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Human Rights Council Working Group on Arbitrary Detention

Opinion adopted by the Working Group on Arbitrary Detention at its seventy-second session (20–29 April 2015)

No. 13/2015 (Saudi Arabia)

Communication addressed to the Government on 23 February 2015

concerning Majid Al Nassif

The Government has not replied to the communication.

The State is 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, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group transmitted the above-mentioned communication to the Government.

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 or her sentence or despite an amnesty law applicable to the detainee) (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 State 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 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; or disability or other status and is aimed at or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Majid Al Nassif, born on 7 November 1979, is a Saudi Arabian national. His national identity card bears the number 101094932 and was issued on 29 November 1994 by the Saudi Arabian authorities. He usually resides at Al-Awamiyah, Qatif, Saudi Arabia. He is a businessman and has also been active in organizing several peaceful protests and vigils. He has published extensively on the Internet, including on social media, to express his views regarding the exercise of civil and political rights in Saudi Arabia.

4. On 15 December 2012, at 11.00 a.m., Mr. Al Nassif was arrested at his office in Al-Awamiya, without a warrant for the arrest being produced. It is reported that masked members of the government security forces, disguised as civilians, forcibly entered his office, pointed their guns at him and proceeded to beat him on his face and neck. Thereafter, he was blindfolded and handcuffed and pushed into a car that was waiting outside the office building. Throughout the process of the arrest, the members of the security forces verbally insulted his Shia religious beliefs, including by calling him “Rafidhi” — a derogatory term for a person who self-identifies as Shia.

5. Mr. Al Nassif was taken to Dammam Administrative Detective Prison, where his possessions were confiscated and he was immediately placed in solitary confinement. A month later, in mid-January 2013, the authorities transferred him to the General Intelligence Prison in Dammam, where he was placed in solitary confinement for two and a half months, until the end of March 2013.

6. According to the source, the authorities subjected Mr. Al Nassif to psychological torture and ill-treatment in detention. They insulted him for his Shiite religious affiliation, he was continuously interrogated, he was denied the right to a lawyer, and he was coerced, through torture and threats, into confessing to crimes that he had not committed. Having signed such a confession, he was transferred to a mass prison ward at the General Intelligence Prison in Dammam, where he continues to be detained.

7. Mr. Al Nassif’s physical and mental health deteriorated in prison. He developed severe stress and anxiety and lost a significant amount of weight. It is reported that, during visits, the authorities mistreated his family and subjected them to unnecessary and humiliating inspection measures.

8. The first hearing in Mr. Al Nassif’s case was held two months after the date of his arrest. Only his lawyer and one of his relatives were permitted to attend the second of the court hearings, which was held on 25 February 2013. The following accusations were made against Mr. Al Nassif: calling for people to participate in demonstrations on Facebook and Twitter; being in contact with persons on a “wanted list”; membership in a text messaging group that monitors security vehicles in Al-Awamiya; financing terrorism; participating in demonstrations; providing transportation for persons on the “wanted list”; and trafficking. He was prosecuted pursuant to provisions of the Anti-Cyber Crime Law and the Anti-

Money Laundering Law. The public prosecutor requested 30 years of imprisonment, a fine of 1 million Saudi Arabian riyals, the confiscation of his car, and a travel ban.

9. On 4 February 2014, a third hearing was held, at which Mr. Al Nassif was sentenced to 17 years in prison, a fine of 100,000 Saudi Arabian riyals, the confiscation of his car, and a 17-year travel ban.

10. The source submits that the deprivation of liberty of Mr. Al Nassif is arbitrary and falls under categories II and III of the Working Group's defined categories of arbitrary detention. In its view, Mr. Al Nassif's deprivation of liberty results from the exercise of his right to freedom of expression, which is guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights. Furthermore, the charges against him indicate that the prosecution of Mr. Al Nassif is based on his role in sharing information on the Internet and through social media, where he commented on the exercise of civil and political rights under the current political regime in Saudi Arabia.

11. The source also submits that Mr. Al Nassif has not been guaranteed the international norms of due process and guarantees to a fair trial during the period of his deprivation of liberty, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. He was detained incommunicado for two months without access to a lawyer, before being brought before a judicial authority for the first time when he was officially charged. Furthermore, the source submits that the forced confessions obtained through torture while he was being held in solitary confinement were treated as compelling evidence for the purposes of convicting him.

12. The source affirms there are no domestic remedies available to challenge the arbitrariness and lawfulness of his detention.

Response from the Government

13. The Working Group addressed a communication to the Government of Saudi Arabia on 23 January 2015 and requested detailed information about the current situation of the detainee and a clarification of the legal provisions justifying his continued detention.

14. According to paragraph 15 of the Working Group's revised methods of work, a Government is requested to reply to a communication within 60 days of the date of its transmittal. However, in accordance with paragraph 16, the Working Group may grant a Government a further period of a maximum of one month in which to reply.

15. The Government of Saudi Arabia made a request for an extension of the time limit on 10 February 2015. Despite having had sufficient time to consider the communication, the Government has unfortunately not responded so far to the allegations contained in it.

Discussion

16. Despite the absence of any information from the Government, the Working Group considers that it is in a position to render an opinion on the case on the basis of the submissions that have been made in conformity with paragraph 16 of its revised methods of work.

