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**Human Rights Council
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary
Detention at its seventy-second, 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 a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established by 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, 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 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. Mr. Majid Al Nassif, born on 7 November 1979, is a Saudi Arabian national. He holds national ID no, 101094932, 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, also using 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 am, Mr. Majid Al Nassif was arrested at his office in Al-Awamiya, without a warrant being produced for his arrest. It is reported that masked governmental security forces disguised as civilians forcibly entered Mr. Majid Al Nassif's office, pointed their guns at him and then proceeded to beat him on his face and neck. He was thereafter blindfolded and handcuffed and pushed into a car waiting outside the office building. Throughout the process of the arrest, the forces verbally insulted his religious beliefs (Shia), including calling him "Rafidhi", a derogatory term for a person who identifies as Shia.

5. It is reported that Mr. Majid Al Nassif was taken to the Dammam Administrative Detective Prison where his possessions were confiscated and he was directly placed in solitary confinement. A month later, in mid-January 2013, the authorities transferred Mr. Majid Al Nassif 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. Majid Al Nassif to psychological torture and ill treatment in detention. They insulted him for his Shiite religious affiliation; he was continuously interrogated; denied the right to a lawyer; and coerced through torture and threats into confessing to crimes he did not commit. Following signing such a confession, Mr. Majid Al Nassif was transferred to a mass prison ward at the General Intelligence Prison in Dammam where he continues to be detained to date.

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

8. The first hearing in his case was held two months following the date of his arrest. Only Mr. Majid Al Nassif's lawyer and one his relatives were permitted to attend the second of the court hearings held on 25 February 2013. The following accusations were made against Mr. Majid Al Nassif: calling to participate in demonstrations via Facebook and Twitter; being in contact with members from a 'Wanted List'; membership in a text messaging group that monitors security vehicles in Al-Awamiya; financing terrorism; participation in demonstrations; providing transportation to members of 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 one million Saudi Arabian Riyals, the confiscation of his car, and a travel ban.

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

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

11. The source further submits that Mr. Majid 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 UDHR, and articles 9 and 14 of the ICCPR. Mr. Majid Al Nassif 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 through torture whilst being detained in solitary confinement were used as compelling evidence in order to convict 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 from 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 extension of time limit on 10 February 2015. Despite that the Government has had sufficient time to consider, unfortunately, it has not responded so far to the allegations submitted to 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 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 given allegations. Hence, the Working Group should base 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 detention in Saudi Arabia, as well as the silence on the part of the Government on allegations transmitted by the Working Group on cases of arbitrary detention. The present case raises a grave concern, as it is yet another case demonstrating the existence of that pattern.²

19. To begin with, the Working Group considers that Mr. Majid Al Nassif had been arrested and sentenced to prison for his activities in organizing several peaceful protests and vigils along with extensive publication on the internet with a view to expressing his views regarding the exercise of civil and political rights in Saudi Arabia.

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

21. Such practice of arrest presents a clear violation of the 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 in arrest has been prolonged and the trials have been delayed. Mr. Majid Al Nassif was taken to the Dammam Prison to be directly 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 two and a half months more, until the end of March 2013. In 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 accounts of violations of the international law protecting human rights. The pre-trial incommunicado detention that lasted longer than 2 months constitutes a violation of the part of the well-established international law on detention that pretrial detention should be an exception and should be as short as possible.³ In its 2011 annual report (A/HRC/19/57, paras. 48-58), the Working Group also underlined that pretrial detention should be an exceptional measure.

24. Mr. Majid Al Nassif continued to be subjected to psychological torture and ill treatment while in detention, including verbal insults for his Shiite religious affiliation;

¹ See, for example, Report of the Working Group, A/HRC/19/57, para. 68.

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

³ See, for example, Human Rights Committee, Communication No. 1787/2008, CCPR/C/107/D/1787/2008, paras. 7.3-4.

incessant interrogations; denial of the right to a lawyer; and coercion into making false self-incriminating confessions. The forced confessions extracted through torture in the solitary confinements were used as compelling evidences for the purpose of convicting and putting him to an overly excessive sentence that extends to 17 years in 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 visitation.

25. The Working Group finds that there is a flagrant violation of the right to a fair trial, as well established in international law, especially under articles 10 and 11 of the Universal Declaration of Human Rights. In particular, 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 categories applicable to the consideration of cases submitted to the Working Group.

26. In addition, the Working Group finds that the deprivation of liberty of Mr. Majid Al Nassif is considered arbitrary and falls under categories II of the Working Group's defined categories of arbitrary detention. Mr. Majid Al Nassif's deprivation of liberty results from the exercise of his rights to free expression, peaceful assembly and association, as guaranteed by article 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:

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

(2) The aforementioned deprivation of liberty, conducted in violation of articles 19 and 20 (1) of the Universal Declaration on 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 Mr. Majid Al Nassif and bring it into conformity with the standards and principles enshrined in the Universal Declaration on 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 the reparation for the harm caused by the grievances.

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

31. In 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 for appropriate action.

[Adopted on 27 April 2015]