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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; 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)
SAU 5/2014

24 April 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, 25/2, 24/5, 25/18, 17/2, and 25/13.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the alleged arbitrary detention and ill-treatment in detention of Mr. **Waleed Abu Al-Khair**.

Mr. Waleed Abu Al-Khair is a human rights lawyer and the founder and Director of Monitor of Human Rights in Saudi Arabia (MHRSA), an organization that monitors and documents human rights violations in the Kingdom of Saudi Arabia. In 2012, Mr. Al-Khair was awarded the Olof Palme Memorial Fund Prize due to his work.

On 3 May 2012, Mr. Al-Khair was the subject of a communication sent to your Excellency's Government by the 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 (SAU 7/2012). We regret that the response to this communication dated 1 February 2013 did not include a substantive response regarding the case of Mr. Al-Khair.

According to the information received:

On 29 October 2013, the Jeddah Court reportedly sentenced Mr. Al-Khair to three months' imprisonment on charges relating to the establishment of Monitor of Human Rights in Saudi Arabia (MHRSA). The charges against him reportedly include "organizing illegal gatherings", "striving to overthrow the state and the authority of the King", "criticizing and insulting the judiciary", "assembling international organizations against the Kingdom", "creating and supervising an unlicensed organization, and contributing to the establishment of another", and "preparing and storing information that will affect public security".

On 24 February 2014, the Jeddah Court of Appeal upheld the prison sentence. Mr. Al-Khair reportedly appealed this decision before the Specialized Criminal Court in Riyadh.

On 15 April 2014 at approximately 8 a.m., while attending the fifth hearing of his trial in appeal at the Specialized Criminal Court in Riyadh, Mr. Al-Khair was reportedly arrested upon arrival and escorted to an unknown location. According to reports, neither Mr. Al-Khair nor his lawyer was informed of the reasons for his arrest.

The following day, the wife of Mr. Al-Khair was allegedly notified that he was imprisoned at the Al Ha'ir prison in Riyadh.

It is reported that Mr. Al-Khair is kept in solitary confinement and subject to ill-treatment amounting to torture. He is reportedly being exposed to constant bright light to deprive him of sleep. He has also been denied access to his lawyers and family.

Grave concern is expressed at the alleged arbitrary detention and ill-treatment of Mr. Al-Khair while in detention. Concern is also expressed that his arrest is related to his work in monitoring and documenting human rights violations in the Kingdom of Saudi Arabia.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Al-Khair 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).

We would like to refer your Excellency's Government to 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."

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 the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which "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 would like to draw your Excellency's Government's attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged"(adopted by the General Assembly by resolution 45/111 of 14 December 1990). We also draw your attention to the Special Rapporteur on torture's interim report to the General Assembly of 5 August 2011 (A/66/268) which stated that, where the physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering, when used...indefinitely or prolonged... it can amount to cruel, inhuman or degrading treatment or punishment and even torture. Paragraph 26 of the report states that, "of particular concern is prolonged solitary confinement, which the Special Rapporteur defines as any period of solitary confinement in excess of 15 days because he concludes that 15 days is the limit between "solitary confinement" and "prolonged" which at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible."

Regarding the fact that Mr. Al-Khair is a lawyer, we would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990, and in particular

principle 18, which states: “Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.”; and principle 23, which states: “Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.”

Regarding the allegations according to which Mr. Al-Khair did not have access to his lawyers after his arrest, we would like to refer your Excellency's Government to the following principles of the Basic Principles on the Role of Lawyers:

- Principle 1, which states: “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”; and

- Principle 7, which states: “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.”

Regarding the fact that Mr. Al-Khair is a human rights defender, 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 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join

and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations;

- article 9 para. 1 which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights; and

- 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 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. Al-Khair 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 Mr. Al-Khair?
3. Please provide information concerning the legal grounds for the arrest and detention of Mr. Al-Khair and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR. Please provide information on whether Mr. Al-Khair has access to family members, legal counsel, and medical personnel.
4. Please provide information concerning access of human rights monitors and independent civil society representatives to Al Ha'ir Prison.

5. In connection with the above, please kindly provide information about the state of health of Mr. Al-Khair, as well as details of his access to medical professionals, legal representation and family members.

6. Please indicate what measures have been taken to ensure that human rights defenders, including lawyers, civil society and activists, and members of associations can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

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. Waleed Abu Al-Khair 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
Special Rapporteur on the rights to freedom of peaceful assembly and of
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