

No. 42/2011 (Kingdom of Saudi Arabia)

Communication addressed to the Government on 25 February 2011

Concerning: Thamer Ben Abdelkarim Alkhodr

The State is a 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 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 No. 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. Alkhodr, born on XX February XXXX, is a law student at the University of Al-Qassim and advocate of human rights. Mr. Al-Khodr is a human rights defender and is the son of Dr. Abdelkarim Al-Khodr, Professor of Comparative Jurisprudence and founding member of the Association of Civil and Political Rights in Saudi Arabia.

4. It is reported that on the evening of 3 March 2010, Mr. Alkhodr was arrested by security agents while en route to his family residence. According to the information received, Mr. Alkhodr was not presented with an arrest warrant or any other judicial decision justifying his arrest and detention. For two days following his arrest, Mr. Alkhodr was allegedly held incommunicado. The day after his arrest, the same security agents searched Mr. Alkhodr's family residence, allegedly without a search warrant, confiscating personal items and computers belonging to Mr. Alkhodr's father.

5. Mr. Alkhodr was taken to Al Hayr prison on 5 March 2010, where he was detained in solitary confinement for three months and 16 days. During this period, he was deprived of any contact with the outside world and allegedly received death threats. Reportedly, Mr. Alkhodr was subjected to acts of torture and other ill-treatment and was hospitalized after losing consciousness.
6. On 21 June 2010, Mr. Alkhodr was transferred to Al-Qassim prison, where he is currently being detained. Reportedly, Mr. Alkhodr has been denied medical treatment despite his deteriorating health condition.
7. Following his transfer to Al-Qassim prison, Mr. Alkhodr's family's visits have been subject to harassment by security agents. For this reason they have suspended visits since 18 December 2010 and called on the authorities to stop the harassment. On several occasions, Mr. Alkhodr's family has contacted the Ministry of Interior. Despite these efforts, Mr. Alkhodr has not been informed to date of any reasons justifying his detention, nor has he been brought before a judge.
8. On 8 June 2011, the First Administrative Circuit Court in the Riyadh Board of Grievances (Diwan Al Mazalem) issued a verdict against the Directorate of General Investigations (DGI) in regard to Mr. Alkhodr's detention. The Court ruled that Mr. Alkhodr has been arbitrarily detained by DGI, and that he must be released.
9. The Court verdict was based on article 114 of the Saudi Criminal Procedure Law, which states: "[t]he detention shall end with the passage of five days, unless the Investigator sees fit to extend the detention period. In that case, he shall, prior to expiry of that period, refer the file to the Chairman of the branch of Bureau of Investigation and Prosecution in the relevant province so that he may issue an order for extending the period of the detention for a period or successive periods provided that they do not exceed in their aggregate forty days from the date of arrest, or otherwise release the accused. In cases that require detention for a longer period, the matter shall be referred to the Director of the Bureau of Investigation and Prosecution to issue an order that the arrest be extended for a period or successive periods none of which shall exceed thirty days and their aggregate shall not exceed six months from the date of arrest of the accused. Thereafter, the accused shall be directly transferred to the competent court, or be released". The decision rendered by the Court confirms that the detention of Mr. Alkhodr by DGI is outside the authority of domestic law.
10. The source maintains that under Saudi domestic law and international law Mr. Alkhodr's detention has had no legal basis since the date of his arrest. In accordance with article 36 of the Saudi Basic Law of Governance, "[t]he State shall provide security for all citizens and residents on its territories. No one may be confined, arrested or imprisoned without reference to the Law". Moreover, article 35 of the Saudi Law on Criminal Procedure (Royal Decree No. M/39) provides that "no person shall be arrested or detained except on the basis of order from the competent authority". This article also specifies that "(...) any such person (...) shall also be advised of the reasons of his detention (...)". Article 2 of the Law of Criminal Procedure declares that "detention (...) shall be for the period prescribed by the competent authority".
11. The source contends that Mr. Alkhodr's detention is in violation of well-established international human rights norms and is a direct consequence of his exercise of the right to freedom of opinion and expression as recognized in article 19 of the Universal Declaration of Human Rights. According to the information received, Mr. Alkhodr's arrest was a measure of reprisal vis-à-vis his father to prevent him from any activity relating to the protection of human rights and the holding of any political views. It is also alleged that the reasons for Mr. Alkhodr's detention may be linked to the fact that, together with his father, he had published an appeal dated 8 March 2008 to denounce the conditions of detention of political detainees in Saudi Arabia.
12. According to the information received, on 24 July 2011, Mr. Alkhodr's mother received a telephone call from his son, who informed him that he was again being tortured and ill-treated in prison. Mr. Alkhodr said that he has been subjected to many acts of torture, threatened in various ways and was being kept incommunicado in solitary confinement for long periods in his cell. Mr. Alkhodr also added that he is suffering from poor health and is prevented from receiving any form of medical care.
13. In the light of the foregoing, the source submits that Mr. Alkhodr's deprivation of liberty is arbitrary since it lacks any legal basis and appears to be a direct consequence of his exercise of the

