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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighth session, 19-28 April 2017

#### Opinion No. 10/2017 concerning Salim Abdullah Hussain Abu Abdullah (Saudi Arabia)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 16 December 2016 the Working Group transmitted to the Government of Saudi Arabia a communication concerning Salim Abdullah Hussain Abu Abdullah. The Government has not replied to the communication in a timely manner. The State is not a party to the International Covenant on Civil and Political Rights.

3. 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 him or her) (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 Covenant (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 international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).



## Submissions

### *Communication from the source*

4. Salim Abdullah Hussain Abu Abdullah, born on 2 November 1984, is a citizen of Saudi Arabia who normally resides in the village of Al-Awamiyah, in Al-Qatif region.
5. On 11 December 2014, Mr. Abu Abdullah was in a car with two other individuals when the car was stopped in a small street near the Centrepont Mall of Al-Qatif. He was subsequently arrested by members of the intelligence forces (the Mabathith, part of the Ministry of the Interior) who were wearing civilian clothes. At the time of the arrest, he was not presented with an arrest warrant nor was he provided with a reason for the arrest. Mr. Abu Abdullah was severely beaten and shot a number of times in the course of the arrest.
6. Following the arrest, Mr. Abu Abdullah was taken to the military hospital of Dhahran, where he stayed for only two and a half days before being transferred to Dammam Central Prison. Because his stay at the hospital was so short, he did not receive the necessary medical treatment.
7. During the first six months of his detention, Mr. Abu Abdullah was held incommunicado. He was denied any contact with the outside world and placed in solitary confinement. After the initial six months, he was again placed in solitary confinement and only allowed rare contact with his family. At no stage was he allowed any contact with a lawyer.
8. Mr. Abu Abdullah was subjected to severe psychological and physical torture while interrogated during the first six months of detention. According to the information received, he was electrocuted, burned with cigarettes, beaten with cables and sticks all over his body and stomped and stepped on; in addition, his head was banged against the walls and he endured waterboarding. At one point, while being tortured, Mr. Abu Abdullah lost consciousness. He was sent to the hospital where he received very minimum treatment.
9. Mr. Abu Abdullah was coerced, under torture, to confess to crimes he did not commit and forced to sign a statement that he was not allowed to read beforehand. Concern has been raised by the source that the confession obtained under duress could be used later as evidence against him in court.
10. In addition, some family members of Mr. Abu Abdullah have reportedly been intimidated and threatened by members of the security services.
11. The source has expressed grave concern about the medical condition of Mr. Abu Abdullah, whose body reportedly still bears signs of torture. His wounds, particularly the bone fractures, are healing slowly owing to the lack of appropriate medical treatment and the continued torture he has been subjected to. Mr. Abu Abdullah has become very weak and suffers from severe back pain, which prevents him from sleeping or even sitting. His vision and hearing have deteriorated and he also suffers from malnutrition.
12. After almost two years of detention, Mr. Abu Abdullah still has not been brought before a judicial authority nor has he been informed of the reason of his arrest and detention.
13. The source submits that the deprivation of liberty of Mr. Abu Abdullah is arbitrary and falls under categories I and III of the categories defined in the methods of work of the Working Group. With regard to category I, in the view of the source, Mr. Abu Abdullah has been arrested and detained outside the protection of the rule of law as he was arrested by intelligence services, which are not subject to any oversight. For over two years since the time of his arrest on 11 December 2014, Mr. Abu Abdullah has not been informed of the reason or the legal basis of his arrest and detention; no charge whatsoever has been brought against him. The source argues that the arrest and detention of Mr. Abu Abdullah without any legal basis violates certain provisions of Saudi domestic law, including article 36 of the Basic Law of Governance and articles 35 and 114 of the Law of Criminal Procedure (Royal Decree No. M/39). The source adds that it is also in violation of article 9 of the Universal Declaration of Human Rights.

14. The source submits that Mr. Abu Abdullah has not been guaranteed the international norms relating to the right to a fair trial during the period of his deprivation of liberty, in violation of articles 10 and 11 of the Universal Declaration of Human Rights. The source argues that Mr. Abu Abdullah was arrested by personnel of the intelligence forces in civilian clothes who did not present a warrant at the time of the arrest nor did they explain the reasons of the arrest; he was subjected to six months of incommunicado detention and to torture, including in the form of solitary confinement; he was coerced into make confessions; he has not been allowed access to any lawyer during interrogations nor at any stage of his detention; and, two years after his arrest, he still has not been brought before a court so that a decision on the lawfulness of his detention could be taken.

#### *Response from the Government*

15. On 16 December 2016, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 14 February 2017, detailed information about the current situation of Mr. Abu Abdullah and any comments on the source's allegations.

16. On 22 December 2016, the Working Group received a request from the Government for a one-month extension of the deadline in order to provide the Working Group with a substantial reply. While the Working Group requested the Government on 25 January 2017 to provide the reasons justifying the request for extension, the Government replied on 26 January 2017 without specifying the reasons. The Working Group thus concluded that the request for extension did not meet the criteria set out in paragraph 16 of its methods of work and therefore did not grant the extension.

17. The Working Group notes that the Government submitted a reply on 15 May 2017. However, the Working Group cannot accept the reply as if it had been presented within the time limit.

#### **Discussion**

18. In the absence of a timely response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

19. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for 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 (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

20. The Working Group notes with concern the consistent pattern of arbitrary arrests and arbitrary detention in Saudi Arabia.<sup>1</sup> The present case raises grave concerns, as it is yet another example of the existence of that pattern.

