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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; 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 the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)

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27 September 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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 the 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 15/18,17/2,16/4,16/5 and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the on-going detention and trial of human rights defenders **Messrs. Ahmed Mansoor, Nasser bin Ghaith, Fahad Salim Dalk, Hassan Ali Khamis, and Ahmed Abdul Khaleq.**

Mr. Ahmed Mansoor is an engineer and prominent blogger. He is also a member of Human Rights Watch's Middle East advisory committee and a member of Arabic Network for Human Rights Information (ANHRI). Mr. Nasser bin Ghaith is an economist, a former visiting university lecturer at the Abu Dhabi branch of the Sorbonne University in Paris and an advocate of political reform in the country.

Messrs. Ahmed Mansoor and Nasser bin Ghaith were the subjects of an urgent appeal by the Chair-Rapporteur of the Working Group on Arbitrary Detention; 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 on 26 April 2011, following their arrest and detention. We regret that to date no reply to this communication has been transmitted by your Excellency's Government. The Working

Group on Arbitrary Detention also transmitted the case of Mr. Ahmed Mansoor in the context of its regular communications procedure on 13 September 2011.

Messrs. Fahed Salim Dalk, Hassan Ali al-Khamis and Ahmed Abdul Khaleq are online activists who advocate for political reform in the United Arab Emirates.

According to the information received:

On 8 April 2011, Mr. Ahmed Mansoor, a 42 year old United Arab Emirates national, was reportedly arrested at his house in Abu Dhabi by a group of plain clothes security officials from Amn al-Dawla, the security police of the United Arab Emirates, and two uniformed police officers who did not present him with an arrest warrant. Mr. Mansoor was reportedly questioned by the Public Prosecutor for the Federal Supreme Court on 17 April 2011.

On 10 April 2011, Mr. Nasser bin Ghaith, a 41 year old United Arab Emirates national, was reportedly arrested at his home in Dubai. He was allegedly taken in a black car and left inside the car for the first 16 hours of his detention. Mr. bin Ghaith was then interrogated in Abu Dhabi by the Public Prosecutor for the Federal Supreme Court on or around 13 April 2011.

Messrs. Mansoor and bin Ghaith were reportedly held in solitary confinement for the first eight days after their arrest and initially their families and lawyers did not know of their whereabouts.

Mr. Fahad Salim Dalk, a 39 year old United Arab Emirates national, Mr. Hassan Ali Khamis, a 39 year old United Arab Emirates national, and Mr. Ahmed Abdul Khaleq, a 34 year old stateless resident of the United Arab Emirates, were reportedly arrested and detained in Dubai between 22 and 25 April 2011.

The five men are currently being held at al Wathba central prison in Abu Dhabi. They allegedly are accused of insulting top officials, reportedly considered to be a crime under article 176 of the Penal Code. These charges may potentially carry sentences of up to five years imprisonment. The charges come after the activists allegedly participated in the online political forum, called Emirate dialogue (Emirati Hiwar Forum), which campaigned for democratic reforms in the Gulf region.

Messrs. Mansoor and bin Ghaith have also reportedly been accused of using the aforementioned forum to “conspire against the safety and security of the State in association with foreign powers”.

It is reported that Mr. Mansoor faces further charges of inciting others to break the law and calling for an election boycott and for peaceful demonstrations in other cases pending against him.

The first hearing of the trial of the five activists before the Supreme Court took place on 14 June 2011. It was followed by further hearings on 18 July and 25 July. All the hearings were allegedly held in closed courtroom, but were filmed by the authorities and attended by members of the State Security Forces who took notes; no reason was allegedly given to the accused as to why the sessions were held in camera. At the first hearing, the five accused reportedly pleaded not guilty to charges of incitement and insulting the United Arab Emirates leadership. At the 18 July session, it is reported that after proceedings had formally commenced, there was a change of all members of the panel of judges were changed, although no explanation was offered to the defence team.

The five activists have reportedly been allowed regular visits from their lawyers who have been present during the trial. It is reported that in the course of the sessions held to date, defence lawyers have not been allowed to question one of the four State witnesses. It is further alleged that the defence lawyers were allocated very limited time to question the remaining three witnesses (10-20 minutes out of two to three hours). In addition, it is reported that the prosecution has been allowed to pose leading question to witnesses, which aim to obtain only their confirmation.

