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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-first session, 29 August-2 September 2011

No. 41/2011 (Kingdom of Saudi Arabia)

Communication addressed to the Government on 9 February 2011

Concerning: Ali Khassif Saïd Al Qarni

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 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. Mr. Al Qarni, born in 1982, usually residing in Mecca with his family, is a student of Arab literature.

4. It is reported that on 5 December 2007, Mr. Al Qarni was arrested in Riyadh by agents of the intelligence services, Al Mabahith Al-Aama. He was allegedly held incommunicado for several weeks before being transferred to Dahban prison in Jeddah, where he is currently being detained without trial.

5. The source reports that a few months prior to his arrest, Mr. Al Qarni had attended a training seminar on human rights organized in Doha, Qatar, from 27 to 30 March 2007 and his arrest appears to be linked to his participation at that seminar. Mr. Al Qarni was not informed of the reasons for his arrest nor was he presented with a warrant. According to the information received, Mr. Al Qarni has not been charged or brought before a judge. Reportedly, he was only questioned regarding his activities as a human rights defender. According to the source, there are reasons to believe that Mr. Al Qarni's arrest and detention are solely intended to prevent him from pursuing his peaceful activities.

6. The source contends that the arrest and continued detention of Mr. Al Qarni, have taken place outside any legal framework and that to date he has not been allowed to seek any legal assistance. Mr. Al Qarni has effectively been unable to contest the legality of his detention before any competent authority.

7. The source submits that Mr. Al Qarni's deprivation of liberty is a direct consequence of his peaceful activities as a human rights defender, as recognized in General Assembly resolution 53/133 of 9 December 1998; and of his exercise of the right to freedom of opinion and expression as guaranteed in article 19 of the Universal Declaration of Human Rights.

Response from the Government

8. The Working Group transmitted the above allegations to the Government of Saudi Arabia, requesting that it provide in its reply detailed information on the current situation of Mr. Al Qarni and clarify the legal provisions justifying his continued detention.

9. The Working Group regrets that it has not received a response from the Government, whose cooperation it would have welcomed.

Discussion

10. In accordance with its revised methods of work, the Working Group is in a position to render an opinion on the basis of the submissions that have been made.

11. The Working Group, on the basis of the information submitted to it, notes that in view of the absence of a governmental response, it appears that Mr. Al Qarni, arrested on 5 December 2007, has at no point been informed of any reasons justifying his detention nor have any formal charges been brought against him. There does not appear to be any information indicating that he has been brought before a judge or had recourse to legal counsel. According to the information received, no legal basis has been invoked to justify

Mr. Al Qarni's arrest and detention. The only interpretation of the timing of his arrest and continued detention is that the arrest took place immediately after his attendance at a human rights seminar in Qatar and in connection with his activities as a human rights defender.

12. Mr. Al Qarni's detention runs contrary to article 9 of the Universal Declaration of Human Rights, which stipulates that no one may be subjected to arbitrary arrest or detention. In the present case, there is clearly no legal basis for Mr. Al Qarni's detention. The Working Group thus reaches the conclusion that Mr. Al Qarni's deprivation of liberty is arbitrary, falling within category I of the categories applicable to the consideration of cases submitted to the Working Group.

13. Mr. Al Qarni's detention is also inconsistent with article 10 of the Universal Declaration, which states that everyone is entitled to a fair and public hearing by an independent and impartial tribunal. A fundamental aspect of this right is the possibility of contesting the legality of one's detention. Both the Human Rights Council and the Commission on Human Rights have stated this, notably in Commission resolution 1992/35 of 28 February 1992, which calls on all States that have not yet done so to establish a procedure such as habeas corpus to enable anyone who is deprived of his or her liberty to institute proceedings before a court so that the 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. Mr. Al Qarni has been unable to contest the legality of his detention before a competent tribunal; he has not had access to a lawyer and has not had regular access to his family. The lack of observance of international norms relating to fair trial described above render his deprivation of liberty arbitrary, falling under category III of the categories applicable to consideration of cases submitted to the Working Group.

14. The Working Group notes with concern a consistent pattern of silence adopted by the Government of Saudi Arabia in not availing itself of the opportunity to respond to allegations set forth by the source in cases alleging arbitrary detention presented to this Group. There is an increasing pattern of arrest and detention of persons exercising their basic human rights, in particular their right to freedom of opinion, expression and association (see, for instance, opinions No. 22/2008, No. 36/2008, No. 37/2008, No. 2/2011, No. 10/2011 and No. 30/2011 of the Working Group). The case of Mr. Al Qarni further indicates that it has become the rule and not the exception that basic human rights are not duly respected. On the basis of the elements available to it, the Working Group concludes that Mr. Al Qarni's detention is arbitrary, falling under category II of the categories applicable to the consideration of cases submitted to the Working Group.

15. The Working Group reminds the Government of Saudi Arabia that customary international law prohibits arbitrary detention. It has been authoritatively recognized as a peremptory norm of international law or *jus cogens* (see Human Rights Committee general comment No. 29 (2001) on states of emergency, para. 11), to which the Working Group refers in its opinions. The judgment of the International Court of Justice in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* of 30 November 2010 and, in particular, the discussions by Judge Cançado Trindade on arbitrariness in customary international law,* have also been adopted by the Working Group. The rulings contained in the opinions of this Working Group, and of the other United Nations special procedures mandate holders constitute another source of reference.

* See International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Judgment of 30 November 2010, ICJ Reports 2010, para. 79; also the Separate Opinion of Judge Cançado Trindade, pp. 26-37, paras. 107-142.

Disposition

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

The continued detention of Mr. Al Qarni is arbitrary, falling under categories I, II and III of the Working Group, being without legal basis and in violation of articles 9, 10 and 19 of the Universal Declaration of Human Rights.

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

18. In view of the adverse effect of this wrongful arrest and detention on Mr. Al Qarni and his family, the Working Group requests the Government of Saudi Arabia to ensure appropriate reparation.

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

[Adopted on 2 September 2011]
