



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its seventy-first session, 17–21 November 2014****No. 54/2014 (Oman)****Communication addressed to the Government on 10 October 2013**

concerning Sagr Mohamed Al Balloushi, Said Hamid Al Meqbaly, Tallal Moubarak Al Meqbaly, Khamis Kassif Al Mamari, Abdurrahman Rashed Al Ghafili, Abdullah Saleh Al Mamari, Abdullah Hassan Al Balloushi, Badr Mohamed Al Mamari and Abdulmajid Sarhan Al Ghafili

The Government replied to the communication on 25 November 2013. It also provided details on the present case on 7 January 2014 in its reply to a related communication.

The State is not a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);



(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case summarized below was reported to the Working Group on Arbitrary Detention.

4. The case concerns nine persons, all Omani citizens, who were arrested following a demonstration in Liwa, Oman, that took place on 22 August 2013 to protest against the pollution and environmental degradation allegedly caused by the petrochemical industries in the province. The petitioners are all currently in detention.

5. The following four individuals were arrested on 22 August 2013:

- Said Hamid Al Meqbaly (المدق بالي حميد سعيد), aged 28, with national identity card No. 7088632, who usually resides in Wadi Fayd, Shinas;
- Tallal Moubarak Al Meqbaly (المدق بالي مبارك طلال), aged 36, with national identity card No. 7308714, who usually resides in Sohar and works as a driver;
- Khamis Khassif Al Mamari (المعمري خد صيف خميس), aged 44, with national identity card No. 1987833, who usually resides in Liwa;
- Abdurrahman Rashed Al Ghafili (عبد الرحمان راشد الغفيلي), aged 25, with national identity card No. 11038789, who usually resides in Liwa.

6. The following three individuals were arrested on 23 August 2013:

- Abdullah Saleh Al Mamari (المعمري صالح الله عبد), aged 40, with national identity card No. 02106494, who usually resides in Liwa;
- Abdullah Hassan Al Balloushi (عبد الله حسن البلوشي), aged 19, with national identity card No. 8174586, who usually resides in Sohar;
- Badr Mohamed Al Mamari (المعمري محمد بدر), aged 29, with national identity card No. 7696673, who usually resides in Ghadfan, Liwa.

7. On 24 August 2013, Saqr Mohamed Al Balloushi (صقر محمد البلوشي) was arrested. He is aged 35, with national identity card No. 07639092. He usually resides in Liwa, where he is a member of the Municipal Council.

8. Abdulmajid Sarhan Al Ghafili (عبد المجيد سرحان الغفيلي), aged 20, with national identity card No. 5565238, who usually resides in Hellat Al Sheikh, Shinas, was also arrested. The exact date of his arrest is unknown.

9. The province of Liwa is located between the port of Sohar, the Sohar aluminium smelter, a mining company, and the Sohar refinery. The source cites reports that draw attention to the negative repercussions of the pollution emanating from those industries on

the health of the region's residents, including a rise in respiratory illnesses, cancers and foetal defects. Residents have attempted to raise awareness of this issue by means of complaints made to local authorities, a complaint filed with the Court of Appeal of Sohar, and a demonstration held in October 2012.

10. It is reported that the demonstration that took place near the port of Sohar in the Batina region on 22 August 2013 was peaceful. Local residents, including women and children, participated in the protest, as did many activists and politicians. Talib Al Mamari, a Shura Council member from Liwa, who is the subject of a separate petition submitted to the Working Group, also took part.

11. It is reported that the security forces, who were present in substantial numbers, fired tear gas and used a water cannon to disperse the crowd that day, resulting in injuries to some of the demonstrators. Many demonstrators were arrested and detained following the demonstration, in order to be tried for their participation.

12. The source reports that, on 10 October 2013, Talib Al Mamari was found guilty of "disturbing public order", "obstructing traffic" and "incitement to misdemeanour" in relation to the demonstration that he attended, and was sentenced to seven years of imprisonment, with a fine of 1,000 Omani rials (equivalent to \$2,600). Saqr Al Balloushi was sentenced to three years of imprisonment and a fine of 500 Omani rials. The eight other men were sentenced to one year of imprisonment and a fine of 300 Omani rials.

