



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. 14/2014 (Saudi Arabia)****Communication addressed to the Government on 31 January 2014****concerning Zakaria Mohamed Ali****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 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); 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 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. Zakaria Mohamed Ali, born in 1983, is a Somali national. Mr. Ali is married and lives with his wife in Riyadh, Saudi Arabia. He is an internal auditor at the Al Amana insurance company and the president of the Sakura association, which promotes reflection on social issues in Saudi Arabian society and promotes cultural exchanges between Saudi Arabia and Japan. He is also an intellectual and a writer who engages in examination and critique of Arab societies.

5. On 20 April 2013, Mr. Ali was arrested at his workplace, Platinum Center, Salah Al Deen Al Ayubi (Sitteen Street), Al Malaz neighbourhood, in Riyadh, by the Saudi Arabian Intelligence Service (al-Mabahith). He was reportedly arrested without a warrant and without being informed of the reason for his arrest, contrary to articles 115 and 116 of the Criminal Procedure Law of Saudi Arabia.

6. Upon arrest, Mr. Ali was detained in prison in Riyadh, where he was reportedly kept incommunicado for a month. He subsequently telephoned his parents, who live in the city of Khamis Mushait in Saudi Arabia, informing them of his detention and that he was to be transferred to a prison in Jeddah. Mr. Ali was thereafter transferred to Dhahban Central Prison in Jeddah, where he currently remains. It is alleged that, to date, Mr. Ali has not been made aware of the charges against him, has not been permitted access to legal counsel, nor been brought before any judicial authority.

7. Mr. Ali's wife was in Somalia visiting her parents when her husband was arrested. The source reports that she is unable to return to Saudi Arabia owing to administrative complications regarding the granting of consent by a male guardian, which is customarily required by women to travel outside of and return to Saudi Arabia. Therefore, Mr. Ali's wife has been unable to visit her husband or telephone him, as he is not permitted to receive international telephone calls.

8. According to the source, Mr. Ali's parents have visited him four times since his arrest. The source was informed that they have since been placed under surveillance by the Saudi authorities. It is further reported that friends who have contacted his family or made attempts to advocate for his release have been discouraged by the authorities from doing so and have been ordered not to interfere in his case.

9. In the source's opinion, the deprivation of Mr. Ali's liberty appears to be related to the exercise of his rights and freedoms under the Universal Declaration of Human Rights, specifically for having expressed his opinion about the need for an open-minded interpretation of Islam and about the rights and freedoms of individuals. The source maintains that his arrest in the absence of a warrant and his detention by the intelligence services, rather than regular security forces, imply that Mr. Ali is a prisoner of conscience.

10. The source argues that Mr. Ali has also suffered violations of his right to a fair trial under article 10 of the Universal Declaration of Human Rights and articles 13 and 14 of the Arab Charter on Human Rights. The source draws attention to general comment No. 8 (adopted on 30 June 1982) of the Human Rights Committee, in which it found that “any person arrested or detained has to be brought ‘promptly’ before a judge or other officer authorized by law to exercise judicial power ... In the view of the Committee, delays must not exceed a few days”.

11. The source submits that the detention of Mr. Ali is arbitrary and may be considered under categories I, II and III of the categories applicable to the consideration of cases submitted to the Working Group.

Response from the Government

12. The communication from the source was transmitted to the Government of the Kingdom of Saudi Arabia on 31 January 2014, with a request that it provide the Working Group with detailed information about the current situation of Mr. Ali and clarify the legal provisions justifying his continued detention. It is regretted that the Government has not responded to that request.

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

Discussion

14. On the basis of the available information, which, given the absence of a response, is not disputed by the Government, the Working Group notes a range of violations of national and international human rights obligations in the present case. At the international level, article 9 of the Universal Declaration of Human Rights provides that no one shall be subjected to arbitrary arrest, detention or exile, while article 10 stipulates that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Both the Human Rights Committee and the former Commission on Human Rights have clarified that the fundamental aspect of such rights hinges on the possibility of contesting the legality of one’s detention. Reference is made to resolution 1992/35, adopted by the former Commission on Human Rights on 28 February 1992, in which it called on all States that had not yet done so to establish a procedure such as habeas corpus by which anyone who is deprived of his or her liberty by arrest or detention shall be entitled to institute proceedings before a court, in order that that court may decide without delay on the lawfulness of his or her detention, and order his or her release if the detention is found to be unlawful. In the present case, those provisions of international human rights law have not been respected.

