of the rights of defence is the defendants’ right to call upon the assistance of a lawyer of their choice to protect and establish their rights in accordance with article 10 of the UDHR and principle 1 of 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. Such access shall be provided promptly pursuant to principle 7 of the aforementioned instrument. In his report A/63/223, the Special Rapporteur on the promotion and

protection of human rights and fundamental freedoms while countering terrorism expressed his deep concern about the impaired fair trial guarantees that often characterize military and special courts in practice due to prolonged periods of pre-charge and pretrial detention, with inadequate access to counsel, intrusion into the attorney-client confidentiality and strict limitations on the right to appeal and bail. Moreover, the Special Rapporteur was concerned that lower procedural and evidential standards in these courts often encourage systematic resort to extralegal practices.

With regard to the alleged imposition of travel bans by prosecutors on Messrs. Muhammad Fahd al-Qahtani, Walid Abu al-Khair and Mukhlif Shammari for “security reasons”, we wish to stress 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.” in accordance with guideline 12 of 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. With respect to the allegations indicating that these decisions are not subject to judicial review, we wish to stress that the right to challenge a decision is also critical in ensuring the fairness of proceedings in accordance with principle 6 of the Basic Principles on the Independence of the Judiciary. Therefore, we believe that the aforementioned individuals should be given the possibility to challenge the decisions affecting them.

In light of the allegations, we urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned individuals are respected and that any person responsible for the alleged violations is held accountable. We also request that your Excellency’s Government adopts 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 Excellency’s Government to safeguard the rights of the above-mentioned person in compliance with the forementioned 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:

1. Are the facts alleged in the summary of the cases accurate?
2. Has a complaint been lodged by or on behalf of Messrs. Mohammad Salih Al-Bajady, Muhammad Fahd al-Qahtani, Walid Abu al-Khair, Mukhlif Shammari and the alleged victims of the 10 March protests at the University of King Khaled in Abha?

3. Please provide the details, and where available the results, of any investigation, 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.

4. Please provide detailed information regarding the jurisdiction of the Specialized Criminal Court and of the legal provisions applicable to judicial proceedings brought before that Court.

5. Please provide information concerning the legal grounds for the arrest and detention of Messrs. Al-Bajady and Ali Al-Sulaiman, the reasons why they have been referred to the Specialized Criminal Court, and why Mr. Al-Bajady has not had access to his lawyers while in detention. Please explain how these measures are compatible with international norms and standards as stated, *inter alia*, in the Universal Declaration of Human Rights and the Basic Principles on the Independence of the Judiciary.

6. Please indicate the legal grounds for the imposition of travel bans against Messrs. Muhammad Fahd al-Qahtani, Walid Abu al-Khair and Mukhlif Shammari and how these measures are compatible with international norms and standards.

7. Please provide information on measures in place to ensure that the physical and psychological integrity of the aforementioned human rights defenders is guaranteed and respected.

8. Please indicate what measures have been taken to ensure that the legitimate rights to association, peaceful assembly and of expression are respected and that the physical and psychological integrity of those exercising these rights are guaranteed.

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.

Please accept, Excellency, the assurances of our highest consideration.

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