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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session (22 April–1 May 2014)

No. 11/2014 (Yemen)

Communication addressed to the Government on 27 February 2014

concerning Haytham al-Zaetari

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 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 and Corr.1, annex), 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);

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(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. Haytham Mansoor Abdul al-Jalil Makrad al-Zaetari. (دراكم ليل لجل دبع روصنم مٲيه) (يرت عزللا) (hereinafter Mr. Al-Zaetari) is a 24-year-old Yemeni national, usually residing at Al-Zira'a Street, Old University, Amanat Al-Asemah, Sana'a.

5. In 2011, Mr. Al-Zaetari actively participated in peaceful demonstrations and other activities organized by groups of young activists. He protested against the former President of Yemen, Ali Abdullah Saleh, in Taghyeer Square, Sana'a, for an extended period of time.

6. On 24 February 2013, Mr. Al-Zaetari did not return home at the end of the day, contrary to his usual practice. His family searched for him in various public places, including hospitals and police stations, but was unable to find him. One week after his disappearance, an anonymous person informed the family by telephone that Mr. Al-Zaetari was being detained in a secret detention centre under the authority of the National Security Service (al-Amn al-Qawmi) in the Al-Hataresh region at the extremity of Sana'a. A month later, another individual visited Mr. Al-Zaetari's family and informed them that he had been detained in a cell near to Mr. Al-Zaetari's cell in the secret detention centre.

7. Mr. Al-Zaetari's family submitted complaints to the Prosecutor General, the Office of the President and the Ministry for Human Rights, requesting them to investigate Mr. Al-Zaetari's disappearance. The governmental authorities reportedly transmitted the request to the National Security Service.

8. On 5 November 2013, an agent of the National Security Service telephoned Mr. Al-Zaetari's family and informed them that they could visit Mr. Al-Zaetari the next day at the National Security premises. On 6 November 2013, Mr. Al-Zaetari's family saw him for a brief moment, more than eight months after his arrest and disappearance. Mr. Al-Zaetari reportedly could not inform his family in detail of his circumstances and the conditions of detention, as the National Security agents were present and monitoring the visit. However, his family learned that Mr. Al-Zaetari had been detained incommunicado for the entire period and had not been informed of the reasons for his detention nor had he been brought before a judge.

9. Since that visit on 6 November 2013, Mr. Al-Zaetari's family has not been allowed to visit him again. According to the source, Mr. Al-Zaetari is currently detained in Al-Hataresh under the authority of the National Security Service.

10. The source submits that Mr. Al-Zaetari's detention is arbitrary, as there is no legal basis to justify it. It reports that no arrest warrant was issued in respect of Mr. Al-Zaetari and no charges have been laid against him since his arrest on 24 February 2013. Furthermore, to date, Mr. Al-Zaetari has not been brought before a judicial authority.

11. The source further submits that the deprivation of Mr. Al-Zaeetari's liberty is arbitrary as it directly results from the exercise of the rights to freedom of peaceful assembly and association and freedom of expression and opinion, guaranteed under articles 19 and 21 of the International Covenant on Civil and Political Rights and articles 19 and 20 of the Universal Declaration of Human Rights. The source believes that Mr. Al-Zaeetari is being detained by the National Security Service because of his participation in anti-Government demonstrations in 2011.

12. Finally, the source alleges that the non-observance of the international norms relating to the right to a fair trial in this case is of such gravity as to give the deprivation of liberty an arbitrary character. It stresses that Mr. Al-Zaeetari has been detained for over a year without trial or without even being informed of the reasons for his detention, in violation of articles 9 and 14 of the International Covenant on Civil and Political Rights and article 10 of the Universal Declaration of Human Rights. In that regard, the source adds that article 7 of the Yemeni Criminal Procedure Law, which guarantees the right to be tried within a reasonable amount of time, has also been violated in this case. Furthermore, the source reports that Mr. Al-Zaeetari has not been granted access to a lawyer, in violation of article 14 of the International Covenant on Civil and Political Rights and article 9 of the Yemeni Criminal Procedure Law.

Response from the Government

13. The Working Group regrets that the Government has not responded to the allegations transmitted on 27 February 2014.

14. Despite the absence of any information from the Government, the Working Group considers that it is in the position to render its opinion on the detention of Haytham al-Zaeetari, in conformity with paragraph 16 of its methods of work.

Discussion

15. The Government has not rebutted the prima facie reliable allegations submitted by the source.

16. In the present case, Mr. Al-Zaeetari was held incommunicado for approximately eight (8) months, during which time he was not notified of the charges against him, nor was he brought before a judge or granted access to a lawyer. The Working Group is of the view that secret detention is irreconcilably in violation of international human rights law, including during states of emergency and armed conflict. No jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods and held outside the reach of the law, without the possibility of resorting to legal procedures, including habeas corpus (see A/HRC/16/47 and Corr.1, para. 54).

17. The Working Group considers that the non-observance of articles 9, 10, and 11 of the Universal Declaration of Human Rights and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights relating to the right to due process and a fair trial in the case under consideration is of such gravity as to give the deprivation of Mr. Al-Zaeetari's liberty an arbitrary character. The Working Group therefore considers that the deprivation of Mr. Al-Zaeetari's liberty falls within category III of the arbitrary detention categories to which it refers when considering cases submitted to it.

18. Moreover, it is not disputed that Mr. Al-Zaeetari is known to be a member of a group of young activists who organized peaceful demonstrations and no charge has been laid against him for committing any offence under criminal law. Therefore, the Working Group considers that Mr. Al-Zaeetari's detention is a direct result of his peaceful exercise of the right to freedom of opinion, expression, peaceful assembly and association. Consequently, his detention is contrary to articles 19 and 20 of the Universal Declaration of

Human Rights and articles 19 and 20 of the International Covenant on Civil and Political Rights. The Working Group further considers that the deprivation of Mr. Al-Zaeetari's liberty falls within category II of the arbitrary detention categories to which it refers when considering cases submitted to it.

Disposition

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

The deprivation of liberty of Haytham al-Zaeetari is arbitrary, being in contravention of articles 9, 10, 11, 19 and 20 of the Universal Declaration of Human Rights and 9, 10, 14, 19 and 21 of the International Covenant on Civil and Political Rights. It falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

20. Consequent upon the opinion rendered, the Working Group requests the Government of Yemen to take the necessary steps to remedy the situation of Mr. Al-Zaeetari, by immediately releasing him and granting him compensation for the harm he has suffered during the period of his arbitrary detention, pursuant to article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

21. 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.¹

[Adopted on 29 April 2014]

¹ Human Rights Council resolution 24/7, paras. 3 and 6.