

OPINION No. 19/2007 (Saudi Arabia)

Communication addressed to the Government on 22 June 2007

Concerning Mr. Zhiya Kassem Khammam al Hussain

The State has not signed nor ratified the International Covenant on Civil and Political Rights

1. (Same text as paragraph 1 of Opinion No. 14/2007.)
2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of the source.
3. (Same text as paragraph 3 of Opinion No. 15/2007.)
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 summarized below was reported to the Working Group on Arbitrary Detention as follows: Mr. Zhiya Kassem Khammam al Hussain, born on 16 July 1966, a citizen of Iraq, with Iraqi passport No. 1670846/846, resident in Al Farouania, Kuwait, married with nine children, a trader by profession, was arrested at his home on 15 January 2007 by around 20 members of a Kuwaiti State Security Agency, which is subject to the Ministry of the Interior (Amn Addaoula). Neither an arrest warrant was shown to him nor was he informed of the reasons and legal basis for his arrest.
7. Mr. al Hussain was taken to the premises of Amn Addaoula, where he was allegedly tortured during one week. Later, he was transferred to a detention centre for foreigners awaiting deportation. At that detention centre he was able to inform a relative of Kuwaiti nationality about his situation, expressing his fears to be expelled to Iraq. On 31 January 2007, he was sent by plane to Riyadh.
8. Upon his arrival in Riyadh, Mr. al Hussain was transferred to a detention centre run by the Ministry of the Interior. In April 2007, he was able to phone his family, informing them that he was detained at Al Hayr Prison in Riyadh. Since then, he has been authorized to call his family every two weeks on a regular basis.
9. The source alleges that Mr. al Hussain is being kept in detention without having been formally charged with an offence, without having received any information on the reasons of his deportation from Kuwait to Saudi Arabia or about the proceedings initiated against him. He has not had the possibility to challenge the legality of his detention before a judicial or other competent authority.
10. The source further alleges that Mr. al Hussain is being detained without any legal basis. Article 2 of Royal Decree No. M.39 of 16 October 2001 stipulates that any arrest or detention should be based upon a legal provision and that the length of detention must be determined by the authorities. Any person accused of a penal offence must be brought before a judicial authority, be informed of the reasons for his arrest and must be shown an arrest warrant. The source further reports that Mr. al Hussain has not been allowed to contact a defence lawyer.
11. In its reply, the Government indicates that Mr. al Hussain was handed over to the Saudi authorities on 31 January 2007 after having been found to illegally raise and receive funds and to transmit them to Iraq through Qatar and Jordan with the help of Saudis and Qataris. These funds were allegedly delivered to groups in Iraq. He underwent the requisite medical examinations immediately after his arrival at the detention centre and was permitted to contact his family on three occasions on 2 February 2007 in the following manner: the first contact was with Sulaiman Qabalan al Ghariba, a relative by marriage, in Kuwait; the second contact was with his sister Fatima in Kuwait; and the third contact was with his brother Abdul Karim al Hussain in Qatar. On these occasions he reassured them about his situation and his state of health and informed them about his place of detention, where he is still being questioned.

12. The Government points out that it is noteworthy that Mr. al Hussain is still questioned as he was involved in an illegal fund raising operation that could be linked to groups threatening regional peace and stability.

13. The source comments on the government reply as follows: It emerges from the reply of the Government that Mr. al Hussain was “handed over” to the authorities of the country on 31 January 2007, because “he was involved in an illegal fund raising operation that could be linked to groups threatening regional peace and stability”.

14. The source points out that irrespective of the allegations, the “handing over” of Mr. al Hussain, who is an Iraqi citizen, by Kuwait to a third country, Saudi Arabia, was carried out outside a lawful extradition proceeding.

15. The source also adverts to the fact that the Government satisfies itself with maintaining that Mr. al Hussain was subjected to medical examinations and that he was allowed to contact his next-of-kin by telephone, facts which are confirmed by the source.

16. The source further mentions that, in its reply, the Government did not question the following facts: Mr. al Hussain has not been brought before an independent and impartial tribunal so as to have the grounds of a possible charge examined and that he has never been made the subject of any legal procedure; Mr. al Hussain has not had the possibility of benefiting from an effective remedy to question the legality of his detention; Mr. al Hussain has not enjoyed any juridical assistance, since no lawyer has been authorized by the authorities to assist him until this day in spite of his requests and those of his family.

17. Finally, the source adds that no member of the family of Mr. al Hussain has been authorized by the Ministry of the Interior to visit him at his place of detention, the latest request, made by his brother-in-law, Mr. Qabalan al Ghariba, having been rejected without reasons.

18. From the above-mentioned information, the Working Group notes that the Government has not challenged the allegations of the source that on 31 January 2007 Mr. al Hussain was handed over by Kuwaiti authorities to the Saudi Government outside of any legal procedure and without having received any information about the proceedings initiated against him. The Working Group has already stated that this practice known as “renditions”, i.e. the informal transfer of a person from the jurisdiction of one State to that of another on the basis of negotiations between administrative authorities of the two countries without procedural safeguards, is irremediably in conflict with the requirements of international law.¹

19. The Working Group also notes that the Government has not disputed that Mr. al Hussain has neither been formally charged with any offence, nor been informed of the duration of his detention, nor been brought before a judicial officer, nor been allowed to name a lawyer to act on his behalf, nor otherwise been provided the possibility to challenge the legality of his detention. The only argument given by the Government to justify his prolonged detention of more than 10 months is that “Mr. al Hussain is still questioned as he was involved in an illegal fund raising operation that could be linked to groups threatening regional peace and stability.”

¹ See the report of the Working Group on Arbitrary Detention (A/HRC/4/40).

20. Consequently, the Working Group can only conclude that the detention of Mr. al Hussain is devoid of any legal basis. This circumstance in itself already renders his detention contrary to applicable international norms and constitutes a violation of the right to liberty irrespective of the nature and the motives of the accusations against him.

21. In the light of the foregoing the Working Group renders the following Opinion:

The detention of Mr. Zhiya Kassem Khammam al Hussain is in contravention of article 9 of the Universal Declaration of Human Rights and falls within category I of the categories applicable to the consideration of the cases submitted to the Working Group.

22. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation in order to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights. The Working Group recommends that the Government considers signing and ratifying the International Covenant on Civil and Political Rights.

Adopted on 22 November 2007