

OPINION No. 18/2011 (SAUDI ARABIA)

Communication addressed to the Government on 4 January 2011

Concerning Mr. Abdulrahmane Al-Faqasi Al-Ghamdi

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. Abdulrahmane Al-Faqasi Al-Ghamdi (علي عبد الرحمن الفقسي الغامدي), (hereinafter Mr. Al-Ghamdi), born in 1975, aged 35, a Saudi national, usually residing with his wife in Raghdan, Al Baha province, Saudi Arabia, is a university student.

4. It has been reported that following the 2001 terrorist attacks in the United States, Mr. Al-Ghamdi's name appeared on a list of suspects by the National

Commission on Terrorist Attacks upon the United States (9/11 Commission). His name was also on a list established by the Saudi authorities after the Riyadh compound bombings of May 2003. In reaction to these allegations, it is reported that Mr. Al-Ghamdi issued a statement of innocence. In late May, the Saudi Ministry of Interior proceeded to arrest Mr Al-Ghamdi's wife, Aydia Ahmed Al-Sayyad and 8 other family members, allegedly without charging them with any crimes. According to the source, Mr. Al-Ghamdi was informed that all of his detained family members would be released if he were to turn himself in.

5. Out of fear for the fate of his relatives, Mr. Al-Ghamdi took the decision to surrender and solicited the help of Mr. Sheikh Safr Al-Hawali, a respected cleric, to negotiate the terms of his surrender. Mr. Al-Hawali contacted the deputy-Minister of Interior, Prince Mohamed b. Naif b. Abdulaziz, son of the Minister of Interior, who agreed to guarantee that Mr. Al-Ghamdi would be subject to legal proceedings and receive a fair trial, that all of his family members would be released and that he would not be tortured following his arrest.

6. Once given these assurances, Mr. Al-Ghamdi turned himself in to the Saudi authorities on 26 June 2003 and was brought to Al-Hayr Prison. Several days thereafter, the deputy-Minister of Interior announced the unconditional surrender of Mr. Al-Ghamdi to the media. The source reports that Mr. Sheikh Safr Al-Hawali publicly reiterated the guarantees he had been given by Prince Mohamed b. Naif b. Abdulaziz.

7. The source further reports that despite the guarantees given by the Saudi authorities and their obligations under international law, Mr. Al-Ghamdi's brother, Salah Abdulrahmane Al-Ghamdi, has not yet been released.

8. According to the information received, Mr. Al-Ghamdi has been transferred several times from Dammam Prison in Dammam to Dahbah Prison in Jeddah and Al-Hayr Prison close to Riyadh. Mr. Al-Ghamdi was allowed visits until on 25 April 2007 when his wife was re-arrested. The source informs that since 25 April 2007, Mr. Al-Ghamdi, his wife and his brother were held incommunicado. It is also reported that Mr. Al-Ghamdi's second brother, Abdullah Abdulrahmane Al-Ghamdi, was arrested on 2 June 2009. Reportedly, these successive arrests are a form of retaliation for reiterated demands made by Mr. Al-Ghamdi to be treated in accordance with legal standards.

9. The source informs that Mrs. Al-Sayyada has been recently released and Mr. Al-Ghamdi is no longer detained incommunicado. Mr. Al-Ghamdi's family is allowed to visit him at Al-Hayr prison on a monthly basis. However, to date, Mr. Al-Ghamdi has not been presented before a judge and has not been able to consult a lawyer. The source reiterates that Mr. Al-Ghamdi has spent over 7 years in prison and does not know when his detention will end.

10. 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) 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 (...)". It is alleged that since 30 June 2003, the day Mr. Al-Ghamdi turned himself to the Saudi authorities in order to free his family members, Mr. Al-Ghamdi has never been informed of the charges pending against him, brought before a competent judicial authority or given any form of trial.

