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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012

#### No. 22/2012 (Saudi Arabia)

#### Communication addressed to the Government on 23 March 2012

Concerning Rabie Mohamed Abdelmaksoud, Jumaa Abdallah Abusraie, Awad Al Sayed Zaky Abu Yahya, Sameh Anwar Ahmed Al Byasi, Abu Al Aineen Abdallah Mohamed Esaa, Youssef Ashmawy, Ahmed Mohamed Al Said Al Hassan, Khaled Mohamed Moussa Omar Hendom, Abdullah Mamdouh Zaki Demerdash, Mustafa Ahmed Ahmed El Baradei, Hassan Anwar Hassan Ibrahim, Abdul Rahman Mahmoud Ibrahim Zeid

**The Government did not reply to the communication.**

#### **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, 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 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), 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 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 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 which aims towards or can result in ignoring the equality of human rights (category V).

## **Submissions**

### *Communication from the source*

3. The cases summarized hereafter have been reported to the Working Group on Arbitrary Detention as follows.

4. Rabie Mohamed Abdelmaksoud, an Egyptian national, born in 1973 in Dakahlia governorate, Egypt, usually residing in Mecca, is a baker.

5. Mr. Abdelmaksoud was arrested on 7 April 2010 and placed in detention in Duba prison for the first three months, before being transferred to Tabuk prison on 5 July 2010. After having been transferred to Tabuk prison, Mr. Abdelmaksoud was accused of being in possession of unlicensed medication. To date, Mr. Abdelmaksoud has not been tried. Mr. Abdelmaksoud has been able to contact his family, whom are in a critical situation as he is the sole breadwinner.

6. Jumaa Abdallah Abusraie, an Egyptian national born in 1973, married with three children, works as a car mechanic in Saudi Arabia. He usually resides at the Al Kawafil's company headquarters in Mecca.

7. Mr. Abusraie was arrested on 29 May 2010 and to date has not officially been charged or brought before a judge. Mr. Abusraie was first detained in Duba prison and transferred to Tabuk prison on 24 July 2010. His detention is allegedly linked to being in possession of medication banned in Saudi Arabia.

8. Mr. Awad Al Sayed Zaky Abu Yahya, born in 1982, usually residing in Gharbia governorate, Egypt, works as a carpenter in Saudi Arabia.

9. He was arrested on 6 April 2010 and placed in detention in Duba prison. Three months later, Mr. Yahya was transferred to Tabuk prison. Since the date of his arrest, he has not been charged or brought to trial. Since March 2011, contact with his family has been cut off. His detention is allegedly linked to being in possession of medication banned in Saudi Arabia.

10. Mr. Sameh Anwar Ahmed Al Byasi, born in 1977, married with one child, usually residing in Dakahlia governorate, Egypt, works as a carpenter at the Bin Laden Company.

11. On 2 September 2010, Mr. Al Byasi was arrested because he was allegedly carrying 40 illicit pills to Saudi Arabia. He was detained for three months in Duba prison before being transferred to Tabuk prison where he remains. To date, Mr. Al Byasi has not been officially charged or brought before a judge.

12. Abu Al Aineen Abdallah Mohamed Esaa, born in 1973, married and father of three children, usually residing in Gharbia governorate, Egypt, works as a doctor.

13. Mr. Esaa was arrested on 5 August 2010. He was found in possession of illicit medication that was allegedly for his personal use. Mr. Esaa suffers from herniated (slipped) disks, torn ligaments and damaged nerves on his knees. Mr. Esaa was taken to Duba prison. On 25 September 2010, he was transferred to the Tabuk Province General Prison. While in detention, Mr. Esaa was allegedly examined by a doctor who diagnosed him with the same health problems and gave him the same medication for which he was reportedly arrested. Since his arrest, Mr. Esaa has not been brought before a judge.

14. Youssef Ashmawy, born in 1985 and usually residing in Giza, Egypt, works as a computer programmer and designer.

15. On 24 August 2008, Mr. Ashmawy was heading toward the Riyadh Traffic Department to obtain his driving licence when he was arrested by agents of the General Intelligence Directorate. At the time of his arrest he was allegedly trying to enter a zone restricted to traffic. He was placed in detention in Riyadh under the authority of the General Intelligence Presidency, where he was allegedly subjected to torture and other ill-treatment. On 26 December 2008, he was transferred to Abha prison where he spent a year, including six months in solitary confinement. Subsequently, Mr. Ashmawy was taken to the Al Hayr State Security detention centre, where he remains. He was kept incommunicado for seven months at Al Hayr prison and also spent long periods in solitary confinement.

