

No. 31/2011 (Saudi Arabia)

Communication addressed to the Government on 7 April 2011

Concerning: Bilal Abu Haikal

The State is a not 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. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.
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 sentence or despite an amnesty law applicable to him) (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 the 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; 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. Mr. Abu Haikal, born in XXXX, of Lebanese nationality, was moving to Saudi Arabia from his family's home in Anjar, in the Beqaa valley, eastern Lebanon, to take up residence at the Ojeh company complex in Riyadh where he was to start an internship. After having studied civil engineering at the Hariri Canadian University in Kfar Falous, southern Lebanon, he was to gain some work experience as an engineer in Saudi Arabia.
4. On 18 July 2009, Mr. Abu Haikal arrived in Saudi Arabia at King Khalid International Airport in Riyadh at around 8.00 p.m. He was arrested by the Saudi Security Services upon arrival and his family had no news of his fate or whereabouts for the following nine months. In this context, Mr. Abu Haikal's case was submitted to the Working Group on Enforced and Involuntary Disappearances on

15 October 2009 which considered and transmitted it to the Government of the Kingdom of Saudi Arabia.

5. In March 2010, Mr. Abu Haikal was able to call his family, and from then on was allowed weekly 10-minute calls and his parents were also allowed to visit him in April 2010 at Al-Hayr Prison near Riyadh. However, in late April 2010 he was transferred to Abha Prison in southern Saudi Arabia, and contact then became difficult as he was only able to speak to them once a week. His family tried to visit him again but they were denied a visa by the Saudi authorities.

6. When Mr. Abu Haikal reappeared after nine months of disappearance, he had neither been notified of the charges against him nor presented before a judge and given the possibility to challenge the legality of his detention since the day of his arrest 16 months previously. His family tried to mandate a lawyer in Saudi Arabia to prepare his defence but they were unable to do so. Furthermore, they contacted both the Saudi Arabian Minister of the Interior, Prince Mohammed bin Nayef and the Lebanese Foreign Ministry but never received an official reply.

7. According to the source, in early February 2011, Mr. Abu Haikal was brought before a judge, without being allowed the presence of a lawyer, and was immediately sentenced to two years' imprisonment counting from the moment of his arrest. His sentence should have expired on 28 June 2011 (Saudi Arabia counts his sentence as two years according to the Hijri calendar, where lunar months are slightly shorter than Gregorian months). Mr. Abu Haikal's family, who were at last able to meet him in February 2011, requested a copy of the sentence, but were told by the authorities not to make such requests as otherwise this would only worsen the fate of their son. Despite having served the two-year term which ended on 28 June 2011, Mr. Abu Haikal remains detained in Al-Hayr Prison in Saudi Arabia with no legal justification.

Response from the Government

8. The Working Group transmitted the above allegations to the Government of Saudi Arabia requesting that it provide, in its reply, detailed information about the current situation of Mr. Abu Haikal and clarify the legal provisions justifying his continued detention.

9. It is regrettable that the Working Group has not received a response from the Government. The Working Group would have welcomed the cooperation of the Government of Saudi Arabia.

Discussion

10. According to its revised methods of work, the Working Group is in a position to render an opinion on the basis of the submissions that have been made.

11. From the facts presented, a number of important issues arise for discussion of the Working Group. There is the matter of arrest and detention, as well as disappearance for a period of nine months. It also includes an ongoing period of detention after completion of the sentence. Allegations have also been made of lack of adequate legal assistance, lack of due process and ongoing detention without knowledge of the reasons thereof.

12. For the first nine months of his detention (18 July 2009-March 2010), Mr. Abu Haikal had been made to disappear, as he was held without contact with the outside world and the Government refused to recognize his detention. His family in Lebanon was unaware of his fate or whereabouts and repeated inquiries with the Saudi authorities brought no response. During the period between July 2009 and February 2011, Mr. Abu Haikal was never informed of the charges against him, brought before a judge or tried. This is contrary to Saudi domestic law, notably the article 36 of the Basic Law of Government which stipulates that "the State shall ensure the security of its citizens and all persons residing in its territory and no one shall be arrested, detained or restricted in his freedom of action except as provided by law." Article 2 of Royal Decree No. M.39 also states that "no person shall be arrested, searched, detainees, or imprisoned except in cases specified by the law". This article also specifies explicitly that the detention "shall be for the period prescribed by the competent authority".