15. At the domestic level, a number of provisions under Saudi Arabian law have been contravened. According to article 36 of the Saudi Arabian Basic Law of Governance, “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”. Moreover, article 35 of the Saudi Arabian Law on Criminal Procedure (Royal Decree No. M/39) provides that no person shall be arrested or detained except on the basis of an order from the competent authority. That article also specifies that “any such person ... shall also be advised of the reasons of his detention”. Article 2 of the Law of Criminal Procedure stipulates that “detention ... shall be for the period prescribed by the competent authority”. To date, Mr. Ali has not been brought before a competent authority or brought to trial.

16. The Working Group notes with concern the consistent pattern of arbitrary arrests and detention in Saudi Arabia, as well as the silence on the part of the Government on allegations transmitted by the Working Group on cases of arbitrary detention.¹ The present case raises a grave concern, as it is yet another case demonstrating the existence of that pattern.

17. In particular, the Working Group notes that, in the instant case as well as in the previous cases relating to Saudi Arabia, the information and allegations from the source are not disputed by the Government, owing to its silence. The Working Group, on the basis of information available to it, finds that Mr. Ali has been detained on account of his expression of opinions, writings and activities as the head of the Sakura organization, which engages in cultural activities. He is known to be a critical thinker and advocates a view of Islam that is not in line with the official Saudi Arabian interpretation of that religion. Thus, the Working Group considers that Mr. Ali's rights under articles 18 and 19 of the Universal Declaration of Human Rights have been infringed.

18. Article 9 of the Universal Declaration of Human Rights, which prohibits arbitrary arrest and detention, is a deeply entrenched human rights norm, reflected in both State practice and *opinio juris*.² The Working Group reiterates that the prohibition of arbitrary detention is part and parcel of customary international law.³ In doing so, the Working Group draws upon the established practice of human rights bodies which consider the prohibition of arbitrary detention as a norm of customary international law, authoritatively recognized as a peremptory norm of international law, or *jus cogens*,⁴ which the Working Group follows in its opinions.

19. The Working Group has, in an earlier opinion,⁵ declared that the responsibility for showing an arrest warrant, informing the individual of the reasons for arrest and the legal provisions under which a detainee is charged, and guaranteeing access to a lawyer and the legal processes available to challenge the legality of his/her arrest and detention, rests with the Government of Saudi Arabia, which ought to have made these available to Mr. Ali in the present case.

Disposition

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

The detention of Zakaria Mohamed Ali is without legal basis and violates articles 9, 10, 18 and 19 of the Universal Declaration of Human Rights. It is therefore arbitrary, falling under categories I, II and III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

¹ See for example the Working Group's opinions on Saudi Arabia No. 22/2008,; No. 36/2008; No.37/2008; No. 21/2009; No. 10/2011; No. 11/2011; No. 17/2011; No. 18/2011; No. 19/2011; No. 30/2011; No. 31/2011; No. 33/2011; No. 41/2011; No. 42/2011; No. 43/2011, No. 8/2012, No. 22/2012, available from www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx.

² See, inter alia, International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment of 30 November 2010, I.C.J. Reports 2010, para. 79; Separate Opinion of Judge Cañado Trindade, pp. 26–37, paras. 107–142.

³ See for example the Working Group's opinions No. 15/2011 (China) and No. 16/2011 (China).

⁴ See, inter alia, the established practice of the United Nations as expressed by the Human Rights Committee in its general comment No. 29 (2001) on derogation during a state of emergency, para. 11.

⁵ Working Group opinion No. 44/2013 (Saudi Arabia).

21. The Working Group requests the Government of the Kingdom of Saudi Arabia to release Zakaria Mohamed Ali forthwith and bring his situation into conformity with the requirements of international human rights law.

22. Consequent upon the opinion rendered and in view of the adverse effect of the wrongful arrest and detention on him and his family, the Working Group requests the Government of Saudi Arabia to provide Mr. Ali with appropriate reparation.

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

24. 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.⁶

[Adopted on 30 April 2014]

⁶ Human Rights Council resolution 24/7, para. 3.