

# No. 53/2013 (Jordan)

## Communication addressed to the Government on 9 September 2013

Concerning Mr. Hisham Al Heysah, Mr. Bassem Al Rawabedah, Mr. Thabet Assaf and Mr. Tarek Khoder

**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. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47 and Corr.1, annex), 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 and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22 and 25-27 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; disability; or other status, which is aimed towards or can result in ignoring the equality of human rights (category V).

### **Submissions**

*Communication from the source*

3. Hisham Al Heysah, born in XXXX, is of Jordanian nationality and usually resides in Amman. He works as a teacher.

4. Bassem Al Rawabedah, born in XXXX, is of Jordanian nationality and usually resides in Irbid, Jordan. He is married and is the owner of a local supermarket.

5. Thabet Assaf, born in XXXX, is of Jordanian nationality and usually resides in Karak, Jordan. He is the General Coordinator and Spokesman of the Islamic Jordanian Youth Movement.

6. Tarek Khoder, born in XXXX, is of Jordanian nationality and usually resides in Amman. He is married and works as an employee in a mobile phone accessories company.

7. Mr. Al Heysah, Mr. Al Rawabedah, Mr. Assaf and Mr. Khoder are members of the Islamic Jordanian Youth Movement. The source reports that the movement advocates civil and economic reforms, for example, by organizing protests against the rise in fuel prices and constraints on fundamental freedoms in the country.

8. According to the source, Mr. Al Heysah was first arrested on 13 June 2013. He was allegedly not given any reasons for his arrest and detained for four days prior to his release on 17 June 2013. On the day of his release, Mr. Al Heysah participated in a protest organized by the Islamic Jordanian Youth Movement. The following day, 18 June 2013, he was summoned by the Military Prosecutor to the Jordanian State Security Court to complete some routine formalities regarding his release. When he arrived at the court, he was asked to sign a document stating that he opposed the protests - a demand which he reportedly refused to comply with. Subsequently, Mr. Al Heysah was again arrested, in the State Security Court building, and sent directly to the Al Zarqaa Prison in the Al Zarqaa Governorate.

9. The source reports that Mr. Al Heysah was interrogated by the Military Prosecutor of the State Security Court without any legal counsel being present. On 3 July 2013, he was charged with undermining the political system of Jordan and inciting sentiments against it, a charge based on article 149 of the Jordanian Penal Code. Mr. Al Heysah appeared for the first time before the State Security Court on 4 September 2013 and his trial was adjourned until 1 October 2013.

10. Mr. Al Rawabedah was reportedly arrested on 19 June 2013, after participating in a sit-in in front of the Council of Ministers in Amman to demand the release of Mr. Al Heysah. While driving back from the protest with his family, he was stopped at a checkpoint on the main road between Amman and Irbid at around midnight. Mr. Rawabedah was arrested on the spot, but his family was allowed to leave. He was reportedly sent to the police station in Irbid for several hours, then transferred to Amman Police Station during the night.

11. The following day, 20 June 2013, Mr. Al Rawabedah was questioned by the Military Prosecutor in the State Security Court without legal counsel, then sent to Al Zarqaa Prison. On 2 September 2013, he was transferred to Remamin Prison in Amman. Mr. Al Rawabedah was charged with committing the same offences as Mr. Al Heysah. Mr. Al Rawabedah appeared before the State Security Court on 4 September 2013 and his trial was postponed to 1 October 2013.

12. On 4 July 2013, Mr. Assaf and Mr. Khoder were arrested in front of the Roman Coliseum Square in Amman by agents of the Special Security Branch, also known as the Preventive Security Forces, which are part of the Public Security Directorate. The source notes that their arrest immediately followed their participation in a debate about political developments in Egypt. The source conveys to the Working Group reports received that the main reason for their arrest was their previous participation in protests regarding the rise in fuel prices and new amendments to the Press and Publications Law. On the day of their arrest, the two men were sent to the Special Security Branch headquarters in Amman, where they spent two days.

