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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth, 22 April – 1 May 2014

No. 13/2014 (Yemen)

Communication addressed to the Government on 24 February 2014

Concerning Mr. Mohammad Muthana Al Ammari

The Government has not replied to the communication

The State is 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, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

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); and

(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. The case summarized below was reported to the Working Group on Arbitrary Detention as follows:

4. Mr. Mohammad Muthana Al Ammari (hereinafter Mr. Al Ammari) is a Yemeni national born in 1980 and usually resides in Sana'a, Yemen with his family. He is a teacher and married with two children.

5. Mr. Al Ammari participated in peaceful anti-Government demonstrations in January 2011 and received threats from the Political Security agents that he and his family may risk harm unless he refrained from participating in the demonstrations. Mr. Al Ammari refused to discontinue his activities and as a result, he was arrested and detained by the Political Security for half a day in March 2011.

6. Around 12 p.m. on 5 December 2011, approximately 15 armed men surrounded and arrested Mr. Al Ammari on the street, as he left the house of his father-in-law's located next to the building of the Political Security. Mr. Al Ammari was then taken into a silver sport car, which proceeded to the parking lot of the Political Security building.

7. Mr. Al Ammari's wife went to the headquarters of the Political Security in the morning of 6 December 2011 to inquire about her husband's whereabouts. Although the Political Security officials denied that they held Mr. Al Ammari, Al-Thawra, a pro-government newspaper, published a front-page article on 15 December 2011 concerning the arrest of "six terrorists from al-Qaeda". The newspaper article featured photos of the six men, including Mr. Al Ammari, and quoted a government source who described them as dangerous armed militants.

8. On 11 February 2012, an official from the Political Security informed Mr. Al Ammari's wife that he was being held by the Political Security at its detention centre and that she would be notified when she would be authorized to visit him. His wife was finally allowed to visit him for the first time on 6 June 2012, six months after his arrest. Until this time, Mr. Al Ammari was detained incommunicado and not allowed to receive any visitors. He was not brought before any competent judicial authority to challenge his detention and reportedly tortured during the first few months of his detention. He was allegedly hung by the feet for hours several times and beaten with sticks.

9. In June 2012, Mr. Al Ammari's lawyer filed a complaint with the General Prosecution, seeking binding orders to the Political Security to bring Mr. Al Ammari before court. The lawyer also requested that Mr. Al Ammari be transferred from the Political Security detention centre to the Central Prison, which was denied by the Political Security.

10. At the beginning of September 2012, Mr Al Ammari was referred to the Specialized Penal Court in Sana'a by the General Prosecution on charges of belonging to al-Qaeda and "participation in an armed gang in order to carry out a military attack against governmental installations, security interests of the State and foreign institutions". His trial did not take

place until 19 October 2012, as the Political Security did not allow him to appear in court on the basis of security concerns.

11. Mr. Al Ammari was tried and sentenced to two years of imprisonment on 19 October 2012. The verdict specified that Mr. Al Ammari is deemed to have served the sentence from 5 December 2011 when he was first arrested and that he should therefore be released on 5 December 2013. The source alleges that the trial lacked due process, as the prosecution did not present any piece of material evidence to substantiate Mr. Al Ammari's guilt. Although Mr. Al Ammari's lawyer appealed the sentence, the appellate court allegedly refused to re-examine the case on the basis that it was "subject to the discretion and authority of the first judge, who is himself under the control of God and his conscience" and consequently upheld the sentence.

12. Mr. Al Ammari served his sentence in the Political Security's detention centre and continues to be detained there to date, despite the fact that he has completed his sentence as of 5 December 2013.

