

# No. 45/2013 (Saudi Arabia)

## Communication addressed to the Government on 9 September 2013

### Concerning Mohammad Salih Al Bajadi

#### **The Government replied to the communication on 27 September 2013. 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 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 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. Mohammad Salih Al Bajadi (hereinafter Mr. Al Bajadi), a Saudi Arabian national, is a human rights defender and co-founder of the Saudi Civil and Political Rights Association (ACPRA), a non-governmental organization calling for political, judicial and civil reforms in Saudi Arabia, including the promulgation of a Constitution.
4. On 21 March 2011, Mr. Al Bajadi was arrested by the Saudi Arabian investigative police at his home in Buraidah. The source provides the information that the Saudi investigative police are overseen by the General Intelligence Directorate and are under the control of the Ministry of Interior,

"Al Mabahith". The source makes note of the fact that Mr. Al Bajadi's arrest took place the day after he had participated in a demonstration in front of the Ministry of the Interior in Riyadh.

5. On 7 April 2011, the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders issued an urgent appeal addressed to the Government of Saudi Arabia, on the arrest and detention of Mr. Al Bajadi.

6. In August 2011, Mr. Al Bajadi appeared before the Special Criminal Court. The source conveys that Mr. Al Bajadi refused to acknowledge the Court's jurisdiction, alleging it lacked independence, being under the control of the Ministry of Interior. As such, he argued, it could not be considered a judicial authority competent to rule on the legality of his detention.

7. The source reports that the legal proceedings against Mr. Al Bajadi were conducted in the absence of legal counsel of his choice and were closed to the public, including his family. It is alleged that lawyers hoping to assist him during the trial were consistently prevented from visiting Mr. Al Bajadi at Al Hayer prison, where he was then detained.

8. On 6 August 2013, Mr. Al Bajadi was released following a two-year detention in Al Hayer prison. It was alleged that the authorities neither gave him notice of nor reasons for his release, or whether it would be permanent or temporary. Further, it did not take place in the framework of any legal process. Prior to his release, the authorities had requested that his family sign a "warrant document", to ensure that they would cooperate with the police if new judicial proceedings were to arise against the former detainee.

9. As soon as his brothers had signed the warrant document effecting his release, Mr. Al Bajadi was ordered to immediately leave the prison. His requests to prison officials to permit him to collect his personal belongings, including his identity card, and bid farewell to his prison mate, were denied. He was not allowed to telephone his family and request them to collect him.

10. On 14 August 2013, nine days after his release, Mr. Al Bajadi was summoned by Al Mabahith to their office in order to sign several documents. Mr. Al Bajadi presented himself at the office of the Mabahith alongside two other activists, Mr. Mohammad Al Utaibi and Mr. Fawzan Al Harbi, as well as his son Mr. Samer Al Bajadi. Upon arrival, the authorities requested his companions to leave without him. Mr. Al Bajadi learned that he was to be re-arrested for the same initial charges as in 2011, including unlawful gathering and creation of an illegal organization. According to the source, these charges have not yet been confirmed as they are still pending before the Court of Appeal.

11. The source submits that Mr. Al Bajadi's arrest is without legal basis and can therefore be considered arbitrary within categories I and II of the categories defined by the Working Group.

#### *Response from the Government*

12. In its response of 27 September 2013, the Government informed the Working Group that Mr. Al Bajadi had been detained and questioned on 21 March 2013. Warrants for his arrest and detention were issued, in accordance with article 35 of the Code of Criminal Procedure, on the following charges of which he was duly informed: writing and disseminating material detrimental to public order, which constitutes an offence punishable under article 6 of the Repression of Cybercrime Act; impugning the independence of the judiciary and participating in the establishment of an association and the exercise of its activities in the Kingdom without a permit from the competent authorities; and failing to comply with orders to stop, resisting police officers and crashing into an official vehicle while attempting to flee in order to avoid arrest.

13. The Government informed the Working Group that Mr. Al Bajadi's house and office were searched and some books and documents were seized in accordance with the Code of Criminal Procedure. His office was photographed for the purpose of documenting the search operation. The Government maintained that Mr. Al Bajadi was allowed to make telephone calls, receive visits and spend time in private with his wife and was also provided with financial aid, health care and moral assistance in accordance with the Code. He did not request the appointment of an attorney, to which he was entitled under the Code, but, instead, designated as his legal representatives persons who were not licensed to practise law. Although it was made clear to him that he must choose a licensed attorney, he refused to do so.

14. The Government stated that no one has lodged a complaint on Mr. Al Bajadi's behalf. He was not subjected to any act of aggression during his arrest, detention and questioning. His physical and mental state of health is sound, since all accused persons are subjected to a medical examination at the time of their admission to the prison and its inmates undergo periodic medical check-ups. According to the Government, all prisons and detention centres in Saudi Arabia are subject to control and inspection by judicial, administrative, health and sociolegal bodies. The Prison and Detention Regulations and the prison and detention centre inspectorates in the Bureau of Investigation and Public Prosecution carry out control and inspection tours, without prior notification. During these tours, prisoners and detainees are interviewed, their complaints are heard and their circumstances are monitored in order to ensure their well-being and ascertain the enjoyment of all their legal and statutory rights. The Government added that, in accordance with its statutes promulgated by the Council of Ministers, the Human Rights Commission visits prisons and detention centres at any time without seeking permission from the competent authority and the National Society for Human Rights also visits prisons and detention centres to hear complaints and ascertain the situation of prisoners and detainees.

15. The Government stated that no financial compensation has been paid to the person concerned or his family, since such compensation was not deemed justifiable.

