

No. 32/2013 (Saudi Arabia)

Communication addressed to the Government on 27 June 2013

concerning Khaled Al-Omeir

The Government did not reply to the communication within the 60-day deadline. 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 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. Mr. Khaled Al-Omeir (hereinafter Mr. Al-Omeir), born in XXXX, is a Saudi national, residing in Hay Al Badr, in Riyadh, Saudi Arabia. Mr. Al-Omeir is married and has three children. He is a member of the Reformist movement and is a human rights defender.

5. On 1 January 2009, around noon, Mr. Al-Omeir was arrested by Saudi security services (Al Mabahith) in Riyadh, following a reportedly peaceful demonstration that took place the same day by a number of human rights defenders protesting against the December 2008 Israeli bombing of

civilians in Gaza. It is unknown whether he was shown an arrest warrant. He was thereafter placed in detention in Al Hayr prison where he remains today.

6. The source alleges that Mr. Al-Omeir's deprivation of liberty resulted directly from the exercise of his right to freedom of expression and peaceful assembly as guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights (UDHR). The source reports that Mr. Al-Omeir publicly advocated institutional reform in Saudi Arabia and published his views on the Internet and in different media. He shared information on human rights violations with international non-governmental organizations, specifically on torture in Saudi prisons.

7. According to the source, Mr. Al-Omeir was previously arrested, on 25 April 2005, following an interview with Al Jazeera television during which he expressed his views about the political situation in the region. At that time he was detained at Al Aicha prison for six months, where he was reportedly ill-treated. Mr. Al-Omeir was subsequently released without any legal proceedings having taken place.

8. On 21 January 2009, an urgent joint appeal concerning Mr. Al-Omeir's case was transmitted by this Working Group, as well as the Special Rapporteurs on the independence of judges and lawyers, on torture and other cruel, inhuman or degrading treatment or punishment, on the situation of human rights defenders and on the promotion and protection of the right to freedom of opinion and expression.

9. On 8 September 2009, the Government of Saudi Arabia responded to the urgent appeal stating that Mr. Al-Omeir had been detained on a security-related charge, which necessitated his remaining in custody for questioning. The Government guaranteed that Mr. Al-Omeir's case would be referred to the judiciary and that he would continue to be treated in accordance with Saudi Arabia's judicial regulations which respect international human rights law.

10. The source submits that Mr. Al-Omeir's detention is arbitrary as there is no legal basis for his detention. It reports that, contrary to articles 35 and 114 of the Saudi Arabian Law of Criminal Procedure (Royal Decree No. M/39), Mr. Al-Omeir was not officially notified of the charges pending against him and was held in pretrial detention for two years and four months (from January 2009 to May 2011) before appearing before a judge.

11. On 15 May 2011, Mr. Al-Omeir's case was heard before the Special Criminal Court of Riyadh. Mr. Al-Omeir was found guilty of "illegally gathering" and "publishing information on the Internet" and was sentenced to eight years imprisonment without the possibility of appeal.

12. The source submits that, contrary to articles 9 and 10 of the UDHR and article 4 of Royal Decree No. M/39, Mr. Al-Omeir was deprived of his right to a fair trial for the following reasons: he was not allowed access to a lawyer; his trial was not open to the public; he does not have an opportunity to appeal his sentence; the Special Criminal Court of Riyadh is under the direct control of the Ministry of Interior; and the accusations made against Mr. Al-Omeir do not justify his case being brought before the jurisdiction of a Special Court.

13. For the above reasons, the source submits that Mr. Al-Omeir's detention is arbitrary under categories I, II and III of the Working Group's criteria for the investigation of individual cases.

Response from the Government

14. The Working Group transmitted the allegations from the source to the Government on 27 June 2013 requesting it to provide information regarding the situation of Mr. Al-Omeir. It is regretted that the Government has not responded to this communication.

15. In this regard it is pertinent to note that Mr. Al-Omeir was the subject of an urgent appeal addressed to the Government of Saudi Arabia on 19 January 2009 by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

16. The Government had responded to that urgent appeal on 8 September 2009 stating that: "In this connection, the competent authorities in the Kingdom of Saudi Arabia have indicated that the above-mentioned person was detained on a security-related charge that necessitated his remand in custody for questioning. He will be referred to the judiciary to determine the legal measures taken

against him. Throughout the period of detention he has been treated in accordance with the Saudi Arabia's judicial regulations, derived from the Islamic sharia, under which human rights and international covenants and conventions in this regard are respected."

