

No. 44/2013 (Saudi Arabia)

Communication addressed to the Government on 20 June 2013

Concerning Yahya Hussein Ahmad Shaqibel

The Government has not replied 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 the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. 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.
4. Yahya Hussein Ahmad Shaqibel, born in XXXX, is a Yemeni national, who usually resides with his wife in Sana'a, Yemen. Mr. Shaqibel is the owner of a computer shop in Sana'a.
5. Mr. Shaqibel used to reside in the Kingdom of Saudi Arabia, where he was born. He moved back to Yemen in 2006, after cancelling his residency in Saudi Arabia and following all the appropriate legal procedures to leave that country. He settled in Sana'a, Yemen, where he opened a computer shop located in Al-Qasr Street. At the beginning of October 2009, Mr. Shaqibel travelled to Malaysia to buy material for his business.

6. On 9 October 2009, Mr. Shaqibel was arrested in Malaysia by unidentified Malaysian forces, reportedly at the request of Saudi Arabian intelligence (Mabahith). He was not informed of the reasons for his detention. After a month of investigations in Malaysia, the Malaysian authorities reportedly did not open any legal proceedings against him and informed Mr. Shaqibel that he would be deported to Yemen.

7. Mr. Shaqibel was put on an aeroplane on 15 November 2009. While on board, he realized that the aeroplane that was supposed to deport him to Sana'a, Yemen, was heading to Riyadh, Saudi Arabia. Mr. Shaqibel was arrested by the Mabahith upon his arrival in Riyadh.

8. Following his arrest, Mr. Shaqibel was reportedly interrogated for two months by the Mabahith. He was allegedly subjected to torture and ill-treatment during the investigation phase. He was prevented from sleeping for long periods and severely beaten several times. At the beginning of 2010, Mr. Shaqibel was finally transferred from the Mabahith office, where he had been interrogated, to Al-Hayer Prison where he was detained in solitary confinement for a year, without the right to receive visits or to communicate with the outside world and without access to a lawyer.

9. At the beginning of May 2013, more than three and a half years after his arrest, Mr. Shaqibel was reportedly brought for the first time before the Specialized Criminal Court of Riyadh to be informed of the charges against him. Mr. Shaqibel was accused of being a *khariji*, which means he was not following the same Sunni Islam as the official Saudi interpretation thereof. He was also accused of being an intermediary for Al-Qaida and for financing terrorism.

10. Mr. Shaqibel denied all the accusations against him, stressing that no evidence was available to convict him. Mr. Shaqibel did not have access to legal counsel until the first hearing held at the beginning of May 2013, when he was allowed to choose a lawyer from a list given to him by the judge. His lawyer is now allowed to visit him in jail, but Mr. Shaqibel does not have the right to contact him from the prison.

11. After three court hearings, Mr. Shaqibel was brought before the court for the last hearing on 17 June 2013, and is still awaiting the verdict.

12. The source considers Mr. Shaqibel's detention to be contrary to domestic and international legal norms, and thus to be arbitrary. According to the source, during the period of detention from November 2009 to May 2013, when he was brought before a judge, Mr. Shaqibel was held without any legal basis. He was detained without charge or trial for a total of three years and six months. Furthermore, Mr. Shaqibel was arrested by the Mabahith after his deportation from Malaysia without being shown an arrest warrant; he was informed of the charges against him only three and a half years after his arrest. Mr. Shaqibel was reportedly detained and interrogated by the Mabahith and was not brought before the Bureau of Investigation and Public Prosecution as is required by the Saudi Law of Criminal Procedure.

13. The source submits that Mr. Shaqibel's treatment is contrary to Saudi domestic law, notably article 36 of the Basic Law of Governance, which stipulates that "the 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 an order from the competent authority". This article also specifies that "any such person ... shall also be advised of the reasons for his detention". In addition, article 114 of the Law of Criminal Procedure stipulates that any pretrial detention should be for a maximum of five days, renewable up to a total of six months. Finally, article 14 of the Saudi Law of Criminal Procedure states that "the Bureau of Investigation and Prosecution shall conduct its investigation and prosecution in accordance with its Law and the implementing regulations thereof".

