No. 35/2011 (Morocco)

Communication addressed to the Government on 24 January 2011

Concerning: Mr. Mohamed Hassan Echerif el-Kettani

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. Its mandate was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the Working Group's mandate in its decision 2006/102 and extended it for a further three-year period in Council resolution 15/18 of 30 September 2010. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
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 sentence or despite an amnesty law applicable to him or her) (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 the 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; 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. Mr. Mohamed Hassan Echerif el-Kettani, of Moroccan nationality, born in XXXX and residing in Rabat, is a well-known religious figure in Morocco.
4. It has been reported that on 6 February 2003, Mr. El-Kettani was summoned by the police of Salé in response to a complaint, allegedly filed by Mr. Al Tayeb Bouriya and Mr. El Hassan al Chebbari, who lived in the Haï El Oued neighbourhood of Salé, accusing him of disturbing the peace in the neighbourhood ever since he became the imam of the Mecca mosque, and of making changes to the Maliki Islamic rite in his sermons.
5. According to the information received, the criminal investigation officers placed him in detention for acting under false pretences by preaching without authorization, for inciting violence and jihad,

for not blessing the king during his sermons, and for distributing banned publications and holding illegal meetings both inside and outside the mosque.
6. On 8 February 2003, Mr. El-Kettani was heard by the Crown Prosecutor. According to the source, the charges against Mr. El-Kettani were proven to be false. Mr. El-Kettani was granted legal authorization to preach in the mosques, and no material evidence was provided by the police officer in charge of the preliminary investigation. Mr. El-Kettani was subsequently released.
7. On 13 February 2003, Mr. El-Kettani learned that there was a warrant out for his arrest. He then appeared of his own accord before the Prosecutor at the Court of Appeal in Rabat. He was questioned about the same events and was informed of the charges against him, namely criminal association, illegal assembly, establishing an unauthorized association and illegal exercise of functions, all of which he had denied ever since his first appearance in court.
8. He was placed in detention and was also accused of having been invited in the past to unauthorized rallies held by members or supporters of an organization that the security services referred to as Salafia Jihadia. Mr. El-Kettani denied all the accusations during the hearing on the merits before the investigating judge.
9. The source adds that, during their hearing before the investigating judge regarding the complaint they had filed with the Salé police, Mr. Al Tayeb Bouriya and Mr. El Hassan al Chebbari stated that they had never filed a complaint against Mr. El-Kettani, whom they did not know; they had never attended his sermons or his Friday prayers; they had never prayed at the Mecca mosque in Salé and, moreover, that Mr. El Hassan al Chebbari had never prayed or entered a mosque before. Several other people who were subsequently heard, including Mr. Mustapha Adra, Mr. Tewfik al Fatmi, Mr. Ahmed Bennacer, Mr. Mohamed al Yabour, Mr. Abdelkader Tima, Mr. Djouad al Bouqali, Mr. Noureddine Azzeraidi, Mr. Bouzza Idiha and Mr. Ahmed al Madkis, all stated that they had no connection with Mr. El-Kettani and that they sometimes prayed at the Mecca mosque but nothing more. Despite the apparent lack of evidence, in an unsubstantiated order, dated 2 April 2003 the investigating judge refused to grant Mr. El-Kettani release pending trial. Despite the fact that the investigation was completed at the end of March 2003, the investigating judge did not refer the case to a trial court.
10. According to the information received, following the terrorist attacks carried out in Casablanca on 16 May 2003 the investigating judge of the Court of Appeal in Rabat decided to refer the case to the Court of Appeal in Casablanca, which had initiated proceedings against 31 persons in relation to the attacks. Most of those persons had been arrested in Casablanca between October and December 2002 and accused of belonging to the Salafia Jihadia organization.
11. According to reports, the principal crown prosecutor's office has ordered the launch of an investigation on the basis of new charges against Mr. El-Kettani, including charges of establishing a criminal association, intentional homicide, complicity in intentional homicide, and endangering State security.
12. According to the source, Mr. El-Kettani refuted these new accusations at his two hearings before the investigating judge of the Court of Appeal in Casablanca. Despite the fact that there was no link between Mr. El-Kettani and the persons prosecuted for the attacks in Casablanca, the case was referred to the criminal chamber responsible for the aforementioned charges. Thus, the hearing before the Court of Appeal in Casablanca was held on 25 September 2003.
13. It has been reported that, at the beginning of the trial proceedings, in their opening address Mr. El-Kettani's lawyers asked the court to subpoena the witnesses listed in the referral order so that they could be heard by the trial court and could confront the accused. According to the source, the Chief Justice rejected that request. The defence withdrew from the hearing in protest. Following the withdrawal of Mr. El-Kettani's lawyers, the Chief Justice appointed an ex officio counsel, who was given a few hours to examine a case file several thousands of pages long.
14. In the light of the above, it is also alleged that Mr. El-Kettani did not enjoy the procedural guarantees stemming from the right to a fair trial. On the same day, 25 September 2003, the Court of Appeal in Casablanca sentenced Mr. El-Kettani to 20 years' imprisonment on the sole basis of statements from witnesses who had been heard by the police and whom the Court itself had refused to subpoena, hear or require to confront the accused. According to the source, it follows from the

