

# No. 12/2011 (Lebanon)

## Communication addressed to the Government on 27 January 2011

**Concerning Mr. Abbas Shadar Zabed al-Lami**

### **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, which clarified and extended the Working Group's mandate by resolution 1997/50. The Human Rights Council approved the Working Group's mandate by its decision 2006/102 and extended it for a further three-year period by resolution 15/18 of 30 September 2010. The Working Group transmitted the above communication to the Government in accordance with its methods of work.

2. The Working Group considers that deprivation of liberty is 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 the detainee) (Category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, and 18 to 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22 and 25 to 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, spelled out 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 aims towards or can result in ignoring the equality of human rights (Category V).

3. The Working Group thanks the Government for the information it supplied to the effect that Mr. al-Lami was sent back to Iraq on 10 July 2010 and is therefore no longer in detention in Lebanon.

4. The Working Group was notified of the following in respect of the above-mentioned case: Mr. Abbas Shadar Zabed al-Lami, an Iraqi national born on X January XXXX and resident in Msharafiyeh, Chiyah, Baabda, Lebanon, holds an Iraqi passport, No. GXXXXXXX, issued on 31 August 2008 and Refugee Certificate No. XXX-XXCOOXXX, issued by the Office of the United Nations High Commissioner for Refugees. On 4 February 2010, he was arrested at his home by plain-clothes officers of the Directorate General of State Security. Mr. al-Lami was not shown an arrest warrant or informed of the reasons for his arrest. He was taken into custody at the police station of the Directorate General of State Security. It was not until 27 March 2010, 53 days after his arrest, that he was charged by the Baabda region Public Prosecutor with a breach of article 34 of the

Act of 10 July 1962 governing aliens' entry to, departure from and sojourn within Lebanon. More specifically, he was charged with a breach of an administrative expulsion order (arrest warrant No. 16533).

5. Mr. al-Lami was reportedly transferred to Roumieh central prison. On 15 May 2010, a judge of the Saïda criminal court, sitting alone, delivered a final judgement on the unsubstantiated charge. He ruled that there had been no infringement of the administrative expulsion order because it had not been shown that the order had been issued in compliance with article 17 of the Act of 10 July 1962. He ordered the immediate release of Mr. al-Lami on 20 August 2010. Mr. al-Lami was transferred to the police station of the Directorate General of State Security where he supposedly still remains.

6. According to the source of this information, Mr. al-Lami's detention prior to 27 March 2010 is arbitrary because it exceeded the legal period of 48 hours, which may be extended once, as stipulated by articles 42 and 47 of the Lebanese Code of Criminal Procedure. The detention is said to be in breach of Principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

7. The source submits that Mr. al-Lami's detention on the strength of an arrest warrant issued by the Baabda region Public Prosecutor is also arbitrary, because the authorities did not honour the judgement of 15 May 2010 ordering Mr. al-Lami's immediate release. Although Mr. al-Lami's lawyer has taken all the requisite procedural steps for the court order freeing his client to be carried out, the authorities have not yet done so.

8. The source adds that article 8 of the Lebanese Constitution reads: "Individual liberty is guaranteed and protected. No one may be arrested or detained except in accordance with the provisions of the law. Any offence or penalty must be established by law."

9. In its reply, the Government says that Mr. al-Lami, an Iraqi citizen, had been detained for infringing the law on entry to and sojourn in Lebanese territory. He was sent back to Iraq on 10 July 2010 from Hariri Airport, with the assistance of the Iraqi Embassy.

10. The fact is that Mr. al-Lami was arrested on 4 February 2010 by plain-clothes officers of the Directorate General of State Security without being shown an arrest warrant. He was not informed of the reasons for his detention and his family was not informed that he had been detained. He was not charged until 53 days later. This constitutes a denial of internationally recognized rights.

11. Article 9, paragraph 1, of the International Covenant on Civil and Political Rights lays down that "no one shall be subjected to arbitrary arrest or detention". It stipulates that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law". Paragraph 3 of the same article reads:

"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement."

12. Mr. al-Lami was brought before a judge. He was tried and acquitted of the offence with which he was charged. The judge found that he had not violated any administrative expulsion order and that the charge was not substantiated.

13. The detainee was never served with the expulsion order, and the charge was thus unfounded. Furthermore, Mr. al-Lami's refugee status had been recognized by both the Lebanese Government and the Office of the United Nations High Commissioner for Refugees. Article 33 of the Convention relating to the Status of Refugees prohibits all contracting States from sending a refugee to a territory where his or her life or freedom would be threatened on account of his or her race, nationality, membership of a particular social group or political opinion (prohibition of "refoulement"). The only permissible exceptions are when a refugee is regarded as a danger to the security of the country in which he/she is or when he/she has been convicted of a particularly serious crime.

14. There is nothing in the Lebanese Government's reply to suggest that Mr. al-Lami was a threat to Lebanon's security, or that he had been convicted of a particularly serious crime.

15. The Working Group considers that Mr. al-Lami was held on police premises between 4 February and 27 March 2010 without court authorization. He had no access to legal counsel and was unable

to challenge the lawfulness of his detention before a court. Nor was he informed of the reasons for his arrest.

16. Although on 15 May 2010 the court found that there were no grounds for keeping Mr. al-Lami in detention and therefore ordered his unconditional release, the Lebanese authorities arbitrarily kept him in detention. Although he was found innocent, Mr. al-Lami was left defenceless, with no possibility of seeking a judicial remedy or benefiting from the safeguards to which persons deprived of their liberty are entitled under international law.

17. The expulsion which, according to the Government, took place on 10 July 2010, was also an arbitrary act and a violation of the human right to personal freedom. Mr. al-Lami was a legally recognized refugee in Lebanon. His stay in Lebanon was therefore lawful. He could not be expelled without a lawful reason accepted by a court and could be expelled only to a country which also recognized his refugee status. Instead he was sent back to the country from which he had fled for safety. That is a violation of the principle of non-refoulement established by article 33 of the Convention relating to the Status of Refugees. What is worse, this expulsion took place with the cooperation of the Government of the country from which Mr. al-Lami had fled.

18. In the opinion of the Working Group these acts are violations of the rights established in articles 3, 5, 7 to 11 and 14 of the Universal Declaration of Human Rights, articles 2, 3, 9, 10 and 12 to 15 of the International Covenant on Civil and Political Rights, and article 33 of the Convention relating to the Status of Refugees.

19. The Working Group is filing the case pursuant to paragraph 17 (a) of its methods of work. It considers, however, that Mr. al-Lami's deprivation of liberty was arbitrary in that it fell into categories I, III and IV, as set forth in its methods of work, save during the period between 27 March and 15 May 2010, when his trial was taking place.

20. The Working Group therefore requests the Government to compensate Mr. al-Lami for the damages he suffered on account of his detention without a court order and his detention in breach of a judicial decision.

[Adopted on 4 May 2011]