

Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE: AL
QAT 2/2015:

16 October 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 28/9, 25/2, and 26/7.

In this connection, we would like to follow up with your Excellency's Government's on our communication sent on 21 December 2012 (QAT 1/2012) relating to the detention of Mr. **Mohammed al-Ajami**, a Qatari poet imprisoned for writing and reciting a poem in private that allegedly criticized the Crown Prince Sheikh Tamim Al Thani of Qatar, encouraged the overthrow of the existing regime and claimed that the Emir did not abide by the Qatari Constitution. The poem also praised the Tunisian revolution and denounced the corruption and oppression by Arab rulers. We take note of your Excellency's Government's response, dated 14 February 2013 (QAT 1/2012), that we analyze below.

The detention of Mr. al-Ajami has also been the object of recommendations by the United Nations Committee against torture during the consideration of Qatar's second periodic report to the Committee in November 2012 (CAT/C/QAT/CO/2). General concerns about the judicial system, also relevant to this case, have been raised in the report of the 2014 country visit from the Special Rapporteur on the independence of judges and lawyers (A/HRC/29/26/Add.1).

According to the information received:

On 25 February 2013, Mr. al-Ajami, also known as Ibn al-Dheeb, was sentenced to 15 years' imprisonment for a poem he wrote and recited in his private residence in Cairo on 24 August 2010. This sentence, issued by the Doha Court of Appeal, is a reduction of the initial sentence to life imprisonment pronounced on 29

November 2012 by the Criminal Court in Doha. The Court of Cassation upheld the 15-year sentence on 20 October 2013.

Many irregularities have been reported throughout the trial, during the following legal procedures and regarding his treatment while in detention, raising concerns about the rights to a fair trial and to protection against arbitrary detention. In the response provided on 14 February 2013 by the Government to Special Procedures communication QAT 1/2012, it is mentioned that Mr. al-Ajami was sentenced on the basis of articles 6, 134 and 136 of the Penal Code. Article 134, penalizing criticism against the Emir's and Vice-Emir's authorities, is clearly incompatible with international human rights law, while the implementation of article 136 to the case of Mr. al-Ajami appears to be disproportionate and amounts to political censorship. It is also alleged that the legal reasons for reducing the sentence were not made clear.

In contrast to the information provided by the Director of the Penal and Correctional institutions Department and mentioned in your Excellency's Government's response, it is alleged that, after almost two years of the fifteen years of his sentence, Mr. al-Ajami is still mostly held in conditions amounting to solitary confinement. Mr. al-Ajami was allegedly not allowed to communicate and meet with his family and it is reported that he has also limited access to his lawyer.

While noting the response submitted by your Excellency's Government to communication QAT 1/2012, we remain gravely concerned that the arrest, detention and sentencing of Mr. al-Ajami may be solely related to the peaceful exercise of his rights to freedom of opinion and expression, including in the form of arts, and to take part in cultural life. We are also concerned about the conditions of his detention and the irregularities observed during legal process.

International human rights standards relevant to the situation described above are provided in the Annex to this communication. They include in particular articles 9 and 10 of the Universal Declaration of Human Rights and articles 5 and 7 of the Arab Charter of Human Rights, concerning the right not to be deprived arbitrarily of one's liberty and to fair proceedings before an independent and impartial tribunal, as well as articles 19 and 27 of the Universal Declaration of Human Rights and article 36 of the Arab Charter of Human Rights, concerning the rights to freedom of opinion and expression, including in the form of arts, and to take part in cultural life. We also recall States obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to ensure that solitary confinement remains an exceptional measure of limited duration, as well as the United Nations Standard Minimum Rules for the Treatment of Prisoners relative to the right to sustain contact with family and relatives.

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. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information concerning the facts alleged in the above summary of the case. Are the facts accurate?

2. Please provide additional information on the legal grounds for the detention and sentencing to 15 years imprisonment of Mr. al-Ajami, indicating how his detention and sentence are compatible with the international norms and standards mentioned above and in the annex.

3. Please provide additional information relative to measures taken to investigate the allegations of irregularities during the criminal proceedings that resulted in the sentencing of Mr. al-Ajami. Please also indicate the measures taken to ensure Mr. al-Ajami's access to legal assistance, in conformity with international norms and standards.

