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Human Rights Council Working Group on Arbitrary Detention

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No. 52/2012 (Saudi Arabia)

Communication addressed to the Government on 14 September 2012

Concerning Mohamed Al Jazairy, Al Yazan Al Jazairy and Hatthem Al Lahibi

The Government did not reply to the communication.

The State is not 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 that 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 hereafter has been reported to the Working Group on Arbitrary Detention as follows:

4. Mr Mohamed Al Jazairy, 44 years old, of Saudi nationality and resident in Mecca, Saudi Arabia, is a taxi driver and animal trader.

5. On 11 August 2003, Mr Mohamed Al Jazairy was arrested in front of his house on Al Siteen Street in Mecca by agents of the Saudi security services in civilian clothing. He was not shown an arrest warrant or informed of the reasons for his arrest. He was reportedly arrested in the context of investigations regarding the aftermath of the Riyadh compound bombings that occurred in May 2003. Around the time of that incident, hundreds of other suspected individuals were reportedly arrested indiscriminately.

6. Mr. Al Jazairy spent the first few months in Mecca Prison before being transferred consecutively to detention centres in Taif and Al Ahsa. He is currently detained in Dhahban Prison, north-west of Jeddah. During his nine years of detention, Mr Al Jazairy has not had access to a lawyer, has not been formally charged with an offence and has not had his case examined by a competent judicial authority.

7. After Mr. Al Jazairy's arrest, his relatives contacted the Minister of Interior at the time and requested him to undertake all necessary steps to end his detention. Mr Al Jazairy's wife, Mrs. Hanane Samkari, was advocating her husband's release when in December 2010 she and three of her minor children were also arrested and held in Dhahban Prison. Mrs. Samkari has since has been released with her three children while her husband, Mr. Al Jazairy, remains in detention.

8. Mr. Al Yazan Al Jazairy, son of Mr Mohamed Al Jazairy, 16 years of age, is of Saudi nationality, single and usually resides with his family in Mecca, Saudi Arabia.

9. Mr. Al Yazan Al Jazairy made a small income driving around families of other detainees like his father. On 25 December 2010, Mr. Yazan Al Jazairy was offered a large sum of money by a Mr. Muhamad Isam Baghdadi to drive him to Riyadh. When they approached a checkpoint on the Riyadh highway in the region of Wadi Al Dawasir, about 300 km south-west of the capital, Mr. Baghdadi told Mr. Yazan Al Jazairy that he was wanted by the Saudi authorities and threatened to kill him if he revealed his identity to the officers who were at the checkpoint. Both Mr. Baghdadi and Mr. Al Yazan Al Jazairy were stopped at the checkpoint and arrested.

10. Mr. Al Yazan Al Jazairy was taken directly to Al-Hair Prison near Riyadh and remained there until he was transferred to Dhahban Prison, north-west of Jeddah, on 7 May 2011. He was sent back to Al-Hair Prison on 7 September 2011. He was not allowed to contact his family to inform them of his arrest and was prevented from speaking to them until 15 May 2011. Mr. Al Yazan Al Jazairy, who is still a minor, was reportedly beaten during his interrogations, prevented from sleeping and was forced to stand for days in a

row. He is currently detained in Dhahban Prison and is in the hospital although the reason for his hospital admission is unclear. Since his arrest, Mr. Al Yazan Al Jazairy has not been able to contact a lawyer and has not been brought before a court or a competent judicial authority.

11. Mr. Hathem Al Lahibi, of Saudi nationality, is the son-in-law of Mr Mohamed Al Jazairy. He is 30 years old (born on 11 September 1982), married and resided with his family in Mecca, Saudi Arabia. Mr Al Lahibi worked in an orphanage.

12. On 20 January 2011, Mr. Hathem Al Lahibi, was summoned by the local branch of the investigative police in Umm Al Jud. He was arrested there without being shown a warrant or informed of the reasons for his arrest. He was taken to Dhahban Prison, Jeddah, where he remains to date. For the first two months of his detention, until 30 March 2011, he was held incommunicado in detention.

13. Mr. Al Lahibi was not formally charged with an offence, was not given access to a lawyer and was not presented before a judge. He was kept awake and forced to stay upright for several days in a row. He has developed an ulcer in his stomach, had a kidney stone and suffered from a prostate infection but was denied appropriate medical treatment.

