

OPINION No. 11/2011 (SAUDI ARABIA)

Communication addressed to the Government on 19 January 2011

Concerning Mr. Ali ben Mohamed Hamad Al Qahtani

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. Ali ben Mohamed Hamad Al Qahtani (علي بن محمد (حمد القحطاني), (hereinafter Mr. Al Qahtani), aged 35, a Saudi national, married with four children, usually residing in Khamees Masheet, Saudi Arabia, is a businessman.

4. According to the information received, on 31 January 2004, Mr. Al Qahtani's house was searched, without a warrant, by heavily armed agents from the Saudi Investigative Service, Al-Mabahith Al-Ammah. Mr. Al Qahtani was arrested during

this raid without being presented with a warrant nor given any reasons justifying the arrest. The source reports that Saudi security services took Mr. Al Qahtani to Abha prison where he has allegedly been subjected to torture and ill-treatment.

5. The source states that in early 2010, Mr. Al Qahtani was transferred from Abha to Al Hayr prison where he was detained for three months in an isolated cell. According to the information received, Mr. Al Qahtani has attempted suicide due to alleged physical and psychological torture. The source reports that Mr. Al Qahtani now constantly coughs and is believed to have contracted pneumonia. Mr. Al Qahtani has allegedly been given no access to adequate medical assistance.

6. According to the information received, Mr. Al Qahtani is allowed visits by his family on a monthly basis and under surveillance. His family lives some 1,000 km from the prison which makes it difficult to overview Mr. Al Qahtani's conditions of detention and his state of health. Moreover, to date, Mr. Al Qahtani has been prohibited from contacting a lawyer and has not been subject to any legal proceedings, nearly seven years after his arrest. Mr Al Qahtani has not been presented before a judge or magistrate nor has he been formally charged. On 19 October 2010, Mr. Al Qahtani's brother filed a complaint with the Riyadh Grievances Court against the Saudi Investigative Service in charge of Mr. Al Qahtani's detention.

7. 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 of Criminal Procedure (Royal Decree No. M/39 of 16 October 2001) provides that "[n]o 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 (...)". Moreover, Article 2 of the Law of Criminal Procedure states that "[n]o person shall be arrested, searched, detained or imprisoned except in cases specified by the law". It is alleged that Mr. Al Qahtani has at no time been informed of the reasons for his detention.

8. The source notes that Article 2 of the Law of Criminal Procedure stipulates that "[d]etention or imprisonment (...) shall be for the period prescribed by a competent authority". The source contends that Mr. Al Qahtani has never been subjected to any legal proceedings, presented before a judge or any other competent authority, nor informed of the period of his detention. Furthermore, in accordance with Article 114 of the Royal Decree, if the accused is to be detained in a pre-trial detention, it is to last a maximum of 5 days, renewable up to a total of 6 months. Mr. Al Qahtani has been detained for almost 7 years. In accordance with Article 114, Mr. Al Qahtani should be "directly transferred to the competent court or (...) released".

9. Moreover, 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 Qahtani has not been allowed to seek legal assistance since his arrest on 31 January 2004.

Response from the Government

10. The Working Group forwarded a communication to the Government on 19 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

11. 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-Qahtani in accordance with paragraph 16 of its methods of work.

12. The facts presented by the source and regrettably not responded to by the Government, highlight a continuous pattern of violations of a range of human rights including the right not to be arrested without a warrant, the right to access to a lawyer and magistrate within a specific period of time, the right to be informed of charge or charges against the person and the right to a fair trial. Furthermore, there exist certain core minimum principles for treatment of detainees including the right not to be ill-treated, tortured or held in solitary confinement as well as the right to medical assistance in case of illness. It follows from information received that Mr. Al Qahtani has been denied these rights and continues to suffer ongoing detention without knowledge of the reasons thereof.

13. 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. The resolution 1992/35 adopted by former Human Rights Commission on 28 February 1992 called expressly 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. Mr. Al Qahtani has not only been unable to contest the legality of his detention before a competent tribunal, but he also continues to be detained indefinitely in violation of Article 9 of the Universal Declaration of Human Rights.

14. Given absence of any legal procedure, let alone fair trial, the detention of Mr. Al Qahtani also runs contrary to Article 10 of the Universal Declaration of Human Rights as well as Principle 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.

15. The Working Group notes with concern that the continued detention of Mr. Al-Qahtani and the alleged torture has resulted in psychological problems for him and endangered his life (it is reported by source that he attempted to take his own life in despair). Furthermore, it appears that due to continuous detention in a very cold cell, he is constantly coughing and may have contracted pneumonia. The Working Group reminds the Government of the Kingdom of Saudi Arabia of the legal obligations undertaken by it as a State party to the UN Convention Against Torture.

16. 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 and Opinion No. 2/2011; and Opinion No. 10/2011, 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 instant case of Mr. Al-Qahtani too, the Government instead of charging Mr. Al-Qahtani, bringing him to trial and following due process is detaining him for an indefinite period.

Disposition

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

The deprivation of liberty of Mr. Al-Qahtani is arbitrary falling under categories I and III of the categories applicable to cases submitted for the consideration of the Working Group, being without legal basis, and in violation of articles 9 and 10 of the Universal Declaration of Human Rights.

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

19. The Working Group further requests the Government of Saudi Arabia to provide adequate and appropriate reparation to Mr. Al-Qahtani and his family.

20. 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