

No. 2/2011 (Saudi Arabia)

Communication addressed to the Government on 28 December 2010

Concerning: Abdul Hakim Gellani

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. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.
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 sentence or despite an amnesty law applicable to him) (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);
 - (e) When the deprivation of liberty constitutes a violation of the 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; 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 source reported to the Working Group on Arbitrary Detention that Abdul Hakim Gellani, a British national, born on XX December XXXX, usually residing with his wife and children in the United Kingdom, is the director of a travel agency specialized in pilgrimages to Mecca.
4. On 19 November 2005, while on a business visit to Saudi Arabia, Mr. Gellani was arrested in Mecca by the Saudi Security Services. Following the intervention of the British Foreign and Commonwealth Office as well as a law firm contracted by Mr. Gellani's family, the Saudi authorities recognized his arrest and detention on 14 December 2005.
5. On 18 December 2005, Mr. Gellani was transferred to Ruwais Prison in Jeddah and received a welfare visit from the British Consulate the following day. However, according to the source, Mr. Gellani did not receive a full consular visit until 12 March 2006.

6. The source reports that in May 2006, Mr. Gellani went on a hunger strike protesting his conditions of detention and lack of a fair trial. According to the information received, Mr. Gellani was not charged in accordance with the Saudi Law of Criminal Procedure and he was not brought before a judge until 19 July 2006, the date of his release.

7. Following his release on 19 July 2006, Mr. Gellani proceeded to organize his return to the United Kingdom. According to the source, Mr. Gellani applied for and received a new passport at the British Consulate. However, the Saudi authorities denied him an exit visa.

8. Following an interview with Al-Jazeera that revolved around detention conditions in Saudi prisons, Mr. Gellani was re-arrested by the Saudi Security Services on 8 August 2007 at Hotel Morjane, his temporary residence in Mecca. According to the information received, the Saudi Arabian Ministry of Foreign Affairs denied Mr. Gellani's detention until 23 September 2007. Subsequently, Mr. Gellani's family learned that he had been transferred to Ruwais Prison in Jeddah.

9. According to the source, Mr. Gellani was held incommunicado until 27 October 2007 when he received a visit from the British Consulate, the first one since his re-arrest. After that visit, Mr. Gellani was allowed regular calls to his family and further consular visits. According to the information received, Mr. Gellani has been held in solitary confinement and, on several occasions, had to sleep on the floor, without blankets and in a constantly lit cell. The source also reports that Mr. Gellani has been subjected to severe beatings and humiliation. On other occasions, Mr. Gellani has allegedly been denied the Koran or handcuffed for several days. The source contends that such treatment, together with the fact that Mr. Gellani does not know when his detention will end, amounts to torture or inhuman and degrading treatment and represents a grave breach of Mr. Gellani's rights under the Saudi domestic laws and international law.

10. It is further reported that during both periods of detention, Mr. Gellani has never been officially charged. According to the source, although Mr. Gellani was brought before a judge several times, he was repeatedly informed that he could not be heard without a lawyer. In September 2010, Mr. Gellani's family, with the help of a London-based law firm and the intervention of the British Foreign and Commonwealth Office, succeeded in obtaining a Saudi lawyer to represent Mr. Gellani in court proceedings. However, according to the information received, the lawyer was prevented from appearing in court at Mr. Gellani's last hearing, scheduled for 26 September 2010. It is reported that Mr. Gellani's lawyer was arrested on the day of the hearing and detained for three days by the authorities for interrogation. Thus, the source argues that Mr. Gellani has not been given a fair trial, nor has he had proper access to legal counsel, let alone to information regarding the length of or reasons for his continued detention.