Source's contention regarding the alleged arbitrary character of the aforementioned detention

14. The source considers the arrest and detention of Messrs. Mohamed Al Jazairy, Al Yazan Al Jazairy and Hathem Al Lahibi as arbitrary, particularly in the absence of an arrest warrant and formal charges being laid against them. The source indicates that this is in contravention of Saudi domestic law, notably article 36 of the Basic Law of Governance. This law stipulates that “[t]he State shall provide security for all citizens and residents on its territories. No one may be confined, arrested or imprisoned without reference to the Law”. Article 35 of the Law of Criminal Procedure (Royal Decree No. M/39) also states that “no person shall be arrested or detained except on the basis of a judicial order from the competent authority.” This article also specifies that “[a]ny such person ... shall also be advised of the reasons of his detention ...”

15. Additionally, article 114 of the Law of Criminal Procedure provides that if an accused is to be detained in pretrial detention, it is to last a maximum of five days, renewable up to a total of six months. The source states that the detention of Messrs. Mohamed Al Jazairy, Al Yazan Al Jazairy and Hathem Al Lahibi has exceeded the limit permissible by law and is in contravention of the aforementioned article 114, which also states that these individuals should “be directly transferred to the competent court, or be released”.

16. The source further states that the arrest and detention of Messrs. Mohamed Al Jazairy, Al Yazan Al Jazairy and Hathem Al Lahibi are in violation of international norms relating to fair trial, as laid out in the Universal Declaration of Human Rights (UDHR), namely articles 9 and 10. Article 8 of the UDHR further states that: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” The right to contest the legal basis for one’s detention is an essential right necessary to guarantee other rights. However, to date, Messrs. Mohamed Al Jazairy, Al Yazan Al Jazairy and Al Lahibi have not been allowed to invoke this right nor have they been able to submit a request for habeas corpus, as laid out in principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereinafter Body of Principles), adopted by United Nations General Assembly resolution 43/173 of 9 December 1988).

17. Furthermore, principle 11, paragraph 1, of the Body of Principles states that persons detained must be given an effective opportunity to be heard promptly by a judicial or other

authority. According to the source, the aforementioned persons have not been presented to a judge or other judicial authority since their arrest.

18. The source maintains that the arrests of Messrs. Mohamed Al Jazairy, Al Yazan Al Jazairy and Hathem Al Lahibi have demonstrated the non-observance of international norms relating to fair trial and that their detention is without legal basis.

Response from the Government

19. The Working Group transmitted the above allegations to the Government of Saudi Arabia on 14 September 2012 requesting that it provide, in its reply, detailed information about the current situation of Messrs. Mohamed Al Jazairy, Al Yazan Al Jazairy and Hathem Al Lahibi and to clarify the legal provisions justifying their continued detention. It is regretted that the Government did not respond to the communication.

Discussion

20. In the absence of a response from the Government and based on its methods of work, the Working Group is able to render an opinion in the light of the information submitted to it.

21. The case in hand concerns the situation of three individuals from the same family. Mr. Mohamed Al Jazairy, his minor son, Mr. Al Yazan Al Jazairy, and his son-in law, -Mr. Hathem Al Lahibi.

22. From information received from the source it appears that Mr. Mohamed Al Jazairy was arrested on 11 August 2003 as part of the indiscriminate arrests undertaken in the aftermath of the Riyadh compound bombings in May 2003. Ever since then he has remained in detention. Since that time over nine years ago, Mr. Al Jazairy has not been formally charged, brought before a judge, had access to a lawyer or stood trial. His wife has made every effort to contact the authorities requesting his release, but these efforts had the opposite effect on the authorities and she was arrested on 25 December 2010, along with her three minor children.

23. The minor son of Mr. Al Jazairy, Mr. Al Yazan Al Jazairy, in the absence of his father, drove a cab and during one such episode of driving was arrested for driving a person wanted by the authorities, about which Mr. Al Yazan Al Jazairy was unaware, according to the source. The Working Group is informed that Mr. Yazan Al Jazairy has been in detention since 25 December 2010, which is the same date on which his mother, Mrs. Samkari, and his three minor siblings were taken into custody. Mrs. Samkari and the three minor siblings have since been released.

24. On 20 January 2011, Mr. Hathem Al Lahibi, son-in-law of Mr. Mohamed Al Jazairy, was summoned to the local branch of the investigative police in Umm Al Jud and arrested without a warrant. He was not informed of the reasons for his detention. He remained incommunicado in detention for two months before being taken to Dhahban Prison in Jeddah where he remains to date.

25. The Working Group notes with deep concern that the arrest and detention of family members of detainees to pressurize them is prohibited under any norm of national and international law.

