

No. 33/2011 (Saudi Arabia)

Communication addressed to the Government on 4 February 2011

Concerning: Mohamed Abdullah Al Uteibi

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 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. Al Uteibi, born in XXXX, usually residing in Hay Badr, Riyadh, is an advocate of human rights in Saudi Arabia. According to the information received, Mr. Al Uteibi has publicly denounced the conditions of detention applied to political prisoners in Saudi Arabia. Mr. Al Uteibi is also said to be one of the signatories of a petition calling for political reforms in the Kingdom, more specifically for the institution of a parliamentary monarchy and respect for the principle of separation of powers.
4. The source reports that on 2 January 2009, Mr. Al Uteibi was arrested in Riyadh by the Saudi secret service Al-Mabahith. According to the information received, Mr. Al Uteibi's arrest came following an attempt of a peaceful demonstration, organized by human rights advocates in Riyadh to protest the attack in Gaza by the Israeli army. The source reports that the authorities declared the demonstration contrary to the principles of Islam.

5. According to the information received, for two months following his arrest, Mr. Al Uteibi was detained incommunicado in total isolation and without any possibility of contact with the outside world. It was not until after two months in detention that Mr. Al Uteibi was allowed visits by his family. However, Mr. Al Uteibi has not been allowed to seek legal assistance.

6. Six months after his arrest Mr. Al Uteibi was presented before a judge of the Office of the Public Prosecutor, who held that Mr. Al Uteibi was not the subject of any criminal proceeding and ordered his release. According to the information received, the Ministry of the Interior refused to execute the release order. To date, Mr. Al Uteibi has not been informed of the charges against him.

7. The source also submits that notwithstanding the fact that Mr. Al Uteibi has never been formally charged, his arrest and detention were motivated by his attempts to organize, together with other human rights advocates, a peaceful demonstration in order to express their views on the events in Gaza. The source contends that Mr. Al Uteibi's deprivation of liberty is a direct consequence of his peaceful exercise of the right to freedom of opinion and expression.

8. The source contends that Mr. Al Uteibi has been unable to contest the legality of his arrest and detention before a competent authority and has been deprived of the possibility to seek legal assistance. According to the information received, Mr. Al Uteibi is currently detained at Al Hayr Prison.

Response from the Government

9. 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 Uteibi's current situation and clarification about the legal provisions justifying his continued detention.

10. The Working Group regrets that it has not received a response from the Government; it would have welcomed the cooperation of the Government of Saudi Arabia.

Discussion

11. 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 made.

12. Having considered the information presented, the Working Group believes that the case in hand raises issues pertaining to non-observance of certain domestic and international human rights norms. Mr. Al Uteibi's arrest and continued detention is closely linked to his stated position as a human rights advocate and supporter of constitutional reform in his country, and his attempt to organize a demonstration to protest the Israeli attack on Gaza. Furthermore, he was held in incommunicado detention for two months, without being charged with violation of the law, and was not presented before a judge until six months after his arrest. The authorities disregarded the release order issued by a judge, and Mr. Al Uteibi has had no recourse to legal counsel. Finally, the Working Group notes that Mr. Al Uteibi has not been given the opportunity to contest the legality of his arrest and continued detention, nor provided with a procedure for appeal to a higher authority.

13. Mr. Al Uteibi's detention 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. Notably, the fact that the Saudi authorities have not complied with the release order issued by the judge supports the finding that there is no legal basis to justify Mr. Al Uteibi's deprivation of liberty. Thus, the Working Group draws the conclusion that Mr. Al Uteibi's deprivation of liberty is arbitrary, falling within category I of the categories applicable to the consideration of the cases submitted to the Working Group.

14. Mr. Al Uteibi's detention is also inconsistent with article 10 of the Universal Declaration of Human Rights which 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 of 28 February 1992, called on all States that had not yet done so to establish a procedure, such as habeas corpus, in order for all persons deprived of their liberty to be able to institute proceedings before a court so that the court may decide without delay on the lawfulness of his or her detention and order his or her release if detention is found to be unlawful. Mr. Al Uteibi has not been able to contest the legality of his detention before a competent tribunal, nor has he been allowed access to a lawyer or regular access to his family. The lack of observance of international norms relating to a fair trial, as

described above, render his deprivation of liberty arbitrary, and falling within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

15. The Working Group notes with concern the consistent pattern of silence adopted by the Government of Saudi Arabia by not availing itself of the opportunity to respond to the allegations set forth by the source regarding arbitrary detention that have been presented to the Working Group. There have been increasing occurrences of arrest and detention of persons exercising their basic human rights in Saudi Arabia, in particular the right to freedom of opinion, expression and association (see, for instance, opinions No. 22/2008, No. 36/2008, No. 37/2008, No. 2/2011, No. 10/2011 and No. 30/2011 of the Working Group). It is therefore pertinent to mention that Mr. Al Uteibi's case further sustains the emergence of what seems to be the rule, and not the exception, of basic human rights not being duly respected. On the basis of the information available to it, the Working Group concludes that Mr. Al Uteibi's detention is arbitrary, falling into category II of the categories applicable to the consideration of the cases submitted to the Working Group.

16. The Working Group reminds the Government of Saudi Arabia that customary international law prohibits arbitrary detention. It has been authoritatively recognized as a *jus cogens* or peremptory norm of international law (see Human Rights Committee's general comment No. 29 (2001) on states of emergency, para. 11) 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 law* have also 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 constitutes another source of reference.

Disposition

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

The continued detention of Mr. Al Uteibi 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.

18. Consequent upon the opinion rendered, the Working Group requests the Government of Saudi Arabia to release Mr. Al Uteibi forthwith, and to bring his situation into 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, the Working Group requests the Government of Saudi Arabia to ensure that appropriate reparation is provided to Mr. Al Uteibi and his family.

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

[Adopted on 1 September 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; and the Separate Opinion of Judge Cançado Trindade, paras. 107-142