13. On 6 July 2013, Mr. Assaf and Mr. Khoder were transferred to the State Security Court, where they underwent interrogation by the Military Prosecutor. The source reports that no lawyers were present during the interrogation. Later that day, Mr. Assaf and Mr. Khoder were transferred to Al Jwaideh prison in Eastern Amman, where they were detained for a week. Up until that point, both men were allegedly held incommunicado with no knowledge of their location. On 13 July 2013, they were transferred to Al Zarqaa prison, where their families were allowed to visit them. Both Mr. Assaf and Mr. Khoder have been accused of inciting sentiments against the political system in violation of article 149 of the Penal Code but have not yet been formally charged. Mr. Assaf continues to be detained in Al Zarqaa prison while Mr. Khoder was transferred to Irbid prison, located in Irbid Governorate, on 2 September 2013.

14. In order to protest against their arbitrary detention, the four men began a hunger strike on 9 August 2013. In that regard, the source conveys reports that the prison authorities had on occasion refused to provide the men with liquids. The source fears that this may lead to renal insufficiency.

15. The source reports that the State Security Court works closely with the General Intelligence Directorate and is made up of two military judges and one civilian judge, who are all appointed by the Prime Minister. The source alleges that the State Security Court is notorious for its disregard for the right to a fair trial of defendants. The source refers to the Court's regulations requiring prosecutors to bring defendants before the State Security Court no later than seven days following their arrest. Provisions allow for an extension of this period, at the discretion of the prosecutor, for up to 15 days. The source alleges that, in practice detainees are often held for a much longer period without trial. Furthermore, in many cases, defendants have not been granted access to legal counsel, especially during investigations. The Court's procedures further stipulate that statements made to the prosecutor, which form the basis of court proceedings, must be made voluntarily, yet many defendants later claim that they made such statements under duress.

16. The source reports that the Court has jurisdiction over crimes under the Penal Code deemed to harm Jordanian internal and external security, involving drugs, explosives, weapons, espionage and high treason but also including offences related to peaceful speech. Although the Court's competencies were reduced to five areas of jurisdiction during the 2011 reform process, which was reaffirmed by a decision of the Council of Ministers based on royal orders on 1 September 2013, the provisions remain, in the source's view, vague enough for broad and arbitrary application, allowing the Court to use its powers to the detriment of protesters, media workers and opposition figures.

17. The source submits that the individuals in the present case were targeted as a result of their participation in demonstrations. It therefore considers their arrest and detention to be in breach of their freedom to assemble peacefully. In addition, the four men were not assisted by legal counsel during their interrogations and have been submitted to trial before the State Security Court, which, the source argues, may not be able to guarantee a fair trial. The source submits that their detention falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

18. The source alleges that Mr. Al Heysah was arrested after he refused to issue a statement asserting that he was against the protests held by the Islamic Jordanian Youth Movement; that Mr. Al Rawabedah was arrested after his participation in a protest; and that Mr. Assaf and Mr. Khoder were arrested after a public debate and participation in protests. Therefore, it argues, their arrests and current detention are clearly related to their exercise of freedom of opinion and expression and freedom of assembly, as guaranteed by the International Covenant on Civil and Political Rights, which Jordan ratified on 28 May 1975.

19. The source draws the Working Group's attention to article 19, paragraph 2, of the Covenant: "Everyone shall have the right to freedom of expression". It also draws attention to article 21 of the Covenant: "The right of peaceful assembly shall be recognized". The source considers that the Jordanian authorities arrested the four individuals in question in violation of rights and freedoms protected by the Covenant, and argues that their detention therefore falls within category II of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

20. With regard to the allegations that the four persons did not have access to legal counsel at any point during their interrogation and that they were tried before the State Security Court as a result of that interrogation, the source maintains that this is a violation of international norms relating to a fair trial, according to articles 8, 9 and 10 of the Universal Declaration of Human Rights, and the Covenant.

21. The source notes article 14, paragraph 1, of the Covenant, whereby "in the determination of any criminal charge against him ... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". It also refers to article 14, paragraph 3 (c), which specifies that everyone shall be entitled "to be tried without undue delay", and paragraph 3 (d), which sets forth that everyone has the right "to defend himself in person or through legal assistance". On the basis of the foregoing, the source submits that such a failure to observe international norms relating to a fair trial gives the detention of the petitioners an arbitrary character, thus making it fall within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

22. The source has subsequently informed the Working Group that another hearing of Mr. Al Heysah and Mr. Al Rawabedah before the State Security Court was held on 10 September 2013 but then postponed to 24 September, owing to the absence of witnesses for the prosecution.

