

Mr Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
E-mail: freedex@ohchr.org

Mr Juan Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment
E-mail: sr-torture@ohchr.org

Cc: Mr Mads Andenas
Chair Rapporteur of the Working Group on Arbitrary Detention
E-mail: wgad@ohchr.org

Cc: urgent-action@ohchr.org

4 June 2014

Follow-up information to Letter of Allegation of 15 December 2013 concerning the detention of journalist Mohammed Hassan, photographer Hussain Hubail and cameraman Qassim Zain Aldeen (Bahrain)

Dear Mr La Rue and Mr Méndez,

The Media Legal Defence Initiative, Americans for Democracy & Human Rights in Bahrain, Bahrain Center for Human Rights, Bahrain Youth Society for Human Rights, FIDH - International Federation for Human Rights, Gulf Centre for Human Rights and Reporters Without Borders (“the signatory organisations”) write further to the Letter of Allegation dated 15 December 2013. A copy of the Letter of Allegation has been enclosed as Annex 1.

The arrest and detention of all three men was also the subject of an Urgent Appeal dated 6 August 2013 made by the Media Legal Defence Initiative, English PEN and Article 19 to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, which was copied to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

The Letter of Allegation respectfully requested that the Special Rapporteurs consider investigating the arrest, detention and torture of Mr Hassan, Mr Hubail, and Mr Zain Aldeen. At the time of the Letter of Allegation, all three men faced trial on charges related to their reporting on recent protests against the government of Bahrain. All three reported that they were subjected to torture while detained in the Criminal Investigation Directorate (“CID”).

Since then, Mr Hubail and Mr Zain Aldeen have remained in detention, whilst Mr Hassan was released on bail at the beginning of October 2013. In addition to providing follow up information regarding each case, this letter also aims at bringing the continued detention of Mr Hubail and Mr Zain Aldeen to the attention of the Working Group on Arbitrary Detention.

I. Update on the Background and Circumstances Surrounding the Arrests and Detention

a. Mr Hassan

After his release on the night of 3 October 2013 and pending his trial, Mohammed Hassan fled Bahrain at the end of February 2014 and sought asylum in the UK. He was arrested upon arrival in the UK and placed in the Detained Fast Track (“DFT”) process by which applicants can be returned to their country of origin. Following an emergency legal challenge he was released from detention and the DFT.

At the moment it is unclear whether Mr Hassan will be granted asylum in the UK. There is a concern amongst Bahraini human rights activists and immigration experts that UK policy towards Bahrain may have changed. Hitherto, 150 Bahrainis have sought asylum in the UK since the 2011 uprising began.¹ However, recent cases suggest that Bahrainis may no longer be granted asylum in the UK and may be returned to Bahrain with the potential prospect of the revival of charges against them, torture and an unfair trial. Alternatively, Bahrainis may no longer seek asylum in the UK, which will reduce their options and could make it harder for them to avoid charges in violation of their rights, torture and an unfair trial.

b. Mr Hubail

Hussain Hubail has remained in custody since his arrest on 31 July 2013 at Bahrain International Airport, where he was due to board a flight to Dubai.²

Since the Letter of Allegation was sent, Mr Hubail has provided further information as to the nature of the interrogation that he underwent at CID shortly after his arrest. According to Mr Hubail, soon after his arrival at CID, officer Bassam Mohammed Al-Muraaaj spoke to Mr Hubail and asked Mr Hubail whether he knew him. When Mr Hubail responded that he did not, Mr Al-Muraaaj gave him a phone on which Mr Hubail read a report that Mr Al-Muraaaj has threatened detainees with rape of their wives. Mr Al-Muraaaj said he would do the same to Mr Hubail and threatened him with other kinds of torture.

Mr Hubail informed Mr Al-Muraaaj that he was unwell and that he might die if tortured. Mr Al-Muraaaj reportedly responded “die” and said that he did not care what was said in the media or internationally.

Mr Al-Muraaaj then rang a bell and Fawaz Al Sameem entered the room. Mr Al Sameem punched

¹ Bahrain Watch, ‘Detention of High Profile Bahraini Activists Upon Arrival in the UK Sets a Worrying Precedent’ (27 February 2014) available at <https://bahrainwatch.org/blog/2014/02/27/detention-of-high-profile-bahraini-activists-upon-arrival-in-the-uk-sets-a-worrying-precedent/> (last accessed 21 May 2014).

