

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ref.: AL BHR 1/2023
(Please use this reference in your reply)

17 February 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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 right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/16, 51/8, 43/4, 50/17, 51/21 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of torture, ill treatment and poor prison conditions of human rights defender Abdulhadi Al-Khawaja, including the restriction of communication with family, and deprivation of his right to give power of attorney to his lawyer in court, as required.

This letter is a follow-up to previous communications sent on Mr. Al-Khawaja, the most recent being AL BHR 2/2021. Special Procedure Mandate Holders issued a several press releases urging for the release of Mr. Al-Khawaja, initially on 13 April 2012, and most recently on 22 June 2021. We would also like to reiterate the observations made in AL BHR 2/2019 on the Act no. 58 of 2006 on the Protection of Society from Terrorist Acts.

Mr. **Abdulhadi Al-Khawaja** عبد الهادي الخواجة is a dual Bahraini-Danish citizen, a human rights defender and former Protection Coordinator at Frontline Defenders, as well as the former President of the Bahrain Centre for Human Rights (BCHR), and the winner of the 2022 Martin Ennals Award for Human Rights Defenders.

Mr. Al-Khawaja was arrested in April 2011 following his participation in peaceful demonstrations calling for political reform. He was tried before the National Safety Court, a military jurisdiction and was convicted and sentenced on 22 June 2011 to life imprisonment for "membership in a terrorist group seeking to overthrow the royal system"; "contact with a terrorist organisation abroad"; and "spreading false information," among other charges. He is currently serving this sentence in Bahrain's Jau prison.

Through his work as a human rights defender, Mr. Al-Khawaja has openly discussed human rights concerns in Bahrain with a number of international human

rights organizations including the United Nations. Mr. Al-Khawaja was the subject of ten communications sent to your Excellency's Government in the past, namely: BHR 2/2021; BHR 3/2012; BHR 18/2011; BHR 17/2011; BHR 9/2011; BHR 5/2011; BHR 4/2011; BHR 2/2009; BHR 2/2007; BHR 6/2005. We acknowledge receipt of responses transmitted by your Excellency's Government regarding all the aforementioned communications on 28 June 2021; 30 December 2012, 21 December 2011, 23 September 2011, 8 June 2011, 7 June 2011, 26 April 2011, 1 April 2009, 15 February 2007 and 27 December 2005, respectively.

In its opinion no. 6/2012 issued in September 2012, the UN Working Group on Arbitrary Detention found that Mr. Al-Khawaja's detention was arbitrary and that throughout his arrest, detention and trial, "the Government violated numerous international norms that relate to the right to fair trial."

According to the information received:

On 29 December 2022, Bahrain's High Criminal Court rejected Mr. Al-Khawaja's appeal on a charge related to insulting a civil servant and refusing to engage with a prison guard on grounds that he allegedly tortured a cellmate of Mr. Al-Khawaja. The prison guard, Mr. [REDACTED], brought the case against Mr. Al-Khawaja.

On 5 January 2023, Mr. Al-Khawaja wrote to the Minister of Justice, describing how he was prevented from attending a court session on new charges issued against him in November 2022 while he was serving a life sentence on terrorism charges. He detailed the escalation in ill-treatment against him and other prisoners that included intimidation, restriction of communication with family, deprivation of basic rights, including his inability to give power of attorney to his lawyer in court, as required, as well as fabrication of cases against him and other political prisoners in Bahrain. He also complained about Mr. [REDACTED] torture of dozens of prisoners and empowering of prison guards to be perpetrators of torture. The letter was made public and copied to United Nations officials and diplomats.

Also on 5 January 2023, Bahrain's High Criminal Court upheld a conviction against him for breaking a plastic chair during an incident in November 2021 in which he protested the denial of his right to call his two daughters. Mr. Al-Khawaja had instructed his legal defence team to withdraw from the court session because he was not brought to court and was not given the right to meet with his lawyer before the hearing. He was fined 60 BD (159 USD)

On 6 January 2023, prison guards attempted to force Mr. Al-Khawaja into a room alone with [REDACTED], a prison guard whom he had previously been convicted of 'insulting' because Mr. Al-Khawaja had named him as one of his torturers. Prison guards took him from his cell in Jau Prison to the administration building where he was led to believe he would be calling his lawyer. When guards attempted instead to force him in a room with Mr. [REDACTED] Mr. Al-Khawaja shouted slogans against the prison authorities and the Interior Minister until they stopped pushing him.

On 8 January 2023, Mr. Al-Khawaja was told by prison authorities that he would not be allowed to call his lawyer anymore, and that his general call

hours would also be cut back.