23. The source has further informed the Working Group that all four men stopped their hunger strike on 14 September to prevent further deterioration of their health.

*No response from the Government*

24. On 9 September 2013 a communication was addressed to the Government of Jordan, requesting its response to the allegations made. The Working Group stated that it would appreciate it if the Government of Jordan could, in its reply, provide the Working Group with detailed information about the current situation of Mr. Al Heysah, Mr. Al Rawabedah, Mr. Assaf and Mr. Khoder, and clarify the legal provisions justifying their continued detention.

25. The Working Group regrets that the Government has not responded to the request made. Despite the absence of information from the Government, the Working Group considers that it is in a position to render its opinion on the detention of Mr. Al Heysah, Mr. Al Rawabedah, Mr. Assaf and Mr. Khoder in conformity with paragraph 16 of its methods of work.

**Discussion**

*Burden of proof*

26. The Working Group emphasizes that the Government of Jordan has not rebutted the prima facie reliable allegations submitted by the source. The Working Group refers to its constant jurisprudence, most recently its opinions Nos. 41/2013 (Libya) and 48/2013 (Sri Lanka), and recalls that, where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he was entitled, the burden to prove the negative fact asserted by the applicant lies with the public authority, because the latter is "generally able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law ... by producing documentary evidence of the actions that were carried out".<sup>1</sup>

27. A similar approach has been adopted by the Human Rights Committee, according to which the burden of proof cannot rest on the author of the communication alone, especially considering that the author and the State party do not always have equal access to the evidence and frequently the State party alone has the relevant information.<sup>2</sup>

*The State Security Court*

28. The Working Group has noted with concern the source's allegations about the State Security Court.

29. The Committee against Torture and the Human Rights Committee have repeatedly recommended that Jordan abolish special courts such as the State Security Court; for example, the Human Rights Committee, in paragraph 12 of its concluding observations in 2010 on the fourth periodic report of Jordan (CCPR/C/JOR/CO/4), stated:

The Committee reiterates its concern at the limited organizational and functional independence of the State Security Court. It is also notes with concern that the Prime Minister has the authority to refer cases that do not affect State security to this court ...

The Committee reiterates its 1994 recommendation that the State party consider abolishing the State Security Court (CCPR/C/79/Add.35, para. 16).

30. In its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, the Human Rights Committee stated that the provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military (para. 22).<sup>3</sup>

31. In its 2007 annual report (A/HRC/7/4, para. 59), the Working Group stated:

However, another issue of concern for the Working Group remains the continuing tendency towards deprivation of liberty by States abusing states of emergency or derogation, invoking special powers specific to states of emergency without formal declaration, having recourse to military, special or emergency courts, not observing the principle of proportionality between the severity of the measures taken and the situation concerned, and employing vague definitions of offences allegedly designed to protect State security and combat terrorism.

32. The source has maintained that the 2011 reform process and the decision taken by the Council of Ministers based on royal orders on 1 September 2013 have not brought the Jordanian rules about the State Security Court into compliance with international law. The Working Group agrees with this view. It notes that the maintenance of the State Security Court does not satisfy the criteria set out for the narrow exception from a system of general courts.

*Overbroad and imprecise offences*

33. The Working Group has also noted with concern the allegations put forward by the source in respect of the wide and overbroad offences in Jordanian criminal legislation.

34. The Human Rights Committee has recommended that such offences be reviewed, inter alia, in paragraph 6 of its concluding observations in 2010 on the fourth periodic report of Jordan (CCPR/C/JOR/CO/4):

The Committee is concerned at the vague and broad definition of "terrorist activities" in the Prevention of Terrorism Act passed in 2006.

The State party should review the Prevention of Terrorism Act and ensure that it defines terrorism and terrorist acts in a manner that is precise and compatible with the Covenant.