² Bahrain Center for Human Rights (“BCHR”), ‘Update: Bahrain: Enforced Disappearance of a Blogger and an Award Winning Photojournalist’ (3 August 2013) available at <http://www.bahrainrights.org/en/node/6271> (last accessed 21 May 2014); Committee to Protect Journalists (“CPJ”), ‘Journalist arrested, another believed to be held in Bahrain’ (1 August 2013) available at <https://cpj.org/2013/08/journalist-arrested-another-believed-to-be-held-in.php> (last accessed 21 May 2014) (“CPJ, ‘Journalist arrested’”).

and kicked Mr Hubail and then dragged him to his office, saying Mr Hubail must confess or go in the “darkroom”. Mr Al Sameem then questioned Mr Hubail, who was punched or kicked by a policeman standing behind him every time (as far as he could ascertain) he answered a question in a way that displeased Mr Al Sameem. Eventually, Mr Hubail fell, whereupon three policemen surrounded him, kicking and spitting on him. Mr Al-Muraaaj reappeared and told Mr Hubail that he could see Mr Hubail's family through an open window and asked Mr Hubail if he wanted Mr Al-Muraaaj to bring his mother in and rape her. Mr Hubail remained silent and Mr Al-Muraaaj kicked and punched him. Mr Hubail was then stripped and threatened with rape.

Different policemen told Mr Hubail to get dressed and took him to another room where he was blindfolded, handcuffed and made to face a wall. He was punched and beaten with different tools before being put in an isolation cell where he was forced to remain standing in very high temperatures before the air conditioning was put on to make it very cold. Mr Hubail was questioned again, whilst being beaten and insulted.

This lasted four days before he was transferred to the Public Prosecutor and then the Dry Dock Detention Centre on 3 August 2013. After a few days he was returned to CID and questioned by Mr Al Sameem who threatened and beat him again. As set out in the Letter of Allegation, he was then transferred to the Public Prosecutor on 7 August 2013 where he saw his lawyer for the first time.³

As set out in the Letter of Allegation, Mr Hubail suffers from a heart condition and has had numerous health issues during the course of his detention as a result of his condition. Since the Letter of Allegation, Mr Hubail has been sent to the Salmaniya Hospital and the prison clinic suffering from symptoms including heart spasms, heart pain, high blood pressure and shortness of breath on at least five occasions. The first occasion on which Mr Hubail was sent to Salmaniya Hospital was on 2 January 2014, when he had collapsed suffering from a heart spasm. Most recently he was kept in hospital between 13 to 16 March because of chest pain.⁴ Mr Hubail has reported that the Dry Dock Detention Centre authorities have repeatedly failed to give him his medication to reduce blood pressure in the right dose or at the right time. Mr Hubail requires his medication daily, but the prison authorities have sometimes only given it to him once a week. In May 2014, Mr Hubail did not receive any medication at all for at least two weeks. Furthermore, prison authorities claim that they do not have Mr Hubail's medical file, even though his family requested transfer of his file from the Dry Dock Detention Centre to Jaw prison, where Mr Hubail is currently being held. Mr Hubail was scheduled to have an appointment at the military hospital (BDF) on 25 May 2014, but he was not able to attend this appointment as he was not taken to the hospital.

Mr Hubail's trial was postponed six times between 28 November 2013 until 28 April 2014⁵ before

³ Amnesty International, 'Bahrain: Further Information: Verdict in Hussain Hubail's Trial Imminent' (14 March 2014) available at <http://www.amnesty.org/en/library/asset/MDE11/011/2014/en/1ee62954-6317-4c2a-85b7-c990f2997e7e/mde110112014en.html> (last accessed 6 April 2014).

⁴ *Id.*; Salmaniya Medical Centre Medical Report for Mr Hubail (16 March 2014). Note Mr Hubail's full name is Hussain Jaffar Ebrahim Hubail.

⁵ *Id.*

being sentenced to five years imprisonment on 28 April 2014.⁶ Mr Hubail's lawyer has made a bail application on six occasions, the most recent of which was made on 30 March on the basis of Mr Hubail's health condition, but bail was nevertheless not granted while trial continued to be postponed. Mr Hubail has also requested release at each of his court appearances which was ignored. Instead, he was being held in an overcrowded cell at the Dry Dock Detention Centre, and is currently being held at Jaw Prison. The appeal in Mr Hubail's case has been scheduled for 22 June 2014.

Since August 2013, he has been permitted weekly visits from his family, as is normal for prisoners on remand. The visits are supervised. They last half an hour, with Mr Hubail separated from his family by a pane of glass. Only Mr Hubail's immediate family is allowed to visit him.

c. Mr Zain Aldeen

As set out in the Letter of Allegation, Qassim Zain Aldeen appeared in court on 26 November 2013, charged with participating in an illegal gathering and vandalism in prison, and his case was postponed until 20 January 2014 to hear from police witnesses.

