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**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**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 Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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) Terrorism (2005-4) G/SO 214 (53-24)  
BHR 17/2011

5 August 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 human rights and fundamental freedoms while countering terrorism; 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 17/2, 15/15, 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 life imprisonment of Messrs. **Abdulahdi Alkhawaja, Abdulwahab Hussain, Hassan Mushaima, Abduljalil Al Singace, Mohammed Habib Al Safaf** (Al Miqdad), **Saeed Mirza Ahmed** (AlNouri), and **Abduljalil Mansoor Makk** (Al Miqdad). A further four human rights defenders including Messrs. **Mohammed Ali Ismael, Mohammed Hassan Jawad, Abdullah Isa Al Mahroos** and **Abdul Hadi Abdullah Mahdi Hassan** (Al Mukhodher) were sentenced to 15 years imprisonment, while human rights defenders Messrs. **Ibrahim Sharif Abdulrahemm Mossa**, and **Salah Hubail Al Khawaj** received five-year prison sentences, and human rights defender Mr. **Al Hurra Yousif Mohammed** received a two-year prison sentence.

Mr. Alkhawaja, former Protection Coordinator of Front Line, the International Organization for the Protection of Human Rights Defenders, as well as the former President of the Bahrain Centre for Human Rights (BCHR) has been the subject of a number of communications sent to your Government dated 20 May 2011, 12 April 2011, 22 March 2011, 19 February 2009, 2 February 2007, and 14 December 2005. The Special

Rapporteurs acknowledge receipt of responses transmitted by your Government regarding the aforementioned communications on 8 June 2011, 7 June 2011, 26 April 2011, 1 April 2009, 15 February 2007 and 27 December 2005 respectively.

Mr. Abdulwahab Hussain, President of the Alwafa Islamic movement, was the subject of an urgent appeal dated 18 March 2011, sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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. The Special Rapporteurs acknowledge receipt of the response transmitted by your Government to the communication on 20 April 2011.

Mr. Hassan Mushaima, Secretary-General of the Haq Democracy Movement, reportedly a movement seeking greater rights for the Shiite Muslims as well as further democratic reforms, was the subject of an urgent appeal dated 22 March 2011, sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; 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; an urgent appeal dated 18 March 2011, sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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; and an urgent appeal dated 2 February 2007 sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on the situation of human rights defenders. His son Mr. Ali Hassan Mushaima was sentenced to 15 years imprisonment *in absentia*. The Special Rapporteurs acknowledge receipt of responses transmitted by your Government to these communications on 26 April 2011, 20 April 2011 and 15 February 2007.

Mr. Al Singace, Director and Spokesperson of the Human Rights Bureau of the Haq Movement for Civil Liberties and Democracy, has been the subject of an urgent appeal dated 22 March 2011, sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; 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; an urgent appeal dated 15 September 2010, sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; 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; an urgent appeal dated 20 August 2010, sent by the Chair-Rapporteur of the

Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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. The Special Rapporteurs acknowledge receipt of responses transmitted by your Government to these communications on 26 April 2011 and 12 October 2010.

A further seven human rights defenders, Messrs. **Akeel Ahmed Al Mafoodh, Ali Hassan Abdullah, Abdul Ghani Al-Khanjar, Saeed Abdulnabi Shehab, Abdulraoof Al Shayeb, Abbas Al Omran, and Ali Hassan Mushaima**, were found guilty and sentenced *in absentia*.

Mr. Al-Khanjar was the subject of an allegation letter dated 5 March 2010, sent by 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. The Special Rapporteurs acknowledge receipt of the response transmitted by your Government to this communication on 27 October 2010.

Mr. Abdulraoof Al Shayeb was the subject of an urgent appeal dated 20 July 2006, sent by the Special Representative of the Secretary-General on the situation of human rights defenders. The Special Rapporteur acknowledges receipt of the response transmitted by your Government to this communication on 20 July 2006.

We wish to bring the following new information to your Government's attention.

According to reports recently received:

On 22 June 2011, the aforementioned human rights defenders were sentenced by the Lower National Safety Court. This is allegedly a military court, which was established on 15 March 2011, pursuant to the declaration of State of National Safety by the King of Bahrain.

Messrs. Abdulhadi Alkhawaja, Abdulwahab Hussain, Hassan Mushaima, Abduljalil Al Singace, Mohammed Habib Al Safaf, Saeed Mirza Ahmed (Saeed AlNouri), Abduljalil Mansoor Makk, and Saeed Abdulnabi Shehab were sentenced to life imprisonment. Mr. Saeed Abdulnabi Shehab was sentenced *in absentia*.

Messrs. Abdul Hadi Abdullah Mahdi Hassan (Al Mukhodher), Abdullah Isa Al Mahroos, Mohammed Ali Ismael, Mohammed Hassan Jawad were handed down 15- year sentences. Messrs. Akeel Ahmed Al Mafoodh, Ali Hassan Abdullah, Abdul Ghani Al-Khanjar, Abdulraoof Al Shayeb, Abbas Al Omran, and Ali Hassan Mushaima were also sentenced to 15 years' imprisonment *in absentia*.

