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PROCEDURES SPECIALES DU
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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the the Special Rapporteur on the independence of judges and lawyers; 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 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: : UA G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)
BHR 14/2011

4 July 2011

Dear Ms. Radhi,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 8/6, 16/4, 16/5, and 16/23.

In this connection, we would like to draw the attention of your Government to information we have received regarding the arrest and detention of **Mr. Matar Ebrahim Matar**, who is a former Member of Parliament and a member of Alwefaq Society, the largest opposition party. Within this Society, Mr. Matar has been an active member of the anti-discrimination committee, and of the monitoring committee, which works on cases of arbitrary detention and torture. Mr. Matar has been also an active speaker with the international media, regarding the protests in the Kingdom of Bahrain.

According to the information received:

It is reported that on 2 May 2011, at around 7:30 p.m., Mr. Matar received an anonymous call. A woman told him that she had an envelope for him, and asked him to collect it. Mr. Matar requested the woman to deliver the envelope at the Alwefaq Society Center, but since she claimed that she was too afraid to go there, they agreed to meet near the Alhelli Supermarket, located in Aldaih Village. When Mr. Matar arrived, at around 8:20 p.m., approximately ten armed masked civilians surrounded his car and pointed guns to his head. The men kidnapped Mr. Matar at around 8:30 p.m.

It is reported that following the kidnapping of Mr. Matar, a member of the Alwefaq Society Center called the authorities of the Ministry of Interior to enquire about his situation, but they claimed that they did not know about his whereabouts.

It is reported that on 12 June 2011, after 40 days of having been kidnapped, Mr. Matar appeared before the Court of the National Safety (Military Court) without his lawyer nor his family being informed. Mr. Matar was charged with “Public incitement for regime change and deliberately spreading biased rumors, in addition to taking part in public gatherings”. It is also reported that Mr. Matar appeared in the same clothes since his detention, and that he had been held in solitary confinement throughout the entire period of detention.

It is alleged that on 21 June 2011, Mr. Matar had his second hearing in the same court. However the session started in his absence, since he had not been brought from jail because his name was dropped from a list allegedly by mistake. It is reported that when the lawyer requested to postpone the hearing, the judge refused. It is alleged that the lawyer claimed that all the charges against Mr. Matar were in the period when he was a Member of Parliament, and therefore he did not enjoy immunity. Furthermore, the lawyer alleged that during the interrogation, Mr. Matar asked for the presence of his lawyer; however Mr. Matar was incorrectly informed that his lawyer had not been found. Finally, the lawyer also argued that Mr. Matar was acting on behalf of the Alwefaq Society Center, and not in his individual capacity. The judge allegedly postponed the case to 5 July 2011. However, it is reported that on 22 June 2011, Mr. Matar was again brought to the Court of National Safety.

On 10 May 2011, a person informed that he had overheard at the army barracks in Alriffaa Town that the military called the name of Mr. Matar. He also confirmed that he overheard Mr. Matar screaming and being beaten while he was interrogated. In particular, Mr. Matar was asked about his relationship with the international media. The witness saw Mr. Matar handcuffed and with blood on his clothes when he was reportedly transferred to the East Riffaa Police Station.

It is alleged that the day before the kidnapping, on 1 May 2011, at around 11:30 p.m., Mr. Matar received another anonymous call, asking him if he could collect an envelope. But the man refused to deliver it at the Alwefaq Society Center.

It is also reported that on 28 April 2011, a Bahrain local television station aired some “confessions” obtained by the authorities, in which Mr. Ali Isa Saqer, one of the four protestors who died in custody, mentioned Mr. Matar’s name. Mr. Ali Isa Saqer “confessed” that on 17 March 2011, during the attacks of the Gulf Cooperation Council against the Pearl roundabout, Mr. Matar encouraged the protestors to run over some police officers with their cars. Mr. Matar expressed his serious concern about his own safety, and that he could be in danger of being

kidnapped, arrested or even assassinated, since this is what has reportedly happened to other people mentioned on the television station “confessions”.

