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Human Rights Council Working Group on Arbitrary Detention

Opinion adopted by the Working Group on Arbitrary Detention at its seventieth session (25–29 August 2014)

No. 32/2014 (Saudi Arabia)

Communication addressed to the Government on 20 June 2014

concerning Tahir Ali Abdi Jama

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 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. Tahir Ali Abdi Jama (hereinafter Mr. Jama) is a Somali national born on 10 May 1978. Mr. Jama arrived in Saudi Arabia with his family when he was two months old and has been living in Saudi Arabia since then.

4. In 2002, a Saudi acquaintance of Mr. Jama was arrested for fraud. When the police searched his belongings and checked his mobile phone, they discovered that the most recent number that he had dialled was Mr. Jama's. The police proceeded to arrest Mr. Jama on suspicion that he was associated in the commission of fraud and detained Mr. Jama without charges for one year and four months. Upon his release, his residence permit in Saudi Arabia was revoked and he was deported to Hargeisa, Somaliland. Mr. Jama remained in Somaliland for approximately two months and returned to Saudi Arabia in October 2003.

5. In February 2004, a friend of Mr. Jama's was involved in producing and distributing fraudulent travel documents. Fearing that he may be arrested and imprisoned, Mr. Jama's friend convinced the police that Mr. Jama had committed the fraud. In the same month, Mr. Jama was subsequently arrested by police officers in plain clothes in Jeddah, Saudi Arabia. The police officers allegedly did not show him any arrest warrant and asked him to get into their car without making a scene.

6. His family was unaware of his fate and whereabouts for the following seven months. They then learned that Mr. Jama was detained in Al-Ruwais prison in Jeddah. When his mother visited him, she noticed that he was very ill, missing several teeth and unable to hear from one ear, and there were signs that he had been severely beaten.

7. On or about 1 June 2008, Mr. Jama was brought to trial without legal representation. The Diwan al-Madhalim court found Mr. Jama guilty of fraud and sentenced him to one year's imprisonment, 80 lashes and a fine of 1,000 Saudi riyal. By that stage, Mr. Jama had already served over four years in prison. In or about July 2008, Mr. Jama was transferred to another prison in Abha city in Assir province.

8. Around the end of 2012, Mr. Jama was summoned to a court hearing again for other outstanding charges of fraud. He was not represented by a lawyer and no substantive outcomes resulted from that court hearing.

9. In April 2013, Mr. Jama's mother visited him in prison and sought explanations from the authorities as to why her son was still detained, although he had finished serving his sentence in 2005. The authorities were reportedly dismissive of her inquiries and did not provide her with answers.

10. In October 2013, Mr. Jama was brought to a court hearing again without legal representation. Again, nothing resulted from that court hearing and Mr. Jama was returned to the prison in Abha city, where he remains in detention to date.

11. The source argues that Mr. Jama's detention is arbitrary, as there is no legal basis justifying his detention. He has been imprisoned for over ten years to date, despite the fact that he has only been sentenced to one year's imprisonment, and the authorities have not provided any explanations about his continued detention. Furthermore, Mr. Jama has never been afforded access to lawyers at any stage of the proceedings. It is submitted that the non-observance of the international norms relating to the right to a fair trial is so grave that it renders Mr. Jama's detention an arbitrary character.

Response from the Government

12. On 20 June 2014, the Working Group communicated the allegations of the source to the Government of Saudi Arabia, requesting it to provide the Working Group with detailed information about the current situation of Mr. Jama and to clarify the legal provisions justifying his continued detention, including details regarding the conformity of his trial with relevant international law standards.

13. Despite the absence of a response from the Government, the Working Group considers that it is in the position to render an opinion in accordance with paragraph 16 of its revised methods of work and on the basis of information made available to it.

Discussion

14. At the outset of its discussion on this case, the Working Group restates its position on the burden of proof.¹ The lack of response by the Government is therefore analysed as an agreement with the statement of facts provided in the application, including a shift from dubious facts in some instances to established facts. As a result, the facts as alleged by the source are not disputed and the Working Group will make its legal assessment on that basis.

15. The Working Group notes that Mr. Jama has been arrested and detained on two different instances without any charges being promptly communicated to him. The first time, he was detained for 16 months and thereafter released and expelled without any trial to determine his innocence or guilt so as to justify any such sanction. The second time, he was detained for about four years before any trial. In addition, he was not provided with any legal assistance by counsel for his representation in the criminal proceedings. Finally, he was convicted for only one year but was still in detention until the time of the application.

16. The Working Group finds that there is a violation of the right to a fair trial, as well established in international law, especially under articles 10 and 11 of the Universal Declaration of Human Rights. The gravity of such a violation qualifies it for category III of the categories applicable to the consideration of cases submitted to the Working Group. In addition, the Working Group finds that there was no ground for the detention after the trial in June 2008 and the new appearance in court by the end of 2012 when outstanding charges were alleged, therefore placing it in category I of the categories applicable to the consideration of cases submitted to the Working Group.

17. Furthermore the Working Group holds the view that the source has provided reliable evidence on a possible situation of physical abuse and mistreatment which could amount to cruel, inhuman and degrading treatment therefore warranting appropriate action as the prohibition of such a treatment is a *jus cogens* norm.²

¹ See opinion No. 41/2013 (Libya), paras. 27 and 28 (A/HRC/WGAD/2013/41).

² See *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422, para. 99.

Disposition

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

The deprivation of liberty of Tahir Ali Abdi Jama is arbitrary, being in contravention of articles 9 to 11 of the Universal Declaration of Human Rights; it falls within categories I and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

19. Consequently upon the opinion rendered, the Working Group requests the Government of Saudi Arabia to take the necessary steps to remedy the situation of Mr. Jama and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be the immediate release of Mr. Jama and an adequate compensation be afforded to him.

20. Furthermore, and in accordance with paragraph 33 (a) of its revised methods of work (A/HRC/16/47 and Corr.1, annex), the Working Group considers it appropriate to refer the allegation of cruel, inhuman and degrading treatment to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

21. The Working Group reminds Saudi Arabia that its national laws should comply with all obligations under international law, in particular international human rights law.

22. The Working Group encourages Saudi Arabia to ratify the International Covenant on Civil and Political Rights.

23. 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 28 August 2014]

³ Human Rights Council resolution 24/7, paras. 3, 6 and 9.