However, in December 2013, he was given a custodial sentence of three months in relation to the charge of participating in an illegal gathering. On 15 January 2014, Mr Zain Aldeen was sentenced to six months in prison, having been found guilty in relation to separate charges for participating in an illegal gathering and vandalism.⁷ These charges related to an illegal gathering that had taken place in October 2012. Mr Zain Aldeen denied both charges. Although represented by a lawyer, his lawyer did not have authority to act on his behalf and he did not have access to a lawyer when preparing his defence for both trials. Sources close to the situation suggest that at neither trial were the judges competent, independent or impartial.

The trial for the remaining charge of vandalism in prison was scheduled to take place at 20 May 2014. These charges relate to the incident on 16 August 2013 (which was described in the Letter of Allegation) when police raided the cell where Mr Zain Aldeen was detained and severely beat several detainees, including him. This resulted in Mr Zain Aldeen spending three days in hospital recovering from his injuries. Mr Zain Aldeen's trial has been postponed five times since 26 November 2013. He has not been permitted to meet with his lawyer, although he can now speak to his lawyer on the phone. He has only seen his family twice since his arrest in August 2013. Initially he did not see his family in protest against the glass that separates prisoners from their visitors.

In summary, Mr Zain Aldeen has been convicted on two charges of participating in illegal gatherings and one count of vandalism and is now charged with another count of vandalism in prison.

⁶ Reporters Without Borders, 'Judicial persecution of Bahraini newsproviders continues' (28 April 2014), available at <http://en.rsf.org/bahrain-judicial-persecution-of-bahraini-28-04-2014.46203.html> (last accessed 21 May 2014).

⁷ Reporters without borders, 'Detained journalists and bloggers appear in court' (30 January 2014) available at <http://en.rsf.org/bahrain-detained-journalists-and-bloggers-30-01-2014.45809.html> (last accessed on 12 April 2014).

II. Violations of the Right to Freedom of Opinion and Expression

As explained in the Letter of Allegation, Mr Hassan, Mr Hubail and Mr Zain Aldeen were arrested, detained and tortured after reporting on pro-democracy protests or commenting on the political situation in Bahrain. Their arrest and detention is part of a broader campaign of repression of journalists, bloggers and human rights defenders carried out by the authorities of Bahrain.

The continued detention of Mr Hubail and Mr Zain Aldeen further demonstrates that Bahrain continues to act in violation of its obligations under international, regional and domestic legal instruments including Article 19 of the International Covenant on Civil and Political Rights (“ICCPR”), Article 32 of the Arab Charter on Human Rights (“ACHR”) and the Constitution of Bahrain.

Since the Letter of Allegation, at least 12 journalists, online activists, photographers and cameramen are reported to have been arrested or remanded in custody, or have otherwise been involved in legal proceedings. On 26 March 2014 for instance, photographer Ahmed Humaidan was sentenced to 10 years in prison on charges of attacking a police station on the island of Sitra in 2012 and vandalism during protests.⁸ Mr Humaidan will appeal his sentence. His appeal was scheduled to take place on Sunday 25 May 2014. In April 2014, Mr Humaidan went into hunger strike to protest against the bad treatment of prisoners in Jaw prison.

III. Violations of the Prohibition of Torture and other Ill-Treatment

As set out in the Letter of Allegation, Mr Hassan, Mr Hubail and Mr Zain Aldeen were subjected to torture and cruel, inhuman and degrading treatment and punishment when they were arrested.

The additional information provided by Mr Hubail about the torture he was subjected to after his arrest and the mistreatment he continues to be subjected to further demonstrates that Bahrain acts in violation of Article 7 of the ICCPR, Article 8 of the ACHR, Article 2 of the Convention Against Torture (“CAT”),⁹ and Articles 19(d) and 20(d) of the Bahraini Constitution.

Furthermore, there is no evidence that the allegations made by Mr Hassan, Mr Hubail and Mr Zain Aldeen and previous allegations regarding the same perpetrators mentioned in the Letter of Allegation have been investigated. This failure to investigate these allegations highlights the repeated and continued failure of the Bahraini government to conduct prompt and impartial investigations into allegations of torture and ill-treatment, which violates its obligations under international human rights law, including Article 2(3) of the ICCPR and Articles 12 and 13 of the

⁸ US News, ‘Bahrain sentences 28, including photojournalist, up to 10 years prison on protest charges’ (26 March 2014) available at <http://www.usnews.com/news/world/articles/2014/03/26/bahrain-sentences-28-to-prison-in-protest-trial> (last accessed 8 April 2014); Ifex ‘Freelance Bahraini photographer Ahmed Humaidan given 10-year prison term’, (31 March 2014) available at https://www.ifex.org/bahrain/2014/03/31/10_year_jail_sentence_ahmed_humaidan/ (last accessed 8 April 2014).

