

19 July 2012

**MR ANAND GROVER**  
**UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHT TO HEALTH**

By e-mail: [anandgrover@gmail.com](mailto:anandgrover@gmail.com)

Dear Mr Grover

**REQUEST TO INVESTIGATE A COMPLAINT AGAINST THE STATE OF QATAR**

1. SECTION27 is a public interest law centre that seeks to influence, develop and use the law to protect, promote and advance human rights. Our activities include research, advocacy and legal action to change the socio-economic conditions that undermine human dignity and development, prevent poor people from reaching their full potential and lead to the spread of diseases that have a disproportionate impact on vulnerable and marginalised people. One of our priority areas is the right to health, which includes the right not to be discriminated against on the grounds of HIV status.
2. SECTION27 acts for MR, a South African citizen who is currently residing in Tunisia.
3. In October 2010, MR was employed by Al Jazeera English (“Al Jazeera”) as a Senior Editor. Al Jazeera is a wholly-owned subsidiary of the Qatar Media Corporation, which in turn is wholly-owned by the State of Qatar (“Qatar”).
4. Following severe discrimination and cruel, inhuman and degrading treatment by both Al Jazeera and Qatar, MR was detained by Qatari authorities, and then unfairly dismissed by Al Jazeera and deported from Qatar in January 2011. The reason for his detention, dismissal and deportation was his HIV status.
5. The applicable laws in Qatar 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 deportation from Qatar of any foreign national who is found to pose a “threat to public health”. Should the deportation order not be implemented immediately, the person who “poses a threat to public health” may be detained, ostensibly for an indefinite period.
6. We therefore request that you initiate an investigation into the practices of Qatar and particularly the impact of its conduct on the realisation of the right to health. Qatar has failed to take steps to extend protection on the grounds of real or perceived HIV status and, through its express conduct, has violated its obligations in relation to the right to health and non-discrimination against people living with HIV.

7. The broad impact of Qatar's conduct is demonstrated by the fact that a startling 94% of its workforce consists of migrant workers, many of whom are from countries with a high prevalence of HIV. Unless Qatar's practices are effectively challenged, the burden on these countries arising from the detention, dismissal and deportation of their nationals with HIV will continue to increase.
8. The facts on which this complaint is based are set out below.

## **BACKGROUND FACTS**

9. These background facts are intended to serve as an illustration of non-compliance by Qatar with its obligations arising from the right to health. A statement setting out these facts more fully is attached as "A".
10. Prior to his employment with Al Jazeera, MR was employed as a senior government official. He is a highly regarded journalist, having occupied senior positions, including editorial positions, with prominent newspapers in South Africa between 1987 and 2010. During the apartheid era, MR was a well-known human rights activist, and was incarcerated on Robben Island from 1989 to 1991.
11. In October 2010, after applying for a Senior Editor position with Al Jazeera, MR was offered the position and arrangements were made for him to relocate to Doha and commence employment on 10 October 2010. Before departing for Doha, MR underwent a series of medical tests and obtained medical clearance to travel to Qatar. He arrived in Qatar on 9 October 2010 and commenced work the following day.
12. In November 2010, MR was informed that a new Managing Editor position was being created and that, due to his experience and outstanding performance as Senior Editor, he would be appointed as Managing Editor. This position did not require the incumbent's physical presence in the newsroom; the duties of the Managing Editor could be performed remotely. Indeed, we are instructed that one of the acting Senior Editors was working remotely from London immediately after MR's dismissal and deportation.
13. In December 2010, approximately two months after his arrival in Qatar, MR was sent for a battery of medical tests (including blood tests) allegedly required to finalise his residence permit. He was not informed which tests in particular were being conducted. He was also not informed of the results of any of these tests. When he enquired why he was being sent for so many blood tests, he was informed that this was just a "formality".
14. On 1 January 2011, having still not received the results of his blood tests and with his residence permit still outstanding, MR underwent blood tests for cholesterol levels and HIV at a private clinic in Doha at his own expense. When he returned for his results that evening, he was chased off the premises by the clinic staff and security guards.

