

Opinion No. 29/2009 (Lebanon)

Communication addressed to the Government on 29 May 2009

**Concerning Messrs. Deeq Mohamed Bere, Ghandl El-Nayer Dawelbeit
and Jamil Hermez Makkhou Jakko**

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the former Commission on Human Rights. Its mandate was clarified and extended by Commission resolution 1997/50. The Human Rights Council assumed the Working Group's mandate by its decision 2006/102 and extended it for a further three-year period by resolution 6/4 of 28 September 2007. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.
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 or her sentence or despite an amnesty law applicable to him or her) (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).
3. The above-mentioned three cases have been submitted to the Working Group on Arbitrary Detention.
4. On 30 May 2008, Mr. Deeq Mohamed Bere, born on X July XXXX and a native of Somalia, was arrested by Lebanese internal security forces at the police station in Jounieh while visiting a friend detained there. The next day, Mr. Deeq Mohamed Bere was transferred to the General Centre for Secure Detention in Adliya, Beirut, Lebanon, under the control of the Directorate of General Security.
5. The source reported that the legal basis for Mr. Bere's detention was article 32 of the Law of 10 July 1962 regulating the entry into, residence in and departure from Lebanon of foreign nationals. According to the information obtained, Mr. Bere was detained on the grounds that he was present in Lebanon illegally. The arrest warrant for Mr. Bere was probably issued by the Prosecutor in Baabda, Mount Lebanon.
6. Since he was placed in detention, Mr. Bere has not been brought before a court. Mr. Bere is a Somali national with refugee status, recognized by the Office of the United Nations High Commissioner for Refugees (UNHCR) and in possession of a refugee certificate issued on 17 November 2008 in Beirut. He may not, therefore, be deported. He has obtained preliminary approval to resettle in Canada and is waiting for a medical certificate. There were fears for Mr. Bere's health,

which was constantly deteriorating because of his detention conditions. He had been on hunger strike several times to protest against his prolonged arbitrary detention. Mr. Bere had also cut himself with razor blades and swallowed pills.

7. On 3 March 2009, a non-governmental organization sent an official petition to the Public Prosecutor requesting that the lawfulness of Mr. Bere's detention be reviewed. The petition was based on article 304 of the Lebanese Code of Criminal Procedure, which provides that the Prosecutor has the power to review the lawfulness of any detention and to order the immediate release of the detainee in the event of unlawful detention. To date, no reply has been received.

8. On the same day, the organization also sent an official petition to the Ministry of the Interior requesting a review of the lawfulness of Mr. Bere's detention. The request was based on the Ministry's competence as the supreme body responsible for general security.

9. On 7 April 2009, the Ministry of the Interior transmitted to the organization the official response of the Directorate of General Security. In its response, the Directorate confirmed that Mr. Bere had been detained at the General Centre for Secure Detention since 31 March 2009 and had been accused of being in the country illegally. The Directorate of General Security did not deny that the detainee had not been brought to trial. In that regard, the Directorate did not explain the grounds for detaining Mr. Bere for more than 10 months without being granted the right to a trial.

10. Moreover, in the above-mentioned letter, the Directorate of General Security explained that Mr. Bere had been detained four times since 1998 on charges of illegal entry, theft and possession of drugs/illicit substances, and that each time he had been released because of his refugee status and the prospect of his resettlement in a third country. According to the information provided by the Directorate of General Security, Mr. Bere failed to contact his family and UNHCR each time he was released. In addition, the Directorate confirmed that Mr. Bere was authorized to settle in Canada but did not explain why he still had not been released. The Ministry of the Interior made no comment.

11. On 3 December 2008, Mr. Ghandl El-Nayer Dawelbeit, born on X January XXXX, a de facto stateless person habitually resident in the Sudan and a caretaker, was arrested together with his wife at their home in Koraytem, Beirut, Lebanon, by Lebanese general security forces. They were then transferred to the General Centre for Secure Detention.