16. To date, Mr. Ashmawy has not been officially charged or brought before a judge. On 24 September 2009, a complaint was filed on his behalf before the Diwan al Madhalim Administrative Court.

17. Ahmed Mohamed Al Said Al Hassan, born in Egypt in 1979, married and father of four children, usually residing in Hafr Al-Batin, Saudi Arabia, works as an accountant.

18. On 7 June 2009, Mr. Al Hassan was arrested in Hafr Al-Batin, in the Dammam region, at his home by agents of the General Intelligence Directorate, who did not present any arrest warrant and who were wearing civilian uniforms. The agents searched his house and then took Mr. Al Hassan to the Dammam Security Prison where he allegedly remains under the authority of the General Intelligence service. Mr. Al Hassan was kept incommunicado. He has not been charged since his arrest and no investigation has been opened against him.

19. Khaled Mohamed Moussa Omar Hendom born in 1971, married and father of four children, usually residing in Cairo, Egypt, works at the Hajj and Umrah office in Saudi Arabia.

20. On 10 November 2004, Mr. Hendom was arrested in Riyadh, in the Al Batha area, by General Intelligence agents. The arrest took place at his workplace after which his house was searched. Following his arrest, Mr. Hendom was kept incommunicado detention from 10 November 2004 to 2 November 2005, at the General Intelligence headquarters in Riyadh. During this time he was allegedly tortured and ill-treated. He was then transferred to Alisha prison in Riyadh where he spent another three years, before being transferred to a prison in Abha, where he allegedly remains. Reportedly, Mr. Hendom has been detained for seven years without being officially charged or brought before a judge.

21. Abdullah Mamdouh Zaki Demerdash, born in 1982, married and usually residing in Cairo, Egypt, works for the Chamblor Gear Company in Khobar.

22. Mr. Demerdash was arrested on 3 June 2008 in Dammam at his office by General Intelligence agents. His house was searched and he was taken to Dammam Security Prison where he remains under the authority of the General Intelligence service. Mr. Demerdash is

allegedly not allowed visits from his family more than once a year. To date, Mr. Demerdash has not officially been charged or brought before a judge.

23. Mustafa Ahmed Ahmed El Baradei, usually residing in Gharbia governorate, Egypt, works at the Mawasem library in Abha, Saudi Arabia.

24. On 27 June 2009, Mr. El Baradei was arrested at his office by agents of the General Intelligence service wearing civilian clothes. It is reported that Mr. El Baradei was not presented with any arrest warrant. He was taken to Abha Security Prison under the authority of the General Intelligence. He has been held in incommunicado detention since 27 June 2009 and has allegedly been subjected to ill-treatment. To date, Mr. El Baradei has not been officially charged or brought before a judge.

25. Hassan Anwar Hassan Ibrahim, born in 1977, usually residing in Nour, Egypt, was arrested in Saudi Arabia on 1 January 2008. The reason for his arrest was an alleged failure to respect the terms of his visa for the Hajj. The arrest took place when Mr. Ibrahim was catching a steamship from Jeddah, Saudi Arabia back to Egypt. He was arrested by agents of the General Investigation Directorate. The agents were in civilian clothing and did not present him with an arrest warrant.

26. Mr. Ibrahim was taken to Dhahban prison in Jeddah where he remained until 3 January 2009. He was then transferred to Al Asir prison where he stayed until 1 December 2009. Subsequently, Mr. Ibrahim was transferred back to Dhahban prison, where he stayed until 1 January 2010. He is currently detained at the Abha Security Prison, under the authority of the General Investigation Directorate.

27. While in detention in Dhahban prison, Mr. Ibrahim was reportedly kept in solitary confinement for about six months in a small and unventilated cell. He was also detained incommunicado at the Abha Security Prison for an extended period of time. Since he was transferred to the Abha Security prison, he has been allowed contact with his family on a weekly basis. Mr. Ibrahim has not been officially charged or brought before a judge.