15. On 2 January 2011, MR was called to a meeting by a senior member of the human resources department at Al Jazeera. On arrival at the meeting, he was ordered to get into a vehicle and was driven to Doha Prison, where he was locked in a crowded cell with other prisoners.
16. MR did not know why he was being detained or for how long he would be detained. He was forced to undergo a full medical examination in front of the other occupants of the cell, which included a full body search.
17. MR was released from Doha Prison later that day and taken back to his hotel room. He then received a telephone call from a senior employee at Al Jazeera and advised to leave Qatar within 48 hours, failing which he would be rearrested. He was also informed that his employment contract with Al Jazeera had been terminated.
18. MR subsequently discovered that he has HIV and that this was the reason for the termination of his employment contract and his deportation from Qatar.

#### **THE RIGHT TO HEALTH**

19. Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. The right to health is a broad concept, and includes the following elements:
  - 19.1 The right to control one's health, including providing informed consent for medical testing and treatment;
  - 19.2 The right to confidentiality of one's health status, including HIV status;
  - 19.3 The right not to be discriminated against unfairly on the basis of one's health status, including HIV status;
  - 19.4 The right to a work environment which promotes the abovementioned rights, and includes appropriate measures of reasonable accommodation and health care, counselling and support services.
20. In referring this complaint to you, we note that Qatar is not a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), from which these principles are derived. However, we submit that the above principles form part of a body of customary international law and accordingly bind Qatar despite its non-ratification of the ICESCR.
21. Qatar has demonstrated its support for standards to be put in place to entrench non-discrimination of people living with HIV. In its capacity as a member state of the International Labour Organisation (ILO), Qatar has expressed its support for the ILO's Recommendation Concerning HIV and the World of Work 2001 ("the Recommendation"). The Recommendation contains the following obligations:

- 20.1 Clause 3 provides that *“there should be no discrimination against or stigmatisation of workers, in particular jobseekers and job applicants, on account of real or perceived HIV status or the fact that they belong to regions of the world or segments of the population perceived to be at a greater risk of or more vulnerable to HIV infection.”*
- 20.2 Clause 3(h) requires the privacy of workers and their families, and particularly the confidentiality of their HIV status, to be protected.
- 20.3 Clause 13 of the Recommendation provides that *“Persons with HIV-related illness should not be denied the possibility of continuing to carry out their work, with reasonable accommodation if necessary, for as long as they are medically fit to do so. Measures to redeploy such persons to work reasonably adapted to their abilities, to find other work through training or to facilitate their return to work should be encouraged, taking into consideration the relevant International Labour Organisation and United Nations instruments.*
- 20.4 The Recommendation also recognises the important role of the workplace in prevention, treatment, care and support, including the promotion of voluntary counselling and testing, in collaboration with local communities.
- 20.5 Clause 19 calls on member states to provide access to free or affordable voluntary counselling and testing, antiretroviral and adherence education, proper nutrition consistent with treatment, treatment of opportunistic infections and appropriate support, including psychosocial support.
- 20.6 In relation to testing, Clause 24 provides that testing must be genuinely voluntary and free of coercion. Testing programmes must respect international guidelines on confidentiality, counselling and consent. Clause 25 prohibits compulsory testing or screening for workers, including migrant workers. In terms of Clause 26, the results of an HIV test should be kept confidential and should not endanger access to jobs, tenure, job security or opportunities for advancement.
22. While the Recommendation has not been formally adopted, Qatar has demonstrated overwhelming acceptance of its terms. At the 99<sup>th</sup> Session of the ILO Conference in Geneva held in June 2010, the entire Qatari delegation to the ILO voted in favour of the Recommendation. As such, Qatar has demonstrated its commitment to the positive steps required to protect against discrimination on the basis of HIV status and the importance of appropriate measures relating to prevention, treatment, care and support.
23. While we acknowledge that the Recommendation falls within the jurisdiction of the ILO, we contend that Qatar’s acceptance of its terms establish custom in relation to its obligations not to discriminate against people living with HIV, and to provide them with

appropriate support. These obligations are echoed in the ICESCR and the principles which have developed from this Convention.