17. In the present case, the Government has chosen not to rebut the *prima facie* reliable allegations submitted by the source. The Working Group has, in its jurisprudence,

established the ways in which it deals with evidentiary issues.¹ If the source has established a prima facie case of breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Hence, the Working Group bases its opinion on the prima facie case made out by the source.

18. The Working Group notes with concern the consistent pattern of arbitrary arrests and arbitrary detention in Saudi Arabia, as well as the silence on the part of the Government upon receiving allegations transmitted by the Working Group in regard to cases of arbitrary detention. The present case raises a grave concern, as it is yet another example demonstrating the existence of that pattern.²

19. The Working Group considers that Mr. Al Nassif was arrested and sentenced to prison for his activities in organizing several peaceful protests and vigils, and for his extensive publishing on the Internet with the purpose of expressing his views on the exercise of civil and political rights in Saudi Arabia.

20. Breaches of law by the State authorities are found throughout the administration of criminal justice in relation to this case, from arrest to detention to trials. On 15 December 2012, Mr. Al Nassif was arrested without a warrant, and without a notification of the charges laid against him, which should have been rendered promptly at the time of arrest. The arrest was made by masked members of the government security forces, disguised as civilians, who pointed their guns at him and proceeded to beat him on his face and neck. Throughout the process of the arrest, the forces verbally insulted his Shia religious beliefs, including by calling him “Rafidhi”.

21. Such an arrest practice is a clear violation of well-established international norms protecting human rights, including article 9 of the Universal Declaration of Human Rights, which provides that no one shall be subjected to arbitrary arrest, detention or exile. Article 9 of the Universal Declaration of Human Rights is a deeply entrenched human rights norm, reflected in both State practice and *opinio juris*.

22. The detention of the victim while under arrest has been prolonged and the trials have been delayed. Mr. Al Nassif was taken to Dammam Administrative Detective Prison and immediately placed in solitary confinement for a month, and then, in mid-January 2013, he was transferred to the General Intelligence Prison in Dammam, again in solitary confinement, for a further two and a half months, until the end of March 2013. During this process, Majid Al Nassif was detained incommunicado without access to a lawyer, and was not notified of the charges against him until he was eventually brought before a judicial authority.

23. The Working Group finds numerous violations of the international law protecting human rights. The pretrial incommunicado detention that lasted longer than two months constitutes a violation of the part of the well-established international law on detention that provides that pretrial detention should be an exception and should be as short as possible.³ In addition, the Working Group emphasized in its 2011 annual report (A/HRC/19/57, paras. 48–58) that pretrial detention should be an exceptional measure.

¹ See, for example, A/HRC/19/57, para. 68.

² In many of its opinions, the Working Group has noted 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 Nos. 22/2008, 36/2008, 37/2008, 2/2011, 10/2011, 30/2011, 42/2011 and 45/2013.

³ See, for example, CCPR/C/107/D/1787/2008, paras. 7.3 and 7.4.

24. Mr. Al Nassif continued to be subjected to psychological torture and ill-treatment while in detention, which included verbal insults for his Shiite religious affiliation, incessant interrogations, denial of the right to a lawyer, and coercion into making false self-incriminating confessions. The forced confessions extracted through torture while he was in solitary confinement were treated as compelling evidence for the purposes of convicting him and imposing on him an excessive sentence of 17 years' imprisonment. His physical and mental health also deteriorated in prison. The authorities mistreated his family and subjected them to unnecessary and humiliating inspection measures during visits.

25. The Working Group finds that there is a flagrant violation of the right to a fair trial — a right which is well established in international law, especially under articles 10 and 11 of the Universal Declaration of Human Rights. Specifically, article 10 of the Universal Declaration of Human Rights stipulates that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. The gravity of such a violation qualifies it for category III of the Working Group's defined categories of arbitrary detention.

26. In addition, the Working Group finds that the deprivation of liberty of Mr. Al Nassif is arbitrary and falls under category II, as it results from the exercise of his rights to free expression, peaceful assembly and association, which are guaranteed by articles 19 and 20 (1) of the Universal Declaration of Human Rights.

Disposition

27. In the light of the preceding paragraphs, the Working Group on Arbitrary Detention renders the following opinion:

The arrest and detention of Mr. Al Nassif, conducted in particular violation of articles 9, 10 and 11 of the Universal Declaration of Human Rights, is arbitrary under category III of the methods of work of the Working Group.

The aforementioned deprivation of liberty, conducted in violation of articles 19 and 20 (1) of the Universal Declaration of Human Rights, is also arbitrary under category II of the methods of work of the Working Group.

28. Consequent upon the opinion rendered, the Working Group requests the Government, without delay, to take the necessary steps to remedy the situation of Mr. Al Nassif and bring it into conformity with the standards and principles enshrined in the Universal Declaration of Human Rights and the relevant international norms.

29. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be the immediate release of the detainee and the provision of reparation for the harm caused by the grievances.

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

31. In the light of the allegations of torture and other ill-treatment inflicted upon the detainee, the Working Group considers it appropriate, in accordance with article 33 (a) of its revised methods of work, to refer these allegations to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

[Adopted on 27 April 2015]