



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. 12/2014 (United Arab Emirates)****Communication addressed to the Government on 19 December 2013****concerning Khalifa Rabia Najdi****The Government has not responded.****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 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);



(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 as follows.

4. Khalifa Rabia Najdi, born in 1979, is a national of the United Arab Emirates. He usually lives with his wife and four children in the region of Merbah in Fujairah, United Arab Emirates.

5. Between June and July 2013, Mr. Najdi expressed his support for the group of 94 individuals known as the "UAE 94" through his Twitter account. Many of the "UAE 94" are affiliated with Al Islah Reform and Social Guidance Association and 69 of the 94 individuals were sentenced to imprisonment after an allegedly unfair trial in July 2013.

6. On 23 July 2013, at about 10 p.m., Mr. Najdi was arrested near the Rehabilitation Centre for the Disabled in Fujairah by State security forces. The agents reportedly showed Mr. Najdi a document justifying his arrest, but allegedly did not give him the opportunity to read it and take note of charges against him. All the agents were wearing civilian clothes, except for one female agent who was wearing military clothes. Neither Mr. Najdi nor his family was informed of the reasons of his arrest.

7. On 25 July 2013, Mr. Najdi's father and brother met the Attorney General to seek information about Mr. Najdi's whereabouts and the reasons of his arrest. The Attorney General reportedly denied that Mr. Najdi was detained by the authorities and referred them to the State Security. The State Security similarly denied Mr. Najdi's detention and advised them to seek information from the police.

8. Mr. Najdi's brother went to the Merbah police station on 12 August 2013, seeking to make a deposition about his brother's arrest and disappearance. The police officers allegedly refused to register the deposition on the basis that they were not willing to provide more details about the place of Mr. Najdi's detention. They referred Mr. Najdi's brother to the investigation section of the Port Police, which in turn informed him that they had no competence to receive the deposition.

9. On 15 August 2013, Mr. Najdi's brother met the General Director of Fujairah Police to inform him about his efforts to locate his brother. While denying that he had the competence to deal with Mr. Najdi's case, the General Director informed Mr. Najdi's brother that Mr. Najdi was being detained by the State Security.

10. On 20 August 2013, Mr. Najdi's brother visited the Office of the State Security Prosecution in Abu Dhabi and met with the head of the State Security, who denied that Mr. Najdi was being detained in one of their detention centres. On the same day, the Office of the Attorney General of Abu Dhabi similarly told Mr. Najdi's brother that his disappeared brother was not on their list of detainees.

11. Mr. Najdi's whereabouts was unknown for over three months until 10 November 2013, after which a case was filed against him and he was transferred to the State Security Prosecution. The State Security authorities allowed Mr. Najdi's family to visit him in the State Security Prosecution building, where its agents allegedly attended and monitored the visit. Until that visit on 10 November 2013, Mr. Najdi's contact with his family had been severely restricted. He had been allowed to call his family only three times on 8 August

2013, 1 September 2013 and 17 October 2013, and he had been unable to inform them of his whereabouts, as he was not aware of them himself.

12. The source argues that Mr. Najdi's detention is arbitrary, as he was arrested without any reason and is detained without legal basis. The source argues that his detention violates article 26 of the Constitution of the United Arab Emirates, which provides that "personal liberty is guaranteed to all citizens. No person may be arrested, searched, detained or imprisoned except in accordance with the provisions of law. No person shall be subjected to torture or to degrading treatment."

13. The source further submits that Mr. Najdi was arrested and detained for having expressed his support for the "UAE 94" in the exercise of his right to freedom of opinion and expression, guaranteed under article 19 of the Universal Declaration of Human Rights. The source maintains that his detention is arbitrary.

14. Furthermore, the source argues that the authorities in the case violated Mr. Najdi's right to a fair trial, guaranteed under article 10 of the Universal Declaration of Human Rights and articles 13 and 14 of the Arab Charter on Human Rights. The source refers to general comment No. 8 (1982) of the Human Rights Committee on the right to liberty and security of persons, which states that "any person arrested or detained has to be brought 'promptly' before a judge or other officer authorized by law to exercise judicial power" and that such "delays must not exceed a few days". The source reiterates that in the present case, Mr. Najdi has been detained for over three months without being informed of the reasons of his detention or being presented to a judicial authority.

