

No. 43/2011 (Saudi Arabia)

Communication addressed to the Government on 16 February 2011

Concerning: Mohamed bin Abdullah bin Ali Al-Abdulkareem

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. Mohamed bin Abdullah bin Ali Al-Abdulkareem, (hereinafter Mr. Al-Abdulkareem), aged 39, is a law professor at the University Mohamed ibn Saoud, Riyadh. Mr. Al-Abdulkareem is also a member of an association on civil and political rights and the Arab Organization for Liberties and Good Governance as well as chief editor of the *Journal of Congress of the Nation*.
4. It is reported that Mr. Al-Abdulkareem was arrested from his home on 5 December 2010 by agents of the general intelligence directorate. According to the information received, Mr. Al-Abdulkareem was not presented with a judicial warrant, nor was he informed of the reasons justifying his arrest.

5. Mr. Al-Abdulkareem was detained at Al Hayr prison, near Riyadh. It is reported that Mr. Al-Abdulkareem was able to contact his wife on two occasions via telephone since his arrest, and thus could inform her of his whereabouts.
6. According to the information received, Mr. Al-Abdulkareem was neither presented before a judge nor was he informed of the reasons justifying his detention or its duration. The source argues that these omissions violate international human rights law and domestic Saudi law, in particular article 36 of the Saudi Basic Law of Governance, article 35 of the Saudi Law on Criminal Procedure (Royal Decree No. M/39) and article 2 of the Law of Criminal Procedure.
7. It is further reported that, on 8 December 2010, a group of lawyers defending Mr. Al-Abdulkareem presented a request in his name calling for his fundamental rights guaranteed by national law to be respected, namely to ensure provisional release according to the Ministerial Decree No. 1900 and article 120 of the Saudi Law on Criminal Procedure, to allow access of legal counsel to Mr. Al-Abdulkareem in conformity with Article 39 of the Saudi Law on Criminal Procedure, and to ensure that Mr. Al-Abdulkareem was presented before a competent judicial authority in accordance with Article 14 of the Saudi Law on Criminal Procedure. It is reported that Mr. Al-Abdulkareem's lawyers did not receive any response from the authorities nor were they allowed to visit Mr. Al-Abdulkareem. Mr. Al-Abdulkareem was unable to contest the legality of his arrest and detention.
8. The source contends that Mr. Al-Abdulkareem's deprivation of liberty is a direct consequence of his pacific exercise of the right to freedom of opinion and expression as guaranteed under article 19 of the Universal Declaration of Human Rights. According to the information received, Mr. Al-Abdulkareem's arrest and detention is linked to the fact that he had published an article on his Facebook page which addressed the problem of succession and mechanisms for transfer of power in Saudi Arabia. It is reported that the same article is available on many Internet websites and generated debate in Saudi civil society concerning the organization of power in the Kingdom.

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 the current situation of Mr. Al-Abdulkareem and to clarify the legal provisions justifying his continued detention.
10. It is regretted that the Working Group had not received a response from the Government within the requested delays. The Working Group would have welcomed the cooperation of the Government of Saudi Arabia.
11. According to information received, Mr. Al-Abdulkareem was released from detention on the 15 February 2011. However, bearing in mind the consistent pattern of arrests and detention, in particular of human rights advocates and activists, the Working Group has decided in accordance with paragraph 17(a) to render an opinion on the arrest and detention of Mr. Al-Abdulkareem.

Discussion

12. The Working Group, on the basis of the information submitted to it, notes that Mr. Al-Abdulkareem, arrested on 5 December 2010, was at no point informed of any reasons justifying his detention nor were any formal charges brought against him. He was not presented before a judge nor had he recourse to legal counsel. According to the information received, no legal basis has thus been invoked justifying Mr. Al-Abdulkareem's arrest and detention. The only reason behind this action of the authorities was his membership in an association on civil and political rights and in the Arab Organization for Liberties and Good Governance, as well as his being chief editor of the *Journal of Congress of the Nation*.
13. The Working Group invites the attention of the Government of the Kingdom of Saudi Arabia to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal

guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

14. Moreover, the Working Group wishes to reiterate the principle, enunciated in Human Rights Council resolution 12/16, which calls on States, while noting that the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions, including on discussion of Government policies and political debate; reporting on human rights, Government activities and corruption in Government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

15. The Working Group notes with concern a consistent pattern of arrest and detention of persons exercising their basic human rights, in particular their 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). In the present case, it is manifest that Mr. Al-Abdulkareem's deprivation of liberty was solely linked to his opinions and activities as part of Saudi civil society organization.

16. The Working Group reiterates 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*,¹ which this Working Group follows in its opinions. Also of assistance is the judgment of the International Court of Justice in *Ahmadou Sadio Diallo*.² The constant jurisprudence of the rulings contained in the opinions of this Working Group, and of the other United Nations special-procedures mandate holders, dealing with full range of human rights treaties and customary international law, is yet another source.

Disposition

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

The continued detention of Mr. Al-Abdulkareem is arbitrary, falling under categories I, II and III of the Working Group being without legal basis, and in violation of articles 9, 10 and 19 of the Universal Declaration of Human Rights.

18. Consequent upon the opinion rendered and in view of the adverse effect of this wrongful arrest and detention on Mr. Al-Abdulkareem and his family, the Working Group requests the Government of Saudi Arabia to ensure appropriate reparation.

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

[Adopted on 2 September 2011]

¹See Human Rights Committee, general comment No. 29 on states of emergency (CCPR/C/21/Rev.1/Add.11), para. 11, 31 August 2000.

²*Republic of Guinea v. Democratic Republic of the Congo* of 30 November 2010 and, in particular, the discussions by Judge Cañado Trindade on arbitrariness in customary international law, which the Working Group adopted (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 Cañado Trindade, pp. 26-37, paras. 107-142.