24. In addition, Qatar is bound by the Universal Declaration on Human Rights (“the Declaration”), which is a cornerstone of customary international law. Article 2 of the Declaration prohibits discrimination of any kind, based on characteristics or attributes which have the ability to impair the fundamental human dignity of persons as human beings. The non-exhaustive nature of this list was expressly held to include HIV status in Article 1 of the Commission on Human Rights Resolution 1996/43. It follows that the UDHR expressly prohibits discrimination on the basis of HIV status.
25. Despite these obligations, Qatar continues to subject MR, and people in a similar position, to systematic disadvantage and discrimination, perpetuating the stigma attaching to HIV. People living with HIV are one of the most vulnerable groups in society. Notwithstanding the availability of compelling medical evidence as to how this disease is transmitted, the prejudices and stereotypes against HIV positive people still persist. In view of the prevailing prejudice against HIV positive people, any discrimination against them can be interpreted as a fresh instance of stigmatisation and is an assault on their dignity. The impact of discrimination on HIV positive people is devastating. It is even more so when it occurs in the context of employment since it denies them the right to earn a living.
26. The following section sets out the particular laws and policies in place in Qatar which undermine its obligations to refrain from discrimination on the basis of HIV status, thereby undermining the right to health.

## **DOMESTIC LAW IN QATAR**

27. Qatar is one of five countries which deny visas to foreign nationals based solely on HIV status. In the event that a foreign national is found to have HIV after that person has already entered Qatar, the law allows the Minister of the Interior to deport that individual. Twenty-one other countries apply a similar deportation policy. Should deportation from Qatar not immediately be possible, the Minister of the Interior is further empowered to detain the foreign national pending deportation.
28. In this regard articles 21 and 22 of Act No 3 of 1963 (Aliens’ Entry and Residence in Qatar) provide as follows:<sup>1</sup>

*21. The Minister of Interior, upon obtaining the approval of the governor, may order the deportation of any alien whose presence poses a threat to the security of the State, internal and external safety, economy, public health, morals, or becomes a burden on the State. The deportation order may include the dependant members of his family.*

---

<sup>1</sup> Please note that in quoting the relevant provisions of Qatari law, we have relied on English translations of the legislation, the official version of which is in Arabic.

*22. The Ministry of Interior may compel an alien, against whom a deportation order has been issued, if such order cannot be implemented, to stay in a certain area for two weeks, which period is renewable.*

29. These provisions are echoed in Law No 4 of 2009 (Regulating the Entry and Exit of Expatriates in Qatar and their Residence and Sponsorship), in particular Article 37 of which empowers the Minister of the Interior to issue a deportation order to *“any Expatriate whose presence in the State ... may damage the national economy or public health or morals.”* The Minister is further empowered by Articles 38 and 39 to arrest the expatriate in respect of whom a deportation order has been issued, for a period of 30 days, renewable for “several” similar periods, or to force the expatriate to reside in a specific area in lieu of arrest.
30. With specific reference to work permits, Article 25 of Law No 14 of 2004 (Labour Law), read with Article 23 of the same law, provides that should a worker cease to be “medically fit”, his or her work permit may be cancelled. It follows that the worker would then not be resident in Qatar legally and may be deported. The term “medically fit” is not defined, leaving the Minister of Civil Service Affairs and Housing free to exercise a wide discretion.
31. The Labour Law contains certain provisions which prohibit discrimination on certain listed grounds, including gender. There is, however, no prohibition on discrimination on the grounds of HIV status or any other medical grounds. The Labour Law further does not regulate the dismissal of employees for reasons of ill health or incapacity.
32. The Labour Law does not regulate medical testing of employees without their informed consent. In addition, there is no protection offered to employees against disclosure of the results of an employee’s medical tests, including his or her HIV status.

#### **NON-COMPLIANCE BY QATAR WITH ITS INTERNATIONAL LAW OBLIGATIONS**

33. Qatar has failed to comply with its international law obligations. There are no policies in place protecting HIV-positive employees from discrimination. Both Al Jazeera and Qatar engaged in direct discrimination against MR on the basis of his HIV status, as well as other conduct which was in direct breach of the Recommendation and the Declaration, and thus in violation of Qatar’s obligations under customary international law.
34. The laws and policies in place contribute to such discrimination and strengthen the stigma attached to HIV: they allow HIV testing to take place without the consent of the employee being tested; they do not protect the confidentiality of the test results; and they do not offer the necessary support and counselling to the employee. In addition, employers in Qatar are under no legal obligation to provide reasonable accommodation where necessary to cater for employees with HIV. There is no prohibition on dismissal or other unfair treatment arising from an employee’s HIV status.

