

OPINION No. 10/2011 (SAUDI ARABIA)

Communication addressed to the Government on 5 January 2011

Concerning Mr. Bachr b. Fahd b. Al-Bachr

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 Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. The Human Rights Council assumed the mandate by its decision 2006/102. The mandate was extended for a further three-year period by resolution 15/18 adopted on 30 September 2010.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

I. 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 him) (Category I);

II. 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);

III. 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).

IV. When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (Category IV);

V. When the deprivation of liberty constitutes a violation of the 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; 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: Mr. Bachr b. Fahd b. Safrane Al-Bachr (بشر ب فهد ب (سفران البشّر), (hereinafter Mr. Al-Bachr), born in 1960, aged 50, a Saudi national, usually residing with his family in Riyadh, Saudi Arabia, is a professor of Religious Science at the University of Al-Imam Ahmed b. Saud in Riyadh.

4. It is reported that on the evening of 15 March 2007, Mr. Al-Bachr was arrested at his residence by about fifteen officers of the Saudi Investigative Police (Al-

Mabahith Al-Amma) in plain clothes and arriving in civilian cars. Mr. Al-Bachr was not presented with a warrant or informed of the reasons for his arrest. According to the information received, Mr. Al-Bachr was taken to an undisclosed location. The source reports that, despite numerous attempts to obtain information regarding Mr. Al-Bachr's fate and whereabouts from the Saudi authorities, his family was left with no news for the following nine months.

5. According to the source, in December 2007, Mr. Al-Bachr was allowed to receive a single visit from his family. At that time, he was detained in Al-Alisha detention centre, entirely controlled by Al-Mabahith. According to the information received, Mr. Al-Bachr was allegedly subjected to ill-treatment and suffered from prolonged solitary confinement. After the visit in December 2007, his family had no further access to Mr. Al-Bachr. According to the source, Mr. Al-Bachr's family learned that his detention conditions further deteriorated. The source alleges that Mr. Al-Bachr was detained in isolation and then transferred to a freezing underground cell. Reportedly, Mr. Al-Bachr was kept handcuffed and blindfolded over long periods of time. Despite Mr. Al-Bachr's alarming health condition, it is reported that he has never received appropriate medical treatment.

6. The source further informs that recently Mr. Al-Bachr has been transferred to Al-Hayer prison near Riyadh. Mr. Al-Bachr receives monthly visits from his family, but he is not allowed access to legal counsel, nor has he been brought before a judge since his arrest. The source reports that for 3 years and 9 months Mr. Al-Bachr remains without being charged, sentenced and without knowing when he will be released.

7. The source then proceeds to cite relevant domestic law, which in their opinion, have been contravened including 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"; Article 35 of the Saudi Law of Criminal Procedure (Royal Decree No. M/39) which 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 104 of the same law specifies that a detainee is to be admitted "into [a] detention centre after [being] explain[ed] the offense with which he is charged and the basis thereof", which has not happened in the case of Mr. Al-Bachr. It is reported that Mr. Al-Bachr has never been informed of the charges pending against him.

8. The source then states that Article 3 of the Law of Criminal Procedure stipulates that "[n]o penal punishment shall be imposed on any person except in connection with a forbidden and punishable act (...) and after he has been convicted pursuant to a final judgment rendered after a trial conducted in accordance with Shari'ah principles". In addition, Article 2 of the Law of Criminal Procedure declares that "detention (...) shall be for the period prescribed by the competent authority". According to the source, Mr. Al-Bachr has not been given a trial nor has he been informed about the period of his detention.

9. The source further refers to Article 114 of the Royal Decree, which provides that if the accused is to be detained in pre-trial detention, it is to last a maximum of 5 days, renewable up to a total of 6 months. Mr. Al-Bachr has been detained for 3 years and 9 months. Hence, the source indicates that in accordance with Article 114, Mr. Al-Bachr should be "directly transferred to the competent court or (...) released".