14. The source also submits that Mr. Shaqibel's detention is contrary to international norms relating to a fair trial, as set out in the Universal Declaration of Human Rights. Article 9 of the Declaration states that "no one shall be subjected to arbitrary arrest, detention or exile." A fundamental aspect of this right is the possibility of contesting the legality of one's detention. Both the Human Rights Committee and the Commission on Human Rights have stated this, notably in the Commission on Human Rights resolution 1992/35 adopted on 28 February 1992, which calls on all States that have not yet done so to establish a procedure such as habeas corpus in order for all persons deprived of

their liberty to institute proceedings before a court so that the court may decide, without delay, the lawfulness of his or her detention and order his or her release if detention is found to be unlawful. Furthermore, the source points to article 10 of the Declaration, which states that everyone is entitled to a fair and public hearing by an independent and impartial tribunal. This includes the right to "call upon the assistance of a lawyer of their choice to protect and establish their rights and defend them in all stages of criminal proceedings", as also laid out in principle 1 of the Basic Principles on the Role of Lawyers.¹ The source also submits that "the right to seek the assistance of a lawyer or a representative to defend one during the investigation and trial stages" is directly translated into Saudi domestic law, as stipulated under article 14 of the Saudi Law of Criminal Procedure. According to relevant international norms, a time limit of several days should not be exceeded before a detainee receives legal counsel.

15. According to the source, Mr. Shaqibel was not authorized to choose a lawyer and had no direct access to legal assistance prior to his trial in May 2013. Furthermore, he was tried by the Specialized Criminal Court, which was established in 2008 by the Supreme Judicial Council. No statute or other law establishing this tribunal or specifying its jurisdiction had been made public until recently. The source considers that the lack of observance of international norms relating to a fair trial as described above is of such a grave nature as to amount, at a minimum, to partial non-observance of the international norms relating to a fair trial and therefore renders Mr. Shaqibel's detention arbitrary.

Response from the Government

16. The Working Group transmitted the above allegations to the Government of the Kingdom of Saudi Arabia on 20 June 2013, requesting it to provide in its reply detailed information about Mr. Shaqibel's current situation and to clarify the legal provisions justifying his continued detention. The Government did not respond to the communication, nor has any request for an extension been received by the Working Group.

17. Since Mr. Shaqibel was arrested in Malaysia and subsequently deported to Saudi Arabia, the Working Group also transmitted the allegations from the source to the Government of Malaysia on 20 August 2013, requesting that it provide information available to it, particularly the identity of the authorities who ordered the deportation of Mr. Shaqibel to Saudi Arabia and the reason for this. In addition, the Working Group requested details regarding the allegations made in the communication in respect of both the facts and the applicable legislation.

18. The Government of Malaysia also did not respond to the Working Group's communication.

Discussion

19. Despite the failure of the two Governments to respond to its communications, the Working Group considers itself in a position to render an opinion in this case on the basis of the information available to it, although the positions of the Governments in this transnational and complex case would have been appreciated.

20. Since 11 September 2011, increased securitization of national laws, policies and regulations have led to closer collaboration among governments in the arrest, detention and deportation of individuals considered a threat to national security.

21. This practice has resulted in violations of certain fundamental human rights that protect the individual from arbitrary arrest and detention, and guarantees of a fair trial and due process, as enunciated in most national as well as international human rights instruments.

22. In the case in hand, Mr. Shaqibel, a Yemeni citizen, formerly a resident of Saudi Arabia, was arrested when he was visiting a third country, Malaysia, and deported to Saudi Arabia without recourse to legal action to challenge the basis of his arrest in the first place. The Working Group has rendered opinions in similar cases, including opinions No. 40/2012 (Morocco); No. 8/2007 (Syrian Arab Republic); No. 2/2009 (United States of America); and No. 3/2009 (United States of America).

