

Opinion No. 40/2008 (Yemen)

Communication addressed to the Government on 11 June 2008

Concerning Mr. Abdeladhim Ali Abdeljalil Al-Hattar

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 17/2008.)

2. The Working Group appreciates that the Government has provided it with its reply to the allegations transmitted to it.
3. (Same text as paragraph 3 of Opinion No. 17/2008.)
4. The case was reported to the Working Group as follows: Mr. Abdeladhim Ali Abdeljalil Al-Hattar (hereafter Mr. Al-Hattar), a citizen of Yemen born in 1982 and a resident of Sanaa, is an Imam at the Al-Haramayn Mosque, in Al-Asbahi, Sanaa. On 14 December 2007, he was arrested at the mosque by agents of the al-Amn al-Siyassi, the Political Security Services, 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.
5. Mr. al-Hattar was held in incommunicado detention in police facilities for the first three months since his arrest. He remains 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-Hattar's parents have appealed to the authorities for their son's release but have not received any reply.
6. The source adds that 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. Article 73 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-Hattar's case, his detention thus being devoid of any valid justification in Yemeni law.
7. In its response dated 19 November 2008, the Government reported that Mr. Al-Hattar is detained in Yemen due to his activities against law and security which have been categorized as terrorist acts. His detention is not arbitrary since this person is available; he has never been in situation of disappeared and is currently going through normal legal procedures.
8. The Working Group notes that the Government has not denied the main allegations from the source. This attitude from the Government of not refuting the allegations of the source implies a tacit acceptance of the veracity of them.
9. The Working Group consequently observes that Mr. Al-Hattar was arrested without a valid judicial arrest warrant; that he was held in incommunicado detention during three months; that the reasons for his detention were not notified to him. The Working Group also notes that Mr. Al-Hattar has never been brought before a judge and that he has not been formally charged with a concrete criminal offence attributed to him.
10. The Working Group further notes that Mr. Al-Hattar has not been allowed to consult a defence lawyer. He continues to be detained in the premises of the Political Security Services without the possibility to contest the lawfulness of his detention and without being brought before an independent and impartial tribunal.
11. In the light of the foregoing the Working Group renders the following Opinion:

The detention of Mr. Abdeljalil Abdeladhim Ali Al-Hattar is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

12. Consequent upon this Opinion, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Al-Hattar; to proceed with his immediate release or to bring him before an independent and impartial tribunal within the shorter delay in case there exists sufficient charges against him, in accordance with the principles and norms enshrined in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 24 November 2008