35. This is clearly illustrated by the attached statement, which records the following:

- a. MR was not informed of the nature of the tests he was required to undergo; he therefore could not have provided his informed consent to be tested for HIV.
- b. MR was not counselled either before or after his HIV tests; he was offered no support services to assist him in dealing with his test results.
- c. MR was not informed of the results of his HIV tests, both through the public health system and at the private clinic where he requested to be tested.
- d. MR's test results were not kept confidential; to the contrary, a number of public officials were informed of his HIV status before he was informed.
- e. MR's contract of employment was terminated solely as a result of his HIV status.
- f. MR was detained and subsequently deported solely as a result of his HIV status.
- g. No measures of reasonable accommodation were considered or implemented. While MR had previously been informed that his duties as Senior Editor could be performed remotely, his contract of employment was terminated immediately upon discovery of his HIV status. He could not, in terms of the laws of the State of Qatar, remain in Qatar. The absence of any measures of reasonable accommodation is highlighted by the subsequent employment of a Senior or Managing Editor based in London. There is no indication that MR could not have performed his duties from South Africa.

36. In addition, MR was detained in the Doha Prison at the instance of Qatar and solely as a result of his HIV status. The fact of his detention, as well as his treatment during the time that he was detained, illustrate severe non-compliance by Qatar with policies prohibiting discrimination on the basis of HIV status, as well as cruel, inhuman and degrading treatment or punishment.

37. Although some of these violations were committed by Al Jazeera and not directly by Qatar, we are of the view that Qatar can and should be held accountable on the basis that it directly controls Al Jazeera. The actions of Al Jazeera may therefore be imputed to Qatar. In addition, much of the egregious conduct was both facilitated and mandated by Qatari law.

#### **CORRESPONDENCE WITH QATAR AND AL JAZEERA**

38. On 21 October 2011, we addressed a letter to Qatar and Al Jazeera, indicating our intention to submit this request. On behalf of MR we demanded the following:

- a. Employment in the position of Managing Editor with retrospective effect on the basis that he may discharge his duties from South Africa; and
  - b. A formal acknowledgement of the violations of MR's rights.
39. A copy of this letter is attached as "B". To date, we have received no response to this letter.
40. On 22 November 2011, we requested the South African delegation to the ILO to lodge a complaint with the ILO against Qatar. A copy of this request is attached as "C". We have been in conversation with the South African Department of Labour and Department of International Relations and Co-operation as to how they may approach this and provide assistance and support to MR.
41. On 14 February 2012, SECTION27, together with members of the Treatment Action Campaign, the Congress of South African Trade Unions and the Federation of Unions of South Africa held a picket outside Al Jazeera's offices in Johannesburg. We handed over the attached memorandum marked "D". We have received no response to this memorandum.
42. We have also been in contact with the Organising Partners of the International AIDS Conference, 2012. We have requested that they ban the participation and coverage by Al Jazeera in the International AIDS Conference as a mark of their commitment to ending discrimination on the basis of HIV status. Al Jazeera has responded to this request, in the attached letter marked "E", baldly denying the allegations made by MR.
43. We have also been working closely with the International Trade Union Confederation and the Congress of South African Trade Unions in addressing this case.

## CONCLUSION

44. Based on the above instances of serious non-compliance with its customary international law obligations arising from the right to health, we request that you initiate an investigation into the conduct by Qatar and its failure to comply with these obligations.
45. For more information, please contact Mark Heywood on (+2711) 356 4103 or [Heywood@section27.org.za](mailto:Heywood@section27.org.za) or Nikki Stein on (+2711) 356 4118 or [stein@section27.org.za](mailto:stein@section27.org.za).

Yours faithfully

Nikki Stein  
Attorney  
SECTION27