23. Responsibility for showing an arrest warrant, informing the individual of the legal provisions under which he was charged, guaranteeing access to a lawyer and legal processes to challenge the legality of his arrest and detention, rests for the initial phase with the Government of Malaysia, which ought to have made these available to Mr. Shaqibel.

24. Thereafter, both the Governments of Malaysia and Saudi Arabia are jointly accountable for the legal basis of his deportation to Saudi Arabia, and his arrest and detention by the Saudi authorities upon arrival.

25. Subsequently, it is the Government of Saudi Arabia which has an obligation under domestic law and international human rights law to guarantee Mr. Shaqibel freedom from arbitrary arrest and detention and the right to a fair trial, from the time of his arrest in Saudi Arabia on 15 November 2009 to date.

26. The Working Group notes that the arrest and detention of Mr. Shaqibel, both in Malaysia from 9 October 2009 until 15 November 2009 and in Saudi Arabia from 15 November 2009 until May 2013, lacked any legal basis and no legal procedures relating to due process were followed by either Government.

27. Mr. Shaqibel was accused of following a version of Sunni Islam different from that espoused by the Saudi regime; such accusation contravened his right to freedom of religion as protected under article 18 of the Universal Declaration of Human Rights. Arrest and detention without a warrant also denies Mr. Shaqibel the right to be free from arbitrary arrest, detention or exile, as guaranteed under article 9 of the Universal Declaration of Human Rights. Furthermore, the delay of more than three and a half years before bringing Mr. Shaqibel before a competent court and denying him access to a lawyer prior to and at the trial amount to a violation of article 10 of the Universal Declaration of Human Rights. Ill-treatment and torture during the investigation phase constitute a violation of article 5 of the Universal Declaration of Human Rights.

28. Mr. Shaqibel's detention is also contrary to domestic legal norms, namely article 36 of the Saudi Basic Law of Governance, and articles 14, 35 and 114 of the Law of Criminal Procedure. Mr. Shaqibel was tried by the Specialized Criminal Court which was established in 2008 by the Supreme Judicial Council, and for which no statute or other law establishing the tribunal or specifying its jurisdiction had been made public until recently. International human rights norms require a fair and public hearing by a transparent, impartial and independent tribunal, which Mr. Shaqibel was not afforded in this case.

Disposition

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

The deprivation of liberty of Yahya Hussein Ahmad Shaqibel from 9 October 2009 to 15 November 2009 in Malaysia, and from 15 November 2009 to May 2013 in the Kingdom of Saudi Arabia is arbitrary, being in contravention of articles 5, 9, 10 and 18 of the Universal Declaration of Human Rights. It falls within categories I, II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

30. Consequent upon the opinion rendered, the Working Group requests the Government of the Kingdom of Saudi Arabia to release Mr. Shaqibel forthwith and bring his situation into conformity with the requirements of international human rights instruments. If the case merits a trial, the Working Group requests the Government to, in particular, ensure a fair, impartial trial, respecting all the guarantees thereof, as enshrined in the domestic law of Saudi Arabia and in international human rights law.

31. Furthermore, in view of the adverse effect of this wrongful arrest and detention on Mr. Shaqibel and his family, the Working Group requests the Government of the Kingdom of Saudi Arabia and the Government of Malaysia to provide Mr. Shaqibel with appropriate reparation.

32. The Working Group recalls the Human Rights Council's reaffirmation that States must ensure that any national laws and measures taken to combat terrorism comply with all their obligations under international law, in particular international human rights law.²

33. The Working Group encourages the Government of the Kingdom of Saudi Arabia to consider ratifying the International Covenant on Civil and Political Rights.

34. The Working Group recalls the Human Rights Council's call for all States to cooperate with the Working Group, to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.³

[Adopted on 18 November 2013]

¹A/CONF.144/28/Rev.1

²Human Rights Council resolution 7/7, para. 1.

³Human Rights Council resolution 24/7, paras. 3 and 6.