13. Following an appeal against their convictions and sentences, all 10 men were released on bail pending their new trial.

14. On 11 October 2013, Talib Al Mamari was arrested again, on the basis that his discussions at the mosque after the midday prayer that day were considered by the authorities to be "incitement to misdemeanour".

15. On 16 December 2013, the Court of Appeal of Muscat issued its verdict, reducing Talib Al Mamari's sentence to four years of imprisonment. It also reduced the sentence of Saqr Mohamed Al Balloushi, Said Hamid Al Meqbaly, Tallal Moubarak Al Meqbaly, Khamis Khassif Al Mamari, Abdurrahman Rashed Al Ghafili and Abdulmajid Sarhan Al Ghafili to one year of imprisonment each. Three of the defendants, Abdullah Saleh Al Mamari, Abdullah Hassan Al Balloushi and Badr Mohamed Al Mamari, were acquitted.

16. Upon appeal by the seven convicted men to the Supreme Court, the verdict of the Court of Appeal of Muscat, of 16 December 2013, was overturned. The Supreme Court decided that the Court of Appeal of Muscat did not have jurisdiction (by reason of its location) and that the case should be returned to the Court of Appeal of Liwa.

17. In the source's view, demonstration and protest conducted in a peaceful way are illegal in Oman according to article 137 of the Omani Penal Code, which provides that: "Anyone who participates in a private gathering including at least 10 individuals with a view to committing a riot or a breach of public order shall be sentenced to imprisonment from 10 days to one year and a fine not exceeding 50 rials, if the assembly does not disperse following an order issued by an authority officer."

18. The source argues that this provision constitutes a restriction on the provisions of the Universal Declaration of Human Rights protecting freedom of peaceful assembly. In its view, the subjective condition expressed in this provision, "with a view to committing a riot or a breach of public order", can be interpreted broadly and may result in systematic violation of the freedom of peaceful assembly as protected by article 20 of the Universal Declaration of Human Rights and by article 24, subparagraph 6, of the Arab Charter on Human Rights.

19. The source concludes that the deprivation of liberty of Saqr Mohamed Al Balloushi, Said Hamid Al Meqbaly, Tallal Moubarak Al Meqbaly, Khamis Kassif Al Mamari, Abdurrahman Rashed Al Ghafili, Abdullah Saleh Al Mamari, Abdullah Hassan

Al Balloushi, Badr Mohamed Al Mamari and Abdulmajid Sarhan Al Ghafili can therefore be considered as arbitrary under category II of the categories referred to by the Working Group when considering cases submitted to it.

Response from the Government

20. On 10 October 2013, the Working Group communicated the allegations of the source to the Government of Oman, requesting it to provide the Working Group with detailed information about the current situation of Sagr Mohamed Al Balloushi, Said Hamid Al Meqbaly, Tallal Moubarak Al Meqbaly, Khamis Kassif Al Mamari, Abdurrahman Rashed Al Ghafili, Abdullah Saleh Al Mamari, Abdullah Hassan Al Balloushi, Badr Mohamed Al Mamari and Abdulmajid Sarhan Al Ghafili, and to clarify the legal provisions justifying their continued detention and the compliance of those provisions with international law.

21. The Government of Oman replied to the communication on 25 November 2013. It also provided relevant information on 7 January 2014 in its reply to a related communication (see opinion No. 53/2014 (Oman)). The Working Group is grateful for such diligence. The Working Group refers to paragraphs 19 to 28 of its opinion No. 53/2014 (Oman), which reproduce the Government's responses in detail.

22. In its responses, the Government of Oman did not contest the allegations made by the source. However, the Government stated that the demonstration was not peaceful and that the arrest and the detention of the above-mentioned persons were in accordance with domestic law, and in particular with article 135 of the Omani Penal Code. The Government also indicated that the above-mentioned persons were processed through the criminal justice process diligently and were convicted before the court of first instance, while some were acquitted on appeal.

Further comments from the source

23. In accordance with paragraph 15 of the Working Group's revised methods of work, the reply of the Government was brought to the attention of the source. The source provided its comments on 11 March 2014. The Working Group refers to paragraphs 30 to 38 of its opinion No. 53/2014 (Oman), which reproduce the source's comments in detail.