10. Article 4 of the Saudi Law of Criminal Procedure provides for "the right to seek the assistance of a lawyer or a representative to defend him during the investigation and trial stages". According to the source, Mr. Al-Bachr has not had the

possibility to mandate a lawyer for his defence and has not had access to legal counsel.

11. The source further reports that the reasons for Mr. Al-Bachr's arrest and continued detention are related to the fact that Mr. Al-Bachr has often spoken freely and publicly about his criticism of Government policies within the academic framework of his university teachings. Mr. Al-Bachr also ran a website, which is now blocked, where he used to peacefully express his opinions.

Response from the Government

12. The Working Group forwarded a communication to the Government on 5 January 2011 and regrets that no response was provided within the stipulated 90 day period. Nor has the Government requested an extension from the Working Group in accordance with paragraphs 15 and 16 of its methods of work.

Discussion

13. Despite the lack of response from the Government and on the basis of information made available to it, the Working group considers itself in a position to render an Opinion on the arrest and detention of Mr. Al-Bachr in accordance with paragraph 16 of its methods of Work.

14. The facts presented by the source and not challenged by the Government indicate serious violations of Mr. Al-Bachr's basic human rights. These include *inter alia*, arrest without warrant and detention for almost 4 years, and without being charged or brought before a judge.

15. Article 9 of the Universal Declaration of Human Rights provides that "[n]o one shall be subjected to arbitrary arrest, detention or exile". 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. Resolution 1992/35 adopted by former Human Rights Commission on 28 February 1992 called on all States 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 detention is found to be unlawful. It transpires from the information available that Mr. Al-Bachr has not only been unable to contest the legality before a competent tribunal, but he continues to be detained indefinitely.

16. Similarly, Mr. Al-Bachr has not benefited from any legal procedure, access to a lawyer or legal assistance in violation of Article 10 of the Universal Declaration of Human Rights, Principles 1 of the Basic Principles on the Role of Lawyers and Principle 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

17. There are also allegations of severe ill-treatment and adverse conditions of detention including periods of solitary confinement resulting in a deteriorating health condition of Mr. Al-Bachr; lack of adequate legal assistance, lack of due process and ongoing detention without knowledge of the reasons thereof. None of these allegations are contested by the Government.

18. The Working Group notes with concern that the continued arrest and detention of Mr. Al-Bachr without charges, legal process or trial and access to legal counsel is not an isolated case. As demonstrated in earlier opinions rendered by the Working Group including Opinion No. 36/2008; Opinion No. 37/2008; Opinion No. 22/2008, Opinion No. 21/2009 and Opinion No. 2/2011, a significant number of persons were arrested and detained without warrants, without timely production

before a magistrate, access to legal counsel and indeed a trial. In the majority of these cases, the detained persons had been arrested for the peaceful expression of their opinions such as Mr. Al-Bachr; in others on vaguely articulated security-related issues.

19. The Working Group also takes note of the fact that for 9 months, Mr. Al-Bachr's family was unaware of his whereabouts. This, combined with cruel, inhuman and degrading treatment during detention and resulting poor health constitutes a tortuous situation for both Mr. Al-Bachr and his family and adds yet another layer of deprivation and denial of basic human rights under domestic law as well as international human rights law. In particular, the Working Group brings to the attention of the Kingdom of Saudi Arabia, its legal obligations as State party to the UN Convention Against Torture.

20. Although the Government of the Kingdom of Saudi Arabia has not offered its response to the allegations set forth by the source, from the nature of the facts supplied to the Working Group, the reason for Mr. Al-Bachr's arrest and continuous detention appears to be directly linked with his exercise of the fundamental right of expression of opinion. To this end his website where he called for reform in the Kingdom, has been blocked.

Disposition

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

The deprivation of liberty of Mr. Al-Bachr 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. Consequent upon the opinion rendered, the Working Group requests the Government of the Kingdom of Saudi Arabia to release Mr. Al-Bachr forthwith and bring his situation in conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

23. The Working Group requests the Government to provide adequate and appropriate reparation to Mr. Al-Bachr and his family.

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

Adopted on 4 May 2011