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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 14–23 November 2012

No. 53/2012 (Saudi Arabia)

Communication addressed to the Government on 9 July 2012

Concerning Nazir Hamza Magid Al Maged

The Government did not reply to the communication within the 60-day deadline.

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 that 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 case summarized hereafter has been reported to the Working Group on Arbitrary Detention as follows:

4. **Mr. Nazir Hamza Magid Al Maged** (hereinafter Mr. Al Maged), born on 30 April 1977, a citizen of Saudi Arabia, holder of identity card number 1012124283, usually residing at Al Qatif, El Bahr area, House No. 3333, is a laboratory technician and teacher.

5. On 17 April 2011, at approximately 10 a.m., Mr. Al Maged was arrested at the Gabal El Noor School where he works, located in Al-Khobar, Eastern Province, Saudi Arabia. The officers conducting his arrest were in plain clothes and belonged to the General Investigation Police Unit. They failed to present an arrest warrant. Subsequently, the officers searched his house and confiscated Mr. Al Maged's passport, books, videotapes, photos of religious figures, computer and hard disk.

6. For the first hours of his arrest, Mr. Al Maged was taken to the General Investigation Police Unit in Al-Khobar, Saudi Arabia. On 18 April 2011, he was transferred to the General Investigation Police in Dammam, Saudi Arabia. Until 10 September 2011, Mr. Al Maged was kept in solitary confinement. In April 2012, on the anniversary of his one year of detention without any legal basis, he went on a hunger strike for 20 days.

7. To date, Mr. Al Maged has not been charged nor informed of the reasons for his detention. The source contends that Mr. Al Maged's detention is arbitrary, lacking any legal basis, any order from the public prosecution or any other judicial decision authorizing his arrest and detention. Mr. Al Maged has not had access to a lawyer or legal assistance and has not been produced before a judge. The source submits that such treatment runs contrary to article 9 of the Universal Declaration of Human Rights (UDHR) and article 114 of the Code of Criminal Procedure of Saudi Arabia.

8. Mr. Al Maged was reportedly only interrogated by police officers regarding his activities in protest demonstrations, and was asked to describe the slogans that were chanted during these protests. Mr. Al Maged had participated in the protests in March 2011 in Al-Qatif and has often reported to Reuters News Agency about the number of protesters in the demonstrations and about the slogans chanted. Mr. Al Maged was also questioned about his Shiite background and whether he had contacted any media or uploaded or sent any videos to the media or Internet.

9. The source argues that Mr. Al Maged's arrest aims solely at sanctioning his peaceful exercise of the rights to freedom of expression and assembly. Mr. Al Maged was allegedly arrested because of his participation in the protests of March 2011 and his communications to the media about the events and articles he published in support of the right to freedom of peaceful assembly. In the light of the foregoing, the source submits that Mr. Al Maged's detention is in violation of articles 19 and 20 of the UDHR.

10. Mr. Al Maged's wife addressed letters to Mohamed Bin Fahd, the Emir of the Eastern Province of Saudi Arabia. She met with the Emir and Sheikh Wagih Al Awhami. Both have promised Mr. Al Maged's release. Mr. Al Maged's wife also met officials from the Ministry of Interior who informed her that he was accused of inciting protests, participating in protests and speaking to foreign media. Mr. Al Maged's family cannot undertake any further legal or administrative remedies against his detention as he is kept in detention without charge and without being produced before a judge.

Response from the Government

11. The Working Group transmitted the above allegations to the Government of Saudi Arabia on 9 July 2012 requesting that it provide, in its reply, detailed information about the current situation of Mr. Nazir Hamza Magid Al Maged and the legal provisions justifying his continued detention.

12. It is regretted that the Government did not respond to the communication.

Discussion

13. In the absence of a response from the Government and based on its revised methods of work, the Working Group is able to render an opinion in the light of the information submitted to it.

14. From information provided by the source (and not contradicted due to the absence of a response from the Government), 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 UDHR states that: "No one shall be subjected to arbitrary arrest, detention or exile." Article 10 of the UDHR 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 right consists in the possibility of contesting the legality of one's detention. Reference is made to resolution 1992/35 adopted by former Human Rights Commission on 28 February 1992, which called on all States that had 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 might decide without delay the lawfulness of his or her detention and order his or her release if detention was found to be unlawful. In the case in hand, these provisions of human rights law have not been adhered to.