21. The source has alleged and the Government of Saudi Arabia has not challenged the allegation that Mr. Abu Abdullah was arrested by plainclothes intelligence forces of the Ministry of the Interior on 11 December 2014. At the time of the arrest, he was not given any reason for his arrest nor was he presented with an arrest warrant. In fact, to date, Mr. Abu Abdullah remains in detention without having been formally charged and without having been given any reason for his continued detention.

22. The Working Group wishes to emphasize that prohibition of arbitrary detention bears an absolute character; it is in fact a peremptory norm of international law and therefore binding upon all States irrespective of their treaty obligations (see A/HRC/22/44, paras. 37-75, and A/HRC/30/37, para. 11). As the International Court of Justice has stated,

<sup>1</sup> See, for example, opinions No. 22/2008, No. 36/2008, No. 37/2008, No. 2/2011, No. 10/2011, No. 30/2011, No. 42/2011, No. 45/2013, No. 32/2014, No. 13/2015, No. 52/2016 and No. 61/2016.

“wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights”.<sup>2</sup>

23. The right to liberty and security of the person, enshrined in article 3 of the Universal Declaration of Human Rights, applies to everyone and is further guaranteed through article 9 of the Universal Declaration of Human Rights, which prohibits arbitrary detention. As stated in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, deprivation of liberty is regarded as unlawful when it is not on such grounds and in accordance with procedures established by law (see A/HRC/30/37, para. 12). However, in order to ascertain such legal basis, the authorities must present charges when a person is arrested and detained. That has not happened in the present case. The Working Group concludes, therefore, that the arrest of Mr. Abu Abdullah on 11 December 2014 and his continued detention since that date constitutes arbitrary detention (category I) as it is clearly impossible to invoke any legal basis justifying his deprivation of liberty.

24. Furthermore, since his arrest on 11 December 2014, Mr. Abu Abdullah has not been brought before a judicial authority and has therefore been unable to challenge the legality of his continued detention. As stated in the above-mentioned Basic Principles, the right to challenge the lawfulness of detention before a court is a self-standing human right and a judicial remedy that is essential for preserving legality in a democratic society (see A/HRC/30/37, paras. 2-3). It is a right that is also enshrined in articles 10 and 11 of the Universal Declaration of Human Rights. In the present case, Mr. Abu Abdullah has been denied that right continuously since 11 December 2014.

25. Moreover, the source has alleged, and the Government of Saudi Arabia has not challenged the allegation, that Mr. Abu Abdullah was held in incommunicado detention for six months; that during that period he was subjected to the most appalling treatment, which included being electrocuted, burned with cigarettes, beaten with cables and sticks all over his body and stomped and stepped on; in addition, his head was banged against the walls and he endured waterboarding. He was forced to confess to crimes and sign such confessions.

26. The Working Group wishes to express concern about the fact that Mr. Abu Abdullah was held in incommunicado detention for six months. The Working Group, in its practice, has consistently argued that holding persons incommunicado breaches the right to challenge the lawfulness of detention before a judge.<sup>3</sup> Articles 10 and 11 of the Universal Declaration of Human Rights also confirm the impermissibility of incommunicado detention. Furthermore: the Committee against Torture has made it clear that incommunicado detention creates conditions that lead to violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see, for example, A/54/44, para. 182 (a)); the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has consistently urged States to declare incommunicado detention illegal (see, for example, A/54/426, para. 42, and A/HRC/13/39/Add.5, para. 156); and the Human Rights Committee, in paragraph 35 of its general comment No. 35 (2014) on liberty and security of person, has argued that incommunicado detention that prevents prompt presentation before a judge inherently violates article 9 (3) of the International Covenant on Civil and Political Rights.

27. The Working Group is particularly concerned about the allegations of torture and ill-treatment and extraction of confessions made by the source, which have not been challenged by the Government of Saudi Arabia. The treatment described reveals a prima facie breach of the absolute prohibition of torture, which is a peremptory norm of international law, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, principle 6 of the Body of Principles for the Protection of All

<sup>2</sup> *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 3, at p. 42, para. 91.

<sup>3</sup> See, for example, opinions No. 56/2016 and No. 53/2016.

Persons under Any Form of Detention or Imprisonment and the rule 1 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The Working Group shall refer the present case to the Special Rapporteur on torture for further consideration.

28. Furthermore, the denial of assistance by a lawyer constitutes a violation of principle 17.1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and of the principle 9 of the Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. The subsequent failure to provide Mr. Abu Abdullah with medication and treatment for the very serious health conditions that he suffers from is a violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), in particular its rules 24, 25, 27 and 30.

29. The Working Group therefore concludes that the 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 Saudi Arabia is of such gravity as to give the deprivation of liberty of Mr. Abu Abdullah an arbitrary character (category III).

30. The Working Group takes this opportunity to invite the Government of Saudi Arabia to ratify the International Covenant on Civil and Political Rights.

### **Disposition**

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

The deprivation of liberty of Salim Abdullah Hussain Abu Abdullah, being in contravention of articles 3, 9, 10 and 11 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I and III.

32. The Working Group requests the Government of Saudi Arabia to take the steps necessary to remedy the situation of Mr. Abu Abdullah without delay and bring it into conformity with the relevant international norms on detention, including those set out in the Universal Declaration of Human Rights.

33. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Abu Abdullah immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

34. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on torture.

### **Follow-up procedure**

35. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Abu Abdullah has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Abu Abdullah;
- (c) Whether an investigation has been conducted into the violation of Mr. Abu Abdullah's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Saudi Arabia with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

36. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and

whether further technical assistance is required, for example, through a visit by the Working Group.

37. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

38. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>4</sup>

*[Adopted on 20 April 2017]*

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<sup>4</sup> See Human Rights Council resolution 33/30, paras. 3 and 7.