In addition, Mr. Al-Khawaja also faces a charge of incitement to overthrow or change the regime in relation to his chants against the Interior Minister in protest at ill-treatment during his transport to hospital for back treatment in July 2022. Prison authorities insisted on shackling his hands and feet, despite doctors' orders to the contrary, while transporting him in a small bus with no ventilation. No trial date has been set so far.

The new charges and an increase in his ill-treatment in prison appear to be in retaliation to his activism regarding the treatment of political prisoners. They also came after a European Parliament resolution on 15 December 2022 calling for his release; the November 2022 UN Universal Periodic Review of Bahrain; the September 2022 UN Secretary General's annual report on reprisals, and his receipt of the June 2022 annual Martin Ennals Award for Human Rights Defenders at Risk.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our utmost concern at the continued arbitrary detention of human rights defender Mr. Al-Khawaja.

We remain deeply concerned by the renewed allegations of torture, and other cruel, inhuman or degrading treatment and punishment of Mr. Al-Khawaja, in clear violation of his rights as a prisoner to maintain contact with his lawyer and family.

We also express our concern with regard to the recent judicial harassment of Mr. Al-Khawaja and the denial of due process in assuring his right to fair trial for the new charges brought against him, and to communicate with his lawyer and attend his hearings. We also remain troubled that the continued intimidation, harassment and mistreatment of Mr. Al-Khawaja by the authorities stem from the past and current exercise of his rights to freedom of association, peaceful assembly and expression.

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.

We are issuing this appeal in order to safeguard the rights of Mr. Al-Khawaja from irreparable harm and without prejudicing any eventual legal determination.

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 the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to consistent allegations of torture and/or cruel, inhuman or degrading treatment against Mr. Al-Khawaja. If no investigation has been initiated, please explain why and how this is compatible with the

international human rights obligations of Bahrain.

3. Please provide information about the legal assistance received by Mr. Al-Khawaja since his arrest and where appropriate during trial, as well as details of how access to legal representation of his choosing has been assured.
4. Please provide information on actions taken by the Government of your Excellency in follow-up to the recommendations made in Opinion 6/2012 of the Working Group on Arbitrary Detention.

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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

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

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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, The above-mentioned allegations appear to be in contravention with articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Bahrain on 20 September 2006, which provides, respectively, that no one shall be subjected to arbitrary arrest or detention and that everyone has the rights to liberty of movement, to fair proceedings before an independent and impartial tribunal, to freedom of opinion and expression, and to freedom of association with others.

In relation to article 9 of the ICCPR, we specifically wish to highlight that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19) (CCPR/C/GC/35, para. 17).

We also wish to refer your Excellency's Government to article 14 of the ICCPR, whereby everyone charged with a criminal offence shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law and shall be entitled to the number of minimum guarantees, in full equality, including to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing. In addition, the denial of access to lawyers of one's choosing violates the right to legal assistance guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 of the ICCPR as well as principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 61(1) of the Nelson Mandela Rules.

We also refer to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment and punishment as codified in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Bahrain acceded on 6 March 1998, and in article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Bahrain acceded on 20 September 2006. We recall articles 7 and 12 of the CAT, which prescribe State parties' obligations to promptly and impartially investigate alleged acts of torture and to prosecute the perpetrators.

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 freedom 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. Furthermore, an attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, torture, threats to life and killing, cannot be compatible with article 19.

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 recall article 20(1) of the Universal Declaration of Human Rights which states that “[e]veryone has the right to freedom of peaceful assembly and association”. We would further like to refer to article 21 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to freedom of peaceful assembly. Article 21 states that “[t]he 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 interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”. Article 22 of the ICCPR 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 refer your Excellency’s Government to the International Covenant on Economic, Social and Cultural Rights (ICESC), ratified by Bahrain on 27 September 2007, which in its article 12 provides for the right to mental and physical health with no discrimination (article 2.2). This includes an obligation on the part of all States parties to, inter alia, refrain from denying or limiting equal access for all persons, including prisoners or detainees, to medical care (general comment no. 14 of the Committee on Economic, Social, and Cultural rights, para. 34). In this connection, we would like to refer to the UN Standard Minimum Rules for the Treatment of Prisoners adopted unanimously by the UN General Assembly (A/Res/70/175) in December 2015 (“Mandela Rules”).

Rules 24 to 35 establish that healthcare for prisoners is a State responsibility; prisoners should be ensured prompt access to medical attention in urgent cases and those requiring specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6(b) and (c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, (2) and (3), which provides that the State shall take all necessary measures to ensure the protection of everyone 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.

Finally, we wish to refer to Human Rights Council resolution 24/24 which calls on States to ensure adequate protection from intimidation or reprisals for cooperation with the United Nations, its mechanism and representatives in the field of human rights; and Human Rights Council resolution 22/6, which provides for the right to “unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms”.