



General Assembly

Distr.: General
20 February 2013

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 14–23 November 2012

No. 43/2012 (Iraq)

Communication addressed to the Government on 3 September 2012

The Government has not replied to the communication.

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

Concerning Messrs Abdallah Hamoud Al-Twijri, Abdallah Hussein Ahmed, Abdulhak Saadi Mhambia, Abdullah Habib Abdellah, Abdullatif Mostafa, Adel Mohamed Abdallah, Adnan Mahmoud Iskaf, Ahmed Mohamed Ali Al Fara, Ali Awad Al Harbi, Amine Al Sheikh, Anas Farouk Ahmed, Anas Khaled Abdulrahim, Aref Abdallah Al Dahmi, Asaad Khalil Mohamed, Azzedine Mohamed Abdeslam Boujnane, Badis Kamal Moussa, Bandar Mansour Hamad, Faraj Hamid Ramadan, Fares Abdallah Ali, Fayez Mohamed Mahmoud Tashi, Hassan Mahmoud Al Abdallah, Hassan Salihine, Ibrahim Abdallah Mohamed, Ismail Ibrahim Al-Maiqal, Jamal Yahya Mohamed, Khaled Ahmed Saadoun, Khaled Hassan Alou, Khalil Hassoun Al Hassoun Al Aouis, Majed Ismail Kayed, Majed Said Al Ghamidi, Mansour Abdallah Lafi, Mohamed Ahmed Ouabed, Mohamed Bin Hadi Al Nawi, Mosaid Mohaya Al Matiri, Moujib Said Saleh, Mounir Mabrouk Bashir, Okab Wanis Okab, Omar Obeid Al Ali, Oussam Ahmed Mohammed, Rashid Alia Yahya, Sadek Hussein Mahoud, Sadiq Omar Muntassir, Salah Faraj Miftah, Saleh Saad Al Qahtani, Tarek Hassan Omar, Waleed Ayed Al Qahtani, Yasser Sobhi Mussa Al Ibrahim, Zayd Raqan Al Shamari

The Government has not replied to the communication.

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 former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47,

annex, and Corr.1), the Working Group transmitted 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 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, 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; or 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 case concerns 48 individuals of non-Iraqi origin, allegedly detained at Soussa prison, As Sulaymaniyah, Iraq. These individuals have allegedly been accused of violations of the Iraqi legislation applicable to entry and exit of the Iraqi territory and were convicted to imprisonment between 2005 and 2006.

4. Khalil Hassoun Al Hassoun Al Aouis, born on 1 January 1986, is a Syrian citizen. On 1 May 2005, he was arrested in Iraq for illegally crossing the border. On 30 November 2005, he was sentenced to 10 years' imprisonment. He is currently serving his term at Soussa prison in As Sulaymaniyah, Iraq. He was recently granted a reduction of prison term, which places Mr. Al Aouis at risk of imminent expulsion to the Syrian Arab Republic where, according to the source, he could be subjected to torture or other ill-treatment. The source reports that he will be released and expelled at the latest by 1 November 2013.

5. Yasser Sobhi Mussa Al Ibrahim, born in 1980, is a citizen of the Syrian Arab Republic. On 28 November 2004, he was arrested in Iraq for illegally crossing the border. On 1 October 2006, he was sentenced to 10 years' imprisonment. He was recently granted a reduction of prison term, which places Mr. Al Ibrahim at risk of imminent expulsion to the Syrian Arab Republic, where, according to the source, he could be subjected to torture or other ill-treatment. The source informs that he will be released and expelled at the latest by 13 January 2013.

6. Mohamed Ahmed Ouabed, born on 27 September 1975, national of Algeria, is a businessman. On 18 May 2005, he was arrested at his home by members of the United States Armed Forces. He was then taken to the airport of Mosul, where he was allegedly

