

OPINION No. 27/2007 (Saudi Arabia)

Communication addressed to the Government on 19 February 2007.

Concerning Dr. Saud Mukhtar Al-Hashimi and eight other persons.

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

1. (Same text as paragraph 1 of Opinion No. 14/2007.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information concerning the allegations of the source.
3. (Same text as paragraph 3 of Opinion No. 15/2007.)
4. The Working Group forwarded to the source the reply of the Government. The source submitted its comments on the information given by the Government. In the light of the allegations made the reply of the Government and the comments of the

¹⁵ In this respect, the Working Group recalls the concluding observations of the Human Rights Committee on the second periodic report of Israel (CCPR/CO/78/ISR, para. 12), where it is stated that the Committee is concerned “about the frequent use of various forms of administrative detention, particularly for Palestinians from the Occupied Territories, entailing restrictions on access to counsel and to the disclosure of full reasons of the detention”. The Committee considers that: “[t]hese features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under article 7 and derogating from article 9 more extensively”.

source thereon the Working Group believes that it is in a position to render an opinion.

5. The cases summarized hereinafter have been reported to the Working Group on Arbitrary Detention as follows: It was alleged that the following nine persons were arrested on 2 February 2007 by agents of the Intelligence Services (Mabahith) in Jeddah and Medina and have been held in incommunicado detention in an unknown location since then. Their names were given as follows:

6. Dr. Saud Mukhtar Al-Hashimi, aged 45, a medical doctor, a human rights defender, and an activist in a movement for constitutional reforms in Saudi Arabia. He is residing in Hai Assafa, avenue Emir Majeed, S.B. 53201, 21583 Jeddah. Dr. Al-Hashimi runs a prominent intellectual discussion forum (diwaniya) in his house. It was said that the secret police frequently summoned him to instruct him to stop inviting prominent Islamist personalities to his house for discussion;

7. Mr. Sulaiman Al-Rashoudi, an elderly former judge and human rights activist, also engaged in the defence of persons detained for the exercise of their right to freedom of expression and an activist for fair trials;

8. Mr. Essam Basrawy, a lawyer and an advocate of political and constitutional reform. A physically disabled person;

9. Mr. Abdulrahman Al-Shumairi, a former University Professor and an activist in the movement for constitutional reforms;

10. Mr. Abdulaziz Al-Khuraiji, a physician and an activist in the above-mentioned movement for constitutional reforms;

11. Dr. Moussa Al-Garni, a university professor and an activist in the above-mentioned movement. He was among four men who, in April 2006, petitioned the King for permission to open an Islamic civil society organization with the aim of “discussing freedom, justice, equality, citizenship, pluralism, proper advice and the role of women”;

12. Mr. Abdulrahman Sadeq Khan, an academic and an activist in the movement for constitutional reforms;

13. Mr. Al-Sharif Seif Al-Dine Shahine, a businessman and an activist in the above-mentioned movement;

14. Mr. Mohammed Hasan Al-Qurashi, a businessman and an activist in the movement for constitutional reforms.

15. It was reported that the arrest of the above-mentioned nine persons, all of them longstanding advocates of political and social reforms, was ordered by the Ministry of the Interior based on allegations of financing terrorism and illegal activities which included collecting donations in order to send Saudi youth to disturbed areas.

16. According to the source, the detainees had gathered on several occasions to discuss about the creation of a committee to strengthen the defence of civil and political rights and the need for constitutional reforms. These activities were made public. They were arrested when Mabahith agents stormed the villa of Mr. ‘Isam Basrawi, where he was meeting with a group of five associates. Another associate was arrested in his car in Jeddah and two others in Medina. They were reportedly handcuffed and transported to an Intelligence Services detention centre.

17. Dr. Al-Hashimi has intervened in several media in Arabic expressing his point of view on the situation in the Middle East and on different international and domestic political issues, and was reportedly asked by the authorities not to convey his opinions on the Al Jazeera satellite television channel. Three days before his arrest, he had participated in a television debate about the demands of the political reformers.

18. The source considers that the detention of these nine persons is arbitrary because it is devoid of any legal basis. As far as the source is aware, the authorities have so far failed to provide any decision justifying arrest and detention according to Articles 33, 34, 35, 101 and 116 of the Criminal Procedure Code. Article 2 of the Royal Decree N° M.39 of 16 October 2001 stipulates that any arrest or detention must be based upon a legal provision and that the length of detention must be determined by the authorities. These persons should be immediately released or formally charged. Evidence should be presented against them.

19. Intelligence Services agents also failed to comply with Article 41 of the Code of Criminal Procedure which specifies that house searches require a search warrant stipulating the reasons for the search, issued by the Bureau of Investigation and Prosecution.

20. According to the source, the detention of these nine persons results from their political opinions and the consequent exercise of their right to freedom of expression, guaranteed by article 19 of the Universal Declaration of Human Rights.

