

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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

REFERENCE: AL Cultural rights (2009) G/SO 214 (67-17) G/SO 214 (3-3-16)
QAT 1/2012

21 December 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to Human Rights Council resolutions 19/6, 17/2, and 16/4.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the sentencing to life imprisonment of detained Qatari poet **Mr. Mohammed al-Ajami**, 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 misused, and did not abide by, the Qatari Constitution, additionally he praised the Tunisian revolution and denounced the corruption and oppression by Arab rulers.

According to the information received:

On 29 November 2012, Mr. Mohammed al-Ajami, also known as Ibn al-Dheeb, was sentenced to life imprisonment by the Criminal Court in Doha. Mr. al-Ajami had been summoned and arrested in Doha on 16 November 2011 by state security officials and allegedly held incommunicado and solitary confinement for months. He was subsequently charged with using public means of communication to incite the overthrow of the ruling system and insult the Emir, under articles 6, 130 and 134 of Qatar's Penal Code, respectively.

The case against him was reportedly based on a poem which he wrote and recited in his private residence in Cairo on 24 August 2010. The recitation was recorded by one of his friends who were present and uploaded on Youtube.

Mr. al-Ajami has been held in solitary confinement for up to six months from his date of detention and incommunicado for three months after his arrest in a police station and then at Doha's Central Prison.

Mr. Mohammed al-Ajami's trial had been reportedly marred by a series of irregularities. The Chairman of the three-judge bench hearing Mr. al-Ajami's case was reportedly also the investigating judge during the six months investigation phase, contrary to Qatari legislation.

The Chairman of the court also allegedly decided that some of the proceedings of the eight sessions should be held in secret without providing grounds for his decision, even though such procedure reportedly does not exist in the Qatari judicial system.

On 10 October 2012, after having protested officially against the secrecy of the trial, Mr. al-Ajami's lawyer was reportedly barred from attending the court proceedings and was informed that the Court had appointed another lawyer for the defence of Mr. al-Ajami. There was a second instance of another lawyer being appointed without knowledge or agreement of Mr. al-Ajami. It is further reported that Mr. al-Ajami informed the Court he did not accept any of these two newly appointed lawyers and that the only lawyer who should defend him is Mr. Najeeb al-Nuaimi to whom he granted full power of attorney.

On 29 November 2012 and in the absence of Mr. al-Ajami, the court delivered a judgment confirming the indictment and sentencing him to life-long imprisonment. His lawyer who was presented during the sentencing hearing noticed his client was absent and later when visiting him in prison was informed by Mr. al-Ajami that he could not attend his sentencing hearing because no one came to transfer him to the courthouse. The prison authorities are reported to have told his lawyer that they had not received any order from the court requiring the presence of Mr. al-Ajami in court.

Article 134 of the Penal Code provides for up to five years of imprisonment for "anyone who challenges by any public means the exercise by the Emir of his rights or authorities or criticizes him". It is important to note here that first, the poem was recited in the poet's private residence (among friends) and not in public or using means of mass communication as defined in Article 6 of the Penal Code, Second, the life sentence imposed on Mr. al-Ajami appears to indicate that he had been sentenced under article 130 of the Penal Code, which deals with attempts to "overthrow the regime of the country" and which carries the possibility of a death sentence.

Mr. al-Ajami is reported to have interjected appeal of his sentence immediately afterwards and the first session of the Court of Appeal is reportedly scheduled on 30 December 2012.

Concern is expressed that the arrest, detention and sentencing to life imprisonment of Mr. Mohammed al-Ajami may be solely related to the peaceful exercise of his right to

freedom of opinion and expression. Further serious concerns are expressed concerning the reported lack of fair trial and equal treatment with other detainees in pre-trial and under-trial detention under articles 104 (Paragraph 2-112).

While we do not wish to prejudge the accuracy of these allegations, 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 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 Universal Declaration of Human Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would also like to draw your attention to article 27 of the Universal Declaration 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".

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."

In this context, we would 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, and in particular principle 6, which states: "The principle of the 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."

We would also like to refer your Excellency's Government to the Bangalore Principles of Judicial Conduct, adopted in The Hague in 2002 (E/CN.4/2003/65), and in

particular principle 5, which states: “Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.”

Moreover, we would like to refer your Excellency’s Government to the following principles from the Bangalore Principles of Judicial Conduct regarding the impartiality and integrity of judges:

- Principle 2.1, which states: “A judge shall perform his or her judicial duties without favour, bias or prejudice.”

- Principle 2.2, which states: “A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.”

- Principle 3.1, which states: “A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.”

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”; principle 5, which states: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”; principle 7, which states: “Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”; and principle 19, which states: “No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.”

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:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by Mr. Mohammed al-Ajani or on his behalf?
3. Please provide information concerning the national legislation related to freedom of opinion and expression, including freedom of the press and in the form of art, and concerning its conformity with article 19 of the Universal Declaration of Human Rights and with other relevant provisions of international human rights instruments.

4. Please provide the details of the judicial proceedings against Mr. Mohammed al-Ajami, and explain how these comply with the international norms and standards on fair trial and due process guarantees, the right to freedom of opinion and expression, and the right to freely participate in cultural life.

5. Please provide the legal basis upon which Mr. Mohammed al-Ajami was sentenced to life imprisonment and explain how such sentence is compatible with the international norms and standards on the right to freedom of opinion and expression, the right to freely participate in cultural life, and the right to a fair trial and due process.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report 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 person 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.

Farida Shaheed
Special Rapporteur in the field of cultural rights

1.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

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