Communication to the Government

15. The Working Group addressed a communication to the Government on 19 December 2013, requesting the Government to respond to the allegations made by the source. The Working Group requested the Government to provide it with detailed information about the current situation of Mr. Najdi and the allegations made both in respect of the facts and the applicable legislation.

16. The Government has not responded to the communication from the Working Group.

Discussion

17. Despite the lack of response from the Government, the Working Group is in the position to render an opinion on the basis of all information that it has obtained, in accordance with paragraph 16 of its methods of work. Pursuant to that paragraph, the Working Group has consistently adopted opinions in a number of previous cases in which the Government of the United Arab Emirates did not provide a response.¹

18. The case concerns the arrest and detention of Khalifa Rabia Najdi, who had expressed his support to the group of 94 individuals known as the "UAE 94" through his Twitter account. The Working Group in its opinion No. 60/2013 (United Arab Emirates) held that the deprivation of liberty of individuals belonging to the "UAE 94" was arbitrary and in contravention of articles 8,–11, 19 and 20 of the Universal Declaration of Human Rights and fell within categories I, II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

19. The right not to be subjected to arbitrary arrest, detention or exile, set out in article 9 of the Universal Declaration, is a customary international norm and recognized as such in the constant jurisprudence of the Working Group. That right imposes on States obligations to ensure that anyone who is arrested shall be informed of the reasons for his or her arrest and be promptly informed of any charges against him or her. International law also requires that anyone arrested or detained on a criminal charge shall be brought promptly before a

¹ See Opinion No. 42/2013 (United Arab Emirates), Opinion No. 60/2013 (United Arab Emirates) and Opinion No. 61/2012 (United Arab Emirates).

judge. Article 14 of the Arab Charter on Human Rights, ratified by the United Arab Emirates on 15 January 2008, also guarantees the right not to be subjected to arbitrary arrest and detention without a legal warrant, and requires States parties to respect those procedural safeguards. In the present case, Mr. Najdi was effectively held in incommunicado detention for over three months from 23 July 2013 until 10 November 2013, without being informed of the reasons for his arrest or of any charges against him and without being brought before a judicial authority. The Working Group holds that the pretrial detention of Mr. Najdi, which lacked any legal basis and continued for a prolonged period of time, is clearly arbitrary, falling within category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

20. The source has put forward allegations that the authorities have not afforded Mr. Najdi the procedural safeguards necessary to ensure his fair trial. Such allegations have not been rebutted by the Government. The Working Group is of the view that the non-observance of the international norms relating to the right to a fair trial in the case is so grave that it renders Mr. Najdi's detention arbitrary according to category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

21. The Working Group also notes the allegations by the source that Mr. Najdi was arrested because he had publicly supported the "UAE 94" through his Twitter account. On the basis of the information available to the Working Group, it concludes that Mr. Najdi was arrested and is detained for the legitimate exercise of his right to freedom of opinion and expression, guaranteed under article 19 of the Universal Declaration of Human Rights. His continued detention is thus arbitrary, according to category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Disposition

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

The deprivation of liberty of Mr. Khalifa Rabia Najdi is arbitrary and constitutes a breach of articles 9 and 19 of the UDHR. 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.

23. Consequent upon the opinion rendered, the Working Group requests the Government of the United Arab Emirates to remedy the situation of Mr. Najdi and to bring it into conformity with the standards and principles set out in the Universal Declaration of Human Rights.

24. Taking into account all the circumstances of the case, the adequate remedy would be to immediately release Mr. Najdi and to provide him with adequate reparations. The duty to provide Mr. Najdi with compensation for the violations of his rights rests upon the State and should be enforceable before the national courts.

25. The Working Group further encourages the United Arab Emirates to ratify the International Covenant on Civil and Political Rights.

[Adopted on 30 April 2014]