kept incommunicado for 10 days and tortured by both American and Iraqi security forces. Mr. Ouabed was later transferred to the airport of Baghdad where he was handed over to American officials. It is alleged that he was tortured and ill-treated, having been forced to sign a deposition in which he admitted having come to Iraq for “acts of resistance”. On 1 June 2005, Mr. Ouabed was transferred to Abu Ghraib prison where he remained for approximately two months before being taken to a military barrack in the south of Iraq. After the 10 months spent in that military barrack, he was taken back to Abu Ghraib prison to be later brought to the airport of Baghdad. Upon his arrival at the airport, Mr. Ouabed was informed that he had been sentenced to 15 years’ imprisonment and was being handed over to the Algerian authorities. On 15 June 2006, Mr. Ouabed was first brought for a hearing, which was attended by American and Iraqi officials who presented themselves as members of a tribunal. A lawyer was appointed ex officio to Mr. Ouabed for that hearing. It is alleged that the lawyer upheld the accusations against Mr. Ouabed and did not make any effort to take into account Mr. Ouabed’s version of the facts. Mr. Ouabed pleaded not guilty, reminding the judge that he used to regularly reside in Iraq and had run a successful business before having been arbitrarily arrested and having been forced under torture to sign self-incriminatory statements. A few months after this hearing, Mr. Ouabed was brought for another hearing before the same judge. He was again given an ex officio lawyer. Reportedly, while noting the inconsistent character of the charges brought against Mr. Ouabed, the judge sentenced Mr. Ouabed to 15 years’ imprisonment. Mr. Ouabed requested the possibility to appeal before a new judge and this time with adequate legal assistance and counselling. His right to appeal was denied and he remains at Soussa prison in Iraq.

7. Ismail Ibrahim Al-Maiqal is a national of Saudi Arabia, born on 17 September 1982. In October 2003, after having legally entered the Iraqi territory, his identity was checked by American soldiers and he was taken without any further explanation to an unknown location, where he was allegedly tortured and ill-treated. He was then taken to the airport of Baghdad where he was interrogated for weeks by the American soldiers or Iraqi agents about the reasons for his presence in Iraq. He was allegedly tortured, including with electric shocks. Mr. Al-Maiqal was subsequently transferred to Abu Ghraib prison where he remained for approximately three years outside any legal framework. In August 2006, he was first brought before a judge in presence of American soldiers and a translator who, before the actual hearing, informed Mr. Al-Maiqal that he would be heavily sentenced. During the hearing, Mr. Al-Maiqal did not benefit from legal assistance or legal counsel. The judge presiding the hearing allegedly insulted Mr. Al-Maiqal and sentenced him to 15 years’ imprisonment. Following this sentence, Mr. Al-Maiqal was successively transferred to different places of detention, including Abu Ghraib prison, before being placed in Soussa prison in the late 2006 where he remains.

8. Abdallah Hamoud Al-Twijri is a 30-year-old national of Saudi Arabia. He was arrested in October 2004 by American soldiers stationed at Al-Qa’im, the border with the Syrian Arab Republic. He was directly taken to a military barrack where he remained for 15 days. Mr. Al-Twijri was reportedly beaten and tortured during the interrogation sessions. He was later transferred to another military barrack run by Iraqi soldiers, where he was allegedly tortured, including with electric shocks and waterboarding. A few days later, Mr. Al-Twijri was transferred to Abu Ghraib prison where he remained for a couple of days before being brought to Baghdad airport. For 15 days he was placed in a room, described as black hole, where American soldiers allegedly subjected him to torture, including burning parts of his body and placing him in painful positions. Mr. Al-Twijri was subsequently taken back to Abu Ghraib prison where he remained for a year outside any legal framework. In October 2005, he was brought before a judge for an expedient hearing and sentenced to 15 years’ imprisonment.

9. Azzedine Mohamed Abdeslam Boujnane is a 29-year-old citizen of Morocco. In late February 2004, three weeks after his arrival to Iraq for humanitarian reasons, Mr. Boujnane was arrested by American soldiers and taken to the airport of Baghdad. He was allegedly tortured and ill-treated. During six days, he was violently beaten, exposed to electric shocks and threatened with sex offences in order to force him to sign self-incriminatory statements. He was then transferred to Abu Ghraib prison where he was again subjected to torture and other cruel, inhuman and degrading treatment. Mr. Boujnane was first brought before a judge in July 2005. Mr. Boujnane requested to benefit from a lawyer of his own choosing; to contact his family or the Moroccan authorities. All these requests were denied. Mr. Boujnane was sentenced to 10 years' imprisonment for having illegally entered the Iraqi territory. When transferred to Abu Ghraib prison, Mr. Boujnane learned that he was in fact sentenced to 15 years' imprisonment. Since 2006, he has been serving his sentence at Soussa prison.