13. The source argues that Mr. Al Ammari's detention is arbitrary, as there is no legal basis justifying his detention. It highlights that Mr. Al Ammari was arrested without any arrest warrant, held incommunicado for six months following his arrest, and notified of the charges against him only after about nine months of his arrest. The source submits that this infringes article 32(b) of the Yemeni constitution, which states that: "nobody may be arrested, searched, or detained unless caught in the act; or in implementation of an order necessitated by an investigation or by the maintenance of security; issued by a judge or a prosecutor in accordance with the provisions of the law". It argues that it also violates article 32(c), which provides that "whoever is temporarily arrested for suspicion of committing a crime shall be arraigned within twenty-four hours. The judge shall inform him of the reasons for his arrest, question him, and give him the opportunity to plead his defence. The judge shall immediately issue a reasoned order for his release or continued detention. In all cases, detention should not exceed the period specified in that judicial order". Furthermore, the source argues that in any event, Mr. Al Ammari has completed his sentence on 5 December 2013 and thus the ongoing deprivation of Mr. Al Ammari's liberty completely lacks a legal basis.

14. The source further argues that Mr. Al Ammari's detention is arbitrary, as it results from the exercise of rights or liberties guaranteed by the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). In the source's view, Mr. Al Ammari's detention is an act of reprisal by the loyalists of the former President Ali Abdallah Saleh and amounts to a violation of the right to freedom of opinion and expression and the right to freedom of peaceful assembly, guaranteed by article 19 and 21 of the UDHR and articles 19 and 21 of the ICCPR.

15. Finally, the source submits that Mr Al Ammari's detention is arbitrary for it violates international norms relating to fair trial, as laid out in articles 9 and 14 of the ICCPR. The source argue that the incommunicado detention of Mr. Al Ammari for six months and his first appearance before the Specialised Penal Court only in October 2012, violate article 9, paragraph 3 of the ICCPR, which provides that "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement". The source also takes the view that Mr. Al Ammari was not presumed innocent prior to his trial, contrary to article 14, paragraph 2 of the ICCPR which guarantees the "the right to be presumed innocent until proved guilty according to law." In support of its argument, the source points to the publication by the pro-government newspaper, Al-Thawra, of the article referring to

Mr. Al Ammari as one of the “six terrorists from al-Qaeda”, and the refusal of the Political Security to bring Mr. Al Ammari to court for several months after his arrest. The source further alleges the lack of due process in Mr. Al Ammari’s trial, as he was convicted without any material evidence and the appellate court simply refused to re-examine Mr. Al Ammari’s matter.

Response from the Government

16. The Working Group transmitted the allegations from the source to the Government of Yemen requesting it to provide in its reply detailed information about the current situation of Mr. Al Ammari and to clarify the legal provisions justifying his continued detention. The Working Group regrets that the Government has not replied to its request.

Discussion

17. Despite the absence of a response from the Government, the Working Group may render an opinion on the basis of the information available to it, in accordance with paragraph 16 of its Methods of Work.

18. Mr. Al Ammari’s case is one of several cases of a similar nature on which the Working Group has rendered opinions, including Opinions No. 47/2005; No. 40/2008; No. 13/2009; No. 26/2009 and No. 17/2010, 5/2011, 19/2012.¹ In all these cases, the persons detained: (a) were arrested without a warrant and either not formally charged or charged months later; (b) have been held at various detention centres and prisons for varying periods of time without being brought before a judge; (c) were charged with anti-state and terrorist activities; and (d) have either never stood trial or were tried by the Specialized Penal Courts.

19. The Working Group further notes that in the present case and a number of other cases, the Government authorities appear to justify the detention by alleging, either formally or informally, that the detainee/s are linked to Al-Qaida and suspected of terrorist activities. This pretext of securitisation is an increasing trend in a number of jurisdictions and has resulted in the decreased protection of basic fundamental rights of the individuals within those jurisdictions. In its past reports, the Working Group has reiterated concerns related to the continuing tendency of States in using deprivation of liberty in the context of the legitimate fight against terrorism.²

20. Bearing in mind this emerging pattern of arbitrary detention in Yemen and information made available in the present case, the Working Group notes that *prima facie*, serious procedural lapses have occurred in the case in hand, both upon arrest and detention, at trial and upon completion of his prison sentence.