Messrs. Ibrahim Sharif Abdulrahemm Mossa and Salah Hubail Al Khawaj were sentenced to five years and Mr. Al Hurra Yousif Mohammed to two years of imprisonment.

According to the information received, the Government has alleged that the aforementioned human rights defenders form part of a “terrorist cell” and were convicted of the following charges:

1. Organizing and managing a terrorist group with the objective of changing the country’s constitution and overthrowing Royal rule in accordance with article 1.6 of law no. 58, 2006 related to the Protection of Society against Terrorist Acts.
2. Seeking and maintaining correspondence with a terrorist organization abroad, working for a foreign country to conduct heinous acts against the Kingdom of Bahrain in accordance with article 122 of the Criminal Penal Code, 1976.
3. Attempting to overthrow and change the country’s constitution and Royal rule by force in accordance with article 148 of the Criminal Penal Code, 1976.
4. Attempting to incite and solicit the overthrow and change of the country’s constitution and Royal rule by force in accordance with article 160 of the Criminal Penal Code, 1976.
5. Collecting funds and providing financial support to a terrorist group with the knowledge of its practices and terrorist activities in accordance the Money Laundering and Financing Terrorism Act, 2001.
6. Obtaining publications that contain content which incites the overthrow of the governing law in the country by force in accordance with article 161 of the same law.
7. Insulting the army in accordance with article 216 of Criminal Penal Code, 1976.
8. Publicly inciting hatred of the governing law of the country in accordance with article 165 of the Criminal Penal Code, 1976.
9. Broadcasting false news and rumors that threaten public security and damage the public interest in accordance with article 168 of the Criminal Penal Code, 1976.
10. Inciting the hatred of a certain sect of people in accordance with article 172 of the Criminal Penal Code, 1976.
11. Inciting incomppliance with the law in accordance with article 173 of the Criminal Penal Code, 1976.

12. Organizing and participating in rallies without the permission of specialized bodies according to article 1, 2, 3, 9, 13 of the Meetings and Processions Law, 2006.

It is reported that, although all of the aforementioned defendants were eventually given access to lawyers, they were initially held, for a long period of time in incommunicado detention. It is further alleged that their confessions may have been extracted under duress. Furthermore, it has been reported that the aforementioned defendants were subjected to torture while in detention.

It is reported that following the verdict, lawyers for all of the aforementioned defendants announced that they would appeal the court decision and the appeal is scheduled to be heard on 11 September 2011. It is finally reported that the King has issued a decree allowing the cases to be appealed to the Court of Cassation which is the ordinary Court of Appeal in Bahrain. Prior to the issuing of this decree, it is alleged that the cases could only have been appealed to the National Safety Court of Appeal, a military court.

With regard to the situation of Mr. Alkhawaja, further to the allegations detailed in the urgent appeal dated 20 May 2011, in particular, allegations that Mr. Alkhawaja was subjected to torture while in detention, we have been informed that injuries which he sustained allegedly while in detention have not healed. It is reported that wounds above Mr. Alkhawaja's eyes were stitched but have not healed; he is reportedly not able to use his mouth or jaw in a normal manner, he cannot chew his food or brush his teeth as a result, and the left side of his face is permanently numb, specifically, his lips, mouth, left cheek, and chin. It is alleged that Mr. Alkhawaja was x-rayed while in prison but he has not been provided with the results of these x-rays.

Deep concern is expressed about the imposition of life sentences on human rights defenders, Messrs. Abdulhadi Alkhawaja, Abdulwahab Hussain, Hassan Mushaima, Abduljalil Al Singace, Mohammed Habib Al Safaf, Saeed Mirza Ahmed (Saeed AlNouri), and Abduljalil Mansoor Makk. Further concern is expressed regarding the sentencing of human rights defenders Messrs. Mohammed Ali Ismael, Mohammed Hassan Jawad, Abdul Hadi Abdullah Mahdi Hassan (Abdulhadi AlMukhodher), Ibrahim Sharif Abdulrahemm Mossa, Abdullah Isa Al Mahroos, Salah Hubail Al Khawaj, Al Hurra Yousif Mohammed, Akeel Ahmed Al Mafoodh, Ali Hassan Abdullah, Abdul Ghani Al-Khanjar, Saeed Abdulnabi Shehab, Abdulraoof Al Shayeb, Abbas Al Omran, and Ali Hassan Mushaima to periods ranging from two to 15 years imprisonment.

Concern is expressed about allegations that the trial of the aforementioned human rights defenders did not comply with international legal standards and access to legal counsel was restricted. Further concern is expressed that the situation of the aforementioned human rights defenders may be linked to their legitimate human rights work.