35. The Working Group itself has, in its jurisprudence, reviewed the issue of wide and overbroad offences. The Working Group recalls its previous opinions Nos. 1/2003, 13/2007, 1/2009 and 24/2011 relating to Viet Nam, in which it emphasized that:

In conformity with its mandate, it must ensure that national law is consistent with the relevant international provisions set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments to which the State concerned has acceded. Consequently, even if the detention is in conformity with national legislation, the Working Group must ensure that it is also consistent with the relevant provisions of international law.

36. The Working Group also reiterates its previous finding in opinions Nos. 1/2009 and 24/2011 that broad criminal law provisions, which take "advantage of democratic freedoms and rights to abuse the interests of the State" are inherently inconsistent with any of the rights and liberties guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Working Group's comments on the recent reform process in paragraph 32 above also apply here.

*Observations*

37. The Government has not rebutted the allegations made about the arrests of Mr. Al Heysah, Mr. Al Rawabedah, Mr. Assaf and Mr. Khoder without an arrest warrant or access to legal counsel. The arrests without a warrant are in breach of articles 9 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The restrictions on access to legal counsel are in breach of articles 10 and 11 of the Universal Declaration and article 14 of the Covenant, falling within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

38. The Government has also not rebutted the allegations concerning the State Security Court, the unfair procedures involved or the overbroad criminal offences. The Working Group recalls the findings set out above about such special tribunals generally, and the State Security Court in particular. This provides another ground for the Working Group's finding that the detentions are in breach of article 10 of the Universal Declaration and article 14 of the Covenant, falling within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

39. The source submits that the detentions are in response to participation in demonstrations. The source alleges that Mr. Al Heysah was arrested after refusing to issue a statement asserting that he was against the protests held by the Islamic Jordanian Youth Movement; that Mr. Al Rawabedah was arrested after his participation in a protest; and that Mr. Assaf and Mr. Khoder were arrested after a public debate and participation in protests. The Government has not rebutted any of these allegations. The Working Group finds that the detentions are in breach of the right to freedom of expression in articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and the right to freedom of assembly in article 20 of the Universal Declaration and article 21 of the Covenant. The detentions fall within category II of the

arbitrary detention categories referred to by the Working Group when considering cases submitted to it. The Working Group further recalls, inter alia, its opinions Nos. 18/2007 (Jordan) and 60/2011 (Jordan) concerning detention for expression of political views, and expresses concern about the systemic nature of the violations in those cases and the one currently before the Working Group. 40. Lastly, the Working Group turns to the source's allegations of delays. The detention of the four individuals has reportedly lasted since June 2013 and the Government has not rebutted the allegations of delays. Pretrial detention raises particular concerns when it results from the exercise of the freedom of expression and assembly, and the State's compliance with the right to be tried without undue delay, guaranteed under article 14 of the Covenant, should be closely scrutinized in such cases of pretrial detention. The breaches of the right to be tried without undue delay in accordance with article 11 of the Universal Declaration and article 14 of the Covenant fall within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

#### **Disposition**

41. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The detention of Mr. Al Heysah, Mr. Al Rawabedah, Mr. Assaf and Mr. Khoder constitutes violations of articles 9-11, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 12, 14, 19 and 21 of the International Covenant on Civil and Political Rights. The detention falls within categories II and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

42. Consequent upon the opinion rendered, the Working Group requests the Government of Jordan to take the necessary steps to remedy the situation of Mr. Al Heysah, Mr. Al Rawabedah, Mr. Assaf, and Mr. Khoder and bring it into conformity with the standards and principles set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

43. In the present case, the Working Group requests the Government of Jordan to immediately release Mr. Al Heysah, Mr. Al Rawabedah, Mr. Assaf and Mr. Khoder and to accord them an enforceable right to compensation, pursuant to article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

[Adopted on 21 November 2013]

<sup>1</sup>*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010, p. 639, para. 55.*

<sup>2</sup>See, for instance, communications Nos. 1412/2005, *Butovenko v. Ukraine*, Views adopted on 19 July 2011, para. 7.3; 1297/2004, *Medjnoune v. Algeria*, Views adopted on 14 July 2006, para. 8.3; 139/1983, *Conteris v. Uruguay*, Views adopted on 17 July 1985, para. 7.2; 139/1983, *Bleier v. Uruguay*, Views adopted on 29 March 1982, para. 13.3.

<sup>3</sup>See also Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, art. 64, and Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 11.