28. Abdul Rahman Mahmoud Ibrahim Zeid, Egyptian national, usually residing in As-Suwaidi district, Riyadh, was arrested at his residence on 22 April 2010. Reportedly, the forces in charge of the arrest belonged to the General Intelligence service. They allegedly failed to show any arrest warrant. Mr. Zeid was taken to Al Hayr prison where he was held incommunicado detention and in solitary confinement from the date of his arrest until 2 February 2011. On the latter date, he was transferred to Abha Security Prison, under the authority of the General Intelligence Directorate, where he remains. It is reported that during his incommunicado detention, Mr. Zeid was forced to sign documents without knowing their content. To date, Mr. Zeid has not been brought before a judge or officially charged. His family is suffering the consequences of his detention as they have allegedly been ill-treated and had their passports seized and residence permits withdrawn by the authorities.

*Source's contention regarding the arbitrary character of the deprivation of liberty*

29. The source submits that the detention of the above 12 Egyptian nationals is arbitrary and is deprived of any legal basis. None of these individuals has been officially charged, many after years being held in detention. Additionally, these individuals have never been brought before a judge or a competent authority to allow them to contest the legality of their arrest and detention. The source contends that such treatment is in breach of articles 9 and 10 of the Universal Declaration of Human Rights and article 114 of the Saudi Law of Criminal Procedure. The latter provides that a pretrial detention "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 source maintains that the deprivation of liberty of the above persons is also in violation of articles 2 and 35 of the

Saudi Law of Criminal Procedure (prohibition of arbitrary arrest and detention) and articles 101 and 116 (the right to be informed of the charges).

*Response from the Government*

30. The Working Group transmitted the above allegations to the Government of the Kingdom of Saudi Arabia requesting that it to provide, in its reply, detailed information about the current situation of Rabie Mohamed Abdelmaksoud, Jumaa Abdallah Abusraie, Awad Al Sayed Zaky Abu Yahya, Sameh Anwar Ahmed Al Byasi, Abu Al Aineen Abdallah Mohamed Esaa, Youssef Ashmawy, Ahmed Mohamed Al Said Al Hassan, Khaled Mohamed Moussa Omar Hendom, Abdullah Mamdouh Zaki Demerdash, Mustafa Ahmed Ahmed El Baradei, Hassan Anwar Hassan Ibrahim, Abdul Rahman Mahmoud Ibrahim Zeid, and to clarify the legal provisions justifying their continued detention.

31. The Working Group regrets that it has not received a response from the Government.

**Discussion**

32. In the absence of a response from the Government and in accordance with its methods of work, the Working Group is able to render an opinion in the light of the information submitted to it.

33. Having studied and analysed the material before it, the Working Group considers it appropriate to group these submissions, based on similarities in the arrest and detention of these individuals, and address each group separately as follows.

34. Regarding the first group of five detainees comprising of Messrs Abdelmaksoud, Abusraie, Yahya, Al Byasi and Esaa, these individuals were arrested between April 2010 and September 2010 from the port of Duba in the Tabuk province upon their arrival by boat from Egypt. All five were allegedly searched and found to be in possession of medication banned in Saudi Arabia and arrested without warrants by uniformed agents of the Saudi General Directorate of Investigation.

35. Despite the fact that a period of over 24 months has elapsed between the arrest and detention of these five individuals, they have never been formally charged or brought before a judge to stand trial.

36. The source states that all these detainees are the sole breadwinners of their respective families, who are suffering as a consequence of the detention.

37. The second group of detainees consists of four Egyptian nationals, Messrs. Ashmawy, Al Hassan, Hendom and Demerdash, who were allegedly detained between 2004 and 2009 by plain-clothed agents of the Saudi General Intelligence Directorate, without presenting a warrant. They have not been charged or presented before a judge to this day.

38. The last three individuals, Messrs. El Baradei, Ibrahim and Zeid were detained between 2008 and 2010, without arrest warrants and charges regarding the nature of their alleged offence/s. In these cases, plain-clothed agents of the General Intelligence Directorate undertook the arrests.

39. From the information provided by the source (and not contradicted due to the absence of the Government's response), the Working Group notes a range of violations of national and international human rights obligations. At the international human rights level, article 9 of the Universal Declaration of Human Rights states that, "no one shall be subjected to arbitrary arrest, detention or exile". Article 10 declares 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". Both the Human Rights Committee and the former Commission on Human Rights have clarified that the fundamental aspect of such rights consists in the possibility of contesting the legality of one's detention. Reference is made to resolution 1992/35 adopted by the former Commission on Human Rights on 28 February 1992, which called on all States that have not yet done so, to establish a procedure such as habeas corpus in order for all persons deprived of their liberty to institute proceedings before a court so that the court may decide without delay the lawfulness of his or her detention; and order his or her release if the detention is found to be unlawful. In the cases in hand, these provisions of human rights law have not been adhered to.