During the trial session on 25 July, the defence lawyers requested the release on bail of the five activists. The request was rejected although no reason was allegedly provided by the Court. The trial was adjourned until 26 September 2011, which might be the final trial session for the five activists since there is no right of appeal at the Federal Supreme Court under article 99 of the United Arab Emirates' 1971 Constitution.

It is alleged that no evidence to support any of the charges have been produced by the Government. The human rights defenders have reportedly pleaded not guilty to all charges against them.

It is reported that the aforementioned human rights defenders are currently being detained with convicted criminals and that they have allegedly received threats from prison authorities and inmates. It is further reported that they have been in solitary confinement on several occasions and that the conditions in the cells are extremely difficult due to high temperatures.

In addition, it is reported that death threats directed against Mr. Mansoor after a public defamation campaign took place, remain without investigation despite numerous requests by his lawyers.

Concern is expressed that the grave accusations raised against the defendants may be directly related to their work in defence of human rights, in particular their work in advocating for political reform and exercising their right to freedom of expression. Concern is expressed regarding the physical and psychological safety of the five human

rights defenders. Concern is further expressed that the human rights defenders are being denied their right to a fair and public trial.

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of Messrs. Ahmed Mansoor, Nasser bin Ghaith, Fahad Salim Dalk, Hassan Ali Khamis, and Ahmed Abdul Khaleq. 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, and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Furthermore, without expressing at this stage an opinion on whether the detention of Messrs. Ahmed Mansoor, Nasser bin Ghaith, Fahad Salim Dalk, Hassan Ali Khamis, and Ahmed Abdul Khaleq is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their rights not to be subjected to arbitrary arrest and detention and to a fair and public hearing by an independent and impartial tribunal, in the determination of their rights and obligations and of any criminal charge against them, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights.

With respect to the allegations indicating that Messrs. Mansoor and bin Ghaith were held in solitary confinement for the first 8 days after their arrest and initially their families and lawyers did not know their whereabouts, we would like to draw the attention of your Excellency's Government to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that "efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged". (Adopted by the General Assembly by resolution 45/111 of 14 December 1990).

Furthermore, with respect to allegations, according to which the aforementioned human rights defenders are currently being detained with convicted criminals and that they have allegedly received threats from prison authorities and inmates, we would like to draw the attention of your Excellency's Government to paragraph 8a of Human Rights Council Resolution 16/23, which reminds States that "Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture".

We would also like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. (Adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). We would also like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988. (Adopted by General Assembly resolution 43/173 of 9 December 1988).

We would also like to refer your Excellency's Government to 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 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985), in particular principle 6 which states that "The principle of independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected."

Moreover, we would like to appeal to your Excellency's 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 Universal Declaration of Human Rights, which provides that "Everyone has the right to freedom of expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas of through any media and regardless of frontiers."

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

- 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.

- 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 Excellency's Government to take all necessary measures to guarantee the rights and freedoms of Messrs. Ahmed Mansoor, Nasser bin Ghaith, Fahad Salim Dalk, Hassan Ali Khamis, and Ahmed Abdul Khaleq 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 Excellency's 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 Excellency's Government to safeguard the rights of Messrs. Ahmed Mansoor, Nasser bin Ghaith, Fahad Salim Dalk, Hassan Ali Khamis, and Ahmed Abdul Khaleq 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 cases accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, medical examination, and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information concerning the legal grounds for the arrest, detention and charges against Messrs. Ahmed Mansoor, Nasser bin Ghaith, Fahad Salim Dalk, Hassan Ali Khamis, and Ahmed Abdul Khaleq and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights.

5. Please explain how the arrest of the aforementioned human rights defenders is compatible with international human rights norms and standards on the right to freedom of opinion and expression, as contained, inter alia, in the Universal Declaration of Human Rights.
6. Please provide detailed information on the measures taken to ensure the right of the human rights defenders to a fair and public hearing by an independent and impartial tribunal, as recognized in article 10 of the Universal Declaration of Human Rights.
7. Please provide details of any measures taken to secure the physical and psychological well-being of the aforementioned human rights defenders while they are in detention.
8. In the event that the arrests and trial against the aforementioned human rights defenders are found to be unlawful under the applicable domestic law, please indicate whether, in accordance with international law, any disciplinary, administrative or penal action against the alleged perpetrators is provided for in national law, and if so, whether any such action has been taken and what they have resulted in.

We undertake to ensure that your Excellency's 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, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

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