⁹ UN General Assembly, ‘Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ (10 December 1984), Art. 2.

CAT.

IV. Violations of the Prohibition of Arbitrary Arrest and Detention

The right to liberty and security of person and prohibition of arbitrary arrest and detention is included in Articles 9 and 14 of the ICCPR and Articles 13 and 14 of the ACHR. The requirements set out in these Articles include that anyone arrested shall be informed at the time of the arrest of the reasons and charges (Article 9(2) ICCPR; Article 14(1) and 14(3) ACHR). Anyone arrested or detained on a criminal charge shall be brought before a judge promptly and entitled to a trial within a reasonable time or release (Article 9(3) ICCPR; Article 14(5) ACHR). It is not a general rule that persons awaiting trial are detained in custody (Article 9(3) ICCPR; Article 14(5) ACHR).

All States are obliged to respect the right of all persons to liberty and security of the person and their freedom from arbitrary arrest, detention or exile. As principles of customary international law, these obligations pertain to States, whether or not they have ratified or otherwise adhered to a particular human rights treaty.

The United Nations Human Rights Committee (“HR Committee”) has held that the principle of legality in Article 9(1) of the ICCPR requires that the grounds for arrest and detention must be clearly established by domestic legislation and made in accordance with that law. Such laws must accord with applicable international human rights law. To be lawful under international human rights law, arrests and detentions must be carried out in accordance with both formal and substantive rules of domestic and international law, including the principle of non-discrimination, and must not be arbitrary. “Arbitrariness” has been defined to include an element of *inappropriateness, injustice, lack of predictability and due process of law* [emphasis added].

Consistent with the presumption of innocence and the presumption in favor of liberty, the ICCPR and other international standards require states to use pre-trial detention as the exception and not the rule, and that pre-trial detention be used as a means of last resort only, and for the minimum necessary period. A remand in custody must not only be lawful but reasonable and necessary in all of the circumstances. Persons awaiting trial are presumed to be innocent (ICCPR, article 14(2)) and are entitled to release in the absence of proof of risks of flight, interference with evidence or to public safety, and, there is no alternative that would reasonably address the proven risk(s). The burden is on the State to show why an accused cannot be released. Pre-trial detention must be kept under judicial review. This requires that a detainee be brought before a court at regular intervals throughout a detention so that the court can review whether detention continues to be both necessary and the only alternative.

Furthermore, the ACHR states that “[e]verybody has the right to a fair trial in which sufficient guarantees are ensured, conducted by a competent, independent and impartial tribunal established by law, in judging the grounds of criminal charges brought against him or in determining his rights and obligations.” This is similar to Article 14(1) ICCPR. The ACHR allows those detained to contact relatives and to undergo a medical examination (Article 14(3) and (4) ACHR).

As set out above, Mr Hubail and Mr Zain Aldeen continue to be in detention. Following his arrest on 31 July 2013, Mr Hubail's first appearance in court was on 28 November 2013 which amounted to a four-month delay. Since then his trial has been postponed six times.¹⁰ Mr Hubail's lawyer has made bail applications in the standard form and Mr Hubail has requested his release from detention at each court hearing on the grounds of his health situation. On every occasion the same judge has refused to grant bail, with no reasons being given. Consequently, during all of this time, Mr Hubail has been on remand, held in an overcrowded cell in the Dry Dock Detention Centre and subsequently Jaw Prison, despite his serious health issues. Regardless of Mr Hubail's right to be subjected to a medical examination and to be informed of this right, and despite knowing about Mr Hubail's medical condition, the Dry Dock Detention Centre authorities did not allow him to visit a doctor for nearly two months. They have also failed to administer his medication properly in the past, and have recently stopped giving Mr Hubail the medication he needs on a daily basis.

Prisoners have a right to receive medical treatment. By arresting and detaining a person, a State takes full responsibility at international law for providing health care to ensure their lives and wellbeing. International human rights law requires State authorities to provide the most appropriate treatment in accordance with professional medical standards. While the ICCPR does not expressly provide for a right to health care, the HR Committee has determined that that "the State party by arresting and detaining individuals takes the responsibility to care for their life". The State must provide appropriate and timely medical care to all detainees as part of the duty to ensure the enjoyment by all persons of the following rights: Article 6 on the right to life, Article 7 on the prohibition on torture or cruel, inhuman or degrading treatment and punishment, and Article 10 on the right to human treatment of prisoners.