11. In its submission to the Working Group on Arbitrary Detention, the source states that during both periods of detention, that is, from November 2005 to July 2006, and from October 2007 to the present, Mr. Gellani has been held without any legal basis. Mr. Gellani was not presented with a warrant for his arrest nor has he ever been informed of the charges against him. It cites a number of articles of domestic Saudi laws that have been violated in relation to Mr. Gellani's arrest and detention, including article 36 of the Saudi Basic Law of Governance, articles 4 and 35 of the Saudi Law of Criminal Procedure (Royal Decree No. M/39), and article 114 of the Royal Decree.

12. Finally, the source argues that although a lawyer had been mandated by Mr. Gellani's family, Mr. Gellani has not yet been able to receive full and adequate legal assistance. Notably, Mr. Gellani's lawyer was allegedly prevented from attending the hearing scheduled on 26 September 2010. According to the source, Mr. Gellani's detention is contrary to Saudi Arabia's domestic laws and applicable international legal norms.

Response from the Government

13. The Working Group transmitted the above allegations to the Government of Saudi Arabia, requesting a response within 90 days, with detailed information about Mr. Gellani's current situation, and clarification of the legal provisions justifying his continued detention. The Working Group regrets that it has not received a response from the Government.

Discussion

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

15. Based on the information presented by the source, the Working Group has a number of issues to discuss in relation to this case. Mr. Gellani was arrested and detained on two different occasions without a warrant, and on the second occasion, there is also the matter of his disappearance. There are also allegations of severe detention conditions; ill-treatment; lack of adequate legal assistance and due process and ongoing detention without knowledge of the reasons therefor.

16. The first arrest and detention lasted for 8 months, without charge or any kind of legal procedure or trial, terminating with Mr. Gellani's release on 19 July 2006. In the absence of any information to the contrary, this detention does not appear to have been supported by any legal justification on the part of the Saudi authorities.

17. The second arrest and ongoing detention occurred after an interview given to Al-Jazeera by Mr. Gellani regarding the poor detention and prison conditions in Saudi Arabia. In the absence of a response from the Government, the linkage between Mr. Gellani's exercise of his right to freedom of expression and opinion and his (initial) disappearance and subsequent detention seems plausible. In addition, the case at hand is not an isolated one, taking into account previous cases, in which academics and intellectuals have been arrested and detained following their expression of opinion or criticism of government policies. There seems to be a clear link between exercise of freedom of opinion and detention (see opinions cited in paragraph 20 below).

18. The lack of arrest warrants; cruel, inhuman and degrading treatment during detention; as well as lack of a fair trial, including access to a lawyer, constitutes another layer of deprivation and denial of basic human rights under domestic law, as well as international human rights law. In particular, these non-contested actions and omissions constitute violations of articles 9 and 10 of the Universal Declaration of Human Rights, principle 1 of the Basic Principles on the Role of Lawyers and principle 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

19. Although the Government has not provided a response to the allegations set forth by the source, based on the information available to the Working Group, a discernible pattern emerges from the number of cases in Saudi Arabia brought before the Working Group. As set out in earlier opinions rendered by the Working Group, including opinions No. 36/2008; No. 37/2008; No. 22/2008 and No. 21/2009, a significant number of persons have been arrested and detained without warrants, without timely presentation before a magistrate, access to legal counsel or even a trial. In the majority of these cases, the detained person had been arrested following peaceful expression of opinion; in others, on vague security-related issues. It is therefore pertinent to mention that Mr. Gellani's case follows the same pattern in which basic rights have not been respected.

Disposition

20. In the light of the foregoing, the Working Group renders the following opinion: The deprivation of liberty of Mr. Gellani on both occasions is arbitrary, being in violation of articles 9, 10 and 19 of the Universal Declaration of Human Right, without legal basis, and falling under categories I, II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

21. Consequent upon the opinion rendered, the Working Group requests the Government of Saudi Arabia to release Mr. Gellani forthwith, and to bring his situation into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

22. The Working Group further requests the Government of Saudi Arabia to provide appropriate reparation to Mr. Gellani and his family.

23. The Working Group invites the Government of Saudi Arabia to ratify the International Covenant on Civil and Political Rights.

[Adopted on 3 May 2011]