Discussion

17. Despite the above response to the urgent appeal regarding the detention of Mr. Al-Omeir, he remains in detention two years later. 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.

18. The Working Group is of the view that where the Government chooses not to rebut the allegations, the Group accepts the information of the source as reliable.

19. Arrest and detention of protesters, human rights activists and defenders as well as those calling for reform of Saudi Arabia's governmental system is a subject on which the Working Group has received a significant number of cases and has rendered opinions. These arrests and detentions have occurred as a reaction to a protest against a certain incident (as in the instant case where Mr. Al-Omeir was part of a peaceful demonstration against the killing of people in Gaza by Israeli bombings), as reprisal for calling for reform, or as a human rights activist or human rights defender (as in Opinion Nos. 36/2008 and 10/2011).

20. The Working Group has previously also rendered opinions in many cases where all elements of the right to a fair trial have not been respected, including long periods of incommunicado and pretrial detentions, lack of arrest warrant, contact with counsel and possibility of appealing a conviction (for instance Opinions Nos. 2/2011; 17/2011; 18/2011; 19/2011 and 31/2011).

21. 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 or indeed being informed later for the reasons of arrest and detention.

22. 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 on Criminal Procedure (Royal Decree No. M/39) provides that "no person shall be arrested or detained except on the basis of order from the competent authority". This article also specifies that "... any such person ... shall also be advised of the reasons of his detention ...". Article 2 of the Law of Criminal Procedure declares that "detention ... shall be for the period prescribed by the competent authority". Mr. Al-Omeir has not been given the benefit of these provisions of domestic law.

23. Once arrested and detained, Saudi law demands that pretrial detention be kept to a minimum. Article 114 of the Saudi Law on 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 Mr. Al-Omeir well exceeds this period having lasted for two years and four months (January 2009-May 2011).

24. The right to a fair, prompt and impartial trial and right to a lawyer form an integral aspect of due process as envisaged in articles 9 and 10 of the UDHR. This has been denied Mr. Al-Omeir and he has not been given an opportunity to submit a request of habeas corpus and indeed the right to defend himself.

25. Mr. Al-Omeir was sentenced to eight years imprisonment by a Special Court and without recourse to an appeal to a higher court for charges brought against him for exercising his freedom of expression and peaceful assembly guaranteed by articles 19 and 20 of the UDHR.

26. The Working Group notes with concern that a consistent pattern of arbitrary arrests and detention is emerging in Saudi Arabia as well as a lack of response on the part of the Government by not availing of the opportunity of responding to allegations set forth by the source in cases alleging arbitrary detention presented to this Group. As examples, the Group refers to Opinion Nos. 22/2008; 36/2008; 37/2008; 21/2009; 2/2011; 10/2011; 17/2011; 18/2011; 19/2011; 31/2011; 8/2012 and 22/2012 of the Group. It is therefore pertinent to mention that the Group sees the present case as a matter of grave concern since basic human rights are not being respected.

Disposition

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

- The detention of Mr. Al-Omeir is arbitrary falling under categories I, II and III of the Working Group, being without legal basis and in violation of articles 8, 9, 10, 19 and 20 of the Universal Declaration of Human Rights
- The Working Group requests the Government of Saudi Arabia to release Mr. Al-Omeir forthwith and bring his situation in conformity with the requirements of international human rights instruments
- Consequent upon the opinion rendered and in view of the adverse effects of this wrongful arrest and detention Mr. Al-Omeir should be ensured appropriate reparation
- The Working Group reminds the Government that according to the recommendations of the Human Rights Council,¹ national laws and measures aimed at combating terrorism shall comply with all obligations under international law, in particular international human rights law
- The Working Group further recalls resolution 15/18² of the Human Rights Council which calls upon "all States to cooperate with the Working Group and to give serious consideration to responding favourably to its requests for visits to that it may carry out its mandate even more effectively"
- The Working Group encourages the Government of Saudi Arabia to ratify the International Covenant on Civil and Political Rights.

[Adopted 30 August 2013]

¹Human Rights Council resolution 7/7.

²Paragraphs 3, 4 (a) and 9.