

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

Ref.: AL BHR 3/2022
(Please use this reference in your reply)

16 December 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 50/17, 43/4 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged arbitrary detention and subsequent arrests of four individuals, including three minors, for their participation in anti-normalization protests in Aali, in October 2021; and their conviction in absentia to one-year imprisonment on 31 May 2022.**

According to the information received:

Case of Yusuf Ahmed Hasan Kadhem

Mr. **Yusuf Ahmed Hasan Kadhem** is a human rights activist who has been arrested four times since 2018 and sentenced in absentia, on various charges pertaining to his activism and participation in peaceful demonstrations.

On 23 September 2018, he was arrested with the charges of illegal assembly, rioting, and manufacturing explosives and was sentenced to one year in prison. He was detained for three months, but he was released after the trial since the execution of the sentence was suspended.

On 12 February 2019, he was arrested at his home, facing similar charges as his first arrest. According to the information received, he was detained in the Central Investigation Department (CID) for 20 days, after which he was transferred to the Dry Dock Detention Center. He has been tried in two different cases, the first being with the charges of illegal assembly and rioting and the second of a Highway bombing. He has been reportedly convicted to one year for the former case and two years for the latter. After two years and two months of imprisonment, he was released under alternative sentencing in April 2021.

On the evening of 6 October 2021, police officers reportedly summoned him through a phone call to appear at the Roundabout 17 police station for questioning without mentioning the reasons. After coming to the aforementioned police station, he was reportedly detained for one night and taken to the Dry Dock Detention Center on the following day, where he was detained for three months on charges of contesting the Bahrain-Israeli normalization agreement, or Abraham accords.

On 31 May 2022, the First High Criminal Court sentenced him in absentia to one-year imprisonment on charges of illegal assembly on 7 October 2021 and possession of flammable devices. According to information received, Yusuf Ahmed Hasan Kadhem missed court sessions because he couldn't leave his job out of fear of being fired.

Consequently, security forces, including officers in civilian clothing, reportedly raided his house at 4.30 a.m. and arrested him. Some of the arresting forces were reportedly wearing masks and green jackets which read "Security accompanied by riot forces". When the parents opened the door, they handed over the arrest warrant to his father. And they reportedly told Yusuf Ahmed Hasan Kadhem: "Come with us. You know you have been sentenced to a year in prison. You served 3 months in custody, and there are 9 months left. You can apply for alternative sentencing."

According to the information received, Yusuf Ahmed Hasan Kadhem was transferred to Jau Prison, where he remains, to serve the remainder of his sentence. Reportedly, he did not have access to a lawyer at any point of the interrogation and detention. His family filed for an appeal of the sentence on 26 June 2022 and the sentence was upheld by the Court of Appeal on 30 November 2022.

Case of [REDACTED]

Mr. [REDACTED] is a high-school student who has been arrested and convicted in absentia, on several charges related to his participation in peaceful protests when he was 16-years old.

On 12 October 2021, police officers from Hamad Town Roundabout 17 police station reportedly summoned him by phone to interrogate him over charges of participation in peaceful demonstrations and writing on walls and roads. After going to the station, he was allegedly transferred to the Public Prosecution Office, where he was questioned without the presence of a guardian or lawyer. He was released later that day at 11 p.m.

According to the information received, he was summoned the following two days to the Roundabout 17 police station where he was questioned about his participation in a peaceful demonstration in Manama without the presence of a guardian or lawyer, despite being minor. Afterwards, he was transferred to Al-Qudaibiya police station.

On 31 May 2022, [REDACTED] was reportedly sentenced, in absentia, by the First High Criminal Court to one-year imprisonment and a five-hundred-Bahraini-Dinar fine for events taking place when he was still a minor. The charges brought against him included possessing and manufacturing flammable or explosive canisters to be used in endangering people's lives and public and private property, and participating in a public assembly of more than five people intended to commit crimes and disturb public security.