16. The Government informed the Working Group that his case file was referred to the Bureau of Investigation and Public Prosecution in accordance with article 16 of the Code of Criminal Procedure and, when it was brought before the competent court of first instance, he was sentenced, subject to appeal, to four years imprisonment, effective from the date of his arrest, with a fine of 100,000 riyals. The court further ordered prohibition from travelling outside the Kingdom of Saudi Arabia during a period of five years from the date of his release from prison, and confiscation of the computer equipment and accessories described in the case file in view of his conviction on the count of writing material detrimental to public order, which is an offence punishable under article 6 of the Repression of Cybercrime Act, and the count of impugning the independence of the judiciary and participating in the establishment of an association and the exercise of its activities in the Kingdom without a permit from the competent authorities.

*Further comments from the source*

17. In its comments, the source notes that the Government confirmed that Mr. Al Bajadi was tried for acts that fall within the context of rights that are protected under international human rights law applicable in the Kingdom, as set out in the Universal Declaration of Human Rights.

18. With regard to the Government's reply that warrants for arrest and detention were issued, the source argues that these warrants were not provided to Mr. Al Bajadi at the time of his arrest, nor was he informed of the accusations held against him at the time. The source reiterates that Mr. Al Bajadi only learned of his formal charges several months after his arrest.

19. The source notes that the Government also affirmed that Mr. Al Bajadi was tried by the competent court of first instance. In this regard, the source reiterates that Mr. Al Bajadi was tried by the Special Criminal Tribunal, an exceptional court under the control of the Ministry of Interior. Neither his legal representative nor any members of the public were allowed to attend. Lawyers were denied entry into the room where the court was being held by the judge himself, and lawyers have consistently been denied access to Mr. Al Bajadi while in detention.

20. The source argues that, despite the affirmation in the State's reply that Mr. Al Bajadi's conviction is subject to appeal, the Government fails to state which court would be responsible for this. According to the source, Mr. Al Bajadi's lawyer provided the information that the General Prosecutor had refused to allow Mr. Al Bajadi's case to be examined by a superior court.

21. Concerning the Government's response that Mr. Al Bajadi designated as his legal representatives persons who were not licensed to practise law, and that he must choose a licensed attorney, which he refused to do, the source states that Mr. Al Bajadi did name legal counsel, and was offered support by a group of lawyers, but was not allowed access to them throughout his pretrial detention, trial and up to the present day. The source reiterates that, following several months of incommunicado detention, Mr. Al Harbi tried to visit Mr. Al Bajadi in prison, but was told he required prior authorization.

22. Finally, the source reiterates that the Government failed to contest that the very basis of Mr. Al Bajadi's detention is flawed, as he was found guilty of acts that are protected under international human rights law. As confirmed by the State's reply, he has been found guilty of "writing and disseminating material detrimental to public order", of "impugning the independence of the judiciary", and of "participating in the establishment of an association and the exercise of its activities in the Kingdom" protected under international human rights law, namely the Universal Declaration of Human Rights. The source concludes that Mr. Al Bajadi undertook these activities peacefully, in his role as a human rights defender, and the nature of these charges only serves to highlight the political nature of the case.

### **Discussion**

23. The Working Group considers that Mr. Al Bajadi, a human rights defender and co-founder of the Saudi Civil and Political Rights Association, a non-governmental organization calling for political, judicial and civil reforms in Saudi Arabia, was arrested and convicted due to his human rights activities.

24. It is because of such human rights activities that Mr. Al Bajadi was charged with "writing and disseminating material detrimental to public order" and "participating in the establishment of an association and the exercise of its activities in the Kingdom without a permit from the competent authorities". The Working Group notes that Mr. Al Bajadi was arrested on 21 March 2011, the day after he had participated in a demonstration in front of the Ministry of the Interior in Riyadh.

25. In this regard, the Working Group recalls that mere conformity with domestic law in itself cannot be used to justify deprivation of liberty of an individual. The rights to freedom of expression and assembly are fundamental human rights protected by international human rights law and a violation of these rights cannot be justified by reliance on domestic law. As to the Government's reference to the charges of "impugning the independence of the judiciary" and "failing to comply with orders to stop, resisting police officers and attempting to flee in order to avoid arrest", the Working Group notes that these events are linked to the criminal proceedings against Mr. Al Bajadi for the exercise of his fundamental rights which should not have been initiated in the first place.

26. In its opinion No. 42/2011, concerning Saudi Arabia, 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.<sup>1</sup>

27. The case under consideration is another instance of the widespread failure in Saudi Arabia to comply with basic human rights obligations.

28. The Working Group concludes that Mr. Al Bajadi has been deprived of liberty for having peacefully exercised his right to freedom of expression and assembly, as guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights. Thus, the deprivation of liberty of Mr. Al Bajadi falls within category II of the categories applicable to the consideration of cases submitted to the Group.

29. With regard to the alleged violations of the right to a fair trial, the Working Group notes that the assertions received from the source and the Government are in most respects contradictory. Considering the serious difference between the allegations submitted by the source and the Government's response, the Group considers that it is not in a position to deliberate on the alleged violation of the right to a fair trial.

### **Disposition**

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

The deprivation of liberty of Mr. Al Bajadi has been arbitrary, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights; it falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

31. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Al Bajadi and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

32. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release Mr. Al Bajadi.

33. In accordance with article 33 (a) of the revised methods of work of the Working Group, the Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.  
[Adopted on 15 November 2013]

<sup>1</sup>Opinion No. 42/2011 of 2 September 2011, para. 20, with reference to opinions Nos. 22/2008, 36/2008, 37/2008, 2/2011, 10/2011 and 30/2011.