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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; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16)
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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; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 15/18, 16/4, 15/21, 16/5, and 17/2.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged arbitrary arrest, detention and criminalization of human rights defenders.

Ms. **Habibah Al-Hinaee**, head of "Takatof" Solidarity Charity Association, is a civil society activist who dedicates herself to defending the rights of the poor, women's rights and workers' rights. Mr. **Yacob Al-Kharusi** is a human rights lawyer. Mr. **Ismael Al-Mikbaly** is an activist and blogger who has significant experience monitoring human rights violations. All three individuals are co-founders of the Omani Group for Human Rights.

According to the information received:

On 24 May 2012, oil workers began a strike to demand improved working conditions in Fohod and Marmu.

According to reports, on the evening of 31 May 2012, Ms. Al-Hinaee and Messrs. Al-Kharusi and Al-Mikbaly set out to monitor the strikes and to investigate the facts surrounding the strike. Reportedly, the three human rights defenders were

arrested by the Royal Oman Police while on their way to monitor the strikes. It is reported that no arrest warrant was shown.

Reports indicate that they were taken to the General Police Headquarters in Muskat, where they were presented to the Al Kism Al Kh'as (Special Security Police Division). It is alleged that the three individuals were initially detained incommunicado.

According to reports, Mr. Al-Kharusi was placed in solitary confinement for three days, during which time he refused to eat or drink. It is further reported that Ms. Al-Hinaee was not allowed to call her family until the third day of her detention. Sources indicate that Mr. Al-Mikbaly was not allowed to receive a visit until 2 June, at which time he had allegedly yet to be charged or provided with the reasons for his arrest.

On 4 June 2012, Ms. Al-Hinaee and Mr. Al-Kharusi were reportedly released on bail after being charged with inciting protest in the oil-producing areas. It is reported that Mr. Al-Mikbaly was charged with the same offence and his detention was extended by seven days.

According to reports, on 4 June, the Public Prosecutor's Office released a statement announcing that it had noticed an increase in the number of "defamatory statements and inciting calls...which constitute a blatant violation of the right to privacy of the individuals targeted by those statements in either their personal or professional capacities." The statement also allegedly declared that the Public Prosecutor will take the appropriate legal action against all those who carry out such acts, "whether through publishing, reciting, incitement, or assisting their dissemination in any other manner."

Reportedly, on 5 June, Mr. **Isaac Al Agbary**, a blogger and activist, was arrested after being summoned for questioning by Special Security officials. It is reported that on 6 June, Mr. **Khalfan Al Badrawi**, a blogger, was also arrested after being summoned by Special Security officials. It is alleged that both individuals remain in detention and that they have not been given access to legal representation.

It is further reported that on 8 June, six other individuals were arrested by security forces and presented to the Special Security Police Division. They are Messrs. **Hassan Al Requishi**, **Ali Al Saadi**, and **Ali Al Hegi**, all bloggers, Mr. **Hamad Al Kharousi**, a poet, and Messrs. **Mamhoud Al Rashdi** and **Nabhan Al Hanshi**, both writers. It is reported that all six individuals are being detained in the General Police Headquarters in Muscat.

According to reports, several other activists have also been summoned for questioning by Special Security officials, but they have chosen not to present themselves for fear of being arrested.

Furthermore, it is alleged that on 11 June, riot police dressed in civilian clothing broke up a peaceful protest in front of the General Police Headquarters in Muskat, which was being held to demand the release of the detainees mentioned above. It is alleged that Mr. **Mukthar Al Hinae**, a founding member of the Omani Group for Human Rights, was one of approximately 22 people arrested. Other human rights defenders reported to have been arrested include lawyer Ms. **Basma Al Khayoumi**, radio presenter Ms. **Basma Al Rajhi**, writers Messrs. **Sa'id Al Hashimi**, and **Samaa Issa**, bloggers Ms. **Fatma Al Bousaidi** and Messrs. **Abdalla Al Badi** and **Fahd Al Kharousi**, and journalist Mr. **Nassir Saleh**. Further arrestees reportedly include Ms. **Mona Al-Gahoury** and Messrs. **Badr Al-Jabery**, **Mahmood Hamad**, **Khalid Al-Newfaly**, **Khalid Al-Jabery**, **Omar Al-Khorousy**, **Yehia Al Khorousy**, **Abdullah Al-Gailany** and the 14-year-old brother of Mr. Mukthar Al Hinae. Reportedly, the arrestees were taken to Samail Central Prison, approximately 90 kilometres from Muscat.

According to reports, all those detained on 11 June, apart from Mr. Samaa Issa, Ms. Basma Al Khayoumi and the 14-year-old boy who have reportedly been released, have been denied access to their families and lawyers, and their detention has been extended by the Attorney General. It is reported that those who remain in detention have been charged with inciting or taking part in a protest. It is further reported that the detainees have gone on hunger strike in protest against these measures. Sources indicate that Mr. Sa'id Al Hashimi was taken to hospital on 14 June after losing consciousness as a result of his hunger strike.

It is alleged that the above actions are in violation of Article 24 of the Omani Constitution, which provides that: "Anyone who is arrested shall be notified of the causes of his arrest immediately and he shall have the right to contact whoever he sees fit, to inform them of what has taken place or seek their assistance, in the manner regulated by the Law. He must be informed promptly of the charges against him, and he and his representative shall have the right to appeal before the judicial authorities against the measure which has restricted his personal freedom."

Concern is expressed for the physical and psychological security of the aforementioned individuals who remain in detention, particularly those who are allegedly being denied access to their families and lawyers. Further concern is expressed that the alleged acts may be directly linked to the legitimate human rights work of those affected, particularly the monitoring of strikes in Fohod and Marmu, as well as the legitimate exercise of the rights to freedom of expression and assembly. Should these allegations be verified, concern is expressed that they form part of an increasingly hostile and intimidatory atmosphere for human rights defenders in Oman.

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.
- article 12 paragraphs 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.

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 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 context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... 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.”

We would also like to refer your Excellency's Government to article 10 of the UDHR, which states that “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(1), which states that “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.”

Further, we would like to refer Your Excellency's Government to the Guidelines on the Role of Prosecutors, 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, and in particular Guideline 12, which states: "Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system."

Finally, we would like to refer Your Excellency's Government to 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, and in particular Principle 8, which states: "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials."

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. Please provide information concerning the legal grounds for the arrest and detention of the abovementioned persons, as well as any charges which may have been brought against them, and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR, the Guidelines on the Role of Prosecutors and the Basic Principles on the Role of Lawyers. Please provide information on whether all detainees have access to family members, legal counsel of their own choosing and adequate medical personnel.
3. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and activists, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.
4. Please indicate what measures have been taken to ensure that the legitimate right to meet and assembly peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.

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
association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

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Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers