

## **Opinion No. 26/2009 (Yemen)**

### **Communication addressed to the Government on 29 May 2009**

#### **Concerning Mr. Karama Khamis Saïd Khamicen**

#### **The State is a party to the International Covenant on Civil and Political Rights.**

1. (Same text as paragraph 1 of Opinion No. 18/2009)
2. Acting in accordance with its methods of work, the Working Group forwarded a communication addressed to the Government on 29 May 2009. A reminder was sent on 13 November 2009. The Working Group regrets that the Government has not replied within the 90-day deadline.
3. (Same text as paragraph 3 of Opinion No. 18/2009)
4. According to the source, Mr. Karama Khamis Saïd Khamicen, a Yemeni national, born on 29 September 1970, residing in Kishan, Muhafadhat Al Mahra Governorate and an ambulance driver for Kishan Hospital, was arrested on 16 March 2009, leaving the Mosque

in Al Shahir, by an agent of the Political Security Services (Al-Amn Assiyassi). The agent of the Political Security Services did not show any arrest warrant.

5. Mr. Khamicen was detained at the United States naval base of Guantánamo Bay in Cuba for over three years before being released on 15 September 2005 to the authorities of Yemen. On his return from Guantánamo, he was kept in incommunicado detention for several months. On 13 March 2006, he was brought before the State Security Court on charges of trafficking narcotics. He was acquitted by the Court on the same day. The acquittal was later confirmed by the Appeal Court on 30 April 2006. Mr. Khamicen was released on 10 May 2006.

6. Mr. Khamicen had gone to consult his regular medical doctor in Al-Shahir for a serious stomach ulcer, a condition the source informs us that he contracted as a result of the torture suffered at the Guantánamo Bay detention facilities in Cuba. Mr. Khamicen was held in incommunicado detention and his arrest was not communicated to his relatives. His family had no news from him for more than a week. Some time later, Mr. Khamicen's brother discovered that he was being kept in detention in the local Headquarters of the Political Security Services in Al-Ghaida, Muhafadhat Al Mahra Governorate.

7. The source reports that Mr. Khamicen's brother was allowed to visit him in prison once. He noticed that his brother's health has deteriorated because of the absence of medical treatment.

8. Mr. Khamicen's brother was told that Mr. Khamicen would be released only if Mr. Khamicen collaborated with the services detaining him, which Mr. Khamicen had refused. He has had no visit since his brother's initial visit and is being kept without any contact with the outside world.

9. Mr. Khamicen has not been informed of the reasons for his detention. No charges have been brought against him and no case has been filed.

10. According to the source, the incommunicado detention of Mr. Khamicen without any legal procedure is in contravention of Yemeni domestic law.

11. An official communication by the local human rights organization HOUD was sent to General Ghaleb Al-Rokn Qamsh, Head of the Political Security Services, asking for the urgent release of Mr. Khamicen, but without any result.

12. Fears have been expressed that Mr. Khamicen might be subject to torture and ill-treatment during his incommunicado detention. His current state of health and the absence of medical treatment only reinforced these fears.

13. Having examined the information received and in the absence of a reply from the Government, the Working Group considers that Mr. Khamicen is being arbitrarily detained in contravention of articles 3, 9 and 11 of the Universal Declaration of Human Rights.

14. The detention in this case is also in violation of article 9 of the International Covenant on Civil and Political Rights, and in particular the guarantees that "everyone has the right to freedom and security of person"; that "no one shall be subjected to arbitrary arrest or detention"; and that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law".

15. Mr. Khamicen's detention is also in violation of article 14 of the International Covenant on Civil and Political Rights, which requires that everyone shall be informed promptly of the nature and cause of the charge against them, and have the right to be tried without undue delay.

16. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Mr. Karama Khamis Saïd Khamicen is arbitrary, being in contravention of articles 3, 9 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. It falls under categories I and III of the categories applicable to the consideration of cases submitted to the Working Group.

17. The Working Group requests the Government to take the necessary steps to remedy the situation, which, under the specific circumstances of this case, are the immediate release of, and adequate reparation to, Mr. Khamicen.

18. The Working Group would emphasize that the duty to immediately release Mr. Khamicen will not allow further detention, even if the further actions taken against him should satisfy the international human rights obligations of Yemen. Furthermore, the duty to provide adequate reparation under article 9, paragraph 5, of the International Covenant on Civil and Political Rights is based on the arbitrary detention that has taken place and subsequent proceedings or findings in these cannot limit the State's responsibility.

Adopted on 23 November 2009