



General Assembly

Distr.: General
17 July 2012

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-third session, 30 April-4 May 2012

No. 8/2012 (Saudi Arabia)

Communication addressed to the Government on 14 February 2012

**Concerning: Salman Mohamed Al Fouzan, Khaled Abdulrahman Al-Twijri,
Abdulaziz Nasser Abdallah Al Barahim, and Saeed Al Khamissi**

The Government has not responded.

The State is not a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was extended and clarified in Commission resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in Council resolution 15/18 of 30 September 2010.
2. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) 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 or her sentence or despite an amnesty law applicable to the detainee) (category I);
 - (b) 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);
 - (c) 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);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of 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; or 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. Salman Mohamed Al Fouzan, usually residing in Hay Al Tawfiq, Buraydah, Saudi Arabia, is a student and works at Khubaira Mosque delivering the call to prayer.

4. It is reported that on 10 May 2009, Mr. Al Fouzan accompanied his mother to the local market. They separated when he left to deliver the call to Maghreb prayer in the early evening and agreed to meet later at home.

5. On 11 May 2009, Mr. Al Fouzan's father and other relatives went to local hospitals and police stations looking for him, but they were unable to determine his fate or whereabouts.

6. The family later learned that agents of the Saudi investigative police (*Mabahith*) had followed Mr. Al Fouzan into the mosque and arrested him before he could deliver his call to prayer. Mr. Al Fouzan was not served with an arrest warrant nor informed of the reasons for his arrest. He was subsequently blindfolded by the police officers and taken away. Mr. Al Fouzan was unable to communicate with his family for a month. Only after five months in detention was Mr. Al Fouzan allowed to receive a visit.

7. The source reports that Mr. Al Fouzan is currently detained in Al Tarfiya Prison in Buraydah. Since his arrest, Mr. Al Fouzan has neither had access to legal counsel nor been brought before a judge. He was interrogated twice after being arrested but could at no point contest the legality of his detention. During the interrogations, Mr. Al Fouzan was allegedly beaten and kept in solitary confinement for his first five months in detention. Reportedly, Mr. Al Fouzan has developed severe stomach pain and has been denied medical care.

8. The source informs the Working Group that Mr. Al Fouzan's family members filed a complaint with the Board of Grievances (Diwan Al Madhalim) but have not received a response.

9. Khaled Abdulrahman Al-Twijri is married and father of two daughters, usually residing with his family in Al-Qassim in Buraydah, Saudi Arabia.

10. Following a trip to Jordan in July 2008, the family of Mr. Al-Twijri received no news about his fate or whereabouts for many months. Notwithstanding several requests addressed to the Jordanian authorities, Mr. Al-Twijri's arrest and detention were never acknowledged. Some months after Mr. Al-Twijri's disappearance, his mother met a former detainee of Al Hayr prison in Riyadh. The latter informed her that Mr. Al-Twijri was being held at Al Hayr prison. On that occasion, Mr. Al-Twijri's mother learned that her son had been arrested and detained in Jordan for five months before being transferred to the Saudi authorities on 25 January 2009.

11. Following months of regular requests by Mr. Al-Twijri's mother to the Saudi authorities, Mr. Al-Twijri was allowed to contact his family by telephone. It was only in March 2009 that Mr. Al-Twijri was authorized to receive a visit from his family.

12. It is reported that Mr. Al-Twijri's health condition is deteriorating, partly as a result of alleged ill-treatment by prison authorities sustained during his first months in detention. It is further reported that he has recently contracted malaria and was hospitalized for about two days.

13. As of the date of this communication, Mr. Al-Twijri has not been charged nor has he been brought before a judge. He has had no access to a lawyer or legal assistance.

14. Abdulaziz Nasser Abdallah Al Barahim, a Saudi Arabian national, usually residing with his family in the Al Khadra district in Al Qassim Province, is married and father of one son.

15. It is reported that on 26 December 2005, Mr. Al Barahim was arrested at his residence by agents of the Saudi investigative police (*Mabahith*). Upon his arrest, his house was searched. Mr. Al Barahim was not shown an arrest warrant nor was he informed of the reasons for his arrest. Mr. Al Barahim was taken to Alisha Prison in Riyadh, where he remained in incommunicado detention for several months. He was reportedly beaten and threatened with electric shocks by the prison guards. He was later transferred to Al Melz prison where he nearly perished in a fire. Mr. Al Barahim is currently being held in detention at the Mabahith section of Al Qassim Prison.

16. Throughout his six years in detention, Mr. Al Barahim has not been brought before a judge and has not been given the opportunity to consult with a lawyer. Since June 2011, Mr. Al Barahim has allegedly been prevented from communicating with his family.

17. Mr. Saeed Al Khamissi, a Saudi Arabian national, usually residing with his family at Al Rabwa district in Jeddah, married and father of four sons, works at the Ministry of Justice of Saudi Arabia.

18. It is reported that on the afternoon of 28 March 2004, Mr. Al Khamissi was arrested by Saudi security forces at his office in the Ministry of Justice. He was taken to his home, which was forcibly searched and officers confiscated his books and computers. Mr. Al Khamissi was then taken into custody without being shown an arrest warrant or being informed of the reasons for his arrest.

19. Only after he had spent two months in detention did his family receive news about Mr. Al Khamissi's fate and whereabouts. It was only at this point that Mr. Al Khamissi's family learned that he was being held at Dhahban Prison, north-west of Jeddah, where he remains.

20. The source reports that Mr. Al Khamissi has been subjected to ill-treatment during the interrogation sessions. In his last seven years in detention, Mr. Al Khamissi has never been brought before a judge nor has he had access to a lawyer or legal assistance.