10. Ibrahim Abdallah Mohamed is a Yemeni citizen, born on 18 August 1986. He was arrested on 24 January 2006 at a checkpoint controlled by the American and Iraqi soldiers. He was taken to an unknown location and was allegedly subjected to acts of torture and other ill-treatment. After one week, he was transferred to Baghdad airport. On 10 December 2006, Mr. Mohamed was sentenced to 15 years' imprisonment under similar circumstances as in cases described above. He was not allowed to appeal against the sentence. He was then held in detention at Abu Ghraib prison before being placed in Soussa prison where he remains.

11. The remaining prisoners are listed below with their identity information where such information was available to the source. The source confirms that all these individuals are being held in detention in Soussa prison. Reportedly, they were convicted on the basis of self-incriminatory statements obtained under torture or other ill-treatment; their trials were expedient and they did not have the possibility to be represented by a lawyer of their own choosing; moreover, all of them were deprived of their right of appeal.

12. Faraj Hamid Ramadan, a 26-year-old citizen of Libya, was arrested in July 2005 and sentenced to 15 years' imprisonment in October 2006.

13. Salah Faraj Miftah, a 36-year-old citizen of Libya, was arrested in August 2005. In October 2006, he was sentenced to 10 years' imprisonment.

14. Hassan Salihine, a 36-year-old citizen of Libya, was arrested in September 2005 and sentenced to 15 years' imprisonment in September 2006.

15. Abdullah Habib Abdellah, a 46-year-old citizen of Tunisia, was arrested in September 2005 and sentenced to 10 years' imprisonment in October 2006.

16. Mounir Mabrouk Bashir, a 34-year-old citizen of Tunisia, was arrested in July 2005 and convicted to 15 years' imprisonment in August 2006.

17. Mohamed Bin Hadi Al Nawi, a 21-year-old citizen of Tunisia, was arrested in October 2004 and sentenced to 12 years' imprisonment in February 2005.

18. Tarek Hassan Omar, a 20-year-old citizen of Tunisia, was arrested in May 2005 and sentenced to 10 years' imprisonment.

19. Oussam Ahmed Mohammed, a 35-year-old citizen of the Syrian Arab Republic, was arrested in May 2005 and sentenced to 15 years' imprisonment.

20. Anas Khaled Abdulrahim, a 27-year-old citizen of the Syrian Arab Republic, was arrested in February 2005 and sentenced to 15 years' imprisonment in February 2007.

21. Hassan Mahmoud Al Abdallah, a 31-year-old national of the Syrian Arab Republic, was arrested in October 2003 and sentenced to 15 years' imprisonment in October 2006.

