

OPINION N 18/2007 (JORDAN)

Communication: addressed to the Government on 4 June 2007.

Concerning: Mr. Issam Mohamed Tahar Al Barqaoui Al Uteibi.

The State is 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 Commission resolution 1997/50, and reconfirmed by resolution 2000/36. It was also reconfirmed by Commission resolution 2003/31, General Assembly resolution 60/251 and Human Rights Council decision 2006/102 and resolution 6/4 of 28 September 2007. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of the source.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

- (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act (category I);
- (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
- (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments.

5. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.

6. The case summarised below was reported to the Working Group on Arbitrary Detention as follows: Mr. Issam Mohamed Tahar al Barqaoui al Uteibi, a/k/a Sheikh al Maqdissi, (hereinafter Mr. al Uteibi), born on 7 March 1959 in Barqa, Jordan, is a

citizen of Jordan resident in Haï Djaffar, Manteqat al Rashed, Muhafadat al Racifa. He is a writer and theologian known in Jordan and in the Arab world, who has been repeatedly accused of "promoting and glorifying terrorism" by the security services. He was detained a first time between 1994 and 1999.

7. On 28 November 2002, Mr. al Uteibi was again arrested together with 11 other persons on charges of "conspiracy to commit terrorist acts". This arrest followed public statements he had made to Jordanian media in which he justified the Palestinian Intifada and condemned United States policies in the Arab region. He was brought to trial before a State Security Court, which acquitted him on 27 December 2004. Instead of being released, however, Mr. al Uteibi was transferred to a secret detention facility. At this facility, which subsequently turned out to be the seat of the intelligence services at al Jandawil in Oued Essir, he was detained until 28 June 2005, when he was released and allowed to return home.

8. According to the source, on 4 July 2005, Mr. al Uteibi gave an interview to the satellite TV channel al Jazeera, in which he again condemned the US military presence in Iraq. The following morning, 5 July 2005, he was again arrested and taken to a secret place of detention. The officers proceeding to his arrest did not show any arrest warrant, nor did they inform him of the reasons for his arrest. The only indication as to the reasons for his arrest comes from statements released on 6 July 2005 by the Deputy Prime Minister and Spokesman of the Government, Mr. Merouane al Maacher, who declared on television that "al Maqdissi was detained following his contacts with foreign entities, outside of Jordan, who are considered terrorist".

9. The source further mentions that Mr. al Uteibi's family did not receive any information concerning his fate and whereabouts for approximately one year, until end of June 2006, when the intelligence services allowed them to visit Mr. al Uteibi. He informed them that he had not been the subject of any legal proceedings and that his requests to be allowed to contact a lawyer in order to challenge the legality of his detention had been refused.

10. According to the source, since then, Mr. al Uteibi's family has been able to visit him twice a month, each time for just a few minutes. The short duration of these visits and the strict surveillance under which they take place makes it impossible for the family to determine whether Mr. al Uteibi is being subjected to torture or other forms of ill-treatment. However, it is clear that both his physical and his mental health are seriously suffering under the difficult conditions of detention and the complete isolation in which he is kept.

11. The source further indicates that the detention of Mr. al Uteibi is arbitrary since his arrest on 5 July 2005, i.e. a year and 11 months ago, Mr. al Uteibi has been detained without any legal basis. The previous six months of detention, from his acquittal by the State Security Court on 27 December 2004 until 28 June 2005, were equally devoid of any justification in law.

12. The source states that there can be no doubt that Mr. al Uteibi's detention is due to the statements he made and interviews he gave following his release from detention on 28 June 2005, and particularly his interview to al Jazeera on 4 July 2005.

The source concludes that the deprivation of freedom is thus due to the expression of his political views.

13. In its observations, the Government notes that Mr. al Uteibi is neither a writer nor a theologian, as he has not acquired any qualification on this field. It adds that he is well known for his radical statements, which constituted a platform that has been widely used by radical groups propagating hatred and intolerance. It also points that he was arrested under an arrest warrant issued by the public prosecutor on charges of conspiring with the objective to commit terrorist acts, which was informed to him. According to the government, Mr. al Uteibi is not deprived of the right of the visit; his family members, the ICRC and the National Centre for Human Rights have been visiting him regularly. Finally, it states that the arrest was carried out according to the applicable laws and regulations and that Mr. al Uteibi has a lawyer who is acting on his behalf and communicating with him.

14. In its comments on the Government's observations, the source reaffirms that Mr. Al-Uteibi was arrested without a warrant and without notification of any charges. It is only on 19 April 2007, almost two years after his arrest that he was brought for the first time before a magistrate, the prosecutor of State Security Court and notified of the charges of conspiring with the objective to commit terrorist acts. The source indicates that the public prosecutor has refused the lawyer chosen by the family and put pressure on them to choose another one and because Mr. al-Uteibi insists on his right to have a lawyer of his choice he was beaten.

15. The source concludes that the Government did not reply to all the substantiated allegations included in the communication, in particular: the link between the arrest and the exercise of the right to freedom of expression, as the arrest was carried out the day following an interview given to Al-Jazeera channel; his secret detention for two times; the ill-treatments suffered by him, the refusal to allowed him to have a lawyer of his choice; to challenge the lawfulness of his detention.

16. The Working Group notes that the assertions received from the sources and the Government are in most respect contradictory. However, the Government has not indicated the dates of arrest and indictment of Mr. Al-Uteibi. The Government has also not denied the allegations made by the source indicating that Mr. Al-Uteibi was arrested on 28 November 2002 and accused of "conspiracy with the objective of committing acts of terrorism" following a statement issued by the Jordan press. In addition, the Government does not deny the fact that on 27 December 2004, Mr. Al-Uteibi was acquitted by the State Security Court but was only freed on 28 June 2005 and was re-arrested on 5 July of the same year, following an interview on Al-Jeezera in which he condemned the occupation of Iraq by the United States of America.

17. The Government accuses Mr. Al-Uteibi of extremism without detailing the exact nature of the facts on which is based the accusation of "conspiracy with the objective of committing terrorism acts". The Working Group concludes that Mr. Al-Uteibi's conduct actually consists of what was indicated in the communication, that is: having granted interviews to journalists during which he expressed his political opinions. The Working Group considers that expressing political opinions which diverge from or criticize Government policy, forms part of the peaceful exercise of

freedom of expression and opinion, a right guaranteed by article 19 of the International Covenant on Civil and Political Rights to which Jordan is a Party.

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

The deprivation of liberty of Mr. Issam Mohamed Tahar Al Barqaoui Al Uteibi is arbitrary being in contravention of Article 19 of the International Covenant on Civil and Political Rights to which Jordan is party and falls under category II of the categories applicable to the consideration of cases submitted to the Working Group

19. Consequent upon the opinion rendered the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Issam Mohamed Tahar Al Barqaoui Al Uteibi.

Adopted on 22 November 2007