4. Please provide information in relation to the alleged restrictions of Mr. al-Ajami to sustain contact with his relatives, indicating how these restrictions – if any - are compatible with relevant international norms and standards.

5. Please provide information on the measures taken to review the use of incommunicado detention with a view to its abolition and ensure that solitary confinement remains an exceptional measure of limited duration, in line with international norms and standards, as indicated in the recommendations of the Committee against Torture.

We would appreciate a response within 60 days.

We urge your Excellency's Government to release Mr. al-Ajami and to take all necessary measures to guarantee that his rights and freedoms are respected. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

We are intending to publicly express our concerns in the near future as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Farida Shaheed
Special Rapporteur in the field of cultural rights

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Mónica Pinto
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, and bearing in mind the commitment taken by your Excellency's Government during its 2014 Universal Periodic Review to continue and strengthen relations with the OHCHR (A/HRC/27/15, para. 122.16), we would like to draw your Excellency's Government's attention to the following international human rights standards, which protect the rights to freedom of opinion and expression and to take part in cultural life, and prohibit arbitrary deprivation of liberty, in accordance with articles 9, 10, 19 and 27 of the Universal Declaration of Human Rights, as well as articles 5, 7 and 36 of the Arab Charter of Human Rights.

We wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that article 19, paragraph 3 of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with paragraph 3 of that article, including (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We would like to take this opportunity to refer to your Excellency's Government to paragraph 79(f) of the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the Human Rights Council (A/HRC/14/23) where he emphasizes that "Laws imposing restrictions or limitations must not be arbitrary or unreasonable and must not be used as a means of political censorship or of silencing criticism of public officials or public policies."

We would also like to draw your Excellency's Government's attention to article 27 of the Universal Declaration of Human Rights and article 36 of the Arab Charter of Human Rights, which states that everyone has the right freely to participate in the cultural life of the community and to enjoy the arts. Under this provision, States undertake to respect the freedom indispensable for creative activity. As stressed by the Special Rapporteur in the field of cultural rights, all persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations. In particular, decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision (A/HRC/23/34, paras. 85 and 89 d).

The Special Rapporteur in the field of cultural rights also recalls that public figures, including those exercising the highest political authority, are legitimately subject to criticism and political opposition. Therefore, using laws to sanction disrespect for authority of the head of State and the protection of the honour of officials raise concerns in regards to the rights of everyone to take part in cultural life and to freedom of expression, including in the form of arts (A/HRC/23/34, para. 45). States should accordingly review critically their legislation and practices imposing restrictions on the right to freedom of artistic expression and creativity, taking into consideration relevant international human rights law provisions (A/HRC/23/34, paras. 85 and 88).

Furthermore, we would like to refer your Excellency's Government to article 10 of the Universal Declaration of Human Rights, which states: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him"; and article 11, which states: "(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

We would like to recall that the right to be assisted by a lawyer of his choice is set forth in 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, in particular in principle 1, which states: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings".

We further recall States obligations relative to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Qatar on 11 January 2000, referring in particular to the recommendations formulated by the Committee against Torture in relation to the solitary confinement of Mr. al-Ajami (CAT/C/QAT/CO/2), which urged the State of Qatar to:

- (a) Ensure that all fundamental safeguards are provided, in law and in practice, for all persons deprived of their liberty. This includes the availability of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, and to challenge the legality of their detention or treatment;
- (b) Amend the Protection of Society Law and the Law on Combating Terrorism to bring them into conformity with the Convention. The State party should review the use of incommunicado detention with a view to its abolition and ensure that solitary confinement remains an exceptional measure of limited duration, in line with international standards; and

- (c) Provide statistics indicating the number of persons arrested by the State security agency personnel, as well as all persons arrested on suspicion of violating the Protection of Society Law and the Law on Combating Terrorism, and the length of time that elapsed before they were charged with an offence.

We also recall the United Nations Standard Minimum Rules for the Treatment of Prisoners which develops international standards relative to the contact of persons deprived of liberty with the outside world, indicating that “Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits”.