12. According to the information provided by Mr. Dawelbeit, the general security officers presented an arrest warrant for his wife, a Sri Lankan citizen, on the grounds that she held a passport and a Lebanese work permit under a false name. Mr. Dawelbeit was also arrested, even though he showed the security officers his asylum seeker's certificate, issued on 30 August 2007 by UNHCR.

13. The source reported that the legal basis for Mr. Dawelbeit's detention was article 32 of the Law of 10 July 1962 regulating the entry into, residence in and departure from Lebanon of foreign nationals. According to the information gathered, Mr. Dawelbeit was detained on the grounds that he had entered and was present in Lebanon illegally.

14. Nonetheless, since 3 December 2008, Mr. Dawelbeit has not been brought to trial. No legal proceedings have been instituted. It would also seem that Mr. Dawelbeit was questioned by the Prosecutor on the day of his detention, before being transferred to the detention centre.

15. The request for asylum submitted by Mr. Dawelbeit to UNHCR was transmitted for review on appeal. According to the information obtained, Mr. Dawelbeit reported that the Lebanese General Security Bureau had contacted the Sudanese Embassy in Lebanon to request information relating to the case. The Sudanese Embassy is said to have replied that no information on Mr. Dawelbeit's police record was available in the Sudan.

16. On 8 April 2009, Mr. Jamil Hermez Makhhou Jakko, born in XXXX, a native of Iraq recognized as a refugee by UNHCR, who obtained refugee status on 28 January 2009 and is a cleaner, was arrested by general security forces in Jdeideh while applying to renew his work permit and residence permit. He was informed by the above-mentioned authorities that the basis for his arrest was a court decision issued in absentia on 5 February 2008 by the Damour Criminal Court (decision No.

17/2008). The basis for the decision was the offence of illegal entry into Lebanese territory, which is punishable under article 32 of the Law of 10 July 1962 regulating the entry into, residence in and departure from Lebanon of foreign nationals.

17. Mr. Jakko had already been convicted of the same offence on 22 December 2005 by the Matn Criminal Court (decision No. 1692/2005). Mr. Jakko had served his sentence before obtaining his residence permit, thus regularizing his status in Lebanon.

18. Mr. Jakko's lawyer contested the court decision issued in absentia on 5 February 2008. Following this challenge, on 24 April 2009, the Damour Criminal Court reversed the decision and dismissed all the charges against Mr. Jakko (decision No. 44/2009, register No. 52/2009).

19. Between 8 and 14 April 2009, Mr. Jakko was detained successively at the General Security Centre in Jdeideh, the police station in Damour under the control of the internal security forces and the Courts of Justice in Baabda. Since 14 April 2009, Mr. Jakko has been in the custody of the Directorate of General Security at the central prison in Roumieh, Mount Lebanon.

20. The prison authorities in Roumieh rejected the court's letter, arguing that decision No. 17/2008 issued on 5 February 2008 had been reversed owing to an error in transcribing the number of the decision. At the lawyer's request, the Damour court addressed a further letter to the prison authorities on 8 May 2009. The authorities agreed to register and implement it on 11 May 2009, but to date Mr. Jakko is still in detention.

21. According to the source, the administration of prisons is the responsibility of the Internal Security Forces (FSI), which must ensure that no one is imprisoned without legal basis. The Code of Criminal Procedure establishes clearly that the Internal Security Forces are responsible for enforcing court decisions and that a convicted person must be released on the day on which his or her prison sentence is completed. A similar provision is to be found in the decree governing the administration of prisons.