22. Anas Farouk Ahmed, Khaled Hassan Alou, Amine Al Sheikh, Ahmed Mohamed Ali Al Fara and Sadek Hussein Mahoud, all nationals of the Syrian Arab Republic, are also allegedly detained at Soussa prison.
23. Adnan Mahmoud Iskaf, a 32-year-old citizen of the Syrian Arab Republic, was arrested in November 2004 and sentenced to 12 years' imprisonment in September 2006.
24. Abdullatif Mostafa, a 31-year-old citizen of the Syrian Arab Republic, was arrested in November 2004 and sentenced to 12 years' imprisonment in September 2006.
25. Ali Awad Al Harbi, a 31-year-old citizen of Kuwait, was arrested in October 2004 and sentenced to 15 years' imprisonment in September 2005.
26. Asaad Khalil Mohamed, a 42-year-old Palestinian man, was arrested in January 2006 and sentenced to 15 years' imprisonment in September 2006.
27. Saleh Saad Al Qahtani, Fayez Mohamed Mahmoud Tashi, Zayd Raqan Al Shamari, Mosaid Mohaya Al Matiri and Waleed Ayed Al Qahtani, all nationals of Saudi Arabia, are also allegedly being held at Soussa prison.
28. Okab Wanis Okab, a 27-year-old citizen of Saudi Arabia, was arrested in October 2004 and sentenced to 15 years' imprisonment.
29. Jamal Yahya Mohamed, a 29-year-old citizen of Saudi Arabia, was arrested in July 2005 and sentenced to 10 years' imprisonment in January 2006.
30. Majed Said Al Ghamidi, a 34-year-old citizen of Saudi Arabia, was arrested in November 2003 and sentenced to 15 years' imprisonment in June 2006.
31. Khaled Ahmed Saadoun, a 27-year-old national of Saudi Arabia, was arrested in February 2005 and sentenced to 10 years' imprisonment and is also believed to be currently held at Soussa prison.
32. Mansour Abdallah Lafi, a 27-year-old citizen of Saudi Arabia, was arrested in October 2004 and sentenced to 15 years' imprisonment in May 2005.
33. Omar Obeid Al Ali, a 50-year-old citizen of Saudi Arabia, was arrested in March 2005 and sentenced to 15 years' imprisonment in August 2006.
34. Bandar Mansour Hamad, a 26-year-old citizen of Saudi Arabia, was arrested in May 2006 and sentenced to 15 years' imprisonment in December 2006.
35. Sadiq Omar Muntassir, a 36-year-old national of Saudi Arabia, was arrested in December 2004 and sentenced to 15 years' imprisonment in October 2006.
36. Badis Kamal Moussa, a 29-year-old citizen of Algeria, was arrested in May 2005 and sentenced to 15 years' imprisonment in December 2005.
37. Abdulhak Saadi Mhambia is a 29-year-old citizen of Algeria held at Soussa prison, who was arrested in May 2005 and sentenced to 15 years' imprisonment in March 2006.
38. Moujib Said Saleh, a 32-year-old national of Yemen, was arrested in June 2006 and sentenced to 20 years' imprisonment in August 2006.
39. Aref Abdallah Al Dahmi, a 35-year-old citizen of Yemen, was arrested in November 2004 and sentenced to 15 years' imprisonment in March 2005.
40. Abdallah Hussein Ahmed, a 39-year-old citizen of Yemen, was arrested in October 2005 and sentenced to 15 years' imprisonment in October 2006.
41. Fares Abdallah Ali, a 30-year-old citizen of Yemen, was arrested in September 2006 and sentenced to 19 years' imprisonment in December 2006.

42. Rashid Alia Yahya, a 21-year-old citizen of Yemen, was arrested in September 2008 and sentenced to 15 years' imprisonment in October 2010.

43. Majed Ismail Kayed, a citizen of Jordan, and Adel Mohamed Abdallah, a citizen of Somalia, are also reportedly being held at Soussa prison.

44. The source alleges that the 48 detainees mentioned above were held in incommunicado detention for months following their arrest. They were allegedly tortured in different locations of the security services, under the control of the American and Iraqi forces. According to the source, the periods of incommunicado detention without any legal safeguards between the moment of their arrest and the first appearance before a judge run contrary to both international and domestic Iraqi laws.

45. In particular, the source invokes the violations of article 9 of the Universal Declaration of Human Rights, article 9 of the International Covenant on Civil and Political Rights and article 35, paragraph 1 (a) and (c), of the Constitution of Iraq. Prior to their first appearance before a judge, months after their initial arrest, the detainees were not informed of the charges or the reasons for their arrest. They were not promptly brought before a judge and could not effectively contest the legality of their detention. All the detainees stood trial for violations of the Iraqi legislation applicable to the entry and exit of the Iraqi territory, to which they have allegedly confessed under torture and other ill-treatment. The source concludes that, under these circumstances, their pretrial detention was deprived of any legal basis.

46. Further, the source maintains a set of violations of the detainees' right to a fair trial as guaranteed by article 14 of the Covenant. In particular, the source contends that the trials were conducted in an expedient manner by tribunals which lacked independence and impartiality pursuant to article 14, paragraph 1, of the Covenant. The petitioners did not benefit from the right to effectively prepare their defence. Most of the detainees were assigned ex officio lawyers. The ex officio lawyers never visited the accused prior to the hearing, did not study their criminal files and did not listen to their version of the facts. None of the petitioners was allowed to have a lawyer of his own choosing in violation of article 14, paragraph 3 (b), of the Covenant. Finally, all the detainees were denied their right to appeal in alleged breach of article 14, paragraph 5, of the Covenant.

