

No. 30/2011 (Saudi Arabia)

Communication addressed to the Government on 8 February 2011

Concerning: Saleh bin Awad bin Saleh Al-Hweiti

The State is not a 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 by 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. Al-Hweiti, born in XXXX in Riyadh, Saudi Arabia, is a stateless person of Bedouin origin (known as "Bidoon" in Saudi Arabia), notwithstanding repeated requests to obtain Saudi citizenship. Mr. Al-Hweiti is a member of the Reformist movement, which calls for peaceful constitutional reforms in Saudi Arabia. It is reported that under the alias "Akhu Saad", Mr. Al-Hweiti published numerous poems on the situation of the Bidoon and the alleged injustice they suffer at the hands of the Saudi authorities, on the grounds of their lack of legal status.
4. The source reported that on 30 April 2003, following a recital of some of his poems on a radio station close to the Reformist movement, Mr. Al-Hweiti was arrested at his brother's residence in Riyadh by plainclothes officers of the Intelligence and Security Agency of the Saudi Ministry of the Interior, Al-Mabahith. According to the information received, it was not until July 2003 that Mr.

Al-Hweiti was allowed to receive a visit from his family for the first time. On this occasion, Mr. Al-Hweiti informed his family that during a rushed trial, he had been sentenced to 11 months' imprisonment for defamation of Governors and other Government officials. The source reports that in response to an urgent appeal from the Office of the High Commissioner for Human Rights, the Government stated that Mr. Al-Hweiti was detained "on the basis of a security-related charge (relevant to terrorist activities)," without giving any precision about the legal basis underlying his detention or the offence allegedly committed. The source deduces that these charges were fabricated and indicate lack of guarantees to a fair trial. Reportedly, Mr. Al-Hweiti has never had access to legal counsel and the hearings were held behind closed doors. After the family's visit, Mr. Al-Hweiti was transferred to Al-Hayr State Security Prison where he remained until 23 April 2007.

5. On 23 April 2007, nearly four years after the end of his sentence, Mr. Al-Hweiti was released. According to the information received, Mr. Al-Hweiti requested identity documents in order to be able to cross the country and join his family in Riyadh. Mr. Al-Hweiti was told to stay in the area of Tabuk and wait until further notice. On 29 April 2007, Mr. Al-Hweiti was summoned by the local branch of Al-Mabahith. When he did not return home, his family sought information about his fate and whereabouts. The family was told that Mr. Al-Hweiti had been re-arrested and detained at Taif detention centre in the Province of Mecca. According to the information received, it was not until one month after his re-arrest that Mr. Al-Hweiti's family received a call from him. Allegedly, Mr. Al-Hweiti was not allowed to speak freely or to inform his family about his situation and conditions of detention. According to the information received, he was allowed a second call to his family on 31 January 2008. He informed his family that he had been subject to alleged acts of torture and had been kept in solitary confinement since the day of his re-arrest. Reportedly, Mr. Al-Hweiti has not received adequate medical treatment. During a subsequent call in early June 2008, Mr. Al-Hweiti complained about alleged skull fractures and a broken jaw. At this point, Mr. Al-Hweiti was being detained in Jeddah State Security Prison. His family's requests for his transfer to Riyadh were successively rejected. Moreover, according to the source, his family's right to State subsidies was withdrawn, thereby causing them financial hardship.

6. The source reports that on 1 February 2009, Mr. Al-Hweiti was woken up and taken to the Direction of Civil Affairs, where he was given identity documents. On 25 April 2009, Mr. Al-Hweiti was transferred to Riyadh. On 25 May 2009, that is two years after his second arrest, Mr. Al-Hweiti was brought to the first hearing for his second trial. A second hearing was adjourned at the request of the Prosecutor, and consequently, Mr. Al-Hweiti was returned to the detention centre in Jeddah. It is reported that in September 2009, Mr. Al-Hweiti was sentenced to five years' imprisonment, to be counted from the end of his first sentence, that is, 30 March 2004. As such, Mr. Al-Hweiti's second sentence should have terminated on 30 March 2009.

7. Towards the end of 2009, Mr. Al-Hweiti's family learned that he had been transferred to Al-Hayr Prison, where he allegedly remained in solitary confinement. Despite numerous calls, the family was not allowed to visit him until March 2010. According to the information received, Mr. Al-Hweiti complained of the lack of medical care, overcrowded cells, the fact that he was not allowed outdoors and that the facilities were badly aerated, leading to conditions favourable to the spread of diseases among the prisoners. In mid-August 2010, Mr. Al-Hweiti was again transferred to Jeddah and taken to Taif detention centre shortly thereafter.

8. On 20 August 2010, Mr. Al-Hweiti was brought before a committee which interrogated him about how he had obtained his identity documents. Mr. Al-Hweiti was asked to disclose the names of individuals who had helped him. Reportedly, these interrogation sessions continued for several months.

