

**OPINION No. 25/2004 (SAUDI ARABIA)**

**Communications addressed to the Government on 3, 5 and 10 August 2004.**

**Concerning Dr. Matrouk b. Hais b. Khalif Al-Faleh, Dr. Abdellah Al-Hamed and Mr. Ali Al-Damini.**

**The State has not signed or ratified the International Covenant on Civil and Political Rights.**

1. (Same text as paragraph 1 of opinion No. 20/2004.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information.
3. (Same text as paragraph 3 of opinion No. 20/2004.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, which made comments on it. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.
5. According to the information submitted by the source:
  - (a) Dr. Matrouk b. Hais b. Khalif Al-Faleh, born in Sekaka on 17 May 1953, former Professor of International Relations at the King Sa'ud University in Riyadh, is currently detained in El-Alicha detention camp in Riyadh, a detention centre of the Ministry of the Interior. He is

particularly known for having written a widely published study calling for political reforms in the Kingdom and an article in the London newspaper *Al Qods Al Arabi*. He lost his position at the university in 2003 for having written those papers. It was reported that this person was arrested on 16 March 2004 at his offices in Riyadh by agents of the Saudi Arabian General Intelligence Service, who failed to provide a proper arrest warrant. No reasons were given to justify his arrest;

(b) Dr. Abdellah Al-Hamed, born on 12 July 1950, Professor of Contemporary Literature at the Imam Mohammed bin Sa'ud University in Riyadh, member of the Saudian Reformer Movement, is also currently detained in El-Alicha detention camp. It was reported that he was also arrested on 16 March 2004 at his offices in Riyadh by agents of the Saudi Arabian General Intelligence Service, who failed to provide a proper arrest warrant. No reasons were given to justify his arrest;

(c) Mr. Ali Al-Damini, born on 10 May 1948, a writer, poet and author of numerous articles and books, is also currently detained in El-Alicha detention camp. It was reported that he was arrested on 16 March 2004 on his way to his home in Riyadh by agents of the Saudi Arabian General Intelligence Service, who failed to provide a proper arrest warrant. No reasons were given to justify his arrest;

6. It is submitted that none of the men have been given an opportunity to be heard by a judicial authority. They were not immediately brought before a judge, nor charged. They were requested to remove their signatures from an open letter addressed in January 2003 to Crown Prince Abdellah Ben Abdelaziz and to sign pledges to consult with the authorities before carrying out any public activity. The letter, which was signed by 104 Saudi intellectuals, petitioned the Government on several political issues, including the necessity of adopting comprehensive institutional reforms in order to establish a constitutional monarchy, to strengthen relations between the leadership and the community and to guarantee the unity and the stability of the Kingdom. It observed that the lack of freedom of expression and assembly fosters the growth of intolerance and extremism.

7. All three were later charged with the following criminal offences: propagation of discord and dissonance; incitement and encouragement against the State; rebellion against authority; doubting the independence and equity of the judiciary; holding political meetings; and commission of crimes against national unity. According to the source, all these charges are of a political nature.

8. The source reports that the treatment given to the co-signatories to the open letter has been different in each case, and thus discriminatory. Some co-signatories were never questioned; others were arrested and later released after agreeing to remove their signatures; others, like Dr. Al-Faleh, Dr. Al-Hamed and Mr. Al-Damini, were arrested and formally charged; and others are being kept arbitrarily in detention without having been brought before a judge, without charges and without clear expectations of being tried soon. A number of those arrested were released on the condition that they pledge not to sign petitions or comment publicly on political issues.

9. The source further alleges that none of the three individuals has had judicial recourse to contest the lawfulness of his detention. There is no evidence that they took actions that violate laws of the Kingdom or that threaten public order. The source further alleges that the detention of these persons is also in violation of Saudi Arabia domestic law, particularly article 36 of the Saudi Basic Law, which guarantees that no citizen may be detained without due process of law, and articles 2 and 4 of Royal Decree No. M.39 of 16 October 2001, which provide for the presentation of a proper arrest warrant and for bringing detainees before a judicial authority to establish the lawfulness and the length of their detention.

10. It is the position of the source that the signing by these persons of the letter to the Crown Prince was in exercise of their right to peaceful freedom of opinion and expression. It was also an effort to take part in the Government of their country by petitioning the authorities. Their detention is related to their efforts to petition the Government, and is a violation of article 21 (1) of the Universal Declaration of Human Rights. According to the source, the letter was a peaceful expression of the political aspirations of the signatories and within the legal bounds of international standards.

