



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. 13/2014 (Yemen)****Communication addressed to the Government on 24 February 2014****concerning Mr. Mohammad Muthana Al Ammari****The Government has not replied 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, annex, 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); and

(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 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. Mohammad Muthana Al Ammari is a Yemeni national born in 1980 and normally resides in Sana'a, Yemen, with his family. He is a teacher and married with two children.

5. Mr. Al Ammari participated in peaceful anti-Government demonstrations in January 2011 and received threats from Political Security agents that he and his family might be at risk of harm unless he refrained from participating in such demonstrations. Mr. Al Ammari refused to discontinue his activities and was arrested and detained by the Political Security Organization for half a day in March 2011.

6. Around 12 noon on 5 December 2011, approximately 15 armed men surrounded and arrested Mr. Al Ammari on the street, as he left his father-in-law's house, which was next to the Political Security Organization building. Mr. Al Ammari was then escorted into a silver sports car, which was driven to the parking lot of the Political Security Organization building.

7. Mr. Al Ammari's wife went to the Political Security Organization headquarters on the morning of 6 December 2011 to inquire about her husband's whereabouts. The Political Security officials denied that they were holding Mr. Al Ammari. However, *Al-Thawra*, a pro-Government newspaper, published a front-page article on 15 December 2011 concerning the arrest of "six al-Qaida terrorists". The newspaper article featured photographs of the six men, including Mr. Al Ammari, and quoted a government source, who described them as dangerous armed militants.

8. On 11 February 2012, an official from the Political Security Organization informed Mr. Al Ammari's wife that he was being held by the Organization at its detention centre and that she would be notified when she was authorized to visit him. She was finally allowed to visit him for the first time on 6 June 2012, six months after his arrest. Until that time, Mr. Al Ammari had been detained incommunicado and had not been allowed to receive any visitors. He had not been brought before a competent judicial authority to challenge his detention and had reportedly been tortured during the first few months of his detention. He was allegedly hung by the feet for hours on several occasions and beaten with sticks.

9. In June 2012, Mr. Al Ammari's lawyer filed a complaint with the Public Prosecutor's Office, seeking binding orders to the Political Security Organization to bring Mr. Al Ammari before a court. The lawyer also requested that Mr. Al Ammari be transferred from the Organization's detention centre to the Central Prison, but that request was denied by the Organization.

10. At the beginning of September 2012, Mr. Al Ammari was referred to the Specialized Penal Court in Sana'a by the Public Prosecutor's Office on charges of belonging to al-

Qaida and “participation in an armed gang in order to carry out a military attack against government installations, security interests of the State and foreign institutions”. His trial did not take place until 19 October 2012, as the Political Security Organization had not allowed him to appear in court previously on the grounds of security concerns.

11. Mr. Al Ammari was tried and sentenced to two years’ imprisonment on 19 October 2012. The verdict specified that Mr. Al Ammari was deemed to have served the sentence from 5 December 2011, when he was first arrested, and that he should therefore be released on 5 December 2013. The source alleges that due process was not followed in the trial, as the prosecution failed to produce any evidence to substantiate Mr. Al Ammari’s guilt. Mr. Al Ammari’s lawyer appealed the sentence but the appellate court allegedly refused to re-examine the case on the grounds that it was “subject to the discretion and authority of the first judge, who is himself under the control of God and his conscience” and therefore upheld the sentence.

12. Mr. Al Ammari served his sentence in a Political Security Organization detention centre and continues to be detained there to date, despite the fact that he has completed his sentence as of 5 December 2013.

13. The source argues that Mr. Al Ammari’s detention is arbitrary, as there is no legal basis for his detention. It points out that Mr. Al Ammari was arrested without an arrest warrant, held incommunicado for six months following his arrest, and only notified of the charges against him about nine months after his arrest. The source submits that that infringes article 32 (b) of the Yemeni Constitution (1991), which provides that “nobody may be arrested, searched, or detained unless caught in the act; or in implementation of an order necessitated by an investigation or by the maintenance of security; issued by a judge or a prosecutor in accordance with the provisions of the law”. The source argues that it also violates article 32 (c), which provides that “whoever is temporarily arrested for suspicion of committing a crime shall be arraigned within twenty-four hours. The judge shall inform him of the reasons for his arrest, question him, and give him the opportunity to plead his defence. The judge shall immediately issue a reasoned order for his release or continued detention. In all cases, detention should not exceed the period specified in that judicial order”. Furthermore, the source argues that since, in any event, Mr. Al Ammari completed his sentence on 5 December 2013, the ongoing deprivation of his liberty has no legal basis whatsoever.

14. The source further argues that Mr. Al Ammari’s detention is arbitrary, as it is on account of the exercise of rights or liberties under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In the source’s view, Mr. Al Ammari’s detention is an act of reprisal by loyalists of the former President Ali Abdallah Saleh and amounts to a violation of the right to freedom of opinion and expression and the right to freedom of peaceful assembly under articles 19 and 21 of the Universal Declaration of Human Rights and articles 19 and 21 of the Covenant.

15. Finally, the source submits that Mr. Al Ammari’s detention is arbitrary as it violates international norms relating to fair trial, as laid down in articles 9 and 14 of the International Covenant on Civil and Political Rights. The source argues that the incommunicado detention of Mr. Al Ammari for six months, and his first appearance before the Specialized Penal Court only in October 2012, violate article 9, paragraph 3, of the Covenant, which provides that “anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement”. The source also takes the view that Mr. Al Ammari was not presumed innocent prior to his trial, contrary to article 14,

paragraph 2, of the Covenant, which guarantees “the right to be presumed innocent until proved guilty according to law”. In support of its argument, the source points to the publication by the pro-government newspaper, *Al-Thawra*, of the article referring to Mr. Al Ammari as one of the “six al-Qaida terrorists”, and the refusal of the Political Security Organization to bring Mr. Al Ammari to court for several months after his arrest. The source further alleges a lack of due process in Mr. Al Ammari’s trial, as he was convicted without any material evidence and the appellate court simply refused to re-examine his case.

