

Submission to the third cycle UPR of SAUDI ARABIA:

Legal Opinion and Report on the Legality of the September 2017 Arrests in the Kingdom of Saudi Arabia

A. Introduction

1. In January 2018, AOHR assisted Lord Ken Macdonald QC and Rodney Dixon QC to prepare a report addressing the legality of a wave of arrests and detentions carried out in the Kingdom of Saudi Arabia (KSA) in September 2017. We believe that their conclusions are highly relevant to the forthcoming UPR in relation to KSA because their report identifies that a significant number of arbitrary detentions have occurred in KSA within this reporting cycle and that those arbitrary detentions form part of a long-standing pattern of conduct on the part of KSA.
2. We attach their report as Annex A to this submission. In order to assist the Council, we summarise their key findings below.
3. In September 2017, the authorities of the Kingdom of Saudi Arabia (KSA) carried out a wave of arrests and detentions. Reliable sources indicate that more than sixty individuals were detained, many of whom are believed to be ‘human rights defenders’ or political activists.
4. In order to prepare their report, Lord MacDonald QC and Rodney Dixon QC interviewed various witnesses who gave first hand accounts to them but who wish to remain anonymous due to concerns for their safety and security. They also interviewed Al Qst (an NGO advocating for human rights in KSA) which has gathered information from several sources in KSA, including persons in detention and family members of those detained. They researched publically available material and information about the arrests and detentions, and various reports on the situation in KSA.

5. Their investigations confirmed the following factual matters relevant to the Council's deliberations:
- a. In total 61 persons are believed to have been detained by KSA in September 2017; 30 detentions have been verified while the whereabouts of 31 persons are still unknown and to be confirmed.
 - b. Salman Al-Awda was arrested at his home address in Riyadh on 7 September 2017 by uniformed members of the State Security Forces. No arrest warrant or decision was produced. No charges have yet been laid against him.
 - c. Malik Al-Ahmad was also detained in September 2017. There is no known reason for his detention. He is a media expert and was involved with the press for many years. But he is not a political activist. As far as they are aware, no arrest warrant has been issued and no charges have been laid against him.
 - d. Salman Al-Awda was arrested shortly after tweeting that he encouraged the Saudi and Qatari authorities to reconcile with each other - a statement which is, of course, contrary to the official policy of KSA. No other explanation for his detention has been put forward by KSA. It therefore appears that he was detained for exercising his right to freedom of expression.
 - e. Family members of Salman Al-Awda have been the subject of illegitimate pressure from state authorities. One family member, Khalid Al-Awda, was reportedly arrested for tweeting about Salman Al-Awda's arrest. Another 17 members of Mr Al-Awda's family have had travel bans imposed on them.
 - f. Not all those detained in September 2017 were treated in the same way. Some have apparently been allowed to contact their families. Others have not. Ali Al Aomri has not been heard from at all since his detention in September 2017 (now five months ago). Salman Al-Awda was allowed one telephone call in October 2017 (therefore after being detained for around one month) but no further contact has been permitted. Others, including Khalid Al-Awda and Sami Al-Majed have been allowed at least one short family visit. This

differential treatment reinforces the impression of arbitrariness because there is no obvious reason to allow some detainees to contact their families but not to accord the same basic right to others.

- g. Salman Al-Awda has been hospitalised. It is understood that his family members have sent official requests to try to find out what has happened to him but there has been no official response from KSA authorities. They have not been allowed to visit him in hospital. In the absence of an official explanation from KSA, his family and others will draw the inference that the cause of his hospitalisation could be as a result of his detention.
 - h. A number of those detained suffer from serious medical conditions. In particular, Mostafa el Hassan is believed to suffer from an advanced stage of cancer. Further, medical notes from July 2016 confirm that Sami Al-Majed had a benign growth on his skull which required monitoring by medical professionals. He was not allowed medical treatment, at least during his initial detention prior to his transfer to Dhahban.
 - i. Detainees including Sami Al-Majed, Salman Al-Awda, and others have been held in solitary confinement.
 - j. Family members and friends have also expressed more general concerns that when they were allowed to see the detainees, they had noticeably lost weight, they had been treated poorly or that they feared ill-treatment.
6. The report concluded that these detentions are arbitrary and unlawful. The facts summarised above lead to the conclusion that the detentions are arbitrary because:
- a. No warrant of arrest was produced at the time of detention. No criminal charges have been brought against those detained. So far as the authors are aware, none of those detained have been brought before a Court. There is thus no justification for the detentions under national law and international law.

- b. In the case of Salman Al-Awda and others, the detention appears to result from their peaceful exercise of their fundamental right to freedom of expression.
 - c. In many cases the imposition of incommunicado detention and solitary confinement are sufficiently severe to provide a further basis for holding that the detentions are arbitrary.
- 7. We respectfully urge the Human Rights Council to consider the annexed report in full because it summarises evidence of serious human rights violations from a variety of sources, including first hand witness testimony. Further, it analyses the pattern of arbitrary detentions in KSA over the past years as set out in the Opinions of the UN Working Group on Arbitrary Detention. Those Opinions show clearly that the September 2017 detentions cannot be treated as isolated incidents but rather are part of a pattern of abuses that has persisted unchecked for at least the last ten years.
- 8. We invite the Human Rights Council to:
 - a. Condemn the violations of fundamental human rights in KSA, including those documented in this report;
 - b. Call for the immediate release of those arbitrarily detained in September 2017 and all those held in prison unlawfully;
 - c. Recommend, again, that KSA accede to the International Covenant on Civil and Political Rights (ICCPR) and all other relevant international human rights instruments; and
 - d. Refer the matter to the UN General Assembly for action to be taken against KSA to hold the KSA authorities to account for the continuing violations and for remedies to be provided to the victims.
- 9. The evidence of human rights violations committed by KSA, as documented in this report and others, is now so compelling that the UN General Assembly should

consider suspending KSA's membership of the UN Human Rights Council. The UN General Assembly can, by a two-thirds majority, remove the right of membership of the Council from a State if that State commits "*gross and systematic violations of human rights*".¹ The violations set out in our report can fairly be described as *gross* and *systematic* because of the number of individuals detained and because they conform entirely to the clear pattern of arbitrary detentions by KSA documented in the Opinions of the UN Working Group on Arbitrary Detentions. Since there appears to have been no improvement since the last UPR, it is surely time for the UNHRC to give serious consideration to this option.

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16 March 2018

¹ Resolution adopted by the General Assembly 60/251, para. 8. A/60.L.48.