40. In addition to being detained without charge, without being presented before a judge, Messrs. Ashmawy, Hendom, Ibrahim and Zeid were also allegedly subjected to torture, ill-treatment, or inhuman behaviour which is a violation of, inter alia, the Universal Declaration of Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Saudi Arabia is a party.

41. At the domestic level, it seems that a number of provisions of the Saudi laws have been contravened. Article 114 of the Saudi Law on Criminal Procedure provides that, if the accused is to be detained in pretrial detention, it is to last a maximum of five days, renewable up to a total of six months. Yet the pretrial detention of all 12 detainees well exceeds this period.

42. In accordance with article 36 of the Saudi Basic Law of Governance, "the 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". To date, none of the 12 detainees has been brought before a competent authority or brought to trial.

43. The Working Group notes with concern that a consistent pattern of arbitrary arrests and detention is emerging in Saudi Arabia as well as a silence on the part of the Government by not availing the opportunity of responding to allegations put forth by the Working Group in cases alleging arbitrary detention presented to this group.<sup>1</sup> It is therefore pertinent to mention that the Working Group sees the present case as a matter of grave concern since basic human rights are not being respected.

44. The Working Group reiterates that the prohibition of arbitrary detention is part and parcel of customary international law.<sup>2</sup> This draws upon the established practice of human rights bodies regarding the prohibition of arbitrary detention as a norm of customary international law, authoritatively recognized as a peremptory norm of international law or *jus cogens*.<sup>3</sup> This is the approach which this Working Group follows in its opinions. Article 9 of the Universal Declaration of Human Rights prohibiting arbitrary arrest and detention is

<sup>1</sup> See e.g. the Working Group's opinions on Saudi Arabia No. 22/2008; No. 36/2008; No. 37/2008; No. 21/2009; No. 10/2011; No. 11/2011; No. 17/2011; No. 18/2011; No. 19/2011; No. 30/2011; No. 31/2011; No. 33/2011; No. 41/2011; No. 42/2011; No. 43/2011 and No. 8/2012. Available from <http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx>.

<sup>2</sup> See e.g. opinions No. 15/2011 (China) and No. 16/2011 (China).

<sup>3</sup> See, inter alia, the established practice of the United Nations as expressed by the Human Rights Committee in its general comment No. 29 (2001) on derogation during a state of emergency, para. 11.

a deeply entrenched human rights norm reflected in both practice and opinio juris of States.<sup>4</sup>

### Disposition

45. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Rabie Mohamed Abdelmaksoud, Jumaa Abdallah Abusraie, Awad Al Sayed Zaky Abu Yahya, Sameh Anwar Ahmed Al Byasi, Abu Al Aineen Abdallah Mohamed Esaa, Youssef Ashmawy, Ahmed Mohamed Al Said Al Hassan, Khaled Mohamed Moussa Omar Hendom, Abdullah Mamdouh Zaki Demerdash, Mustafa Ahmed Ahmed El Baradei, Hassan Anwar Hassan Ibrahim and Abdul Rahman Mahmoud Ibrahim Zeid is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights; it falls under categories I and III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

46. The Working Group requests the Government of Saudi Arabia to release the above-mentioned persons and bring their situation into conformity with the requirements of international human rights law. To this end, if the case merits it, the Working Group in particular requests the Government to ensure a fair, impartial trial respecting all the guarantees thereof and enshrined in domestic Saudi and international human rights law.

47. Consequent upon the opinion rendered and in view of the adverse effects of the wrongful arrest and detention on the above-mentioned persons and their families, the Working Group requests the Government to ensure appropriate reparation.

48. The Working Group also requests the Government to ensure protection against further ill-treatment of the detainees and initiate an impartial and effective investigation into the allegations of torture and ill-treatment.

49. The Working Group recalls the Human Rights Council's call for all States to take into account the Working Group's views and, where necessary, to take the appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty. States are also invited to extend their cooperation to the Working Group's requests for information and to give due consideration to the recommendations it has made.<sup>5</sup>

*[Adopted on 28 August 2012]*

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<sup>4</sup> See, inter alia, International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment of 30 November 2010, *I.C.J. Reports 2010*, para. 79; Separate Opinion of Judge Cañado Trindade, pp. 26-37, paras. 107-142.

<sup>5</sup> Human Rights Council resolution 15/18 on arbitrary detention, paras. 3, 4 (a) and 9.