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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 situation of human rights defenders; the Independent Expert on the situation of human rights in Somalia; and the Special Rapporteur on violence against women, its causes and consequences

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24 January 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 situation of human rights defenders; Independent Expert on the situation of human rights in Somalia; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 15/18, 16/4, 16/5, 17/25, and 16/7.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the arrest and detention without charge of Mr. **Abdiaziz Abdinur Ibrahim** (alias Koronto) since 10 January 2013. Mr. Abdinur Ibrahim is a freelance journalist, working with Radio Ergo, Dalsan Radio, Badri Media Productions and other media outlets.

According to the information received:

On 10 January 2013, the Central Investigation Department (CID) in Mogadishu of the Somali police called Abdiaziz Abdinur to come to their offices. When he complied with the request, he was arrested and has been detained since. Abdiaziz Abdinur is reportedly held without charge at the Central Investigation Department in Mogadishu and subjected to prolonged interrogations.

The arrest and detention of Abdiaziz Abdinur appears to be linked to a feature story published by Al Jazeera English Online on 6 January 2013, titled 'Rape flourishes in Mogadishu's IDP camps' describing rape in camps for internally displaced people in Mogadishu. On 9 January 2013 Universal TV ran a follow-up on the story.

According to information received, the interrogation of Abdiaziz Abdinur has been focused on his alleged involvement in the production of the above-

mentioned reportages and the interview he conducted with a woman who was introduced to him as a rape victim.

Abdiaziz Abdinur however, while admitting that he was researching the phenomenon with a view to producing an article to be sold to some media outlets, and therefore was in contact with rape victims, has consistently denied his involvement in both productions and he does not work for either Al Jazeera or Universal TV.

The CID has allegedly also questioned a number of other Somali journalists in connection with the article, including Mr. Omar Faruk, the Arabic correspondent for Al Jazeera, and Mr. Abdiaziz Mohamed Dirie, a radio journalist. Mr. Dirie was reportedly detained for one night in the National Security Agency facilities. Furthermore, on 11 January 2013 the police also interrogated a staff member of a women's rights organization who assisted the alleged rape survivor.

Since 10 January 2013, the Somali Police has also investigated a number of other persons in relation to this case. They include: the woman whom Abdiaziz interviewed in his research on sexual violence and who claimed to have been raped by government forces in August in the IDP settlement where she resides; a social worker who assisted the victim when she first reported her case to the Police; two intermediaries who reportedly put the alleged victim in contact with the journalist; and the husband of the victim. In total, six persons are under investigation and four remain detained as of today.

On 16 January 2013, the police commissioner, Gen. Sharif Shekuna Maye held a press conference in which he alleged, among others, that the story was fabricated and the alleged rape victim was bribed. On 18 January 2013, a similar press statement was issued by the Ministry of Interior. The President of Somalia was interviewed by CNN Amanpour and he stressed that the case was a test for the rule of law in the country.

Concern is expressed at the arrest and prolonged pre-trial detention of Mr. Abdiaziz Abdinur Ibrahim and three others, who as of 23 January 2013 remain to be charged. Similarly, concerns are raised at the questioning and detention of journalists Mr. Omar Faruk and Mr. Abdiaziz Mohamed Dirie, for the sole reason of carrying out their journalistic activities.

Further serious concerns are expressed regarding compliance with fair trial standards, including: the availability of legal counsel to all suspects in the early phases of the investigation by the journalist and the alleged rape victim in particular, as well as the actual time and facilities available to the suspects to communicate with counsel in confidence; the right of the detainees to access their family; the right to be brought before a judicial authority and have detention reviewed at regular intervals, appearing in person and being heard by such judicial authority. Furthermore, concern is expressed at the exposure of the victim of the alleged rape to public curiosity including by having her participate in the police press conference on 16 January. Further concerns are expressed

at the condemnatory statements of certain public authorities which may call in question fair trial guarantees and the presumption of innocence in particular.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the above mentioned 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) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

Furthermore, we would like to bring to your Excellency's attention to Article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. To this end, States should develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence. Women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered. States should, moreover, also inform women of their rights in seeking redress through such mechanisms.

We also recall Article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women.

We deem it appropriate to make reference to Commission on Human Rights Resolution 2005/41, which strongly condemns violence against women and girls committed in situations of armed conflict, such as murder, rape, including widespread and systematic rape, sexual slavery and forced pregnancy, and calls for effective responses to these violations of human rights and international humanitarian law. In this context, reference is further made to the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War (IV Geneva Convention), which provides that women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault (art. 27). The Protocol additional to the Geneva Conventions of 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) states that outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any forms of indecent assault are prohibited at any time (art. 4(2)(e)). According to these general principles of international law, rape during armed conflict is considered to be a war crime and States have an affirmative duty to prevent, punish and prosecute perpetrators of such crimes.

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 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- 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 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.

In connection with the allegation that the arrest and detention of Mr. Abdiaziz Abdinur Ibrahim related to interviewing the alleged rape victim, 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 ICCPR, 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.”

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 Mr. Abdiaziz Abdinur Ibrahim, the alleged rape victim and her husband 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 the victims or on their behalf?
3. Please provide the details, and where available the results, of any judicial investigation, or any criminal charges, medical examinations, and other inquiries carried out in relation to the alleged rape case.
4. Please provide the details of the prosecution against Mr. Abdiaziz Abdinur Ibrahim and how it is compatible with the international norms and standards of the right to freedom of opinion and expression and the related right to peaceful assembly and association.
5. Please provide the details on how the actions undertaken by public officials regarding this case are compatible with the international norms and standards of the right to freedom of opinion and expression and the related right to peaceful assembly and association.
6. 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.
7. Please specify how your Excellency’s Government is implementing the recommendations made by the Special Rapporteur on violence against women following her visit to Somalia (A/HRC/20/16/Add.3), in particular concerning the implementation of Security Council resolutions 1325 and 1820 which call upon Governments to prosecute rape as a crime of war, the enactment of a Law on Violence against Women which should contain specific provisions regarding domestic violence (providing for civil and criminal remedies), sexual violence and sexual harassment), and the establishment of a system of standardized data collection and analysis, disaggregated by sex, race, age, ethnicity and other relevant characteristics, in order to understand the magnitude, trends and patterns of violence against women in Somalia.

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 Mr. Abdiaziz Abdinur Ibrahim, the alleged rape victim and her husband 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
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Margaret Sekaggya
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