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DGS/ZMG/jvm

6 March 2012

Dismissal and Deportation of MR on the Basis of HIV Status

Dear Sheikh Hamad bin Thamer Al Thani and Mr Mohamed Nanabhay,

The International Trade Union Confederation (ITUC), which represents 175 million workers in 151 countries worldwide, is deeply concerned about the humiliating detention, dismissal and deportation of MR,¹ a South African employee of Al-Jazeera English Online (“Al-Jazeera”) on the basis of his HIV status. This case was recently brought to our attention by SECTION27, a renowned South African human rights organization.

According to SECTION27, MR was hired by Al-Jazeera English in October 2010 as a Senior Editor and was required to relocate to Doha, Qatar. As a migrant worker, he was sent for medical tests by the employer (for residency permit purposes) and was tested for HIV. MR was not informed about the nature of any of the medical tests he was required to undertake, nor was he given the results of those tests. In fact, while a number of public officials and his employer were informed of his HIV status while he resided in Doha, MR only discovered that he has HIV upon his return to South Africa.

MR alleges that upon the discovery of his HIV status by the government and Al-Jazeera, he was taken to the Doha State Prison by the employer’s human resources officials. He was detained in the prison, locked up in a crowded cell and subjected to a medical examination, including a full body search, in full view of other prisoners. At no point was he informed of the reason for his detention. He recalls that he was later collected from the prison, again by employees of Al Jazeera, who instructed him to leave the country immediately in order to avoid further detention. He was forced to leave Qatar on 3 January 2011.

MR was dismissed and deported solely on the basis of his HIV status, with no apparent attempt made to protect his rights to privacy and confidentiality or to consider measures of reasonable accommodation to allow MR to continue to carry out his work. MR has on

¹ MR has requested that we do not disclose his identity at this stage.

numerous occasions contacted Al Jazeera management to request an explanation for his dismissal and has received no response.

Before his dismissal, MR had been informed that, due to his outstanding performance and experience, he would be promoted to the newly-created position of Managing Editor, in which he would have supervised the Senior Editors. Notably, the work of the Managing Editor does not require physical presence in the news room and can be performed from outside of Qatar.

The fact of his detention, dismissal and deportation, as well as his treatment leading up to and during his detention, illustrate egregious non-compliance with international human rights standards, including ILO Recommendation 200,² which calls on governments to prohibit discrimination on the basis of HIV status. His treatment in detention also potentially constitutes cruel, inhuman and degrading treatment. These acts were committed both by government officials as well as employees of Al-Jazeera, a state-owned entity.

We wish to draw your attention to the fact that on 14 February 2012, a picket took place at the Al-Jazeera office in Johannesburg. SECTION27, the Treatment Action Campaign (TAC), and ITUC affiliates – the Confederation of South African Trade Unions (COSATU) and the Federation of Unions of South Africa (FEDUSA) joined efforts in urging Al-Jazeera to end discrimination on the grounds of HIV status. A memorandum was handed to Thembisa Fakude, Al Jazeera Bureau Manager, demanding that MR be re-employed in the position of Managing Editor, that he be allowed to perform his duties from outside of Qatar and that Al-Jazeera formally acknowledge the numerous violations of MR's rights.

We stress that although MR's detention and deportation was pursuant to current (and deeply flawed) Qatari law, allowing for detention and deportation of HIV positive migrant workers, Al-Jazeera is not stopped from acting responsibly and with full respect for international human rights. As communicated to MR, the position of Managing Editor, to which he would have been appointed had he not been dismissed, does not require physical presence in Doha and can be performed remotely. As established by SECTION27, the Managing Editor appointed after MR's dismissal is currently working from London. In the same way, even in presence of discriminatory deportation laws in Qatar, MR can continue to perform his duties from South Africa.

We therefore urge that MR be re-employed in the position of Managing Editor with retroactive effect. He should be able to perform his duties from outside Qatar for as long as the travel restrictions relating to foreigners living with HIV remain in place. We would also point out that Al Jazeera is a powerful company and can play a leading role in working with the Qatari government to eliminate the discriminatory laws that undermine universal access to HIV prevention, treatment, care and support and deepen the stigma attaching to HIV status.

² International Labour Organization's Recommendation on HIV and AIDS and the World of Work (No. 200), adopted in 2010.

The ITUC stands ready to provide whatever technical assistance necessary to resolve the matter as soon as possible in the interests of MR. We would therefore appreciate it if you could respond to this request by no later than March 20, 2012.

Yours sincerely,



General Secretary

CC:

Zwelinzima Vavi, General Secretary, Congress of South African Trade Unions (COSATU)
Dennis George, General Secretary, Federation of Unions of South Africa (FEDUSA)
Manene Samela, General Secretary, National Council of Trade Unions (NACTU)
Khulile Nkushubana, General Secretary, Confederation of South African Workers' Unions (CONSAWU)
Mark Heywood, Executive Director, SECTION 27

Encl:

ITUC Letter to H.H Sheikh Hamad Bin Khalifa Al Thani dated 25 January 2012



ITUC INTERNATIONAL TRADE UNION CONFEDERATION CSI CONFÉDÉRATION SYNDICALE INTERNATIONALE
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GENERALSEKRETÄRIN
SECRETARIA GENERAL

To the attention of:

H.H. Sheikh Hamad Bin Khalifa Al Thani
Emir of the State of Qatar

DGS/JW/jvm

25 January 2012

Your Majesty,

The International Trade Union Confederation (ITUC), which represents 175 million workers in 151 countries worldwide, is deeply concerned regarding the recent humiliating detention, dismissal and deportation of MR,¹ a South African employee of Al Jazeera English Online (“Al-Jazeera”) on the basis of his HIV status. This violation was recently brought to our attention by SECTION27, a renowned South African human rights organization.