22. The legal provisions governing the system of enforcement of penalties and the administration of prisons do not distinguish between nationals and non-nationals. However, there are internal instructions governing the practice with respect to foreigners. For example, instruction No. 2004/4662 of the Public Prosecutor of 16 December 2004 establishes that all foreigners must be transferred to the detention centre of the General Security Services (SSG) on receipt of the decision to grant them conditional release or of notification that their prison term has been completed, so that the General Security Services can take an appropriate decision on their legal status. Whether or not the foreigner has the required documents has no bearing on this rule. Consequently, foreign detainees who have served their sentence are no longer considered the responsibility of the judiciary or the Internal Security Forces but that of the General Security Services. The transfer of authority is automatic; it makes no difference whether or not the foreigner has the status of legal resident or whether or not the court decision includes a deportation order. Once they have served their sentence, foreigners in detention are considered to be "subject to deportation" in the General Security Services, even if they are physically kept in detention in prisons administered by the Internal Security Forces.

23. These instructions, guidelines and practices are clearly a violation of the legal norms prohibiting the keeping of a person in detention after the completion of his or her term of imprisonment. These instructions and practices result in foreigners being kept in detention indefinitely, even after the courts have finally declared their innocence and dismissed the charges against them or they have served their prison terms in full. Mr. Jakko's name was removed from the list of convicted prisoners on 11 May 2009 and added to the list of prisoners to be released. However, he was not released but transferred from Roumieh central prison to the detention centre of the General Security Services on 27 May 2009, in accordance with the practices described in the previous paragraph.

24. These three cases were raised with the Government in a letter dated 29 May 2009. A note verbale of reminder was sent on 13 November 2009. To date, no reply has been received.

25. It should be added that the Government has not made use of the provisions of paragraph 16 of the Group's methods of work, which offer the possibility of requesting an extension of the time limit granted for giving a reply.

26. Under these circumstances, the Working Group considers it necessary to proceed regardless and to consider the cases submitted to it, despite the release of Mr. Deeq Mohamed Bere on an unknown date and of Mr. Ghandl El-Nayer Dawelbeit on 14 July 2009, bearing in mind the

seriousness of the allegations and the fact that the practice described above seems to have become institutionalized.

27. However, the Working Group notes that the three cases concern persons of foreign origin, all three of whom have requested asylum and obtained certificates from UNHCR. Moreover, while Mr. Deeq Mohamed Bere has obtained preliminary approval to resettle in Canada, the other two persons, Messrs. Ghandl EI-Nayer Dawelbeit and Jamil Hermez Makkhou Jakko, have found work, one as a caretaker and the other as a cleaner.

28. At this stage, they can no longer be accused of entering and residing in Lebanon illegally, particularly as the Working Group has always considered that migrants in an irregular situation should not be detained. However, if exceptions are to be made to that principle, then a number of other principles must be respected when a person is detained, in particular that of proportionality, which requires that detention be used only as a last resort and that it be accompanied by all the relevant necessary legal guarantees.

29. In this case, all the individuals concerned had obtained a certificate from UNHCR and all had found employment, except for Mr. Bere, who was awaiting the results of his medical examinations in order to go to Canada. They could not, therefore, be regarded as foreigners in an irregular situation. Thus the grounds given for their arrest and detention must be considered a pretext.

30. It should be added that the detainees did not have the opportunity to challenge the lawfulness of their detention or to be tried by an independent tribunal in a fair and public hearing organized within a reasonable time, as provided by articles 10 and 11 of the Universal Declaration of Human Rights.

31. The Working Group therefore has sufficient information to conclude that the detention of Mr. Deeq Mohamed Bere between 30 May 2008 and 23 July 2009 and the detention of Mr. Ghandl EI-Nayer Dawelbeit between 3 December 2008 and 14 July 2009 were arbitrary and constituted violations under category III in its methods of work. Given that these persons have been released, the Working Group decides to file the case in accordance with paragraph 17 (a) of its methods of work.

32. Mr. Jamil Hermez Makkhou Jakko, however, remains in detention despite the quashing of his conviction and the court's decision to order his release. His detention must be considered arbitrary under category III in the Group's methods of work.

33. The Working Group therefore requests the Government to release Mr. Jamil Hermez Makkhou Jakko immediately and to ensure that the above-mentioned three persons are given a fair trial.

Adopted on 25 November 2009