Mr Zain Aldeen was arrested on 2 August 2013. His first appearance in court was on 26 November 2013, i.e. almost four months after his arrest. Since then his case has been postponed five times. Sources close to Mr Zain Aldeen suggest that neither of the trials at which he was convicted in December 2013 and January 2014 were 'fair'. His conviction in January 2014 was for charges in relation to events that took place approximately 14 months earlier in October 2012, suggesting the trial may only have been brought opportunistically as a result of Mr Zain Aldeen's arrest in August 2013 and to keep him detained for as long as possible. In addition, sources say the judges could not be described as competent, independent or impartial. He did not have sufficient time or the facilities for the preparation of his defence, nor was he able to communicate with a lawyer of his own choosing without restriction.

The Letter of Allegation explained that Mr Hubail and Mr Zain Aldeen's detention results from the exercise of the rights or freedoms guaranteed by article 19 of the ICCPR. Accordingly, their detention qualifies as a Category II arbitrary detention.

The detention of Mr Zain Aldeen also amounts to Category III arbitrary detention as a result of the non-observance of the international norms relating to the right to a fair trial, which is of such

¹⁰ Amnesty International, 'Bahrain: Further Information: Verdict in Hussain Hubail's Trial Imminent' (14 March 2014) available at <http://www.amnesty.org/en/library/asset/MDE11/011/2014/en/1ee62954-6317-4c2a-85b7-c990f2997e7e/mde110112014en.html> (last accessed 6 April 2014)..Mr Hubail's trial was postponed to 30 March 2014 on 16 March 2014 and has since been postponed again until 29 April 2014

gravity that it gives the deprivation of liberty an arbitrary character.¹¹

V. Invocation of the Special Mandates

In the Letter of Allegation, the signatory organisations submitted that the treatment of all three journalists falls within the mandate of the UN Special Rapporteurs.

Furthermore, the Working Groups on Arbitrary Detention is mandated:

- a) To investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned;
- b) To seek and receive information from Governments and intergovernmental and non-governmental organizations, and receive information from the individuals concerned, their families or their representatives;
- c) To act on information submitted to its attention regarding alleged cases of arbitrary detention by sending urgent appeals and communications to concerned Governments to clarify and to bring to their attention these cases...¹²

As set out above, Mr Hubail and Mr Zain Aldeen remain in custody, which amounts to arbitrary detention because of the nature of the charges for which they are on remand and / or convicted and, in the case of Mr Zain Aldeen as a result of the non-observance of the international norms relating to the right to a fair trial.

In light of the above, we request that the Special Rapporteurs:

- a) call upon the government of Bahrain to release Mr Hubail and Mr Zain Aldeen and insist that they are not subjected to further torture or ill-treatment;
- b) raise with the government of Bahrain the mistreatment of Mr Hassan, Mr Hubail and Mr Zain Aldeen and request the government of Bahrain to conduct a complete and impartial investigation of their allegations of torture and ill-treatment; and
- c) declare that the charges against Mr Hassan, Mr Hubail and Mr Zain Aldeen are in violation of their right to freedom of expression.

In addition, we request the Working Group on Arbitrary Detention:

- d) to act on the information submitted to its attention regarding the arbitrary detention of Mr Hubail and Mr Zain Aldeen by sending urgent appeals and/or communications to the

¹¹ Working Group on Arbitrary Detention 'Revised Working Methods' available at http://www.ohchr.org/Documents/Issues/Detention/WGAD_RevisedMethodsofWork.pdf

¹² *Mandate of the Working Group on Arbitrary Detention*, Resolution 1997/50. The mandate was extended for a further three-year period by resolution 24/7 dated 26 September 2013.

- government of Bahrain; and
- e) to investigate the deprivation of liberty of Mr Hubail and Mr Zain Aldeen, render an Opinion regarding both cases and make recommendations to the government of Bahrain.

We would welcome the opportunity to provide you with further information in relation to this matter.

Yours sincerely,

Nani Jansen
Senior Legal Counsel

Media Legal Defence Initiative
Americans for Democracy & Human Rights in Bahrain
Arabic Network for Human Rights Information
Bahrain Center for Human Rights
Bahrain Youth Society for Human Rights
FIDH - International Federation for Human Rights
Gulf Centre for Human Rights
Lawyer's Rights Watch Canada
PEN International
Reporters Without Borders