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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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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 Health (2002-7) G/SO 214 (3-3-16) G/SO 214 (53-24)
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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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health; 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, 24/6, 17/2, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding allegations of torture and ill-treatment of Mr. [REDACTED], and of the use of confessions extracted under such conditions during judicial investigation.

According to the information received:

On 23 July 2012, Mr. [REDACTED], a national of Bahrain, born on 24 February 1997, was arrested by security forces of the Ministry of Interior following clashes in Bilad al-Qadeem. He was 15 years old at the time of his arrest.

It is reported that the security officers subsequently beat, threatened and insulted Mr. [REDACTED] and attempted to sexually assault him. They allegedly pointed a gun at him and then fired it from right next to his head. The officers then allegedly drove him to a burnt armored police vehicle. There, they gave him a written script which they ordered him to follow to enact the burning of the vehicle, while they would videotape the scene. When he refused, he was taken to al-Qudaibiya police station for further interrogation.

There, it is reported that the interrogator insulted and cursed him. During interrogation, he was reportedly blindfolded, handcuffed and forced to lie on the floor without moving, sitting or sleeping. His interrogators reportedly tried to force him to confess to the burning of the police car.

On 25 July 2012, Mr. [REDACTED] was transferred to the Criminal Investigation Directorate. Before moving him, security officers allegedly threatened him with reprisals should he complain about the torture and other treatment endured during interrogation.

It is reported that Mr. [REDACTED] was not allowed to contact his family for two days after his arrest and that he was not allowed contact with his lawyer during interrogation. The public prosecutor subsequently ordered to remand him for 60 days for investigation without notifying the lawyer. Mr. [REDACTED] was then transferred to Dry Dock detention center, where he was reportedly held with adults and convicted criminals. He was detained there for two months pending trial. His family was reportedly only able to visit him a week after his arrest.

According to the information received, Mr. [REDACTED] was tried and sentenced in a criminal court. Despite his young age at the time of the commission of the crime imputed to him, he was not presented to a juvenile court. In addition, it would seem that the criminal court relied on evidence extracted under duress and refused to investigate the complaint of torture and ill-treatment filed by his lawyer. His family was prevented from attending the verdict and sentencing hearing. On 4 April 2013 the court sentenced him to 10 years of imprisonment under an anti-terrorism law for burning a police vehicle.

Mr. [REDACTED] is now believed to be detained in Jaw prison. He is in poor health and has calcium and vitamin deficiency, thyroid problems and osteomalacia. He is also said to suffer from idiopathic scoliosis, which causes chronic pain and may lead to complications if left untreated. It is reported that Mr. [REDACTED] does not have access to the medical treatment and physiotherapy that he needs for the medical conditions.

Very serious concern is expressed regarding Mr. [REDACTED] physical and psychological integrity in the light of the allegations that he was tortured during interrogation in order to extract a confession. Further concern is expressed regarding the fairness of Mr. [REDACTED] trial, in particular regarding allegations according to which forced confessions obtained from him under duress were used in court against him. Concern is also expressed regarding the alleged lack of medical treatment provided to Mr. [REDACTED] in Jaw prison.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. [REDACTED] 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) ratified by Bahrain on 20 September 2006

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. [REDACTED]. We would 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), acceded to by Bahrain in 1998.

In this context, we would like to draw the attention of your Excellency's Government 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, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to draw the attention of your Excellency's Government to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."

We would further draw the attention of your Excellency's Government to article 15 of the CAT provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." We also recall that paragraph 7c of Human Rights Council Resolution 16/23 urges States "To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider

extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;”

We would appreciate information from your Excellency’s Government on the steps taken by the competent authorities with a view to ensuring the right to enjoy the highest attainable standard of health of Mr. [REDACTED]. This right is reflected, inter alia, in article 12 of the International Covenant on Economic, Social and Cultural Rights (accession on 27 September 2007), which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health, as well as in article 24 of the Convention on the Rights of the Child (accession on 13 February 1992), which recognizes that children and adolescents have the right to the enjoyment of the highest standard of health and access to facilities for the treatment of illness. This includes an obligation on the part of all State parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

We wish to refer your Excellency’s Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which holds that, “States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services...” (para.34). Furthermore, we wish to refer your Excellency’s Government to General Comment No. 15 of the Committee on the Rights of the Child, which observes that the core obligations, under the children’s right to health include ensuring universal coverage of quality health services, including prevention, health promotion, care and treatment services, and essential drugs.

Rule 22(2) of the Standard Minimum Rules for the Treatment of Prisoners, provides that, “(s)ick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, “(t)he medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed” (approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977).

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), provide that “The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication” (Rule 27.1), and also hold that “Juveniles in institutions shall receive care, protection and all necessary assistance - social, educational, vocational, psychological,

medical and physical - that they may require because of their age, sex, and personality and in the interest of their wholesome development (Rule 26.2). In addition, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty further note that "Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated" (Rule 49).

Regarding the fact that Mr. [REDACTED] is a minor, we would like to refer your Excellency's Government to article 14(4) of the International Covenant on Civil and Political Rights, which states: "In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation."

Regarding allegations of inappropriate access to a lawyer, 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, and in particular the following principles, provide that:

- Principle 5: "Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence."
- Principle 7: "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."; and
- Principle 21: "It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time."

Regarding the allegation that the criminal court relied on evidence that had been extracted under duress, we would like to refer your Excellency's 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, and in particular guideline 16, which states: "When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice."

Regarding the allegation that Mr. [REDACTED] family was prevented from attending the sentencing hearing, we would like to refer your Excellency's Government to article 14(1) of the International Covenant on Civil and Political Rights, which states: "All persons shall be equal before the courts and tribunals. In the

determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."

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. [REDACTED] 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. [REDACTED] for his alleged torture and ill-treatment?
3. Please provide information concerning the legal grounds for the arrest and detention of Mr. [REDACTED] and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR, the ICCPR and the Convention on the Rights of the Child.
4. Please explain in details how the trial of Mr. [REDACTED] respected the fundamental human rights standards of due process and fair trial, as enshrined, inter alia, in the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors.
4. Please provide the details, and where available the results, of any investigation, medical and judicial or other inquiries carried out in relation to allegations of torture and ill-treatment. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide the full details of any prosecutions which may have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators of torture and ill-treatment?

6. Please provide details of any measures taken to ensure that Mr. [REDACTED] [REDACTED] has immediate access to medical care and treatment in Jaw prison.

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 Mr. [REDACTED] [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.

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