15. The Working Group was informed (and the Government has not challenged this due to lack of response), that Mr. Al Maged was arrested without a warrant. His house was searched and personal belongings confiscated without any search warrant. These acts are a violation of both international human rights law as well as Saudi domestic law as described below. He was kept in solitary confinement from 18 April 2011 until 10 September 2011. This period goes beyond detention into the realm of ill-treatment, abuse and even torture. The Human Rights Committee has noted that prolonged solitary confinement may amount to a violation of the prohibition against torture and ill-treatment in article 7 of the International Covenant on Civil and Political Rights.

16. At the domestic level, a number of provisions of the Saudi laws have been violated as well. 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 Mr. Al Maged far exceeds this period.

17. 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 of 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 “[a]ny such person ... shall also be advised of the reasons of his detention”. Article 2 of the Law of Criminal Procedure declares that “[d]etention ... shall be for the period prescribed by the competent authority”. Yet Mr. Al Maged has not been brought before a competent authority nor has he been brought to trial.

18. The source has indicated that the only reason for the arrest and detention of Mr. Al Maged is his participation in protest demonstrations held in March 2011 and his reporting of these activities to Reuters News Agency. This reason is cited due to the nature of the questions posed to Mr. Al Maged by the interrogation officers. The Working Group notes that participation in peaceful demonstrations and reporting these is an act of freedom of expression and opinion and protected by all international human rights norms and standards; in particular articles 19 and 20 of the UDHR.

19. The Working Group notes with concern that a consistent pattern of arbitrary arrests and detention is emerging in Saudi Arabia as well as of silence on the part of the Government by not availing itself of the opportunity of responding to allegations set forth by the source in cases alleging arbitrary detention presented to this Group. As examples, reference is made to Opinion No. 36/2008; Opinion No. 37/2008; Opinion No. 22/2008, Opinion No. 21/2009; Opinion No. 2/2011; Opinion No. 8/2012; and Opinion No. 22/2012 of the Group. It is therefore pertinent to mention that the Group sees the present case as a matter of grave concern since basic human rights are not being respected.

20. The Working Group refers to its jurisprudence, drawing upon established practice of human rights bodies regarding prohibition of arbitrary detention as a norm of customary international law, authoritatively recognized as a peremptory norm of international law or *jus cogens*.¹ Thus article 9 of the UDHR prohibiting arbitrary arrest and detention now stands as a deeply entrenched human rights norm. (See, for example, the established practice of United Nations bodies as expressed by the Human Rights Committee in general comment No. 29 on states of emergency (CCPR/C/21/REV.1/Add.11 of 31 August 2001, para. 11). See also the International Court of Justice in *Ahmadou Sadio Diallo (I.C.J. Reports 2010)* and the discussions by Judge Cançado Trindade on arbitrariness in customary international law, which the Working Group has adopted.)

Disposition

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

The detention of **Mr. Nazir Hamza Magid Al Maged** 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.

22. The Working Group requests the Government of Saudi Arabia to release Mr. Al Maged forthwith and bring his situation into conformity with the requirements of international human rights instruments. To this end, if the case merits it, the Working Group in particular requests the Government to ensure a fair and impartial trial respecting all the guarantees thereof, enshrined in domestic Saudi and international human rights law.

¹ Opinion No. 51/2012.

23. The Working Group further requests that Mr. Al-Maged be ensured appropriate reparation, consequent upon the opinion rendered and in view of the adverse affect of this wrongful arrest and detention on and his family.

24. The Working Group encourages the Government of Saudi Arabia to consider ratification of the International Covenant on Civil and Political Rights.

25. The Working Group reminds the Government of Saudi Arabia of the Human Rights Council's call for States to take account of the Working Group's views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty. States are also requested to extend their cooperation to the Working Group's requests for information and to give due consideration to the recommendations it has made.²

[Adopted on 19 November 2012]

² Human Rights Council, resolution 15/18 on arbitrary detention (A/HRC/RES/15/18), paras. 3, 4 (a) and 9.