In view of the allegations that Mr. Matar was overheard to have been subjected to beatings during interrogations, concern is expressed about the physical and mental integrity of Mr. Matar. Further concern is expressed regarding allegations that he was denied access to a lawyer and his family until the day he was taken to a military court, where he may not receive a fair trial. Moreover, concern is expressed that the situation of Mr. Matar may be linked to his work in the defense of human rights and fundamental freedoms, and in particular, exercising his legitimate right to freedom of expression and engagement with international media.

Without expressing at this stage an opinion on the facts of the case, we wish to draw your Government’s attention to the right to physical and mental integrity of the Mr. Matar. We would also 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 Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this context, we would like to draw the attention of your 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 Government to paragraph 8b of Human Rights Council Resolution 16/23, which reminds States that “Prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person and to ensure that secret places of detention and interrogation are abolished.”

In addition, we would like to draw the attention of your Government to article 12 of the Convention against Torture, 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 Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture.

We would also like to draw your 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.”

In respect of the allegations that Mr. Matar did not have access to a lawyer until he was brought to court, 40 days following his arrest, we would like to refer your Government to 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). According to 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.” Such access to a lawyer shall be granted promptly and “in any case not later than forty-eight hours from the time of arrest or detention” in accordance with principle 7.

In relation to the allegations that Mr. Matar has been brought for hearings before a military court, we wish to stress that everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures in accordance with para. 5 of the Basic Principles on the Independence of the Judiciary (adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985). We would further like to draw your Government’s attention to paragraph 22 of General Comment No. 32 of the Human Rights Committee, in which it stated that “[t]rials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.” This argument was also underscored by the Committee in its decision concerning communication 1172/2003 (*Madani vs. Algeria*). In this decision, the Committee considered “[t]hat the State party must demonstrate, with regard to the specific class of individuals at issue, that the regular civilian courts are unable to undertake the trials, that other alternative forms of special or high-security civilian courts are inadequate to the task and that recourse to military courts is unavoidable. The State party must further demonstrate how military courts ensure the full protection of the rights of the accused pursuant to article 14. [...] Nor does the mere invocation of domestic legal provisions for the trial by military court of certain categories of serious offences constitute an argument under the Covenant in support of recourse to such tribunals.”

We are further concerned about allegations that Mr. Matar’s second hearing started in his absence. In this regard, we wish to recall that in the determination of any

criminal charge against him, everyone shall be entitled to a fair trial, which includes the right to be tried in his presence according to article 14(3)(d) of the ICCPR. Concerning the allegations indicating that the judge refused to postpone the second hearing upon request of Mr. Matar's lawyer, we wish to refer your Government to the relevant provisions of the Bangalore Draft Code of Judicial Conduct 2001 (adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002). Principle 2(2) stipulates that "[a] judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary. Also relevant in this regard is principle 3(1) according to which "[a] judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer."

Pursuant to article 11.1 of the Covenant, States parties recognize "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions", while pursuant to article 11.2 they recognize that more immediate and urgent steps may be needed to ensure "the fundamental right to freedom from hunger and malnutrition". The human right to adequate food is of crucial importance for the enjoyment of all rights. It applies to everyone; thus the reference in article 11.1 to "himself and his family" does not imply any limitation upon the applicability of this right to individuals or to female-headed households. States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters.

We would also like to appeal to your 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 ICCPR, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would also like to refer your 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 Government the following provisions of the Declaration:

- article 5, point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully;

- 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, 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.

We urge your Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Matar 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 Government adopt 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 Government to safeguard the rights of Mr. Matar 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. Matar?
3. Please provide the details, and where available the results, of any investigation, medical examinations, 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. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please provide information on the measures taken to ensure the safety of Mr. Matar.
6. Please indicate the reasons justifying his trial before a military court and to what extent this complies with the international standards mentioned above. Please indicate what measures are taken to ensure that Mr. Matar receives a fair trial in accordance with article 14 of the ICCPR.
7. Please indicate what measures have been taken to ensure that the legitimate right to meet and assembly peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.

We undertake to ensure that your 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, Ms. Radhi, the assurances of our highest consideration.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

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