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Working Group on Arbitrary Detention

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No. 5/2011 (Yemen)

Communication addressed to the Government on 31 January 2011

Concerning: Osama Mohsen Hussein Al Saadi and Mohamed Mohsen Hussein Al Saadi

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 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, adopted on 30 September 2010.

2. The Working Group, in accordance with its methods of work, forwarded a communication to the Government on 17 December 2010 and regrets that the Government has not provided the requested information.

3. 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).

4. The case concerns Osama Mohsen Hussein Al Saadi and Mohamed Mohsen Hussein Al Saadi. The Working Group concludes below that they are being arbitrarily detained, and that their detention falls into categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

5. The Working Group wishes to point out that the age of the two boys, who were 14 and 17 at the time of their arrest, constitutes a particularly aggravating circumstance in this case.

6. The Working Group further wishes to point out that this is only one of several opinions of the Working Group holding Yemen to be in violation of its international human rights obligations (see opinions No. 40/2008, No. 13/2009, No. 26/2009 and No. 17/2010). The Working Group wishes to remind the Government of Yemen of its duties to comply with international human rights obligations not to detain persons arbitrarily, to release persons who are arbitrarily detained, and to provide compensation to them. The duty to comply with international human rights rests not only on the Government but on all officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person can contribute to human rights violations.

Submissions

Communication from the source

7. The cases summarized have been reported to the Working Group on Arbitrary Detention as follows: Osama Mohsen Hussein Al Saadi was 14 years old when he was arrested. Mohamed Mohsen Hussein Al Saadi was 17 when arrested. They are brothers and were college students living with their family in Sanaa.

8. At 6.00 on the morning of 13 October 2007, armed and masked agents of the political security services (Al Amn Assiyassi), apprehended the two boys in their family home. No arrest or search warrant was presented. The two boys were taken to an undisclosed location. The Al Saadi family had no information as to their fate or whereabouts. Nearly two months later they learned that they were being kept at the detention centre run by the political security services in Sanaa. Members of the Al Saadi family were subsequently allowed weekly visits to the boys.

9. On 3 January 2009, some 14 months after their arrest, the two brothers were brought before a judge of the State Security Court. Their family was then informed of the charges. The charges were alleged membership in a terrorist organization and constituting a threat to public order.

10. The boys' lawyer, instructed by their family after the initial hearing, challenged the jurisdiction of the State Security Court to try minors. During a hearing held on 10 January 2009, the Al Saadis' lawyer requested the Court to refer the case to a court for minors.

11. The State Security Court rejected the challenge to its jurisdiction. On 24 February 2009, it sentenced Mohamed Al Saadi to seven years' imprisonment, and Osama Al Saadi to two years' imprisonment.

12. According to the source, Osama Al Saadi, after serving his sentence of two years' imprisonment, should have been released on 13 October 2009. Whatever the starting point used to calculate the sentence, his release is now overdue and he remains in detention, as does his brother.

Response from the Government

13. The Chairman of the Working Group addressed the communication to the Government on 31 January 2011 with a view to obtaining the information requested within 90 days. The Working Group regrets that no reply has been received from the Government. Nor has the Government requested an extension for its reply in accordance with paragraphs 15 and 16 of the Working Group's methods of work. The Working Group is in a position to render an opinion on the case, in the light of the allegations made, notwithstanding that the Government has failed to provide its version of facts and explanations on the circumstances of the case.

Discussion

14. Article 9 of the Universal Declaration and article 9 of the Covenant prohibit arbitrary arrest and detention. The Working Group wishes first to address the basic legality requirement of the Universal Declaration and the Covenant. Article 9(1) of the Covenant provides that "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law".

15. For detention to comply with international human rights requirements, it must comply with domestic law. The detention of Mohamed Al Saadi and Osama Al Saadi is in violation of the fundamental rights provisions of the Yemeni Constitution and Criminal Code of Procedure. Article 47(a) of the Yemeni Constitution provides that "[t]he law shall define the cases in which citizens' freedom may be restricted. Any restriction to personal freedom cannot be restricted without the decision of a competent court of law". Article 47(c) of the Yemeni Constitution specifies that "[a]ny person temporarily apprehended on suspicion of committing a crime shall be presented in front of a court within a maximum of 24 hours from the time of his detention" and that "[t]he judge or Public Prosecutor shall inform the detained individual of the reason for his detention and questioning and shall enable the accused to state his defense". Furthermore, article 73 of the Criminal Code of Procedure provides that any person arrested shall be immediately informed of the reasons for his arrest, that any person has the right to be presented with the arrest warrant and to contact any person who, in his view, should be informed of the charges. Article 269 provides that any accusation brought against a person who is placed in detention on this basis must be examined with urgency before a competent court.

16. In this case there is a preliminary failure, as the detention violates the legality requirement to comply with domestic law. There is also the issue of trying minors, and Yemeni rules concerning special courts for minors or juveniles, which need not be entered into as there is in any case a clear breach of the legality requirement.

17. The Working Group also notes that article 9(2) of the Covenant provides that "anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him". Yemen is also in breach of this requirement.

18. In connection with the fair trial issues, article 14(1) of the Covenant provides that "[a]ll persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". The Al Saadi brothers were not brought before a judge until 3 January

2009, and in the preceding period of detention, they had no opportunity to contest the legality of their arrest and detention.

19. The Working Group refers to resolution 1992/35 of the former United Nations Human Rights Commission, calling on all States that have not yet done so to establish a procedure such as habeas corpus in order for all persons deprived of their liberty to institute proceedings before a court so that the court may decide without delay the lawfulness of his or her detention and order his or her release if detention is found to be unlawful. The Working Group wishes to add that in this case, as the review of Yemeni legislations shows, the issue seems less to be a matter of adopting guarantees by statute but of observing them in practice.

20. The Working Group further refers to the concluding observations of the Committee against Torture (CAT/C/YEM/CO/2), which "remains seriously concerned at the State party's failure in practice to afford all detainees, including detainees held in State security prisons, with all fundamental legal safeguards from the very outset of their detention".

21. The way in which the pre-trial detention issues were dealt with casts grave doubts on the fairness of the trial in the State Security Court. The Working Group has no information as to its further procedures and its constitution. The fact that the younger of the two brothers, Osama Mohsen Hussein Al Saadi, has not been released after the completion of his term, further raises doubts as to the possibility of a fair trial. The fairness of their trial having thus been brought into question, the Government has a duty to establish an inquiry into this, the outcome of which may give rise to further compensation, and also have consequences for the continued detention of Mohamed Mohsen Hussein Al Saadi.

22. Article 9(5) of the Covenant provides for an enforceable right to compensation. In its jurisprudence, the Working Group has continued to develop the general principles of the right to a remedy, which is primarily a right to immediate release and to compensation. In this case, it is clear that Osama Mohsen Hussein Al Saadi and Mohamed Mohsen Hussein Al Saadi have a claim to compensation under article 9(5) of the Covenant, which sets forth the general principles. The reasons that may be given for the detention of Osama Mohsen Hussein Al Saadi and Mohamed Mohsen Hussein Al Saadi cannot be used to counter a claim for compensation.

Disposition

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

The deprivation of liberty of Osama Mohsen Hussein Al Saadi and Mohamed Mohsen Hussein Al Saadi is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. It falls within categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

24. Consequent upon this opinion, the Working Group requests the Government to take the necessary steps to remedy the situation, which include the immediate release of Osama Mohsen Hussein Al Saadi and adequate reparation to Osama Mohsen Hussein Al Saadi and Mohamed Mohsen Hussein Al Saadi.

[Adopted on 3 May 2011]