Moreover, in the case of Mr. Alkhawaja, deep concern is expressed regarding allegations that his health has deteriorated as a result of injuries sustained while in detention. Concern is expressed that Mr. Alkhawaja has not been provided with adequate medical care.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Government's attention to the right to physical and mental integrity of the above-mentioned persons. 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 Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We should like to appeal to your Government to seek clarification of the circumstances regarding the case of the persons named above.

In this context, we would like to draw your Government's attention to paragraph 1 of Human Rights Council Resolution 8/8 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would like to draw the attention of your Government to paragraph 7.c of Human Rights Council Resolution 8/8 of 18 June 2008, which reminds all States that "Prolonged incommunicado detention or detention in secret places may 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".

We would like to draw your Government's attention to article 15 of the Convention against Torture 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 6c of Human Rights Council resolution 8/8 of 2008 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". In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in article 7 of the ICCPR.

We would also like to draw the attention of your Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, "Sick 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, “The 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.)

With regard to the allegation that the aforementioned persons were held a long period in incommunicado detention, we wish to stress that “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.” in accordance with principle 8 of 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).

While we welcome that the trials on appeal will take place before a civilian court, we remain concerned that the first instance trials of the aforementioned persons were held before a military court and that they may not have enjoyed all guarantees pertaining to the right to a fair trial. In paragraph 22 of its General Comment No. 32, the Human Rights Committee said that “Trials 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.”

Concerning the terrorism-related convictions against the abovementioned human rights defenders, we would like to stress that the principle of legality in criminal law, enshrined in several international human rights instruments such as article 15 of the ICCPR and made non-derogable in times of public emergency, implies that the requirement of criminal liability is limited to clear and precise provisions in the law, so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation which would broaden the scope of the proscribed conduct. The former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism raised his concerns in relation to broad definition of

terrorism contained in the then draft law on counter terrorism in a letter of allegation, dated 29 March 2006, and a joint urgent appeal, dated 30 June 2006, to which your Government replied by letter dated 29 September 2006, the abovementioned joint urgent appeal dated 20 August 2010, to which your Government replied by letter of 12 October 2010, and a joint urgent appeal dated 15 October 2010, to which your Government replied by letter of 15 November 2010. The Committee Against Torture, in its Conclusions and Recommendations to Bahrain, stated in relation to this draft law that it contained a “broad and vague definition of terrorism and terrorist organization” (CAT/C/CR/34/BHR, 21 June 2005, paragraph 6(i)).

In our view, at the national level, the specificity of terrorist crimes is usually defined by the presence of two cumulative conditions: (1) The means used, which can be described as deadly or otherwise serious violence against members of the general population or segments of it, or the taking of hostages; and (2) the intent, which is to cause fear among the population or to compel the government or an international organization to doing or refraining from doing something, usually in the advancement of a political, religious or ideological cause. It is only when these two conditions are fulfilled that an act may be criminalized as terrorist.

Regarding allegations indicating that the situation of the aforementioned human rights defenders may be linked to their legitimate human rights work, we would 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.”

In addition, we would 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 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 the above mentioned persons 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 Messrs. Abdulhadi Alkhawaja, Abdulwahab Hussain, Hassan Mushaima, Abduljalil Al Singace, Mohammed Habib Al Safaf (Al Miqdad), Saeed Mirza Ahmed (AlNouri), Abduljalil Mansoor Makk (Al Miqdad), Mohammed Ali Ismael, Mohammed Hassan Jawad, Abdullah Isa Al Mahroos, Abdul Hadi Abdullah Mahdi Hassan (Al Mukhodher), Ibrahim Sharif Abdulrahemm Mossa, Salah Hubail Al Khawaj and Al Hurra Yousif Mohammed 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. Please provide information regarding whether there will be a full hearing of the case and the facts before the Court of Cassation scheduled for 11 September 2011 and whether any evidence which was not heard at the full hearing will be admissible and heard at the appeal hearing.

3. Please indicate what measures are taken to ensure that the aforementioned persons will receive a fair trial before the Court of Cassation in accordance with international standards as enshrined *inter alia* in article 14 of the ICCPR.

4. In the case of Mr. Alkhawaja, please provide details describing how Mr. Alkhawaja sustained such injuries while in detention. Kindly provide details about the medical care with which he has been provided while in detention.

5. Please provide information on the measures undertaken to ensure that any statement or confession obtained under torture is excluded from judicial proceedings.

6. Please provide information on the measures taken to ensure the safety of the aforementioned persons.

7. Please also indicate whether and how the requirements of the principle of legality have been observed in relation to the definition of the crimes that have reportedly formed the basis of the convictions against the aforementioned persons.

8. Please describe how a “terrorist group” or “terrorist organization” is designated. Are there any procedures in place to appeal such a designation?

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

Frank La Rue  
Special Rapporteur on the promotion and protection of the right to freedom of  
opinion and expression

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