11. Moreover, Article 3 of the Law of Criminal Procedure stipulates that [n]o penal punishment shall be imposed on any person except in connection with a

forbidden and punishable act (...) and after he has been convicted pursuant to a final judgment rendered after a trial conducted in accordance with Shari'ah principles". Finally, Article 2 of the Law of Criminal Procedure declares that "detention (...) shall be for the period prescribed by the competent authority". Mr. Al-Ghamdi has not been given a trial nor has he been informed about the period of his detention.

12. The source further refers to Article 114 of the Royal Decree, 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-Ghamdi has been detained for more than 7 years. In accordance with Article 114, Mr. Al-Ghamdi should be "directly transferred to the competent court or (...) released".

13. 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". The source reports that Mr. Al-Ghamdi has not been allowed to seek legal assistance since his arrest in June 2003.

Response from the Government

14. The Working Group forwarded a communication to the Government on 4 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

15. 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-Ghamdi in accordance with paragraph 16 of its methods of Work.

16. The facts presented by the source and regrettably not responded to by the Government, is an example of a trend across many jurisdictions where, after the September 2001 bombings and in the name of countering terrorism, suspects are simply detained without the protection of due process including the right not to be arrested and detained without a warrant, the right to be produced before a judge within a specified period of time, the right to be informed of charges for arrest and detention, access to a lawyer and the right to a fair trial within a reasonable period of time.

17. Article 9 of the Universal Declaration of Human Rights provides that "[n]o one shall be subjected to arbitrary arrest, detention or exile". 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 also called 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. According to the information available before the Working Group, Mr. Al-Ghamdi has not only been unable to contest the legality before a competent tribunal, but he also continues to be detained indefinitely.

18. Given the absence of any legal procedure, let alone fair trial, Mr. Al-Ghamdi's detention also runs contrary to Article 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. The case in hand has an added dimension of violation, i.e. arrest and detention of close family members of Mr. Al-Ghamdi to induce his surrender as well as arrest and detention of family members as reprisals for demanding right to a fair trial and basic human rights as a detainee (see details in the information received from source above).

20. The Working Group on Arbitrary Detention has been seized of such cases in the past and noted with concern that the “frequent attempts by Governments to use normal legislation or to have recourse to emergency or special laws and procedures to combat terrorism and thereby permit, or at least increase, the risk of arbitrary detention. Such laws, either *per se* or in their application, by using an extremely vague and broad definition of terrorism, bring within their fold the innocent and the suspect alike, and thereby increase the risk of arbitrary detention, disproportionately reducing the level of guarantees enjoyed by ordinary persons in normal circumstances” (see UN Doc. E/CN.4/1995/31, page 8).

21. The arrest and continued detention of Mr. Al-Ghamdi for over 7 years, without any recourse to justice is not an isolated case. 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; and Opinion No. 17/2011, 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 case of Mr. Al-Ghamdi, despite his declaration of innocence, surrender to the authorities on the assurance that he will be charged according to law and tried in accordance with national and international law, the pattern of behaviour of the Saudi Arabian authorities was repeated. If there was any suspicion of terrorist links or action ascribed to Mr. Al-Ghamdi, the Government had and continues to have the option of charging him, bringing him to trial and following due process rather than detaining him for an indefinite period. Keeping persons in detention for such a long period and with no prospect of remedial measures is unacceptable under any law, domestic or international.

22. Finally, it is unacceptable in national and international law that persons are arrested and detained simply on the basis that they are family members of the person suspected of a wrongdoing. In the instant case, the relatives of Mr. Al-Ghamdi appear to have been subjected to detention on this count which constitutes a shocking disregard of basic fundamental norms of law and justice.

Disposition

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

The deprivation of liberty of Mr. Al-Ghamdi is arbitrary falling under categories I and III of the Working Group being without legal basis, and in violation of articles 9 and 10 of the Universal Declaration of Human Rights. Although not formally part of the present communication, the Working Group also finds the arrest and detention of the wife and brothers of Mr. Al-Ghamdi arbitrary.

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

25. The Working Group requests the Government of Saudi Arabia to provide adequate reparation to Mr. Al-Ghamdi and his family.

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

Adopted on 5 May 2011