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HIGH COMMISSIONER FOR HUMAN RIGHTS

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HUMAN RIGHTS COUNCIL

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

REFERENCE: UA Health (2002-7)
BHR 5/2014

16 April 2014

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health pursuant to Human Rights Council resolution 24/6.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received concerning the alleged denial of medical treatment for the deteriorating health condition of **Mr. Hassan Mushaima**, a 64-year old Bahraini political activist who is currently detained in the Bahrain State Prison.

Mr. Mushaima, Secretary-General of the Haq Democracy Movement, the main opposition movement calling for democratic reforms, has been the subject of an urgent appeal dated 16 March 2012 sent by 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 torture and other cruel, inhuman or degrading treatment or punishment; an urgent appeal dated 5 August 2011 sent by the Special Rapporteur on the Independence of Lawyers, the Special Rapporteur on the protection and promotion of the fundamental and human right of 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 and degrading treatment or punishment; an urgent appeal dated 22 March 2011, sent by the Chair-Rapporteur on the Working Group on Arbitrary Detention, the Special Rapporteur on the protection and promotion of the fundamental and human right of 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 on the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary execution, the Special Rapporteur on the protection and promotion of the fundamental and human right of freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment; and an urgent appeal dated 2 February 2007 sent by the Chair-Rapporteur on the Working

Group on Arbitrary Detention and the then Special Representative of the Secretary-General on the situation of human rights defenders. The Special Rapporteur acknowledges receipt of responses transmitted by your Excellency's Governments to these communications on 18 April 2012, 23 September 2011, 26 April 2011, 20 April 2011, and 15 February 2007 respectively.

According to the information received:

It is reported that Mr. Hassan Mushaima's health condition has significantly deteriorated. He was reportedly allowed to see a medical specialist six months ago, who advised that Mr. Mushaima should urgently undergo a positron emission tomography (PET) scan. It is alleged that since then Mr. Mushaima has received neither the PET scan nor medical treatment for cancer, including chemotherapy.

As of April 2014, Mr. Mushaima was reportedly experiencing symptoms similar to those that he had before remission. According to the sources, doctors informed Mr. Mushaima that his symptoms were due to other illnesses, and he is therefore not scheduled for surgery. Despite the repeated requests from Mr. Mushaima's family, his medical records have allegedly not been made available to them for follow-up treatment.

It is also reported that Mr. Mushaima is suffering from complications in his eyes due to his diabetes condition. In a check-up in March 2014, doctors reportedly noticed a liquid build-up in his eyes. In spite of the advice from an independent doctor who had determined that the deterioration of Mr. Mushaima's eyes requires surgery, the prison authorities allegedly provided him only with eye-drops.

While I do not wish to prejudge the accuracy of these allegations, I would appreciate information from your Excellency's Government on the steps taken by the competent authorities with a view to ensuring the right of Mr. Hassan Mushaima the enjoyment of the highest attainable standard of health. 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. 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.

I 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).

I would also like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners (approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). Rule 22(2) 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"

Furthermore, I also wish to refer your Excellency's Government to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173, which states that: "A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge" (Principle 24). Furthermore, I wish to recall the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, according to which "Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation" (Principle 9).

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights and freedoms of Mr. Mushaima.

Moreover, it is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information on the measures taken to ensure Mr. Mushaima's enjoyment of the right to the highest attainable standard of health, including access to adequate medical treatment in detention.

I undertake to ensure that your Excellency's Government's response will be available in the report I will submit to the Human Rights Council for its consideration.

While waiting for your response, I urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Mushaima 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. I also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Anand Grover

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