24. In summary, the source refutes the legal argument of the Government. The source reiterates its challenge in respect of Omani law, highlighting the contradiction with international human rights instruments. The source therefore restates its submissions on the arbitrariness of the arrest and detention of the above-mentioned persons.

Discussion

25. The Working Group, having received the submissions of both the source and the Government, is in a position to settle the matter.

26. At the outset, it is important for the Working Group to recall that the situation reported by the source is already well known to it and to the special procedures of the Human Rights Council. Over the last few years, urgent appeals have been issued with regard to the arrest of human rights defenders for participation in peaceful protests in Oman: in April 2011 (OMN 1/2011), in June 2012 (OMN 1/2012) and in February 2013 (OMN 1/2013). The Government of Oman duly responded to each of those urgent appeals, on 6 June 2011, 18 August 2012 and 21 March 2013 respectively.

27. In his 2013 report¹ to the Human Rights Council, the Special Rapporteur on the rights to freedom of peaceful assembly and of association expressed his concern "about

¹ A/HRC/23/39/Add.2, paras. 296–303.

overly broad interpretations of laws that have resulted in undue restrictions on individuals' rights to freedom of association and of peaceful assembly"² and "about repeated allegations of excessive use of force during demonstrations that have largely been peaceful".³ The Special Rapporteur on the situation of human rights defenders referred to one of the above-mentioned urgent appeals (OMN 1/2013) in her 2014 report⁴ to the Council.

28. The Working Group also notes that a separate complaint was submitted to it relating to Talib Al Mamari and that the facts in it are similar to those in the present complaint. The Working Group restates here its reasoning given in opinion No. 53/2014 (Oman), paragraphs 39 to 45, relating to Talib Al Mamari.

29. The Working Group is concerned about the legal framework of the criminal proceedings brought against the nine above-mentioned individuals. The category II definition of an arbitrary detention covers situations where the deprivation of liberty results from exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights. It appears that Omani law allows for such a situation owing to the vagueness of the relevant legal provisions, which leads to an over-broad interpretation, in violation of human rights standards.

30. In addition, the Government has not provided any convincing justification for any limitation of freedom of expression or freedom of peaceful assembly. With regard to the nine individuals referred to in the submissions by the source, the Government of Oman has failed to demonstrate how political expression on the subject of their social and environmental conditions, via the demonstration, posed such a breach of public order as to warrant their arrest, detention and prosecution. The Working Group is, therefore, of the view that their deprivation of liberty falls within category II of the categories referred to by the Working Group when considering cases submitted to it.

31. The Working Group recalls that special procedures mandate holders could provide assistance to the Government of Oman with a view to generating satisfactory conditions in the longer term. The Working Group notes the involvement of the Special Rapporteur on the situation of human rights defenders, and also that the alleged environmental prejudice suffered by the local population in the province of Liwa is relevant to the mandate of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

Disposition

32. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Sagr Mohamed Al Balloushi, Said Hamid Al Meqbaly, Tallal Moubarak Al Meqbaly, Khamis Kassif Al Mamari, Abdurrahman Rashed Al Ghafili and Abdulmajid Sarhan Al Ghafili is arbitrary, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights; it falls within category II of the categories referred to by the Working Group when considering cases submitted to it.

33. Consequent upon the opinion rendered, the Working Group requests the Government of Oman to take the necessary steps to remedy the situation of Sagr Mohamed Al Balloushi, Said Hamid Al Meqbaly, Tallal Moubarak Al Meqbaly, Khamis Kassif

² Ibid., para. 300.

³ Ibid., para. 301.

⁴ A/HRC/25/55/Add.3, paras. 322–323.

Al Mamari, Abdurrahman Rashed Al Ghafili and Abdulmajid Sarhan Al Ghafili, and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

34. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release Sagr Mohamed Al Balloushi, Said Hamid Al Meqbaly, Tallal Moubarak Al Meqbaly, Khamis Kassif Al Mamari, Abdurrahman Rashed Al Ghafili and Abdulmajid Sarhan Al Ghafili, and to accord them an enforceable right to compensation.

35. The Working Group further refers the situation to both the Special Rapporteur on human rights defenders and the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

[Adopted on 21 November 2014]