21. In addition, the source reports that the Intelligence Services authorities have denied to the detainees access to legal counsel, to family visits and to adequate medical care. They have not even informed the detainees' relatives about the location where they are kept.

22. According to the government response, the competent authorities in the Kingdom of Saudi Arabia have indicated that the above-mentioned persons were arrested and charged with "engaging in activities involving the collection of donations in an illicit manner and the smuggling and transmission of funds to bodies suspected of using such funds to deceitfully incite Saudi citizens into travelling to locations where disturbances are taking place". This was announced officially and the said persons are currently being treated in accordance with the Kingdom's judicial standards, which respect human rights, prohibit injustice, comply with international rules and conventions, permit visits by relatives, ensure that no physical or mental humiliation or harm is inflicted on the accused, and guarantee them a fair trial.

23. The Government adds that those proved guilty will be referred to the judicial authority of the Kingdom, which is well known for its independence and is the only body competent to adjudicate in all crimes, determine penalties after conviction and hand down a final judgement on the accused. It is noteworthy that the said persons and their families are currently enjoying all aspects of care (health, social and financial).

24. In its comment to the reply of the Government, the source points out that the concerned persons are still being detained as of 25 October 2007 without following a legal process and without having been presented before a magistrate to be charged or officially notified about any lawful reasons of their arrest.

25. The source further states that the above-named persons have so far not had any opportunity of consulting a lawyer or of questioning the legality of their detention by filing an appeal before a judicial authority.

26. The source further informs that seven of the persons concerned were transferred from Rouis Prison in Djedda to a villa administered by the Security Services. Their conditions of detention have improved according to their families from which they are allowed to receive visits; however, they are not able to leave their place of detention.

27. Dr. Saud Mukhtar Al-Hashimi and Dr. Moussa Al-Garni are still being detained in complete isolation at Rouis Prison in Djedda. They have received only four visits since the beginning of their period of detention and certain family members, among whom their spouses and their children, are not authorized to see them at all. The state of health of Dr. Saud Mukhtar Al-Hashimi is particularly worrying because he is suffering from chronic digestive diseases.

28. The source further notes that the Government did not contest its allegations concerning the political motives linked to freedom of expression and peaceful assembly and that their arrests were carried out following their intervention in the mass media. According to the source, the Government further did not refute the long duration of secret detention (156 days for Dr. Saud Mukhtar Al-Hashimi), without there being the possibility of receiving visits or having access to a remedy to question the legality of detention or enjoying the assistance of a lawyer.

29. Having examined all the above information, the Working Group notes that the Government has not challenged the allegations of the source that the detainees were arrested and remain detained without having been brought before any judicial authority or formally charged. Therefore, they are detained without any legal basis in violation of article 9 of the Universal Declaration of Human Rights. Although the Government states that those proven guilty will be referred to the judicial authority of the Kingdom, it has not specified the particular judicial authority which is currently handling the proceedings or the charges against these nine individuals. The Working Group further observes that there is no legal basis of detention which could be invoked for the inconclusive purpose of referring them to the authorities at an uncertain date.

30. Whereas the Government has not clarified the places of detention of the nine individuals in its reply, although it had reasons to do so in view of the allegations by the source contained in its initial communication and transmitted to the Government, the source has made known in its observations on the response of the Government that it is aware of their present whereabouts. The source has communicated that seven of them are not held in prison but rather in a villa under surveillance and which they are not allowed to leave, whereas Dr. Saud Mukhtar Al-Hashimi and Dr. Moussa Al-Garni remain detained at Rouis Prison in Djedda.

31. Although the Government has accused these nine persons of engaging in activities of “deceitfully incit[ing] Saudi citizens into travelling to locations where disturbances are taking place”, it has not refuted the allegations of the source concerning the activities in which the nine individuals concerned have engaged in their professional capacity during the time before their arrests and concerning the political opinions they hold. The Working Group, which has already examined and has pronounced itself on similar cases, has consistently held that expressing

opinions not in conformity with or critical to government politics is a legitimate exercise of the right to freedom of opinion and expression, guaranteed by article 19 of the Universal Declaration of Human Rights. Thus, the Working Group considers that in the present case it has been proven that the cause of the arrest of these nine persons falls within the scope of the right to freedom of opinion and expression and assembly as guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights.

32. In the light of the foregoing the Working Group renders the following Opinion:

The deprivation of liberty of Dr. Saud Mukhtar Al-Hashimi and the other 8 aforementioned persons is arbitrary, being in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights and falls within categories I and II of the categories applicable to the consideration of the cases submitted to the Working Group.

33. Consequent upon this Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles enshrined in the Universal Declaration of Human Rights. The Working Group recommends that the Government considers signing and ratifying the International Covenant on Civil and Political Rights.

Adopted on 28 November 2007