

Mandates of the Special Rapporteur on the human rights of migrants; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
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27 July 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 43/6, 42/22, 45/3 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government concerning the **arbitrary detention, enforced disappearance and charges subsequently brought against Mr. Malcolm Bidali, a Kenyan migrant worker.**

Mr. **Malcolm Bidali** is a 28 year old migrant worker from Kenya. In his blog, he has been highlighting the conditions for migrant workers in Qatar, where he currently resides and works. Mr. Bidali has drawn attention to workers' rights issues including working hours, wages, accommodation, and workplace conditions.

According to the information received:

On 26 April 2021, Mr. Bidali gave an online presentation for international civil society groups on the situation of migrant workers in Qatar, drawing on his experience working in the country.

A few days later, on 4 May 2021, Mr. Bidali was detained from his labour accommodation in Doha by the Qatari security services and taken to an undisclosed location. His fate and whereabouts remained unknown between 4 and 12 May 2021. He was detained incommunicado, in solitary confinement for 23 hours a day, with no access to legal representation, until 20 May 2021, when he was given consular access and permitted to make a ten-minute phone call to his mother. Qatari authorities acknowledged his presence in custody for the first time on 12 May 2021, without disclosing his location.

On 29 May 2021, a statement by the Government Communications Office confirmed that Mr. Bidali had been formally charged with receiving payments from a foreign agent for the creation and distribution of disinformation within the State, and that his case had been transferred to the public prosecution services.

One week prior to his arrest, Mr. Bidali was reportedly the subject of a targeted phishing attack, with a malicious link disguised as content related to worker's rights in Qatar aimed at him on social media.

On 31 May 2021, Mr. Bidali was released after he signed a document in Arabic without knowing its precise content. The human rights defender was denied access to legal representation during his 27 days in custody.

Without prejudging the accuracy of the allegations, we express grave concern at the reports of Mr. Bidali's arrest and alleged incommunicado detention, which may have amounted to enforced disappearance. We express further concern at the alleged failure to ensure Mr. Bidali access to legal representation of his own choice and consular protection during his detention and the charge brought against him. We express our serious concern that these measures appear to have been carried out in retaliation for Mr. Bidali's legitimate exercise of the right to freedom of expression and his peaceful work to promote and protect human rights, in particular the rights of migrant workers.

We are issuing this appeal in order to safeguard the rights of Mr. Bidali from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.¹

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As 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 be grateful for your observations on the following matters:

1. Please provide any additional information and any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal and factual grounds for the detention of Mr. Bidali and the charge brought against him, and how his detention and prosecution are compatible with international norms and standards as stated, *inter alia*, in the International Covenant on civil and political rights.
3. Please provide information about any investigation made into the enforced disappearance of Mr. Bidali from 4 to 12 May 2021; what remedies have been given to Mr. Bidali and his relatives?
4. Please provide detailed information about the reasons for restricting the access of Mr. Bidali to legal representation and consular assistance since his detention and explain how this is compatible with due process and fair trial standards, and article 36 of the 1963 Vienna Convention on Consular Relations.

¹ Article 41 ICJ Statute 'Interim Protection': Part III, Section D (Incidental Proceedings), Subsection 1.

5. Please indicate whether the consular officers of the government of Kenya in Qatar have been duly informed of the arrest and detention of Mr. Bidali, and if that was not the case, please indicate why.
6. Please indicate what concrete steps have been taken to ensure that the right of freedom of expression and work to promote and protect migrant labour rights is respected.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted a joint communication to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudge any opinion the Working Group may render. The Government is required to respond separately to the joint communication and the regular procedure.

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

Felipe González Morales
Special Rapporteur on the human rights of migrants

Miriam Estrada-Castillo
Vice-Chair of the Working Group on Arbitrary Detention

Tae-Ung Baik
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to further refer to article 9 of the International Covenant on Civil and Political Rights, acceded to by Qatar on 21 May 2018, taking into account the Human Rights Committee (HRC) general comment No. 35 (2014) on liberty and security of person. The State should, inter alia, ensure that, in practice, all persons deprived of their liberty are informed promptly of their rights and guaranteed all fundamental legal safeguards from the very outset of detention, including prompt access to counsel of their own choosing and confidential meetings with counsel. The State should also ensure that any failure in that regard constitutes a violation of procedural rights entailing appropriate sanctions and remedies. In addition, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court under article 9 (3) and 9 (4) of the Covenant. Judicial oversight of detention is a fundamental safeguard of personal liberty and is essential in ensuring the legality of detention and the right to Habeas Corpus, consequently the right to an effective remedy as stated under article 8 of the Universal Declaration of Human Rights and Article 2 (3) of the Covenant.