Response from the Government

16. The Working Group transmitted the allegations from the source to the Government of Yemen, requesting it to provide in its reply detailed information about the current situation of Mr. Al Ammari and to clarify the legal provisions governing his continued detention. The Working Group regrets that the Government has not replied to its request.

Discussion

17. Despite the absence of a response from the Government, the Working Group may, in accordance with paragraph 16 of its methods of work, render an opinion on the basis of the information available to it.

18. Mr. Al Ammari’s case is one of several of a similar nature on which the Working Group has rendered opinions, including opinions No. 47/2005, No. 40/2008, No. 13/2009, No. 26/2009, No. 17/2010, No. 5/2011 and No. 19/2012.¹ In all those cases, the persons detained: (a) were arrested without a warrant and either not formally charged or charged months later; (b) had been held at various detention centres and prisons for varying periods of time without being brought before a judge; (c) were charged with anti-State and terrorist activities; and (d) had either never stood trial or were tried by the Specialized Penal Courts.

19. The Working Group further notes that, in the present case and a number of other cases, the Government authorities appear to justify the detention by alleging, either formally or informally, that the detainee/s are linked to Al-Qaida and suspected of terrorist activities. The use of the pretext of securitization is an increasing trend in a number of jurisdictions and has resulted in decreased protection of the basic human rights within those jurisdictions. In previous reports, the Working Group has expressed concerns related to the continuing tendency of States to use deprivation of liberty in the context of the legitimate fight against terrorism.²

20. Bearing in mind the emerging pattern of arbitrary detention in Yemen and information made available in the present case, the Working Group notes that *prima facie* serious procedural lapses have occurred in the case in hand, both at the time of Mr. Al Ammari’s arrest and during his detention, at trial and after completion of his prison sentence.

21. The first violation is that of article 9, paragraph 2, of the International Covenant on Civil and Political Rights. Mr. Al Ammari was arrested on 5 December 2011 without an arrest warrant, held incommunicado for six months following his arrest, and informed of the charges against him only after nine months in detention. Various provisions of Yemeni law on the subject were also violated (see article 48 (c) of the Constitution of Yemen (2001) and article 73 of the Criminal Procedure Code of Yemen (Law No. 31 of 1994)).

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

² See A/HRC/10/21; E/CN.4/2005/6 and E/CN.4/2004/3.

22. Mr. Al Ammari was brought before a judge in the Specialized Penal Court in Sana'a nine months after his arrest in September 2012, contrary to the requirements under article 269 of the Criminal Procedure Code of Yemen and article 9, paragraph 3, of the International Covenant on Civil and Political Rights. Article 9, paragraph 3, of the Covenant provides 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. The Human Rights Committee, in its general comment No. 8 (1982) on the right to liberty and security of persons, notes that "delays must not exceed a few days" from the time of arrest and that "pretrial detention should be an exception and as short as possible".³ In the present case, the delay of nine months in bringing Mr. Al Ammari before a judicial authority, six months of which were incommunicado detention, clearly violates the requirements under article 9, paragraph 3, of the Covenant.

23. Mr. Al Ammari had participated in peaceful anti-government demonstrations since January 2011 and had received warnings from government agents to refrain from such activities. However, further to his continued participation in such demonstrations, Mr. Al Ammari was detained by the Political Security Organization for half a day. His present detention illustrates the pattern whereby anti-Government demonstrators are detained in an attempt to prevent them from expressing their opinions and from exercising their right to assembly under articles 19–21 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights.

24. Mr. Al Ammari was sentenced to two years of imprisonment from the date of his arrest, 5 December 2011. Mr. Al Ammari was not released upon completion of his sentence on 5 December 2013, and remains in detention to date. In the absence of any indication that Mr. Al Ammari has been charged with any further offence, there is no valid legal basis or justification for his detention.

25. The Working Group also notes with concern that Mr. Al Ammari has suffered torture and ill-treatment during his detention.

26. 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 and community, and society at large. Governments and their agents therefore bear the serious responsibility of ensuring the application of the law and equal protection for all persons within its jurisdiction.

Disposition

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

The deprivation of Mr. Al Ammari's liberty is arbitrary, being in contravention of articles 9 and 19–21 of the Universal Declaration of Human Rights and articles 9, 14, and 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.

28. Additionally, the detention of Mr. Al Ammari from 5 December 2013 to the present falls within category I of the categories referred to by the Working Group.

³ Human Rights Committee, general comment No. 8 (1982) on the right to liberty and security of persons, *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40)*, annex V.

29. The Working Group requests the Government to take the necessary steps to remedy the situation, which are the immediate release of, and the provision of adequate compensation to, Mr. Al Ammari, pursuant to article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

30. Furthermore, the Working Group recalls the Human Rights Council's call 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. States are also requested to extend their cooperation to the Working Group in relation to its requests for information and to give due consideration to the recommendations it has made.⁴

31. In accordance with article 33 (a) of its revised methods of work, the Working Group considers it appropriate to refer the allegations of torture and ill-treatment of Mr. Al Ammari to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

[Adopted on 30 April 2014]

⁴ Human Rights Council resolution 24/7, paras. 3, 6 and 8.