11. The Government made the following statement with regard to the allegations of the source:

“The said persons were arrested for holding a number of suspicious meetings. Following an investigation, they were charged with engaging in acts which, inter alia, justified terrorism, encouraged violence and incited civil disturbance. The investigation of Mr. Matrouk b. Hais b. Khalif Al-Faleh, Dr. Abdellah Al-Hamed and Mr. Ali Al-Damini showed that they were responsible for organizing the above-mentioned meetings. The accusations against them were therefore found to be substantiated and they were referred to the courts for judgement. All the accused have enjoyed the rights guaranteed to them under the Kingdom’s Code of Criminal Procedure, including the right to have the charges against them heard by a court of law, and their trial, at a first public hearing attended by their lawyers, their families and representatives of the media in which the Public Prosecutor read out the indictment against them, started on 9 August 2004. The second hearing is scheduled to be held on 23 August 2004. In the light of the above information, the Government of Saudi Arabia does not consider their arrest as arbitrary detention but rather as arrest for the commission of an ordinary criminal act.”

12. The source took issue with the assertions of the Government, and put forward, among other things, the following arguments, brought to the attention of the Government:

“Such a reply requires us to bring to your attention some highly important issues concerning the current situation in the Kingdom of Saudi Arabia and all attempts at moderate and peaceful reform, as well as with regard to the participation in the building of a country governed by the rule of law and the main principles of justice of Islam, in accordance with international legality in human rights matters. Because for these reformists, there is no conflict between the values of Islam and the international bill of human rights.

“These representatives of the reformist movement have indeed held various meetings of which the Saudi authorities were very much aware, some of them having taken place with representatives of the authorities themselves. Such meetings aimed at identifying the best solutions to leave behind the difficult situation currently experienced by the Kingdom. The situation is characterized by the escalating confrontation between local armed groups and the security services, by the rising corruption, the deteriorating economic crisis, and the absence of fundamental freedoms. All these factors constitute a cause of instability, particularly so for the youth, who let off steam through violence as they lack peaceful and legal means of expression.”

13. The main issue in the present communication, which the Working Group shall address, is whether in the decision-making process leading to the deprivation of liberty of Dr. Al-Faleh, Dr. Al-Hamed and Mr. Al-Damini their human rights and freedoms as guaranteed by international norms and standards, above all by the Universal Declaration of Human Rights, have been duly taken into consideration.

14. Even assuming that the prosecution giving rise to the detention of Dr. Al-Faleh, Dr. Al-Hamed and Mr. Al-Damini did have a legal basis in the criminal law of Saudi Arabia - an assertion of the Government not contested by the source - the Working Group notes that no State can be absolved from responsibility for human rights violations on the sole argument that the act of the State causing harm to human rights is not prohibited, or - even worse - is allowed under the legislation of that State. The Working Group is of the opinion that what is provided for, or permitted by national legislation, is not necessarily lawful under international law. It is the position of the Working Group that the freedoms protected by the Universal Declaration, in particular by articles 19, 20 and 21 (1), may only be restricted by the operation of criminal law if the conditions required of such restrictions under international law are met. It follows that only restrictions aimed at protecting national security, public order, public health, as well as the rights and reputation of others, are compatible with international law.

15. To support its allegation that the detention of Dr. Al-Faleh, Dr. Al-Hamed and Mr. Al-Damini was necessary to protect public interest, even to the detriment of their freedoms enshrined in international law, the Government ought to have specified why and how their activity endangered public order. But all the Government put forward to support its position was that the three persons were arrested for holding a number of suspicious meetings and that they were charged with engaging in acts that justified terrorism, encouraged violence and incited civil disturbance.

16. In the specific context of the present case, however, the unsubstantiated references by the Government to suspicious meetings and attempts to justify terrorism did not convince the Working Group. It is clear from the information available that what the three individuals concerned were doing was engaging in a peaceful dialogue with the Government aimed at the improvement of the governance of the country. The Working Group is of the view that any peaceful action the objective of which is to bring about progress in a given country is protected by article 21 (1) of the Universal Declaration. Such activity necessarily entails the holding of meetings, where arguments, sometimes critical of the existing State structure, take place.

17. On that basis, the Working Group concluded that the Government had failed to adduce convincing arguments that the detention of the above-mentioned three individuals was necessary for the protection of public order. Hence, the restriction of their right to freedom of opinion, expression and assembly, as well as their right to take part in the conduct of public affairs in the country, was not compatible with international law.

18. In the light of the foregoing, the Working Group expresses the following opinion:

The detention of Matrouk Al-Faleh, Abdellah Al-Hamed and Ali Al-Damini is arbitrary, being in contravention of articles 19, 20 and 21 (1) of the Universal Declaration of Human Rights, and falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

19. Consequent upon this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Dr. Matrouk Al-Faleh, Dr. Abdellah Al-Hamed and Mr. Ali Al-Damini in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights.

20. The Working Group recommends that the Government consider signing and ratifying the International Covenant on Civil and Political Rights.

Adopted on 26 November 2004