13. In addition, article 114 of the Royal Decree notes that if the accused is to be detained in pretrial detention, it is to last a maximum of five days, renewable up to a total of six months. In the instant case, it is evident that Mr. Abu Haikal who has already been detained for 24 months has widely passed this legal limit. He should therefore, as stated in article 114, have been "be directly

transferred to the competent court, or be released". The court's sentence too has been spent and his continued detention appears without legal basis or justification.

14. Mr. Abu Haikal's detention also runs contrary to article 9 of the Universal Declaration of Human Rights which stipulates that no one may be subjected to arbitrary arrest or detention. Article 10 of the Universal Declaration further states that everyone is entitled to a fair and public hearing by an independent and impartial tribunal. A fundamental aspect of this right is the possibility of contesting the legality of one's detention. The former Commission on Human Rights in its resolution 1992/35 called on all States that had not yet done so to do establish a procedure such as habeas corpus in order for all persons deprived of their liberty to institute proceedings before a court so that the court may decide without delay the lawfulness of his or her detention and order his or her release if detention is found to be unlawful. Mr. Abu Haikal has been unable to contest the legality of his detention before a competent tribunal; he has not had access to a lawyer and has not had regular access to his family. The lack of observance of international norms relating to fair trial described above render his deprivation of liberty arbitrary.

15. Although the Government of Saudi Arabia has not offered its response to the allegations set forth by the source, from the nature of the facts supplied to the Working Group, there appears a pattern discernible in a number of previous cases from Saudi Arabia brought before the Group. As examples, we refer to opinions No. 36/2008, No. 37/2008, No. 22/2008, No. 21/2009; No. 2/2011, No. 10/2011, No. 11/2011, No. 17/2011, No. 18/2011, No. 19/2011 and No. 30/2011 of the Working Group where persons were arrested and detained without warrants, without timely production before a magistrate, access to legal counsel and indeed a trial. In the majority of these cases, the detained persons had been arrested for their peaceful expression of opinion; in others on vague security-related issues. It is therefore pertinent to mention that the case of Mr. Abu Haikal too, follows the same pattern where basic rights have not been respected, including those recognized in articles 9 and 10 of the Universal Declaration of Human Rights.

16. The Working Group considers it pertinent to remind the Government of Saudi Arabia that the prohibition of arbitrary detention is part of customary international law. It has been authoritatively recognized as a peremptory norm of international law or *jus cogens* (see Human Rights Committee in its general comment No. 29 (2001) on states of emergency, para. 11), which this Working Group follows in its opinions. Of assistance is the judgment of the International Court of Justice in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* of 30 November 2010 and, in particular, the discussions by Judge Cançado Trindade on arbitrariness in customary international law with which the Working Group agrees.* The constant jurisprudence of the rulings contained in the opinions of this Working Group, and of the other United Nations special procedures mandate holders is yet another source.

Disposition

17. In the light of the foregoing, the Working Group renders the following opinion:

Both periods of detention of Mr. Bilal Abu Haikal, including the ongoing one, are arbitrary falling into categories I and III of the Working Group being without legal basis, and in violation of articles 9 and 10 of the Universal Declaration of Human Rights.

18. Consequent upon the opinion rendered, the Working Group requests the Government of Saudi Arabia to release Mr. Abu Haikal forthwith and bring his situation in conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

19. In view of the adverse effect of this wrongful arrest and detention on Mr. Abu Haikal and his family, the Working Group requests the Government of Saudi Arabia to ensure appropriate reparation.

20. The Working Group urges and invites the Government of Saudi Arabia to ratify the International Covenant on Civil and Political Rights.

[Adopted on 30 August 2011]

*See International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment of 30 November 2010, *ICJ Reports 2010*, para. 79; Separate Opinion of Judge Cançado Trindade, pp. 26-37, paras. 107-142