9. According to the information received, Mr. Al-Hweiti has been convicted twice following in camera hearings for alleged violation of articles 9 and 10 of the Universal Declaration of Human Rights. According to the source, Mr. Al-Hweiti has never had access to legal counsel, neither during his first detention, nor since his re-arrest in April 2007.

10. The source submits that Mr. Al-Hweiti's first arrest occurred following the broadcast of some of his poems on a radio station closely linked to the Reformist movement, which referred to the pseudonym under which the poems had been published. The source contends that Mr. Al-Hweiti's

deprivation of liberty is a direct consequence of his pacific exercise of the right to freedom of opinion and expression, as guaranteed in article 19 of the Universal Declaration of Human Rights. According to the source, Mr. Al-Hweiti has been unable to contest the legality of his detention before a competent tribunal. Moreover, Mr. Al-Hweiti has at no point been given the possibility to appeal the sentences pronounced against him.

Response from the Government

11. The Working Group transmitted the above allegations to the Government of Saudi Arabia, requesting that it provide, in its reply, detailed information about Mr. Al-Hweiti's current situation and clarification about the legal provisions justifying his continued detention.

12. The Working Group regrets that it did not receive a response from the Government; it would have welcomed the Government's cooperation.

Discussion

13. In accordance with its revised methods of work, the Working Group is in a position to render an opinion on the basis of the submissions available before it.

14. Based on the information presented, which has not been refuted by the Government, the various and varying periods of arrest and detention of Mr. Al-Hweiti raise a number of important issues for discussion by the Working Group. Arrest and detention on different occasions without being informed of the reasons thereof, delayed and hurried summary court proceedings leading to periods of imprisonment without recourse to legal counsel, frequent movement between detention facilities away from place of family residence are matters of serious concern in the present case. There are also allegations of severe detention conditions and ill-treatment, lack of adequate legal assistance and due process, and most importantly, incarceration for expression of opinion and association. Finally, as stateless persons with nomadic characteristics, Mr. Al-Hweiti and his family members are a vulnerable group requiring particular protection.

15. Although the Government of Saudi Arabia has not responded to the allegations set forth by the source, based on the information available to the Working Group, a discernible pattern emerges from the number of cases in Saudi Arabia brought before the Working Group. For example, 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 and No. 19/2011 of the Working Group all deal with persons who had been arrested and detained without warrants, timely presentation before a magistrate, access to legal counsel or indeed a trial. In the majority of these cases, the detained persons had been arrested following peaceful expression of opinion; in others, on vague security-related issues. It is therefore pertinent to mention that Mr. Al-Hweiti's case follows the same pattern in which basic rights have not been respected, including those recognized in articles 9 and 10 of the Universal Declaration of Human Rights.

16. Based on the information provided by the source, it appears that the officers who arrested Mr. Al-Hweiti, used his "pen-name", leading to the inference that his arrest and detention were due to his exercise of the right to freedom of opinion and the call for peaceful constitutional reform through his poetry.

17. It also appears that in parallel with his continued detention, Mr. Al-Hweiti's "punishment" has been further compounded by the withdrawal of financial support to his family by the authorities. Although this action is not directly related to the determination of arbitrariness of Mr. Al-Hweiti's detention, it serves to aggravate the psychological and emotional constraints under which Mr. Al-Hweiti remains detained and is therefore relevant to note. The Working Group notes with grave concern the lack of transparency and due process of the serial trials of Mr. Al-Hweiti.

18. The Working Group emphasizes that customary international law provides for the prohibition of arbitrary detention. It has been authoritatively recognized as a jus cogens or peremptory norm of international law (see the Human Rights Committee's general comment No. 29 (2001) on states of emergency) to which the Working Group refers in its opinions. The judgment of the International Court of Justice in the case concerning *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 law⁷ have been adopted by the Working Group. The body of jurisprudence of the rulings contained in the opinions of the Working Group and of the

other United Nations special procedures mandate holders also constitute a source of reference for the Working Group's opinions.

Disposition

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

The deprivation of liberty of Mr. Al-Hweiti for multiple and continued periods is arbitrary, being without legal basis and in violation of articles 9, 10 and 19 of the Universal Declaration of Human Rights, and falling within categories I, II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

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

21. In view of the adverse effect of this wrongful arrest and detention, the Working Group requests the Government of Saudi Arabia to ensure that appropriate reparation is provided to Mr. Al-Hweiti and his family.

22. In view of the alleged ill-treatment of Mr. Al-Hweiti during his ongoing detention, the Working Group forwards this case to the attention of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

23. 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)*, Judgment of 30 November 2010, para. 79; also the Separate Opinion of Judge Cançado Trindade, paras. 107-142.