MR has had a well-respected career as a journalist and editor of various publications in South Africa, and has been recognized internationally for his work. According to SECTION27, MR was hired by Al-Jazeera English in October 2010 as a Senior Editor and required to relocate to Doha. As a migrant worker, he was sent for medical tests (for residence permit purposes) and unknowingly tested for HIV. MR was not informed about the nature of the tests, nor was he given the results of any of his medical tests. In fact, while a number of public officials and his employer were informed of his HIV status, MR only discovered that he has HIV on his return to South Africa. On discovery of his HIV status by his employer, MR was detained in the Doha Prison, locked up in a crowded cell and subjected to a medical examination, including a full body search, in full view of the prisoners. At no point was he informed of the reason for his detention. He was dismissed and deported solely on the basis of his HIV status.

Before his dismissal, he had been informed that, due to his outstanding performance and experience, he would be promoted to the newly-created position of Managing Editor, in which he would have supervised the senior editors. Notably, the work of these editors is routinely performed from outside of Qatar.

The fact of his detention, dismissal and deportation, as well as his treatment leading up to and during his detention, illustrate egregious non-compliance by Qatar with policies prohibiting discrimination on the basis of HIV status, as well as potentially cruel, inhuman and degrading treatment or punishment. These violations of MR’s rights were committed both by government officials and by employees of Al-Jazeera, which is a state-owned entity.

¹ MR has requested that we do not disclose his identity at this stage.

The applicable laws in Qatar unfortunately do not prohibit discrimination on the grounds of HIV status, nor is there any prohibition on dismissal solely on the grounds that an employee is living with HIV. In addition, the laws in Qatar allow the detention and deportation of any person which is found to pose a "threat to public health." Qatar is one of only five countries which deny visas to foreign nationals based solely on HIV status. As such, the laws in Qatar are non-compliant with international standards. Rather than promoting prevention of HIV infection and the treatment, care and support of people living with HIV, Qatari law undermines these objectives and deepens the stigma attaching to HIV status.

The International Labour Organization's Recommendation on HIV and AIDS and the World of Work (No. 200), adopted in 2010, promotes non-discrimination in recruitment and continued employment on the basis of HIV status. These protections are to be equal to those under the Discrimination (Employment and Occupation) Convention 111 adopted in 1958, which Qatar has ratified. Recommendation 200 establishes that HIV testing not be a requirement for employment, including for migrant workers, and that where testing is conducted this is on the basis of informed consent and test results remain strictly confidential. Recommendation 200 further establishes that appropriate measures are to be put in place for the treatment, care and support of people living with HIV, including reasonable accommodation in the workplace where possible.

In June 2011 Qatar took part in the UN High Level Meeting on AIDS where all Member States committed to "*mitigate the impact of the epidemic on workers, their families, their dependants, workplaces and economies, including by taking into account all relevant Conventions of the International Labour Organisation, as well as the guidance provided by Recommendation No. 200*" and called on "*employers, trade and labour unions, employees and volunteers to eliminate stigma and discrimination, protect human rights and facilitate access to HIV prevention, treatment, care and support* (Paragraph 85 of the 2011 UN Political Declaration on HIV/AIDS). At that meeting, the government of Qatar underlined its commitment to support all efforts to reduce the spread of the epidemic and to support ways that would reduce its negative impact of people living with the virus. It also called on the international community to intensify efforts to guarantee protection the rights of people living with the virus and the elimination of all forms of discrimination against them.²

The policies now in place in Qatar have had a severe impact on the prevention, treatment, care and support of people living with HIV more broadly. In 2009, an estimated 94% of Qatar's workforce consisted of migrant labourers. The legally-sanctioned dismissal and deportation of these migrant workers in the event that they test HIV positive places a major burden on their home countries in dealing with loss of income, increased unemployment and increased demands on their domestic health systems.

Regarding the Al-Jazeera case, we urge the government of Qatar to ensure that MR is re-employed in the position of Managing Editor with retroactive effect. He should be able to perform his duties from outside Qatar for as long as the travel restrictions relating to foreigners living with HIV remain in place. Further, we urge the government of Qatar to

²Statement of Qatar at the High Level Meeting on AIDS (8-10.06.2011, NY, USA), available online at <http://www.un.org/en/ga/aidsmeeting2011/pdf/qatar.pdf>

formally acknowledge the violations of MR's rights and to move quickly introduce polices necessary to extend protection to workers on the grounds of real or perceived HIV status.

The ITUC stands ready to provide whatever technical assistance necessary to ensure that all workers in Qatar enjoy the rights that are guaranteed to them under international law.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'A. Rana', written over a horizontal line.

General Secretary