



General Assembly

Distr.: General
27 February 2012

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixtieth session, 2–6 May 2011

No. 17/2011 (Saudi Arabia)

Communication addressed to the Government on 6 December 2010

Concerning: Abdulrahim Ali Abdullah Al-Murbati

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 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 case summarized hereinafter was reported by the source to the Working Group on Arbitrary Detention as follows: Abdulrahim Ali Abdullah Al-Murbati, a Bahraini national born on 28 December 1960, usually residing with his wife and five children, in Isa Town, Bahrain, is a businessman with strong commercial ties to Saudi Arabia. Mr. Al-Murbati's second residence is in Medina, Saudi Arabia.

4. On 22 August 2003, Mr. Al-Murbati was arrested by officers of the Saudi Investigative Police, Al-Mabahith Al-Ammah, at his second residence in Medina.

5. It was not until December 2003 that Mr. Al-Murbati's family obtained access to information about his fate and whereabouts. According to the source, the family learned that for three months Mr. Al-Murbati had been held in Ruwais Prison, near Jeddah, and had subsequently been transferred to Alisha Prison close to Riyadh where, for the first time, the family was able to visit him.

6. According to the information received, during the first months of detention, Mr. Al-Murbati was allegedly tortured and subjected to inhuman conditions of detention in a solitary confinement cell, cold and lit 24 hours a day. He was repeatedly whipped with electric cables on the soles of his feet and on his back. During the interrogation sessions, Mr. Al-Murbati was questioned about his work for a humanitarian organization that had supported refugees in Afghanistan during the Soviet occupation in the 1980s. The source reports that although the Government of Saudi Arabia itself supports the organization's work, the security forces found suspicious Mr. Al-Murbati's association with that organization.

7. According to the information received from the source, Mr. Al-Murbati was repeatedly transferred from one prison to another. On 6 June 2008, the Bahraini Embassy to Saudi Arabia, whose intervention had been requested by Mr. Al-Murbati's family, was informed by Saudi authorities that the latter no longer recognized Mr. Al-Murbati's detention. From June 2008 until October 2008, Mr. Al-Murbati's fate and whereabouts were unknown to his family.

8. The source reports that Mr. Al-Murbati is currently detained at Dammam Prison. Due to serious health issues, he has required month-long treatment at the prisoners' section of Dammam Hospital. According to the information received, Mr. Al-Murbati has lost more than 50 kg during his detention, almost halving his weight. At present, the family is in regular contact with Mr. Al-Murbati. However, they continue to face financial difficulties, since Mr. Al-Murbati was the main breadwinner of the family.

9. Despite efforts undertaken by Mr. Al-Murbati's family to mandate a lawyer to prepare an adequate defence, Mr. Al-Murbati has still not had access to legal counsel, nor has he been presented before a judge or given the possibility to challenge the legality of his detention.

10. The source further reports that from August to December 2003 and from June to October 2008, Mr. Al-Murbati's whereabouts were unknown; he was arrested without being shown a warrant, and throughout the seven years of his detention he has never been informed of the charges against him. The source alleges that this is in violation of Saudi law, notably article 36 of the Basic Law of Governance which stipulates that "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". Article 35 of the Law of Criminal Procedure (Royal Decree No. M/39 of 16 October 2001) also states that "no person shall be arrested or detained except on the basis of order from the competent authority". This article further specifies that "any such person ... shall also be advised of the reasons of his detention", which has not been the case with Mr. Al-Murbati.

11. According to the information received, Mr. Al-Murbati has not been given a trial, nor has he been notified of the length of the period of detention. This is not in conformity with the Saudi domestic law. Namely, article 3 of the Law of Criminal Procedure notes that "no penal punishment shall be imposed on any person except in connection with a forbidden and punishable act ... and after the person has been convicted pursuant to a final judgment rendered after a trial conducted in accordance with Shari'ah principles". Furthermore, article 2 of the Law of Criminal Procedure declares that "detention ... shall be for the period prescribed by the competent authority".

12. The source further alleges that article 114 of the Law of Criminal Procedure provides that if the accused is to be detained in pretrial detention, it is to last a maximum of five days, renewable up to a total of six months. Accordingly, Mr. Al-Murbati should "be directly transferred to the competent court, or be released".

13. Moreover, the source argues that Mr. Al-Murbati's detention is contrary to both articles 9 and 10 of the Universal Declaration of Human Rights. Mr. Al-Murbati has been unable to contest the legality of his detention before a competent tribunal and has not had access to a lawyer.

Response from the Government

14. The Working Group forwarded a communication to the Government on 6 December 2010 and regrets that no response was provided within the stipulated 90 day period. Nor has the Government requested an extension from the Working Group in accordance with paragraphs 15 and 16 of its methods of work.

Discussion

15. Despite the lack of response from the Government, and on the basis of information made available to it, the Working Group considers itself in a position to render an opinion on the arrest and detention of Mr. Al-Murbati in accordance with paragraph 16 of its methods of work.

16. The facts presented by the source, and regretfully not responded to by the Government, highlight a continuous pattern of violations of a range of human rights, including the right not to be arrested without a warrant, the right to be brought before a judge within a specified period of time, the right to be informed of charges for arrest and detention, the right to access to a lawyer and the right to a fair trial within a reasonable period of time. Furthermore, in the present case there is the added violation of arrest without any contact with his family on two occasions during his seven years of detention (between August 2003 and December 2003 and then from June 2008 until October 2008). It follows from information received that Mr. Al-Murbati has been denied the above-mentioned rights and continues to suffer ongoing detention burdened with ill-health and without knowledge of the reasons of the said detention and its duration.

17. It is also pertinent to remind the Government of Saudi Arabia that there exist certain core minimum principles for treatment of detainees, including the right not to be ill-treated, tortured or held in solitary confinement in a freezing cell, as well as the right to medical assistance in case of illness.

18. The Working Group notes with concern that the continued detention of Mr. Al-Murbati and the alleged torture has resulted in his deteriorating health condition and endangered not only his health and well-being but indeed, his very life. To this end, the Working Group recalls its opinion No. 25/2007 (Australia), regarding health conditions of detainees. The Working Group reminds the Government of Saudi Arabia of the legal obligations undertaken by it as a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Working Group also recalls principles 11, paragraph 1, and 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly (resolution 43/173 of 9 December 1988, annex).

19. The Working Group notes that the case in hand is not an isolated one. As demonstrated in earlier opinions rendered by the Working Group, including opinions No. 36/2008; No. 37/2008; No. 22/2008, No. 21/2009; No. 2/2011; No. 10/2011; and No. 11/2011, a significant number of persons have been arrested and detained without warrants, without timely production before a magistrate, access to legal counsel and indeed a trial. It has been stated that Mr. Al-Murbati's interrogation and torture had as its main objective the extraction of information regarding his connection with a humanitarian organization. If there was any suspicion of illegal contact, the Government has the option of charging Mr. Al-Murbati, bringing him to trial and following due process rather than detaining him for an indefinite period. Keeping persons in detention for such long periods and with no prospect of remedial measures is unacceptable under any law—domestic or international.

Disposition

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

The deprivation of liberty of Mr. Al-Murbati is arbitrary, falling under categories I and III of the Working Group, being without legal basis and in violation of articles 9 and 10 of the Universal Declaration of Human Rights.

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

22. In particular, the Working Group urges the Government to pay urgent attention to the conditions of health of Mr. Al-Murbati and accord him all appropriate medical assistance in this regard.

23. The Working Group requests the Government to provide adequate reparation to Mr. Al-Murbati and his family.

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

[Adopted on 5 May 2011]