



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012****No. 19/2012 (Yemen)****Communication addressed to the Government on 2 May 2012****Concerning Abbad Ahmed Sameer****The Government did not reply 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 15/18 of 30 September 2010. 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);

(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. Abbad Ahmed Sameer, a national of Yemen born in 1990, is a recent graduate from high school. He is single and normally lives with his family in Aden Governorate, Yemen.

5. During the night of 11 November 2010, Mr. Sameer was arrested at his home by a group of agents belonging to the Aden branch of the Political Security Department. He was allegedly not presented with an arrest warrant.

6. Following the arrest, Mr. Sameer was placed in detention in the Political Security prison of Baltwaha, At-Tawahi district, Aden. Around March 2011, Mr. Sameer was transferred to Ta'izz Political Security Prison where he remained until 15 April 2011. On the latter date, he was transferred to Sana'a Political Security Prison, where he remains.

7. While in Baltwaha prison, Mr. Sameer was detained incommunicado for several weeks. After this period, he was allowed family visits once a week. However, following his transfer to Ta'izz and then to the Sana'a prison, contact with his family became more difficult. The source reports that the last time his family was able to visit him was on 3 October 2011, allegedly thanks to the intervention of the International Committee of the Red Cross. The last telephone call the family received from Mr. Sameer dates back to 1 November 2011.

8. The source reports that during the initial period of his detention, Mr. Sameer underwent numerous interrogations during which he was allegedly tortured. He was beaten and forced to confess to a terrorism-related charge. Mr. Sameer was also placed in solitary confinement for prolonged periods and with negative impact on his physical and mental health. Mr. Sameer is suffering from asthma attacks, fever, migraines and digestive problems.

9. The source reports that Mr. Sameer was informally accused of being a member of Al-Qaida, but has never been charged nor presented before a judge. Reportedly, his family informed the judicial authorities, including the Public Prosecutor, claiming that Mr. Sameer's detention was arbitrary and asking for his release. However, no action has been taken since by the authorities.

10. The source submits that Mr. Sameer's detention is arbitrary as there is no legal basis for his detention and he has not been informed of any charge nor brought before a judge, despite the fact that his arrest dates back to November 2010. Such treatment, in the source's view, contravenes not only the domestic Yemeni law, namely article 47 (c) of the Yemeni Constitution and article 73 of the Yemeni Criminal Procedure Code, but also article 9 of the International Covenant on Civil and Political Rights. The source also submits that Mr. Sameer has been deprived of his right to a fair trial and has not been able in any way to challenge the legality of his detention.

Response from the Government

11. The Working Group transmitted the above allegations to the Government of Yemen requesting it to provide, in its reply, detailed information about the current situation of Mr. Sameer.

12. The Working Group regrets that it has not received a response from the Government.

Discussion

13. In the absence of a response from the Government and in accordance with its methods of work, the Working Group is able to render an opinion on the basis of the information submitted to it.

14. The case of Mr. Sameer is one of several of a similar nature on which the Working Group has rendered opinions in the past. These include opinions No. 47/2005; No. 40/2008; No. 13/2009; No. 26/2009 and No. 17/2010.¹ In all these cases, the persons detained (a) have been arrested without a warrant and never formally charged thereafter; (b) have been held at various detention centres and prisons for varying periods of time without being brought before a judge; and (c) have never stood trial.

15. The Working Group notes that in the case of Mr. Sameer and other cases from Yemen, government authorities either formally or informally fend off family members and other concerned persons by declaring that the detainee/s are linked to Al-Qaida and are suspected of terrorist activities. However, these allegations are neither formally brought up before a judicial forum nor is a trial held to prove or disprove such allegations.

16. The continued detention of Mr. Sameer violates national as well as international human rights standards of arrest and detention. At the national level, article 47 (c) of the Constitution of Yemen provides that any person temporarily apprehended on suspicion of committing a crime shall be presented before a court within a maximum of 24 hours from the time of his detention. This is further reinforced by article 73 of the Yemeni Criminal Procedure Code (Law No. 31 of 1994), which stipulates that all persons arrested must immediately be informed of the reasons for the arrest; that they have the right to know about the arrest warrant, that they may also contact all persons who should, in their opinion, be informed; and that they may request the assistance of a lawyer. Article 269 of the Criminal Procedure Code stipulates that all accusations against a person, who for this reason has been placed in detention before being brought before a judge, must be examined in all urgency by a tribunal which must rapidly make a decision. In the case in hand, no legal reason has been provided by the authorities to justify the arrests and detention of Mr. Sameer.

17. In terms of international human rights obligations, article 9 of the Universal Declaration of Human Rights establishes that “no one shall be subjected to arbitrary arrest, detention or exile”; article 9, paragraph 1, of the International Covenant on Civil and Political Rights states that “everyone has the right to liberty and security of person”, and that “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. In the case in hand, none of these rights have been respected.

18. Furthermore, article 9, paragraph 3, of the Covenant is similar to the national laws of Yemen on the subject. The Human Rights Committee in its general comment No. 8 (1982)

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

on the right to liberty and security of persons notes that article 9, paragraph 3, of the Covenant 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. More precise time limits are fixed by law in most State parties and, in the view of the Committee, delays must not exceed a few days. The total length of detention pending trial is also a significant issue to consider. In certain categories of criminal cases in some countries, this matter has caused some concern within the Human Rights Committee, and questions have been raised as to whether State practices have been in conformity with the entitlement “to trial within a reasonable time or to release” under article 9, paragraph 3, of the Covenant. Pretrial detention should be an exception and as short as possible.²

19. 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

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

The deprivation of liberty of Mr. Sameer is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights; it falls within categories I and III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

21. 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, under article 9, paragraph 5, of the International Covenant on Civil and Political Rights, to Mr. Sameer.

22. 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 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

[Adopted on 27 August 2012]

² Human Rights Committee, general comment No. 8, paras. 2 and 3.

³ Human Rights Council resolution 15/18, para. 3.

⁴ *Ibid.*, paras. 4 (a) and 9.