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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
OMN 1/2013

27 February 2013

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 promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding an alleged **hunger strike started by eleven human rights defenders detained at Samail Central Prison**, to protest their sentencing as well as delays in processing their cases at the Muscat Court of Appeals.

All eleven human rights defenders were reportedly arrested at various moments between 31 May and 11 June 2012. It is reported that all have been sentenced, or are under investigation, for offences that include insulting Sultan Qaboos and violations of the Information Technology Crimes Law.

Mr. **Ismael Al-Mikbali** is a prominent blogger with extensive experience monitoring human rights violations. He was reportedly arrested on 31 May 2012 while he and other human rights defenders were on their way to monitor a strike by oil workers at Fohoud oil field.

Mr. **Hassan Al-Ruqayshi** is a blogger. He was reportedly arrested at a protest on 8 June 2011 by officers of the Special Security Police Division.

Mr. **Hamad Al-Kharousi** is a poet. He was allegedly arrested while attending the same protest on 8 June 2012 on the accusation of having written a poem critical of Sultan Qaboos.

Mr. **Mukhtar Al-Hana'i** is a founding member of the Omani Group for Human Rights. He was reportedly arrested on 11 June 2012 during a protest against the detention of other human rights defenders outside Police Headquarters in Muscat.

Messrs. **Khaled Al-Nawfali** and **Mohammed Al-Fazari** were arrested while participating in the same protest on 11 June 2012. The charges against them reportedly include, *inter alia*, gathering with the intent to breach public order. It is reported that they are currently being held in pre-trial detention while the court has appointed a technical expert to examine the Facebook pages on which they allegedly made defamatory comments critical of the authorities, in order to assess whether the accusations against the human rights defenders are accurate.

Ms. **Basema Al-Rajehi**, a broadcaster and radio presenter and Ms. Basma Al-Keumy, a lawyer, were allegedly also arrested on 11 June and subsequently went on a hunger strike in protest at their detention. After having been released on bail, both were reportedly detained once again on 6 November 2012 on charges of participating in an illegal gathering.

Mr. **Saeed Sultan Al-Hashemy** was allegedly arrested on 11 June together with the previously mentioned human rights defenders, and joined them in a hunger strike. Sources have reported that on 14 June, Mr. Al-Hashemy had to be hospitalised due to his weakened condition. He reportedly started serving a sentence of six months imprisonment on 6 November 2012.

All the human rights defenders listed here, with the exception of Messrs. **Mahmood Al-Jamoodi** and **Ali Al-Hajji**, were the subjects of either one or both of the previous communications sent to your Excellency's Government during 2012, dated 21 June 2012 (case number OMN 1/2012) and 10 August 2012 (case number OMN 2/2012). A reply was received from your Excellency's Government on 21 August 2012, followed by a translation of the same and although the contents of that response, assuring that the allegations relayed were inaccurate, were duly noted, the receipt of new and regular reports both reinforcing previous allegations and detailing worrying new allegations has prompted the elaboration of this letter.

According to the information received:

On 16 January 2013, Muscat Court of Appeals upheld the sentence of Messrs. Ismail Al-Mikbali, Mahmood Al-Jamoodi, Hassan Al-Ruqayshi and Ali Al-Hajji to 18 months imprisonment and a fine of 1000 Riyal for insulting Sultan Qaboos, undermining the status of the State and using the internet to publish defamatory materials. The sentence is allegedly connected to comments the human rights defenders made on Facebook which were critical of the authorities.

On the same day, the Court of Appeals allegedly also upheld Mr. Mukhtar Al-Hana'i's sentence to one year imprisonment and a 1000 Riyal fine on similar charges.

It is alleged that on 12 February 2013, the human rights defenders mentioned above, namely Ms. Basema Al-Rajehi, Ms. Basma Al-Keumy and Messrs. Ismael Al-Mikbali, Mahmood Al-Jamoodi, Hassan Al-Ruqayshi, Hamad Al-Kharousi, Mukhtar Al-Hana'i, Ali Al-Hajji, Khaled Al-Nawfali, Mohammed Al-Fazari, and Saeed Sultan Al-Hashemy, went on a liquid hunger strike to protest at their convictions related to the exercise of their rights to freedom of expression and of peaceful assembly, and at the delays in processing their cases at the Muscat Court of Appeals.

Sources have reported that Mr. Saeed Sultan Al-Hashemy has been placed in solitary confinement as he is reportedly believed by prison authorities to have been the main instigator of the hunger strike.

Concern is expressed at the allegations of undue delays in judicial proceedings regarding the cases of human rights defenders. Furthermore, while noting the response from your Excellency's government dated 21 August 2012, grave concern is expressed at allegations that overly broad interpretations of laws containing provisions on defamation may have resulted in undue and unnecessary restrictions being imposed on human rights defenders with regard to their rights to freedom of expression and freedom of peaceful assembly, as such fundamental freedoms should only be restricted in an extremely narrow set of circumstances, given that they are essential to the ability of human rights defenders to carry out their work.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

In this connection, we would 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 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.

With regards to the role of media and human rights defender in monitoring demonstrations, we would like to refer to the Guidelines on Freedom of Peaceful Assembly of the Office for Democratic Institutions and Human Rights (ODHIR) of the Organization for Security and Cooperation in Europe (OSCE), available at <http://www.osce.org/odihr/66042> and to (my) 2007 report to the General Assembly (of the Special Representative of the Secretary-General on the situation of human rights defenders) (A/62/225, paras. 91 and 93) that underline how “monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. [...] The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly. [...] Journalists as well have an important role to play in providing independent coverage of demonstrations and protests. [...] The media must therefore have access to assemblies and the policing operations mounted to facilitate them.

We would also 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 UDHR which provides that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

We would further like to call on your Excellency’s Government to take all necessary steps to secure the rights to freedom of peaceful assembly and of association in accordance with fundamental principles as set forth in article 20 of the UDHR which provides that “[e]veryone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association.”

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to

respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

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 the above-mentioned persons 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 the alleged victims?
3. Please provide information concerning the legal grounds for the arrest and detention of the abovementioned persons and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
4. Please provide the details, and where available the results, of any investigation, 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.
5. Please explain what steps have been taken to ensure that undue delays in judicial proceedings are prevented to the maximum possible extent, and that swift, thorough and impartial proceedings are guaranteed.
6. Please explain whether human rights defenders in Oman are able to carry out their peaceful and legitimate activities in defence of the human rights of others without fear of judicial harassment or other restrictions.

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.

While waiting for your response, we urge your Excellency's 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 Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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

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

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
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