



Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 14–23 November 2012****No. 49/2012 (Algeria)****Communication addressed to the Government on 12 September 2012****Concerning: Saber Saidi****The Government did not reply to the communication.****The State is 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 that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work,¹ 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);

¹ A/HRC/16/47, annex.



(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. Mr. Saber Saidi, an Algerian citizen born on 24 March 1979, uses the social network Facebook to launch appeals for peaceful change in the political system in Algeria.

4. At around noon on 11 July 2012, Mr. Saidi was abducted on a public thoroughfare in his neighbourhood in the Zerhoun Mokhtar estate of Bordj El Kiffan (Algiers) by officers from the Intelligence and Security Department (DRS), the Algerian intelligence service attached to the Ministry of National Defence.

5. As he did not return to the family home, the next day his father enquired with the various security services to establish what had happened to him. These included the local police station, followed by the criminal investigation service in Bab Ezzouar, the Cavaignac police station in Algiers, the police station in Dar Al Beïda, and lastly the central police station in Algiers, but none of these services provided information or acknowledged detaining Mr. Saidi.

6. Thus, the source states that Mr. Saidi's detention remained secret for 11 days, in violation of article 9 of the International Covenant on Civil and Political Rights and the Code of Criminal Procedure, as the competent regional prosecution service (the El Harrach Court) was not informed of the arrest within 48 hours.

7. It was not until 22 July 2012 that Mr. Saidi was finally brought before the public prosecutor at the El Harrach Court.

8. His father and brother were not allowed to visit him at El Harrach Prison until 30 July 2012. They found him in an appalling state. They say that Mr. Saidi was having difficulty speaking and seemed afraid to tell them what had happened to him while in custody.

9. Mr. Saidi was charged with "advocating terrorism", an accusation that the source considers sufficiently vague and unclear to enable the Algerian judicial authorities to prosecute a whole range of acts related to political activities or involvement in associations. In this case, DRS officers accused Mr. Saidi of sharing YouTube videos about the Arab revolutions on his Facebook page, expressing sympathy for Islamic Salvation Front leader Mr. Ali Belhadj and having links to Qatar and unauthorized Algerian political opposition movements. His Facebook page was reportedly blocked the day after his abduction.

10. The source maintains that the legal proceedings brought against Mr. Saidi, which may result in his being sentenced to a lengthy prison term, are the direct consequence of him exercising his right to peacefully express his opinion, recognized in article 19 of both the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. The arrest, carried out by DRS services, aims to muzzle an activist who has been particularly visible on Facebook and, by extension, any person calling for a peaceful change in the political system in Algeria.

11. According to the source, the arrest is all the more worrying because it was made as part of a campaign of repression and harassment now being waged against many other activists and human rights defenders throughout the country.

Response from the Government

12. In a letter dated 12 September 2012, the Working Group invited the Government to respond to the above allegations.

13. The Government failed not only to reply within the given 60-day limit, but even to request an extension, as authorized by the provisions of paragraph 16 of the Working Group's methods of work. The Working Group considers that it is in a position to render an opinion on the basis of the information available to it.

Discussion

14. It is regrettable that the Government has not responded to particularly serious allegations of violations of fundamental rights, two of which fall under the Working Group's mandate.

15. On the one hand, Mr. Saidi was arrested on 11 July 2012 by officers from the intelligence department, and was not brought before the public prosecutor until 22 July 2012, after more than 10 days of incommunicado detention.

16. In that connection, article 9, paragraph 3, of the International Covenant on Civil and Political Rights stipulates that: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power." According to Human Rights Committee general comment No. 8 (1982),² promptly means within a few days, but according to the source, Algerian law provides that persons must be brought before the public prosecutor within 48 hours. This violation of article 9, paragraph 3, of the Covenant is therefore likely to have rendered Mr. Saidi's detention irregular.

17. On the other hand, it is not disputed that Mr. Saidi uses the social network Facebook to launch appeals for peaceful change in the political system in Algeria. He has also shared videos about the Arab revolutions and expressed sympathy for the leader of the Islamic Salvation Front. From this perspective, the charge of "advocating terrorism", on the basis of which he is being prosecuted, is contrary to article 19 of the International Covenant on Civil and Political Rights.

18. Indeed, paragraph 3 of that article states very clearly that: "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals."

19. In the case at hand, even though it involves the prosecution of terrorism-related offences, domestic law must comply with the provisions of article 19 of the Covenant. By invoking loose definitions of offences that allow for a broad interpretation of those provisions, the law is not in conformity with international law in that regard.

² *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V, p. 95.*

20. Moreover, no specific acts have been attributed to Mr. Saidi, who, it should be recalled, has the right and freedom to criticize a political system and call for it to be changed through peaceful means. Prosecutions brought on this basis clearly violate the fundamental right to freedom of expression set forth in article 19 of the International Covenant on Civil and Political Rights.

Disposition

21. In the light of the foregoing, the Working Group renders the following opinion:

The detention of Saber Saidi is arbitrary and runs counter to articles 9, 10, 19 and 20 of the Universal Declaration of Human Rights and 9, 19 and 21 of the International Covenant on Civil and Political Rights, and constitutes a violation under categories II and III of the Working Group's methods of work.

22. The Working Group therefore requests that the Government immediately release Mr. Saidi, grant compensation for any harm that he may have suffered, bring its legislation into line with article 19 of the International Covenant on Civil and Political Rights to which it is a party, conduct an exhaustive investigation into incommunicado detention and, in future, cooperate more closely with the Working Group, as it has been invited to do by the relevant resolutions of the Human Rights Council.

[Adopted on 16 November 2012]