We would also like to refer your Excellency's Government to Article 14 of the International Covenant on Civil and Political Rights, which states that 'all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law'.

Moreover, the right to a fair trial and due process is also recognized in the Arab Charter on Human Rights, in particular, in Articles 13 (1) and (16).

We would like to refer to the 1963 Vienna Convention on Consular Relation, article 36 (1) (b) of which provides that the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. According to article 36 (1) (c), consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him, and to arrange for his legal representation.

Regarding the necessity to receive information in a language that they understand, we would also like to refer to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988. Principle 14 states that a person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands, information concerning the reason for the arrest, as

well as information on and an explanation of his rights and how to avail himself of such rights, and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings **subsequent to his arrest**.

The right to be assisted by a lawyer is also 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 principles 1, 5, 7 and 8.²

We also wish to recall that solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, subject to independent review, and authorised by a competent authority. We refer your Excellency's Government to the jurisprudence of the Working Group on Arbitrary Detention which has held³ that according to rule 45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the imposition of solitary confinement must be accompanied by certain safeguards.

We would like to call on your Excellency's Government to Articles 19 and 22 of the ICCPR which protect the rights to freedom of expression and to freedom of association." Moreover, the right to freely form associations with others the right to freedom of association and peaceful assembly are also recognized in the Arab Charter on Human Rights, in particular, in Articles 5 and 6.

As stated by the Human Rights Committee, the deprivation of liberty of an individual for exercising their freedom of expression constitutes an arbitrary deprivation of liberty contrary to article 9 of the Covenant, see CCPR/C/GC/35 para. 17, and a concurrent violation of article 19.

In its General Comment No. 34 (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including *inter alia* 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism'. Further, the Human Rights Committee made clear that "It is not compatible with article 19 paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information".

In addition, under international law, the right to freedom of expression extends to everyone, including all migrants regardless of their status. The rights to freedom of expression and freedom of association for migrants and migrants' rights defenders is essential to express their needs, protect their right to life and defend their economic, social, cultural and other human rights. As emphasized by the Special Rapporteur on the human rights of migrants, the work of migrants' rights defenders and support from civil society organizations is crucial for migrants, particularly for those in an irregular situation or with vulnerabilities (A/HRC/44/42). Given the interconnected nature of human rights, restrictions on migrants' and their defenders' freedom of expression and

² See also the recent report of the Working Group on Arbitrary Detention to the Human Rights Council, A/HRC/45/16, paras. 50-55.

³ See e.g. Opinions Nos. 83/2018, 17/2019 and 54/2020 of the Working Group on Arbitrary Detention.

association further hinder migrants' enjoyment of other rights. Furthermore, the importance of the right to defend the human rights of migrants was recently reaffirmed in the report on principles and practical guidance on the protection of the human rights of migrants in vulnerable situations (A/HRC/37/34); according to principle 18, States must "respect and support the activities of human rights defenders who promote and protect the human rights of migrants".

In this connection, we would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 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."

The Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in 2011, elaborate on the State duty to protect human rights against adverse impacts by business enterprises. This duty derives directly from States' existing obligations under international human rights law and includes the need for States to create an environment that enables human rights defenders to carry out their work. *_For example, the commentary to Guiding Principle 26 says that the State should ensure that "the legitimate and peaceful activities of human rights defenders are not obstructed."*

We would further like to recall that the right to liberty and security of person is also enshrined in the Arab Charter on Human Rights, which was ratified by the State of Qatar in 2009 and in particular in Article 14 of the Charter.

We further draw your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which states that no State shall practice, permit or tolerate enforced disappearances (article 2); affirms the obligation of all States to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (article 3), and holds that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7). The Declaration recognizes the right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty (article 9); and the right to be held in an officially recognized place of detention, in conformity with national law, and to be brought before a judicial authority promptly after detention in order to challenge the legality of the detention (article 10). The same article of the Declaration establishes the obligation of the detaining authorities to make accurate information on the detention of persons and their place or places of detention available, including transfers, to their family, counsel or other persons with a legitimate interest. The Declaration also establishes the obligation to make the findings of an investigation into the circumstances of the disappearance available upon request to all persons concerned (article 13).