reasoning given in the court's sentence that it was up to the accused to prove that the witnesses' statements were false, which violates the fundamental principle of presumed innocence. Mr. El-Kettani subsequently lodged an appeal in cassation against the decision of the Court of Appeal in Casablanca. It was not until 24 January 2007, nearly four years after Mr. El-Kettani's arrest, that the Supreme Court in Rabat set aside the sentence on the ground that "the lack of replies to the requests made by the different parties left the Court of Appeal's decision with no legal basis".

15. The case has been returned to the Court of Appeal in Casablanca for review. This second trial of Mr. El-Kettani was postponed several times, allegedly without grounds. The case was allegedly adjourned on 15 June 2007, 20 July 2007, 28 September 2007, 9 November 2007, 1 February 2008, 14 March 2008, 20 May 2008, 10 October 2008 and 26 December 2008. On 2 May 2009, the Court of Appeal in Casablanca again sentenced Mr. El-Kettani to 20 years' imprisonment. According to the information received, during that hearing and after the sentence was handed down, the judge said to Mr. El-Kettani in so many words: "I do not have anything against you in this case file, but I considered the case as a whole." A new appeal in cassation was lodged against that decision and is currently pending before the Supreme Court in Rabat.

16. The source maintains that Mr. El-Kettani has been held in detention since 6 February 2003 without any legal basis. The proceedings initiated against Mr. El-Kettani are allegedly vitiated, on the one hand because they are based on a false criminal complaint, and on the other hand because they are linked with another procedure initiated in another city against persons with whom Mr. El-Kettani obviously has no connection and who were prosecuted for other events that took place after Mr. El-Kettani's arrest.

17. In addition, the source contends that Mr. El-Kettani's conviction was of a political nature and that this was confirmed by the judge's remarks at the hearing before the Court of Appeal in Casablanca. According to the information received, Mr. El-Kettani's current deprivation of liberty is the direct result of him exercising his right to peacefully express his opinion, a right that is protected by the Constitution of Morocco and by article 19 of the International Covenant on Civil and Political Rights, to which the respondent State is a party.

18. The source claims that Mr. El-Kettani did not have the opportunity to mount a proper defence. The judges refused, in particular, to subpoena witnesses who had testified before the investigating judge.

19. According to the information received, Mr. El-Kettani is currently being held in the Casablanca prison. The source maintains that Mr. El-Kettani's detention is allegedly arbitrary because it has been without legal basis since 6 February 2003, that it is a direct consequence of him exercising his right to freely and peacefully express his political and religious beliefs and opinions, and finally, that his right to a fair trial has not been respected.

Response from the Government

20. The Working Group on Arbitrary Detention expresses its appreciation to the Government for providing the requested information in good time.

21. In its response, the Government argues that Mr. El-Kettani taught courses encouraging rebellion and disobedience against non-Islamist regimes, and that these courses were attended by members of the Salafia Jihadia, several of whom were involved in the terrorist attacks in Casablanca in 2003. The proceedings against him are based on the testimony of several persons involved in those events and on his own confession.