right to freedom of opinion and expression. The source also concludes that Mr. Alkhodr's deprivation of liberty is in total or partial non-observance of the guarantees inherent to the right to a fair trial.

Response from the Government

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

15. It is regretted that the Working Group has not received a response from the Government within the requested period. Nor has the Working Group received a request from the Government for an extension for its reply. The Working Group would have welcomed the cooperation of the Government of Saudi Arabia.

Discussion

16. 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.

17. Having given consideration to the facts 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. Alkhodr's arrest and continued detention are closely linked to his stated position as a human rights advocate and supporter of constitutional reform in his country, together with the fact that he is the son of a human rights advocate. He has been held without being charged or offered legal counsel and, despite a court ruling ordering his immediate release, Mr. Alkhodr continues to be detained in disregard of a domestic judicial decision. The Working Group also takes note of allegations of ill-treatment, harassment and torture as well as the adverse impact of this treatment on Mr. Alkhodr's family. Finally, the Working Group notes the lack of opportunity to contest the legality of arrest and continued detention.

18. Mr. Alkhodr'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 a judicial release order supports the finding that no legal basis is available to justify Mr. Alkhodr's deprivation of liberty. The Working Group thus concludes that Mr. Alkhodr's deprivation of liberty is arbitrary, falling within category I of the categories applicable to the consideration of cases submitted to the Working Group.

19. Mr. Alkhodr's detention is also inconsistent with article 10 of the Universal Declaration, which states that everyone is entitled to a fair and public hearing by an independent and impartial tribunal. According to the submission received from the source, Mr. Alkhodr has been unable to contest the legality of his detention before a competent tribunal, has not had unimpeded access to his 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, falling under category III of the categories applicable to consideration of cases submitted to the Working Group.

20. 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, 37/2008, No. 2/2011, No. 10/2011 and No. 30/2011 of the Working Group). The case of Mr. Alkhodr is yet another instance of the emergence of a widespread failure in the Kingdom of Saudi Arabia to comply with basic human rights. On the basis of the elements available to it, the Working Group concludes that Mr. Alkhodr's detention is arbitrary, falling within category II of the categories applicable to the consideration of cases submitted to the Working Group.

21. The Working Group reiterates that customary international law prohibits arbitrary detention. It has been authoritatively recognized as a peremptory norm of international law or *jus cogens* (see Human Rights Committee 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 *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 rulings contained in the opinions of this Working Group, and of the other United Nations special procedures mandate holders is yet another source.

Disposition

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

The continued detention of Mr. Alkhodr is arbitrary, falling under categories I, II and III of the categories applicable to the consideration of cases submitted to the Working Group, being without legal basis and in violation of articles 9, 10 and 19 of the Universal Declaration of Human Rights.

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

24. In view of the adverse effect of this wrongful arrest and detention on Mr. Alkhodr and his family, the Working Group requests the Government of Saudi Arabia to provide appropriate reparation.

25. In view of the alleged ill-treatment of Mr. Alkhodr 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.

26. 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]

*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.