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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-second session, 16–25 November 2011

No. 68/2011 (Qatar)

Communication addressed to the Government on 12 September 2011

Concerning: Salem Al-Kuwari.

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. Salem Al-Kuwari, born in 1978, usually residing in Doha, is an agent of the civil protection unit.

4. It is reported that on 7 February 2011, Mr. Al-Kuwari was arrested by agents of the State Security Services. It is unknown whether Mr. Al-Kuwari was presented with an arrest warrant or informed about the reasons for his arrest.

5. Mr. Al-Kuwari was taken to his residence, which was subsequently searched. He was later transferred to an undisclosed location. His wife only learned one and a half months later that Mr. Al-Kuwari was being held at the premises of the State Security Services. During his first days in detention, he was allegedly kept handcuffed and in a standing position in a freezing cell without a bed. Under the alleged threat of continuing ill-treatment, he was forced to sign and put his fingerprints on a document against his will.

6. Following the initial days in detention, he was brought before the Prosecutor's Office, which ordered his continued detention. The source informs the Committee that Mr. Al-Kuwari has been deprived of any legal assistance and access to a lawyer of his choosing, although his family has received assurances from the Government that he will be released shortly. Mr. Al-Kuwari continues in detention without any legal proceedings and without being informed of the charges against him.

7. According to the source, Mr. Al-Kuwari's detention is not in conformity with articles 9 and 10 of the Universal Declaration of Human Rights. Furthermore, the source contends that his detention contravenes article 40 of the Code of Criminal Procedure (Law No. 23/2004), which provides that any arrest or detention can only be ordered by the competent authorities and in accordance with the law. Article 43 of the same law states that "the criminal investigation officer immediately hears the statement by the defendant upon his arrest. If there were sufficient evidence for accusation, the officer, within twenty-four hours, refers him to the competent Public Prosecution. The Public Prosecution interrogates the defendant under arrest within twenty-four hours from the time he is referred to it and orders either that the defendant be released or detained under protective custody".

8. Article 117 of the Qatari Code of Criminal Procedure clarifies that:

The warrant for preventive detention issued by the public prosecution is made after the interrogation of the defendant, for four days renewable for similar period or periods.

This period is of eight days renewable for similar period or periods, for crimes provided by the chapter one and two of section three of part two of the Penal code whenever it may prejudice the national economy.

If the interest of the investigation requires the continuation of the preventive detention of the defendant after the end of the period mentioned in the previous paragraph, the Public Prosecution refers the warrant to any of the judges of the competent court of First Instance to issue a decision ... to prolong the detention for a period not exceeding thirty days renewable for similar period or periods, or to release him with or without a bail.

9. The source argues that none of the requirements and procedures listed in paragraph 8 above has been respected in the present case. Mr. Al-Kuwari was de facto deprived of his right to contest the legality of his detention.

10. In the light of the foregoing, the source submits that Mr. Al-Kuwari's deprivation of liberty is arbitrary, lacking any legal basis and being in alleged contravention of the minimal guarantees enshrined in his right to a fair trial.

Response from the Government

11. The Working Group transmitted the initial information provided by the source to the Government of Qatar on 12 September 2011, requesting it to provide detailed information about the current situation of Mr. Al-Kuwari and to clarify the legal provisions justifying his continued detention.

12. The Working Group regrets that the Government of Qatar has not provided a response clarifying the allegations made by the source within the stipulated 60-day period; nor has the Government requested an extension from the Working Group in this regard.

Further comments of the source

13. The Working Group received further information from the source regarding the present case. The source indicates that Mr. Al-Kuwari was released on 19 October 2011, without formal charges brought against him or any legal proceedings. His release came about after being detained for a total of approximately seven months and two weeks.

14. The source states that Mr. Al-Kuwari was the subject of arrest and detention as a consequence of his regular criticism of the Qatari authorities. Further, the source states that Mr. Al-Kuwari has been charged with alleged terrorist activities in the past and was arrested along with Abdullah Ghanem Mahfoud Khowar in 2009, but both were later released.

Discussion

15. The Working Group has been informed by the source of the release of Mr. Al-Kuwari on 19 October 2011. In accordance with paragraph 17 (a) of its methods of work (A/HRC/16/47, annex), the Working Group "reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned". Notwithstanding Mr. Al-Kuwari's release and given the gravity of the allegations presented by the source, the Working Group decides to render an opinion.

16. The right not to be deprived of liberty and detained without charge, the right to be informed of a charge, and the right to be brought before a magistrate or other competent authority as soon as possible after being arrested, as well as all the requirements to a fair trial, are basic and fundamental human rights of every person. Mr. Al-Kuwari was subjected to arrest and detention, not formally charged for any offence and then released after approximately seven months in custody. These acts of the authorities are in manifest contravention of articles 9 and 10 of the Universal Declaration of Human Rights.

17. The Working Group notes with concern that the detention of Mr. Al-Kuwari with no attempt at charging him with a specific offence and subsequent release without charge is an indication that the Government did not have any legally sustainable and robust grounds for his arrest and detention.

18. Finally, further information received from the source has not been transmitted to the Government for its response due to the fact that it was not drawn upon in the substantive conclusion of the opinion rendered below. Nevertheless, the Working Group notes with

concern that Mr. Al-Kuwari's detention may be directly linked to his criticism of the authorities in Qatar. If such an allegation is corroborated, the Working Group would like to remind the Government of Qatar about its obligation to respect the right to freedom of opinion and expression enshrined in article 19 of the Universal Declaration of Human Rights.

Disposition

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

The deprivation of liberty of Mr. Al-Kuwari was arbitrary, without legal basis and in violation of articles 9 and 10 of the Universal Declaration of Human Rights, falling under categories I and III of the categories applicable to cases submitted to the Working Group.

20. As a result of the opinion rendered, the Working Group requests the Government of Qatar to ensure adequate reparation to Mr. Al-Kuwari for the adverse effect that this arbitrary detention will have had on him and his family.

21. The Working Group reminds the Government of Qatar of the Human Rights Council resolutions in which the Council calls for cooperation with special procedures, and urges the Government of Qatar to accede to the International Covenant on Civil and Political Rights.

[Adopted on 24 November 2011]