On 16 June 2022, the Al-Khamis Police Station called his parents requesting that [REDACTED] be brought to the station supposedly for investigation only with the assurance that he wouldn't be arrested, as he was a minor. His father went with him to the police station and was asked to leave. [REDACTED] was interrogated alone without the presence of a guardian or lawyer, despite being minor. Despite the absence of an arrest warrant, the police officers called his father to inform him that they would transfer [REDACTED] to the Public Prosecution and AlQalaa for examinations and detention. Reportedly, he was subsequently transferred to the New Dry Dock Prison, with adult detainees, where his family was able to visit him in October and on 10 November 2022, without any physical contact.

On 30 November 2022, the Court of Appeal amended his sentence to three months, and the fine from 500 dinars to 110 dinars. Accordingly, [REDACTED] was released after his family paid the fine on 1 December 2022.

Case of Sayed Ali Mustafa Majid Maki

Mr. Sayed Ali Mustafa Majid Maki is a student, who has been arrested several times and convicted in absentia, for his participation in peaceful protest when he was 17 years old.

On 7 October 2021, army vehicles reportedly raided his house, arrested him and transferred him to Hamad Town Roundabout police station. He was allegedly interrogated regarding anti-normalization protests in Aali, without the presence of a guardian or lawyer, despite being minor, and was denied an opportunity to present counterevidence. He was released after signing a pledge not to participate in assemblies or riots again.

On 31 May 2022, the First High Criminal Court reportedly sentenced Sayed Ali Mustafa Majid Maki in absentia, to one-year of prison and a five-hundred-Bahraini-Dinar fine, on charges of manufacturing and possessing flammable canisters and participating in an illegal assembly, he allegedly committed when he was a minor.

On 13 June 2022, police officers in civilian clothing and riot police reportedly raided his house at 4.30 a.m. and arrested him violently, without any arrest warrant. After being detained in the Roundabout 17 police station, he was transferred to the New Dry Dock Prison with adult detainees. His family has not been able to visit him because of COVID-19 regulations. Reportedly, he has received only three visits following his arrest.

On 30 November 2022, the Court of Appeal amended his sentence to three months, and the fine from 500 dinars to 110 dinars. However, he is still in detention as he had been sentenced in another case to one year in prison, reportedly on charges of placing structures simulating or resembling the shapes of explosives.

Case of ██████████

Mr. ██████████ is an industrial major student, who has been convicted in absentia and arrested, for his participation in peaceful protest when he was 16 years old.

On 31 May 2022, ██████████ was reportedly convicted and sentenced in absentia, by the First High Criminal court to a one-year imprisonment and a five-hundred-Bahraini-Dinar fine, on charges of manufacturing and possessing flammable canisters and participating in an illegal assembly, he allegedly committed when he was a minor. The family of ██████████ submitted an appeal, and the court session is set to take place 30 November 2022. It was reported that the appeal session has been postponed two times.

On 15 June 2022, an individual who identified himself as Captain Abdulla called his father requesting ██████████ be brought to the AlKhamis police station supposedly only for investigation with the assurance that he would not be arrested, as he was a minor. His father went with him to the police station and was asked to leave. ██████████ was reportedly interrogated alone without the presence of a guardian or lawyer, despite being minor. Despite the absence of an arrest warrant, the police officers called his father to inform him that they would transfer ██████████ to the Public Prosecution and AlQalaa for examinations and detention. His father went to the AlKhamis police station and could not receive any further information about the situation of his son.

On 30 November 2022, the Court of Appeal amended his sentence to three months, and the fine from 500 dinars to 110 dinars. Accordingly, ██████████ was released after his family paid the fine on 1 December 2022.

Without prejudging the accuracy of the above allegations, we wish to express our concern over the alleged arbitrary arrest and conviction of Mr. Yusuf Ahmed Hasan Kadhem, Mr. ██████████, Mr. Sayed Ali Mustafa Majid Maki and Mr. ██████████, over charges that may be directly related to the exercise of their legitimate rights to freedom of expression and peaceful assembly.

