

OPINION No. 19/2011 (SAUDI ARABIA)

Communication addressed to the Government on 2 February 2011

Concerning Mr. Fouad Yahya Ali Al-Samhi

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. Fouad Yahya Ali Al-Samhi (فؤاد السمحي), (hereinafter Mr. Al-Samhi), aged 38, born in 1971 and of Yemeni nationality, usually residing in Saudi Arabia at Hay Al Saouidia and Al Badi'a, Riyadh with official visa No. 2187401613, is married with two wives and three children. Mr. Al-Samhi is the Saudi representative of the Al Hikma Foundation, a humanitarian association based in Yemen.

4. It is reported that on 20 August 2009, at approximately 8 p.m., Mr. Al-Samhi was arrested in front of his home by a group of men. According to the information received, this group of men was dressed in civilian clothing driving two vehicles and was accompanied by a woman from the Security Services. According to the source, these men are presumed to be members of the General Investigation Services. Reportedly, Mr. Al-Samhi was not presented with any reasons justifying his arrests, an arrest warrant or a decision by a judicial authority. Mr. Al-Samhi's house was allegedly searched and his computer was confiscated without any judicial decision authorizing such actions.

5. According to the information received, Mr. Al-Samhi was taken to Alisha Prison where he was allegedly detained incommunicado for 15 days. On 4 September 2009, Mr. Al-Samhi was transferred to Al Hayer Prison in Riyadh. At this moment, Mr. Al-Samhi's family was for the first time informed of his arrest and detention. Mr. Al-Samhi's family undertook all available measures with a view to obtaining his release, including meeting with the person responsible for the Security Services in Yemen, as well as the Saudi Ambassador to Yemen and the General Investigation Services in Saudi Arabia. On 10 April 2010, Mr. Al-Samhi was transferred to Al Kassim Prison, where he is currently detained.

6. 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 on 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 "(...) any such person (...) shall also be advised of the reasons of his detention (...)". According to the information received, Mr. Al-Samhi has not yet been presented before a judge.

7. The source further refers to Article 114 of the Law on Criminal Procedure, 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-Samhi has been detained since 20 August 2009. In accordance with Article 114, Mr Al-Samhi should have been "directly transferred to the competent court or (...) released".

Response from the Government

8. In the letter of 2 February 2011, the Chairman of the Working Group addressed the above allegation to the Government requesting information within the 90 day period in accordance with paragraph 15 of the Working Group's methods of work. The Government has not provided the response within the prescribed period, nor has it requested an extension for its reply in accordance with paragraphs 15 and 16 of the Working Group's methods of work.

Discussion

9. 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-Samhi in accordance with paragraph 16 of its methods of Work.

10. It results from the above allegations, as presented by the source, that Mr. Al-Samhi was arrested on 20 August 2009, without an arrest warrant, judicial decision or any other justification. He has not been notified of the reasons for his arrest and detention. To date, Mr. Al-Samhi has not been presented before a judge nor has he benefited from legal assistance or access to a lawyer. These non-contested actions and omissions on the part of the Saudi authorities contravene articles 9 and 10 of the

Universal Declaration of Human Rights and fall within categories I and III of the Working Group's methods of work.

11. The Working Group notes that the case in hand is not an isolated one. 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; Opinion No. 2/2011; Opinion No. 10/2011; Opinion No. 11/2011; Opinion No. 17/2011; and Opinion No. 18/2011, 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.

Disposition

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

The deprivation of liberty of Mr. Al-Samhi is arbitrary, being in violation of articles 9 and 10 of the Universal Declaration of Human Rights and falling within categories I and III of the categories applicable to the cases submitted for consideration of the Working Group.

13. The Working Group requests the Government to immediately release Mr. Al-Samhi and to ensure that adequate reparation is provided to Mr. Al-Samhi and his family.

14. The Working Group urges the Government of Saudi Arabia to ratify the International Covenant on Civil and Political Rights.

Adopted on 5 May 2011