47. In the light of the foregoing, the source submits that the periods spent by the detainees in incommunicado detention before trial were deprived of any legal basis and were used to extract confessions under torture. Moreover, the source points out to a set of violations at the trial stage, which are reportedly of such gravity as to render their ongoing detention arbitrary.

Response from the Government

48. The Working Group regrets that the Government has not responded to the allegations it transmitted on 3 September 2012.

49. Despite the absence of any information from the Government, the Working Group considers it is in the position to render its opinion on the detentions of the 48 individuals in conformity with paragraph 16 of its methods of work.

Discussion

50. The Government did not contest the allegations that all 48 individuals have been serving harsh sentences imposed on them upon summary trials where they were deprived of the basic rights of the accused provided for in article 14 of the International Covenant on Civil and Political Rights and article 10 of the Universal Declaration of Human Rights. For months after their arrests, the petitioners were not informed of any charges or the reasons

for the arrest; were not allowed to be represented by counsel of their own choosing; were convicted by tribunals which lacked independence and impartiality; and were deprived of the right of appeal.

51. The Government also did not respond to and refute the allegation that the 48 individuals, in violation of article 5 of the Universal Declaration and article 7 of the Covenant, were tortured while in custody. Subsequently the individuals were convicted for violations of the Iraqi legislation applicable to the entry and exit of the Iraqi territory on the basis of the self-incriminating statements obtained under torture or other ill-treatment in violation of article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this regard, the Working Group concurs with the European Court of Human Rights that the admission of statements obtained as a result of torture or of other ill-treatment as evidence in criminal proceedings renders the proceedings as a whole unfair.¹

52. The Working Group notes the non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights in the case under consideration, is of such gravity as to give the deprivation of liberty of the 48 petitioners an arbitrary character.

Disposition

53. In the light of the preceding, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Abdallah Hamoud Al-Twijri, Abdallah Hussein Ahmed, Abdulhak Saadi Mhambia, Abdullah Habib Abdallah, Abdullatif Mostafa, Adel Mohamed Abdallah, Adnan Mahmoud Iskaf, Ahmed Mohamed Ali Al Fara, Ali Awad Al Harbi, Amine Al Sheikh, Anas Farouk Ahmed, Anas Khaled Abdulrahim, Aref Abdallah Al Dahmi, Asaad Khalil Mohamed, Azzedine Mohamed Abdeslam Boujnane, Badis Kamal Moussa, Bandar Mansour Hamad, Faraj Hamid Ramadan, Fares Abdallah Ali, Fayez Mohamed Mahmoud Tashi, Hassan Mahmoud Al Abdallah, Hassan Salihine, Ibrahim Abdallah Mohamed, Ismail Ibrahim Al-Maiqal, Jamal Yahya Mohamed, Khaled Ahmed Saadoun, Khaled Hassan Alou, Khalil Hassoun Al Hassoun Al Aouis, Majed Ismail Kayed, Majed Said Al Ghamidi, Mansour Abdallah Lafi, Mohamed Ahmed Ouabed, Mohamed Bin Hadi Al Naw, Mosaid Mohaya Al Matiri, Moujib Said Saleh, Mounir Mabrouk Bashir, Okab Wanis Okab, Omar Obeid Al Ali, Oussam Ahmed Mohammed, Rashid Alia Yahya, Sadek Hussein Mahoud, Sadiq Omar Muntassir, Salah Faraj Miftah, Saleh Saad Al Qahtani, Tarek Hassan Omar, Waleed Ayed Al Qahtani, Yasser Sobhi Mussa Al Ibrahim and Zayd Raqan Al Shamari is arbitrary, being in contravention of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights; it falls within category III of the arbitrary detention categories referred to by the Working Group when considering the cases submitted to it.

54. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of the above petitioners and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

¹ See, for instance, European Court of Human Rights, *Gäfgen v. Germany* (application No. 22978/05), judgement of 1 June 2010, para. 166; *El Haski v. Belgium* (application No. 649/08), judgement of 25 September 2012, para. 85.

55. The Working Group believes that, taking into account all the circumstances of the case and the time the petitioners have already spent in prison, the adequate remedy would be to release them and accord them an enforceable right to compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

56. In accordance with article 33 (a) of its methods of work, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 14 November 2012]
