

OPINION No. 9/2008 (Yemen)

Communication addressed to the Government on 18 June 2007.

Concerning Mr. Saqar Abdelkader Al Choutier.

The State is a party to 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. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the light of the allegations made and the response of the Government thereto, as well as the observations by the source.
5. According to the source, Mr. Saqar Abdelkader al Choutier (hereinafter Mr. al Choutier), a citizen of Jordan born in 1972, is a resident of Ibb, a town 200 kilometres south of Sanaa. He is a teacher at the “Ennahda” school of Ibb.
6. During the 19th Arab League Summit in the Kingdom of Saudi Arabia on 28 and 29 March 2007, a group of activists of the Attahrir party, to which Mr. al Choutier belongs, published a document alleging corruption of, and

maladministration and human rights violations by allegedly authoritarian governments of Arab countries.

7. On 7 April 2007, Mr. al Choutier was arrested by agents of the “Political Security Organisation” of Yemen (al Amn Assiyassi) and taken to an undisclosed location. No arrest warrant was shown to him, nor was he informed of the reasons and legal basis for his arrest.

8. Two months later, Mr. al Choutier remained in detention without having been formally charged with an offence, without having received any information on the proceedings initiated against him or on the legal basis of his detention, without access to a lawyer, and without having had the possibility to challenge the legality of his detention before a judicial or other authority. Mr. al Choutier’s parents have appealed to the Minister of the Interior for their son’s release but have not received any reply.

9. The source argues that since his arrest on 7 April 2007, Mr. al Choutier has been detained without any legal basis. The Constitution of Yemen stipulates that any person accused of a penal offence must be brought before a judge within 24 hours of his arrest. Articles 73 and 269 of the Criminal Procedure Code of Yemen (Law no. 31 of 1994) establishes that everyone who is arrested must be immediately informed of the reasons for his arrest, must be shown the arrest warrant, must be allowed to contact any person he wishes to inform of the arrest and must be allowed to contact a lawyer. According to the source, none of these guarantees has been respected in Mr. al Choutier’s case, his detention thus being devoid of any justification in Yemeni law. Article 9 (1) of the International Covenant on Civil and Political Rights, to which Yemen is a party, establishes that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”.

10. The source further states that Mr. al Choutier’s detention results from the publication of documents peacefully expressing a political opinion on a current political event, the Summit Meeting of the Arab League. The source concludes that the deprivation of freedom is thus due to the expression of his political views, which constituted exercise of the freedom of expression protected by article 19 of the international Covenant on Civil and Political Rights.

11. The source also argues that Mr. al Choutier has been completely deprived of the right to challenge the legality of his detention enshrined in article 9, paragraph 4 of the international Covenant with regard to all forms of detention, whether administrative or in the framework of judicial proceedings.

12. Insofar as Mr. al Choutier is accused of a criminal offence, he has not been “promptly informed of the charges against him”, as required by article 9, paragraph 2 of the International Covenant on Civil and Political Rights, nor been “brought promptly before a judge or other officer authorized by law to exercise judicial power” (article 9, paragraph 3, of the Covenant). The source adds that he has not been allowed to contact a lawyer and has been denied the right to “adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing” (article 14, paragraph 3 (b) of the Covenant).

13. By its communication dated 11 June 2007, the source informs the Working Group that Mr. al Choutier was released on 29 May 2007, after 52 days of detention.

14. In its submission, the Government of Yemen makes reference to a person named Sager Abdulgader al Choutier and informs that this person was questioned for a short while and released immediately.

15. The source replies in commenting on the response from the Government by arguing that a 52 days detention cannot be considered as a "short while". Furthermore, the source emphasizes that the government reply does not contest the allegations previously made.

16. The Working Group recalls that paragraph 17 (a) of its methods of work provides: "If the person has been released, for whatever reason, following the reference of the case to the Working Group, the case is filed; the Group, however, reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned."

17. In this special case, although the person has been released, it is not contested that Mr. al Choutier was detained for 52 days. In addition, the Working Group has not been provided with any information on the reasons for his arrest, on the legal basis invoked for his arrest, on the legal reasons for his detention, or on why he was released and by whom. Has Mr. al Choutier enjoyed the assistance of legal counsel or visits by his next-of-kin?

18. The Government of Yemen, which is State party to the International Covenant on Civil and Political Rights, should have replied to all these questions put to it out of respect for its international obligations and also for the Working Group. In view of its silence the Working Group considers that the allegations put forward by the source have not been repudiated or contested by the Government. In the absence of any indication to the contrary they are to be considered as well-founded.

19. Consequently, the Working Group notes that it is established that Mr. al Choutier was arrested at his place of work on 7 April 2007 without a warrant and without being informed of the reasons for and legal basis of his arrest, that he was taken to an undisclosed place of detention, where he was detained incommunicado for 52 days without having been informed about any charges laid against him and without having had the possibility to challenge the legality of his detention before a court.

20. Given the fact that the rights afforded to Mr. al Choutier under the Yemeni Constitution and articles 73 and 269 of the Criminal Procedure Code have been violated in the absence of any information or argument shared by the Government as to the reasons and legal basis for his arrest and detention, the Working Group is led to the conclusion that his taking into custody did not find any justification in Yemeni law. Hence, it did not follow a procedure established by law as envisaged by article 9, paragraph 1 of the international Covenant on Civil and Political Rights and is as such devoid of any legal basis.

21. Furthermore, it is the view of the Working Group that there seems to be a causal link between Mr. al Choutier's participation in the publication of a document criticizing corruption, mismanagement and human rights violations allegedly

conducted by, in his view, authoritarian governments in the Arab region during the 19th Summit of the Arab League, as alleged by the source and not refuted by the Government. Public criticism of policies and conduct of Government, foreign or one's own, falls, however, squarely within the scope of the right to freedom of opinion and expression as protected by article 19 of the International Covenant, provided that it is done in a peaceful manner, as in the present case. Mr. al Chouitier was therefore also arbitrarily arrested and detained as a result of the peaceful exercise of his right to freedom of opinion and expression.

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

The detention of Mr. al Chouitier was arbitrary, being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights and articles 9 and 19 of the International Covenant on Civil and Political Rights and falls under categories I and II of the categories applicable to the consideration of cases submitted to the Working Group.

23. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to prevent similar situations from occurring in the future in order to be in conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 8 May 2008