21. The first violation is that of article 9, paragraph 2 of the ICCPR. Mr. Al Ammari was arrested on 5 December 2011 without an arrest warrant, held *incommunicado* for six months following the arrest and informed of the charges against him only after nine months in detention. Additionally, various provisions of the Yemeni law on the subject are also violated. (Cf. article 47 (c) of the Constitution of Yemen; article 73 of the Yemeni Criminal Procedure Code (Law No. 31 of 1994).

22. Mr. Al Ammari was presented before a judge in the Specialized Penal Court in Sana’a nine months after his arrest in September 2012. This is contrary to the requirements under article 269 of the Criminal Procedure Code of Yemen and article 9, paragraph 3 of

¹ Opinions are available from the Working Group on Arbitrary Detention database: www.unwgadatabase.org/un.

² See A/HRC/10/21 (2009); E/CN.4/2005/6 (2004); E/CN.4/2004/3 (2003).

the ICCPR. Article 9, paragraph 3, of the ICCPR requires that in criminal cases any person arrested or detained has to be brought "promptly" before a judge or other officer authorized by law to exercise judicial power. The Human Rights Committee, in its general comment No. 8 (1982) on the right to liberty and security of persons, notes that "delays must not exceed a few days" from the time of arrest and "pre-trial detention should be an exception and as short as possible".³ In the present case, the delay of nine months in bringing Mr. Al Ammari to a judicial authority, six months of which were incommunicado detention, clearly violates the requirements under article 9, paragraph 3 of the ICCPR.

23. Mr. Al Ammari participated in peaceful anti-government demonstrations since January 2011 and received threats from the Government agents to refrain from these activities. Upon his refusal and continued participation in these demonstrations, Mr. Al Ammari was detained by the Political Security for half a day. The present detention illustrates the pattern of detention of anti-government demonstrators in an attempt to prevent them from expressing their opinion and exercising their right to assembly, which are guaranteed by article 19 and 21 of the UDHR and articles 19 and 21 of the ICCPR.

24. Mr. Al Ammari was sentenced to two years of imprisonment from the date of his arrest, 5 December 2011. Upon completion of his term on 5 December 2013, Mr. Al Ammari was not released and continues to be detained to date. In the absence of evidence that Mr. Al Ammari has been charged with any further offence, this detention thus lacks a legal basis and justification.

25. The Working group also notes with concern that Mr. Al Ammari has suffered torture and ill-treatment during his detention.

26. Finally, the Working Group would like to reiterate the fact that the detention of an individual has far-reaching adverse consequences for his or her family, community and society at large. Governments and their functionaries therefore bear the serious responsibility of ensuring the application of the law and equal protection of all persons within its jurisdiction.

Disposition

27. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Al Ammari is arbitrary, being in contravention of article 9, 19 and 21 of the UDHR and articles 9, 14, and 19 and 21 of the ICCPR; it falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

28. Additionally, the detention of Mr. Al Ammari from 5 December 2013 to date falls within category I of the categories referred to by the Working Group.

29. The Working Group requests the Government to take the necessary steps to remedy the situation, which, under the specific circumstances of this case, are the immediate release of, and the provision of adequate compensation to Mr. Al Ammari, pursuant to article 9, paragraph 5 of the ICCPR.

30. Furthermore, the Working Group recalls the call of the Human Rights Council for States to take into account the Working Group's views and, where necessary, to take the appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty.

³ Human Rights Committee, General Comment No. 8 (1982).

States are also requested to extend their cooperation to the Working Group's requests for information and to give due consideration to the recommendations it has made.⁴

31. In accordance with article 33(a) of the revised Methods of Work of the Working Group, the Working Group considers it appropriate to refer the allegations of torture and ill-treatment of Mr. Al Ammari to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

[Adopted on 30 April 2014]

⁴ A/HRC/RES/24/7, paras 3, 6 and 8.