26. A number of violations of established human rights instruments as well as Saudi domestic law are apparent in the present case before the Working Group, including arrest and detention without a warrant and indeed being informed later on of the reasons for such arrest and detention. In accordance with article 36 of the Saudi Basic Law of Governance, “[t]he State shall provide security for all citizens and residents on its territories. No one may be confined, arrested or imprisoned without reference to the Law”. Moreover, article

35 of the Saudi Law of Criminal Procedure provides that “no person shall be arrested or detained except on the basis of order from the competent authority”. This article also specifies that “[a]ny such person ... shall also be advised of the reasons of his detention”. Article 2 of this Law declares that “[d]etention ... shall be for the period prescribed by the competent authority”. Yet Messrs. Mohamed Al Jazairy, Al Yazan Al Jazairy and Hatem Al Lahibi were not given the benefit of these laws.

27. Saudi law demands that pretrial detention be kept to a minimum, once the accused has been arrested and detained. Article 114 of the Saudi Law of Criminal Procedure provides that, if the accused is to be detained in pretrial detention, it is to last a maximum of five days, renewable up to a total of six months. Yet the pretrial detention of Messrs. Mohamed Al Jazairy, Al Yazan Al Jazairy and Hatem Al Lahibi has well exceeded this period.

28. Finally, the rights to a fair, prompt and impartial trial and to a lawyer form an integral aspect of due process as envisaged in articles 9 and 10 of the UDHR. This has been denied to the three persons in question. They have not been given an opportunity to submit a request of habeas corpus nor indeed the right to defend themselves.

29. In the case of Mr. Al Yazan Al Jazairy, a minor, the Convention on the Rights of the Child to which the Government of Saudi Arabia is a party, has been violated. Under article 37 of that treaty, States parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

30. Mr. Al Yazan Al Jazairy’s position as a minor has not been respected. Furthermore, he has been ill-treated and prevented from making prompt contact with his family.

31. The Working Group notes with concern that a consistent pattern of arbitrary arrests and detention is emerging in Saudi Arabia as well as of silence on the part of the Government by not availing itself of the opportunity of responding to allegations set forth by the source in cases alleging arbitrary detention presented to this Group. As examples, reference is made to Opinion No. 36/2008; Opinion No. 37/2008; Opinion No. 22/2008, Opinion No. 21/2009; Opinion No. 2/2011; Opinion No. 8/2012; and Opinion No. 22/2012¹ of the Working Group. It is therefore pertinent to mention that the Working Group sees the present case as a matter of grave concern since basic human rights are not being respected.

¹ Opinions will be available at <http://www.unwgadatabase.org/un/default.aspx> when they are officially published.

Disposition

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

The detention of Mr. Mohamed Al Jazairy and Mr. Al Yazan Al Jazairy is arbitrary, falling under category III; and the detention of Mr. Hatem Al Lahibi is arbitrary and is without legal basis, falling under category I of the categories applicable to the consideration of the cases submitted to the Working Group. The detention of Messrs. Mohamed Al Jazairy, Al Yazan Al Jazairy and Hatem Al Lahibi is in violation of articles 9 and 10 of the Universal Declaration of Human Rights.

33. The Working Group requests the Government of Saudi Arabia to release Messrs. Mohamed Al Jazairy, Al Yazan Al Jazairy and Hatem Al Lahibi forthwith and bring their situation into conformity with the requirements of international human rights instruments. To this end, if the case merits it, the Working Group in particular requests the Government to ensure a fair, impartial trial respecting all the guarantees thereof, enshrined in domestic Saudi and international human rights law.

34. The Working Group further requests that appropriate reparation be ensured, consequent upon the opinion rendered and in view of the adverse effects of these wrongful arrests and detention on the detainees and their families.

35. The Working Group reminds the Government that, according to the recommendations of the Human Rights Council, national laws and measures aimed at combating terrorism shall comply with all obligations under international law, in particular international human rights law.²

36. The Working Group also encourages the Government to consider ratifying the International Covenant on Civil and Political Rights.

37. Finally, the Working Group reminds the Government of Saudi Arabia of the Human Rights Council's call for States to take account of the Working Group's views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty. 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.³

[Adopted on 19 November 2012]

² Human Rights Council resolution 7/7 of 27 March 2008 on protection of human rights and fundamental freedoms while countering terrorism.

³ Human Rights Council resolution 15/18 on arbitrary detention (A/HRC/RES/15/18), paras. 3-4 (a).