21. Mr. Al Khamissi's relatives appealed to the King of Saudi Arabia and the Minister of Interior, asking them to release Mr. Al Khamissi. These requests have been unsuccessful.

Source's contention regarding the allegedly arbitrary character of deprivation of liberty

22. Although the above cases are factually unrelated, the source's submission with regard to the detention of Messrs. Al Fouzan, Al-Twijri, Al Barahim and Al Khamissi is legally similar. The source submits that the detention of these persons lacks any legal basis. Messrs. Al Fouzan, Al-Twijri, Al Barahim and Al Khamissi have spent prolonged periods in detention. They have not yet been formally charged or informed of the reasons for their detention. The source points out that such treatment is in violation of article 36 of the Basic Law of Governance, article 35 of the Law of Criminal Procedure (Royal Decree No. M/39) and article 114 of the Law of Criminal Procedure. In addition, the source submits that their detention is in violation of articles 9 and 10 of the Universal Declaration of Human Rights.

The persons referred to above have not been allowed to contest the legality of their detention in further violation of Principles 11 and 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Response from the Government

23. The Working Group transmitted the above allegations to the Government of Saudi Arabia requesting it to provide, in its reply, detailed information about the current situation of Mr. Al Fouzan, Mr. Al-Twijri, Mr. Abdulaziz Al Barahim and Mr. Al Khamissi and to clarify the legal provisions justifying their continued detention. It is regretted that the Working Group has not received a response from the Government.

Discussion

24. In the absence of a response from the Government and pursuant to paragraph 16 of its revised methods of work, the Working Group is able to render an opinion in light of the information submitted to it.

25. From the information provided by the source, the factual details of the cases of the four detainees vary slightly. However, a number of common elements can be identified. Arrest and detention in all four instances was carried out by the police without an arrest warrant and without informing the detainees verbally of the reasons for deprivation of liberty. A second point of commonality is the delay in allowing detainees to contact their families to inform them of their whereabouts. Thirdly, there is lack of access to a legal counsel and failure to bring them before a judge; ill-treatment and absence of legal proceedings amounting to lack of a (fair) trial.

26. The pretrial detention of Mr. Al Fouzan, Mr. Al-Twijri, Mr. Al Barahim and Mr. Al Khamissi has continued for years without their being brought before a judge. 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 (...)”.

27. Article 9 of the Universal Declaration of Human Rights provides that “[n]o one shall be subjected to arbitrary arrest, detention or exile”. According to Article 10 of the Universal Declaration of Human Rights, “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”. In the cases in hand, these provisions have not been adhered to.

28. The Working Group notes with concern a consistent pattern of arbitrary arrests and detention in Saudi Arabia as well as silence on the part of the Government in not availing itself of the opportunity to respond to allegations set forth by the source and presented to the Group (see e.g. the Working Group’s Opinions on Saudi Arabia Nos. 22/2008; 36/2008; 37/2008; 21/2009; 10/2011; 11/2011; 17/2011; 18/2011; 19/2011; 30/2011; 31/2011; 33/2011; 41/2011; 42/2011; and 43/2011). The Working Group considers the present cases to be a matter of grave concern and a reflection of the continuing violation of basic human rights in the country.

29. The Working Group reiterates that the prohibition of arbitrary detention is part and parcel of customary international law (see e.g. Opinions Nos. 15/2011 (China) and 16/2011 (China)). The prohibition has been authoritatively recognized as a peremptory norm of international law or *jus cogens* (see the established practice of United Nations bodies as

expressed by the Human Rights Committee in its general comment No. 29 (2001) on derogations during States of Emergency, CCPR/C/21/Rev.1/Add.11, para. 11), the approach which this Working Group follows in its opinions. Article 9 of the Universal Declaration of Human Rights prohibiting arbitrary arrest and detention is a deeply entrenched human rights norm reflected in both practice and *opinio juris* of States (see, *inter alia*, International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment of 30 November 2010, *ICJ Reports* 2010, para. 79; Separate Opinion of Judge Cançado Trindade, pp. 26-37, paras. 107-142).

Disposition

30. In light of the above, the Working Group on Arbitrary Detention renders the following opinion:

The detention of Salman Mohamed Al Fouzan, Khaled Abdulrahman Al-Twijri, Abdulaziz Nasser Abdallah Al Barahim and Saeed Al Khamissi is arbitrary, being without legal basis and in violation of articles 9 and 10 of the Universal Declaration of Human Rights. The detention falls under categories I and III of the revised methods of work of the Working Group.

31. The Working Group requests the Government of Saudi Arabia to release Mr. Al Fouzan, Mr. Al-Twijri, Mr. Al Barahim and Mr. Al Khamissi forthwith and bring their situation into conformity with the requirements of international human rights instruments. To this end, if the case merits it, the Working Group in particular requests the Government to ensure a fair and impartial trial respecting all the guarantees thereof as enshrined in international human rights law.

32. Consequent upon the opinion rendered and in view of the adverse affect of this wrongful arrest and detention on Mr. Al Fouzan, Mr. Al-Twijri, Mr. Al Barahim and Mr. Al Khamissi and their families, the Working Group requests the Government of Saudi Arabia to ensure appropriate reparation.

33. The Working Group would like to recall resolution 15/18 of the Human Rights Council, which calls upon “all States to cooperate with the Working Group and to give serious consideration to responding favourably to its requests for visits so that it may carry out its mandate even more effectively”.

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

[Adopted on 2 May 2012]