



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. 45/2011 (Kingdom of Saudi Arabia)****Communication addressed to the Government on 15 June 2011****Concerning: Chérif Al Karoui and Hichem Matri****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 that Mr. Al Karoui, born in 1969, married and father of three children, usually residing with his family in France, is an artisan. Mr. Matri, born in 1979, married and father of four children, usually residing with his family in France, is director of a plumbing company.

4. Messrs. Al Karoui and Matri decided to jointly establish a restaurant in Riyadh. They obtained a regular visa with the intention of completing their investment with the local authorities.

5. On 27 May 2010, the day before they were scheduled to return to France from Saudi Arabia, they were arrested in Riyadh by agents of the Saudi Interior Ministry's Intelligence and Security Agency, Al-Mabahith. They were not presented with an arrest warrant or notified of the charges against them. Messrs. Al Karoui and Matri were taken to an undisclosed location. After being interrogated about their identity and reasons for their trip, they were transferred to Al-Hayr Prison where they have been held in separate cells and isolated from the external world.

6. According to the source, Messrs. Al Karoui and Matri were informed by one of the officers of the Intelligence and Security Agency that they were suspected of terrorism, but they have not being provided with any further details. The authorities denied Messrs. Al Karoui and Matri's request to appear before a judge and to be formally notified of the charges against them. Their request to have access to a lawyer and to the Consulate of France was also denied.

7. It was not until 24 June 2010 that they were finally allowed to call their respective families and inform them about their fate and whereabouts. On 8 August 2010, Mr. Al Karoui was authorized to make another telephone call to his family, to whom he allegedly confirmed being held in total isolation without any charge or legal procedure.

8. The source informed that Messrs. Al Karoui and Matri were transferred from Al-Hayr Prison (where they had been held for 14 months) to Asir Prison in Abaha, Saudi Arabia on 21 June 2011.

9. The source refers to article 9 of the Universal Declaration of Human Rights which states that "no one shall be subjected to arbitrary arrest, detention or exile". Similarly, article 36 of the Saudi Basic Law of Governance states 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". Moreover, article 35 of the Saudi Law on Criminal Procedure (Royal Decree No. M/39) guarantees that "no person shall be arrested or detained except on the basis of order from the competent authority". This article specifies that "any such person [...] shall also be advised of the reasons of his detention".

10. The source argues that the deprivation of liberty of Messrs. Al Karoui and Matri lacks any legal basis, being in violation of the above-mentioned provisions of Saudi domestic law and the Universal Declaration of Human Rights. The source further refers to article 2 of the Saudi Law on Criminal Procedure which declares that the "detention shall be for the period prescribed by the competent authority". Article 114 of the Law on Criminal Procedure states that if the accused is to be detained in pretrial detention, it is to last a maximum of five (5) days, renewable up to a total of six (6) months. According to the

source, the authorities not only failed to release Messrs. Al Karoui and Matri, but they also deprived them of access to a lawyer or consular assistance. They continue to be deprived of contact with the external world, except for two short telephone calls in 2010.

11. The source further contends that Messrs. Al Karoui and Matri have been deprived of the possibility of a fair and public hearing by an independent and impartial tribunal in order to contest the legality of their detention. They have not been informed of the charges against them or the reasons for their detention, except for a vague reference to suspicions of terrorism.

Response from the Government

12. In its letter of 15 June 2011, the Working Group provided the Government of Saudi Arabia with the summary of the case and requested that it provide information regarding the allegations of the source. The Working Group regrets that the Government has not responded to its communication. The Working Group would have welcomed the cooperation of the Government of Saudi Arabia.

Discussion

13. Despite the absence of information from the Government, the Working Group considers that it is in a position to render an opinion on the detention of Messrs. Al Karoui and Matri, in conformity with paragraph 16 of its revised methods of work.

15. The Working Group finds that the following allegations have not been challenged by the Government:

- Messrs. Al Karoui and Matri were arrested and kept in detention without a court order authorizing their detention;
- they have not been allowed to challenge the lawfulness of their detention before the judicial authorities;
- they have been deprived of legal assistance;
- they have not been informed in detail of any charges against them;
- they have been deprived of the right to a fair trial by an independent and impartial tribunal to determine any criminal charge against them.

16. The Working Group has referred to similar violations of the provisions of the Universal Declaration of Human Rights which prohibit arbitrary detention and provide for the right a fair trial in previous opinions concerning Saudi Arabia (see, for instance, opinions No. 22/2008; No. 31/2008; and No. 36/2008).

17. In its opinion No. 6/2008, the Working Group recalled that the fight against terrorist threats could not justify violation of the due process rights of all accused persons nor the non-observance of the corresponding international human rights obligations of the State concerned (para. 21)

18. With regard to detentions in the framework of measures countering terrorism, the Working Group has reiterated that the practice of deprivation of liberty without charges or trial or other applicable procedural guarantees against persons accused of terrorist acts in the context of the implementation of criminal policies against terrorism is contrary to international human rights instruments (see A/HRC/10/21, para. 52).

19. In particular, the Working Group drew up a list of principles (see A/HRC/10/21, para. 54), of which the following are noteworthy:

- the detention of persons who are suspected of terrorist activities shall be accompanied by concrete charges;

- persons, detained under charges of terrorist acts, shall be immediately informed of them and shall be brought before a competent judicial authority, as soon as possible, and no later than within a reasonable time period;
- persons detained under charges of terrorist activities shall enjoy the effective right to habeas corpus following their detention;
- persons accused of having engaged in terrorist activities shall have a right to enjoy the necessary guarantees of a fair trial.

20. Accordingly, the Working Group considers that the deprivation of liberty of Messrs. Al Karoui and Matri is in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

21. The Working Group reiterates that customary international law prohibits arbitrary detention. It has been authoritatively recognized as a *jus cogens* or peremptory norm of international law (see the Human Rights Committee's 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 the case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* of 30 November 2010 and, in particular, the discussions by Judge Cañado Trindade on arbitrariness in customary international law* have also been adopted by the Working Group. The body of jurisprudence of the rulings contained in the opinions of the Working Group and of the other United Nations special procedures mandate holders constitutes another source of reference.

Disposition

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

The deprivation of liberty of Messrs. Al Karoui and Matri is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

23. Consequent upon the opinion rendered, the Working Group requests the Government of Saudi Arabia to take the necessary steps to remedy the situation of Messrs. Al Karoui and Matri and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

24. The Working Group is of the opinion that, taking into account all the circumstances of the case, the adequate remedy would be to release Messrs. Al Karoui and Matri, and to accord them an enforceable right to compensation.

25. The Working Group invites the Government to consider the possibility of becoming a party to the International Covenant on Civil and Political Rights.

[Adopted on 2 September 2011]

* See International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, and Judgment of 30 November 2010, para. 79; and the Separate Opinion of Judge Cañado Trindade, paras. 107-142.