

OPINION No. 2/2011 (SAUDI ARABIA)

Communication addressed to the Government on 28 December 2010

Concerning Mr. Abdul Hakim Gellani

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 summarised hereinafter was reported by the source to the Working Group on Arbitrary Detention as follows: Mr. Abdul Hakim Gellani (عبدالحكيم جيلاني), (hereinafter Mr. Gellani), a British national, born on 11 December 1964, usually residing with his wife and children in the United Kingdom, is a director of a travel agency specialized in pilgrimages to Mecca.

4. On 19 November 2005, while on a business visit to Saudi Arabia, Mr. Gellani was arrested in Mecca by the Saudi Security Services. It was not until 14 December 2005 that at the intervention of the British Foreign and Commonwealth Office as well as a law firm contracted by Mr. Gellani's family, that the Saudi authorities recognized his arrest and detention.

5. On 18 December 2005, Mr. Gellani was transferred to Ruwais Prison in Jeddah and received a welfare visit from the British Consulate the following day. However, according to the source, it was not until 12 March 2006 that Mr. Gellani received a first full consular visit.

6. The source reports that in May 2006, Mr. Gellani went on a hunger strike protesting against his conditions of detention and lack of fair trial. According to the information received, Mr. Gellani was not charged in accordance with the Saudi Law of Criminal Procedure and he was not brought before a judge up until 19 July 2006, the date of his release.

7. Following his release on 19 July 2006, Mr. Gellani proceeded to organize his return to the United Kingdom. According to the source, Mr. Gellani applied for and received a new passport at the British Consulate. However, the Saudi authorities denied him an exit visa.

8. Following an interview with Aljazeera revolving around detention conditions in Saudi prisons, Mr. Gellani was re-arrested by the Saudi Security Services on 8 August 2007 at his temporary residence, Hotel Morjane in Mecca. According to the information received, the Saudi Arabian Ministry of Foreign Affairs denied Mr. Gellani's detention until 23 September 2007. Subsequently, Mr. Gellani's family learned that he had been transferred to Ruwais Prison in Jeddah.

9. According to the source, Mr. Gellani was held incommunicado until 27 October 2007 when he received a first visit from the British Consulate following his re-arrest. As a result of that visit, Mr. Gellani was allowed regular calls to his family and further consular visits. According to the information received, Mr. Gellani has been held in solitary confinement and on several occasions had to sleep on the floor, without blankets and in a constantly-lit cell. The source also reports that Mr. Gellani has been subjected to severe beatings and humiliations. On other occasions, Mr. Gellani has been allegedly denied the Quran or handcuffed for several days. The source contends that such treatment together with the fact that Mr. Gellani does not know when his detention will end, amounts to torture or inhuman and degrading treatment and represents a grave breach of Mr. Gellani's rights under the Saudi domestic laws and international law.

10. It is further reported that during both periods of detention, Mr. Gellani has never been officially charged. According to the source, although Mr. Gellani was brought before a judge several times, he was repeatedly informed that he could not be heard without a lawyer. In September 2010, Mr. Gellani's family, with the help of a London based law firm and due to the intervention of the British Foreign and Commonwealth Office, succeeded in obtaining the consent of a Saudi lawyer to represent Mr. Gellani in court proceedings. According to the information received, the lawyer was prevented from appearing in court at Mr. Gellani's last hearing scheduled for 26 September 2010. It is reported that Mr. Gellani's lawyer was arrested and detained by the authorities for interrogation and held for three days starting from the day of the hearing. Thus, the source argues that Mr. Gellani has not been given a fair trial, nor has he had proper access to legal counsel, let alone to information regarding the length of or reasons underlying his continued detention.

11. The source, in its submission to the Working Group on Arbitrary Detention states that during both periods of detention i.e. between November 2005 and July 2006 and from October 2007 to the present day, Mr. Gellani has been held without any legal basis. Mr. Gellani was not presented with a warrant for his arrest nor has he ever been informed of the charges against him. It cites a number of articles of the domestic Saudi laws that have been violated in the arrest and detention of Mr. Gellani including Article 36 of the Saudi Basic Law of Governance, Articles 4 and 35 of the Saudi Law of Criminal Procedure (Royal Decree No. M/39) and Article 114 of the Royal Decree.

12. Finally, the source argues that although a lawyer had been mandated by Mr. Gellani's family, Mr. Gellani has not yet been able to receive full and adequate legal assistance. Notably, Mr. Gellani's lawyer was allegedly prevented from attending the hearing scheduled on 26 September 2010. According to the source, Mr. Gellani's detention is contrary to both Saudi Arabia's domestic laws and applicable international legal norms.

Response from the Government

13. The Working Group transmitted the above allegations to the Government of the Kingdom of Saudi Arabia requesting that in 90 days it provide, in its reply, detailed information about the current situation of Mr. Gellani and clarify the legal provisions justifying his continued detention. It is regretted that the Working Group has not received a response from the Government.

Discussion

14. Notwithstanding absence of the Government's response, the Working Group believes that in accordance with its methods of work and on the basis of the information acquired, the Group is now in a position to render an opinion in this case.

15. From the facts presented to us, a number of important issues arise for discussion of the Working Group. There is the matter of arrest and detention on two different occasions without warrant and in the second case, of detention and disappearance. There are also allegations of severe conditions of detention and ill-treatment; lack of adequate legal assistance, lack of due process and ongoing detention without knowledge of the reasons thereof. We discuss these one by one in the paragraphs below.

16. The first arrest and detention lasted for 8 months, without charges and any kind of legal procedure or trial terminating in Mr. Gellani's release without charge on 19 July 2006. In the absence of any information to the contrary, this detention does not appear to have been supported by any legal justification on the part of the Saudi authorities.

17. Likewise, the second arrest and ongoing detention occurred after an interview given to Aljazeera by Mr. Gellani regarding poor detention and prison conditions in Saudi Arabia. In the absence of a response from the Government, the linkage between Mr. Gellani's exercising his right to freedom of expression and opinion and his (initial) disappearance and subsequent detention seems plausible. If we add to this the fact that the case in hand follows an unfortunate recurrence from previous cases where detention of academics and intellectuals is conterminous with their expression of opinion and criticism of governmental policies, this linkage between exercise of freedom of opinion and detention, becomes apparent (see opinions cited below in paragraph 20).

18. The lack of arrest warrants, cruel, inhuman and degrading treatment during detention as well as lack of fair trial including access to a lawyer, constitutes yet another layer of deprivation and denial of basic human rights under domestic law as well as international human rights law. In particular these actions and omissions constitute violations of Articles 9 and 10 of the Universal Declaration of Human Rights, 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.

19. Although the Government has not offered its response to the allegations set forth by the source, from the nature of the facts supplied to the Working Group, there appears a pattern discernible in a number of previous cases from the Kingdom of Saudi Arabia brought before the Group. As examples, we refer to Opinion No. 36/2008; Opinion No. 37/2008; Opinion No. 22/2008 and Opinion No. 21/2009 of the Working Group where 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 their peaceful expression of opinion; in others on vague security-related issues. It is therefore pertinent to mention that the case of Mr. Gellani too, follows the same pattern where basic rights have not been respected.

Disposition

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

Both periods of deprivation of liberty of Mr. Gellani are 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.

21. Consequent upon the opinion rendered, the Working Group requests the Government to release Mr. Gellani forthwith and bring his situation in conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

22. The Working Group further requests the Government to ensure appropriate reparation to Mr. Gellani and his family.

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

Adopted on 3 May 2011