22. In its response, the Government provides the names of Mr. El-Kettani's lawyers, who effectively participated in the trial but withdrew following the court's decision to link their request to hear witnesses with the judgement on the merits, because they considered that this decision jeopardized their client's interests. This was why the court appointed him another lawyer before continuing with the proceedings. The Government argues that this decision has a basis in Supreme Court case law.

23. According to the Government, the court respected the guarantees related to a fair trial, and the accused was sentenced on the basis of regular and orderly proceedings. Lastly, the Supreme Court set aside the sentence, and the Court of Appeal, issuing another ruling after having heard Mr. El-Kettani's lawyers and about 20 witnesses so as to satisfy the lawyers' request, sentenced him

again to 20 years' imprisonment. An application has been lodged for judicial review of this decision and is still pending.

Comments from the source

24. The source, in its comments following this response, also invokes category V of the methods of work of the Working Group on Arbitrary Detention and considers that the Government has not provided any new elements in its argument. With regard to the false accusations, no link has been established between the proceedings against those prosecuted for terrorism and the proceedings against Mr. El-Kettani. Also, Mr. El-Kettani contests the charges against him, and no physical or testimonial evidence has been provided. All the persons committed for trial who were heard by the court maintained that they did not know Mr. El-Kettani, and yet, to everyone's surprise, the conviction was upheld.

Discussion

25. The Working Group on Arbitrary Detention notes that Mr. El-Kettani has been under a committal warrant since 13 February 2003 and that his trial is still ongoing.

26. Without making a value judgement on the lawfulness of the proceedings described by the source, we note that the following facts deserve the Working Group's attention, especially given that the Government has not provided any specific response regarding them:

(a) Mr. El-Kettani was arrested a second time for the same offences for which he had initially been released;

(b) He turned himself in to the police of his own accord when he found out that he was wanted;

(c) The acts of which he is accused are vague, namely: disturbing the peace, deviating from the Maliki Islamic rite in his sermons, preaching without authorization, inciting violence and jihad, not blessing the king during his sermons, distributing banned publications inside and outside the mosque, criminal association, illegal assembly, establishing an unauthorized association and illegal exercise of functions;

(d) The persons who supposedly filed the initial complaint and several of the witnesses questioned have denied filing a complaint and maintain that they do not know Mr. El-Kettani;

(e) Following the terrorist attacks in Casablanca on 16 May 2003, the two cases were linked without any supporting evidence that a link truly existed. The Government has not made any statement on this point;

(f) At the beginning of the trial, Mr. El-Kettani's lawyers asked the court to subpoena the witnesses heard during the police investigation. That request was denied, leading his lawyers to withdraw from the hearing in protest, and as a result Mr. El-Kettani's defence could not be assured in accordance with the law, even though another counsel was chosen for him;

(g) The Supreme Court in Rabat set aside the sentence, considering that "the lack of replies to the requests made by the different parties left the Court of Appeal's decision with no legal basis".

27. These elements show that Mr. El-Kettani's arrest, without his being accused of specific and clearly identified acts, lends support to the argument that he was arrested because of his opinions and exercise of his freedom of expression. Furthermore, his defence before the court was not in conformity with international law in the light of his lawyers' absence, his lengthy detention and the fact that he was not able to call all the witnesses before the court. Moreover, the Supreme Court mentioned all of these breaches in its judgement cited above.

28. The Working Group can only conclude that deprivation of liberty under such circumstances is arbitrary and pertains to categories II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

Disposition

29. In the light of the foregoing, the Working Group renders the following opinion:

Mr. El-Kettani's deprivation of liberty is arbitrary, being in contravention of the provisions of articles 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 9, 14, 18 and 19 of the International Covenant on Civil and Political Rights, and falling within categories II and III of its methods of work.

30. Consequent upon the opinion rendered, the Working Group requests the Government to release Mr. El-Kettani forthwith and to provide him with reparation for the damages he allegedly suffered as a result of this situation.

[Adopted on 1 September 2011]