Furthermore, we wish to convey our concern over the alleged infringements of Mr. Yusuf Ahmed Hasan Kadhem's, Mr. ██████████, Mr. Sayed Ali Mustafa Majid Maki's and Mr. ██████████ rights to a fair trial and due process. Convictions reportedly took place in absentia, which impeded lawyers to adequately prepare an adequate judicial defence, in accordance with international norms and standards related to a fair trial.

We would like also to express serious concern over the arrest of the minors Mr. ██████████, Mr. Sayed Ali Mustafa Majid Maki and Mr. ██████████, without an arrest warrant or being provided with the reason for their arrest despite their age; and the denial of their right to benefit from the presence of their guardian or legal counsel during the interrogation.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal and factual grounds for the arrest, detention and convictions of Mr. Yusuf Ahmed Hasan Kadhem, Mr. [REDACTED], Mr. Sayed Ali Mustafa Majid Maki and Mr. [REDACTED], and how these measures are compatible with international norms and standards.
3. Please clarify if an arrest warrant was provided and if Mr. [REDACTED], Mr. Sayed Ali Mustafa Majid Maki and Mr. [REDACTED] were able to effectively exercise their right to legal assistance from the moment of arrest, as minors.
4. Please explain what measures have been taken to ensure that all people in Bahrain, including children and human rights defenders can exercise their legitimate rights to freedom of expression and peaceful assembly without fear of reprisals, judicial prosecution or criminalization of any kind.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to articles 9, 14, 19, 21 and 22 of the International Covenant for Civil and Political Rights (ICCPR), ratified by your Excellency's Government on 20 September 2006, which guarantees the rights not to be subjected to arbitrary arrest or detention, to a fair trial, to freedom of opinion and expression and to freedom of peaceful assembly and of association.

We would like to recall that article 21 of the ICCPR guarantees the right of peaceful assembly, while article 22 protects the right to freedom of association with others. As stated in a report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards (A/HRC/17/27, para. 66; and A/HRC/29/25/Add.1). This means ensuring that the rights to freedom of peaceful assembly and of association are enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2 (1) of the International Covenant on Civil and Political Rights) (see also ICCPR, art. 26).

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the General Comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedoms of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant.

We would like to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the legitimate aim. As the Human Rights Committee observed in General Comment No. 27 (CCPR/C/GC/27), restrictive measures must "be appropriate to achieve their protective function" and "be the least intrusive instrument amongst those which might achieve the desired result" (paragraph 14), while "the principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law" (paragraph 15).

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, also known as the UN Declaration on Human

Rights Defenders. In particular, we would like to refer to the following provisions:

- Article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- Article 9 paragraph 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.
- Article 12 paragraphs 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 like to draw Your Excellency's Government's attention to its obligations under general international law and specific human rights instruments your Excellency's Government has ratified. In particular, we would like to refer to the obligation to take all necessary measures to guarantee the right of all individuals under its jurisdiction to not to be deprived arbitrarily of their liberty, and the right to a fair trial before an independent and impartial tribunal, as set out inter alia in articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) and in articles 37 (b) and (d) and 40 of the Convention on the Rights of the Child. Your Excellency's Government ratified the latter treaty on 13 February 1992.

Further, we would like to draw your attention to article 37.b of the Convention on the Rights of the Child which provides that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. Failure to recognize or apply these safeguards increases the risk of children being subjected to torture or other ill-treatment, and implicates State responsibility. Therefore, States should, to the greatest extent possible, and always using the least restrictive means necessary, adopt alternatives to detention that fulfil the best interests of the child and the obligation to prevent torture or other ill-treatment of children, together with their rights to liberty and family life, through legislation, policies and practices that allow children to

remain with family members or guardians in a non-custodial, community-based context. Alternatives to detention must be given priority in order to prevent torture and the ill-treatment of children (A/HRC/28/68 para. 72). If detained, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) guide States on how to approach the deprivation of liberty of children.