

**Human Rights Council
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary
Detention at its seventy-first session, 17–21 November 2014****No. 48/2014 (Lebanon)****Communication addressed to the Government on 19 August 2014****Concerning Tarek Mostafa Marei and Abdel Karim Al Mustafa****The Government has not replied to the communication.**

The State is a party to the International Covenant on Civil and Political Rights, to which it acceded on 3 November 1972. The State is also a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which it acceded on 19 August 2004.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former 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 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 by Council resolution 24/7 of 26 September 2013. In accordance with its methods of work ([A/HRC/16/47](#), annex), 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);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative detention without the possibility of administrative or judicial review (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 present case was submitted to the Working Group on Arbitrary Detention in the following terms.

4. Tarek Mostafa Marei, born on 11 May 1972, is a Lebanese national. He is a trader and also an imam at the Minqara Amera mosque, in the Bab al-Ramel district of Tripoli. He is married and has five children. Before his arrest, he lived in the Haddaden district of Tripoli.

5. According to information received, Mr. Marei was arrested without a warrant on 13 October 2008 in one of the shops in the town, by military intelligence officers dressed in civilian clothes. He was taken to Al-Quba military barracks and then the Ministry of Defence, where he was detained for approximately 10 days. He was subsequently transferred to the Rihanyya military base for 1 month, then to the premises of the Lebanese internal security forces, and lastly to Roumieh prison on 28 December 2008, where he remains in detention to this day.

6. The source reports that, during his time in the different premises of the intelligence services, Mr. Marei was subjected to ill-treatment and torture, including the practice known as "*faruj*". This treatment stopped only when Mr. Marei agreed to sign statements containing false confessions, which he was not able to read in advance. With these confessions, he incriminated himself as a participant in an attack on a military bus on 29 September 2008 and in two other attacks carried out in May and August 2008. It was only after several hearings before the Council of Justice (*Al-Majlis Al-'Adli*) that he was formally charged with terrorism.

7. Abdel Karim Al Mustafa, born on 21 October 1984, is a Lebanese national. He is a teacher at the Telecommunications Institute and before his arrest lived in Bebnine, Akkar, in northern Lebanon.

8. According to information received, Mr. Al Mustafa was arrested on 12 October 2008 by members of the Lebanese military intelligence services after having been summoned to their headquarters in Al-Quba. The source indicates that, as soon as Mr. Al Mustafa arrived on their premises, he was violently beaten and placed under arrest without a warrant. Four days later, he was taken to the Ministry of Defence in Yarze, where he was detained for a further 10 days prior to being brought before Beirut Military Court. According to the source, he was then held for almost a month at the Rihanyya military base and was eventually transferred on 24 November 2008 to Roumieh prison, where he is still detained.

9. The source reports that Mr. Al Mustafa was held in solitary confinement in Roumieh prison, without any contact with the outside world for the first 41 days of his detention, during which he was severely tortured. A medical examination ordered by

his lawyer confirmed that he had suffered abuse. As in the case of Mr. Marei, these acts of torture were aimed at forcing Mr. Al Mustafa to confess to alleged involvement in terrorist acts against the army in Tripoli in August and September 2008. The confessions were contained in statements that he signed under duress.

10. Mr. Marei and Mr. Al Mustafa were brought before the Council of Justice and tried on 6 August 2013. They were sentenced to 15 years' imprisonment solely on the basis of reports drawn up by the military intelligence services containing the statements obtained under torture.

11. The source alleges that this detention is arbitrary and falls under category III of the criteria applicable to the consideration of cases submitted to the Working Group, inasmuch as it violates the right to a fair trial and contravenes 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.

12. The source reports that Mr. Marei and Mr. Al Mustafa were arrested by military intelligence officials and were not shown a warrant at the time of arrest. Nor were they informed of the reasons for their arrest, in contravention of articles 9, paragraph 2, and 14, paragraph 3 (a), of the International Covenant on Civil and Political Rights. They were not brought before a judge within a reasonable time, as they remained in the custody of the intelligence services for several days before being brought before a judicial authority, despite the fact that exceeding the 48-hour time limit is acknowledged to amount to a violation of the requirement of a fair trial, even in terrorism cases, which may, under certain conditions, justify an extended custody period.

13. The source adds that Mr. Marei and Mr. Al Mustafa have been held incommunicado for more than 2 months, during which time they have been repeatedly subjected to acts of torture with a view to forcing them to give false confessions of involvement in terrorist acts, in violation of article 7 of the International Covenant on Civil and Political Rights. The conviction of the two men is thus largely based on statements containing these confessions extracted under torture.

14. The source emphasizes that the two men remained in pretrial detention for more than 4 years before being tried, in violation of the right to trial within a reasonable time as enshrined in articles 9, paragraph 3, and 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights. According to the source, this was made possible by the fact that the Lebanese Code of Criminal Procedure, article 108, provides that, for cases concerning breaches of State security and acts of terrorism, pretrial detention may be renewed for an unlimited duration, which contravenes the international obligations outlined above.

15. The two men were brought for trial before the Council of Justice, which is a specialized court competent to hear cases relating to the internal and external security of the country. Cases are referred to it under a decree issued by the Council of Ministers.

16. The source alleges that, not having its own investigation department, this court is not independent. The source states that preliminary investigations are conducted by other services, including the military intelligence services, and that confessions obtained under duress by these services are subsequently presented to the Council as having been legally obtained. The source adds that decisions handed down by this court are final and are not subject to appeal.

17. This impossibility of appeal constitutes a violation of article 14, paragraph 5, of the International Covenant on Civil and Political Rights, as already pointed out by the

Human Rights Committee during its most recent consideration of Lebanon (CCPR/C/79/Add.78, paras. 9 and 15).

Response from the Government

18. In a letter dated 19 August 2014, the Working Group transmitted the above allegations to the Lebanese Government and requested it to provide detailed information on the current situation of Mr. Marei and Mr. Al Mustafa and clarification of the legal basis for their detention.

19. The Working Group finds it regrettable that, to date, the Lebanese Government has not replied to the allegations transmitted to it nor requested an extension of the time limit fixed for a reply, in accordance with paragraphs 15 and 16 of the methods of work of the Working Group.

20. Despite the Government's failure to reply, the Working Group considers that it is in a position to render its Opinion on the detention of Mr. Marei and Mr. Al Mustafa, in accordance with paragraph 16 of its methods of work, solely on the basis of the information provided by the source.

Discussion

21. The source provided consistent reports on the arrest and detention of Mr. Marei and Mr. Al Mustafa. These same reports had already been transmitted by the source to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in two submissions dated 1 November 2010 and 11 March 2011, respectively. In the absence of any rebuttal from the Government, the Working Group could only assume the source's report to be reliable.

22. Mr. Al Mustafa and Mr. Marei were arrested on 12 and 13 October 2008, respectively, by military intelligence agents and were not shown a warrant at the moment of the arrest. They remained in pretrial detention for more than 4 years before being brought to trial. They are still in detention.

23. On 6 August 2013, the Council of Justice sentenced the two men to 15 years' imprisonment solely on the basis of reports drawn up by the military intelligence services containing statements obtained under torture during the men's detention.

24. The allegations made by the source are based on the incommunicado detention, on the acts of torture that were carried out to obtain the confessions during the preliminary investigation, with no administrative or judicial inquiry being conducted to rule on the legality of those confessions, on the denial of fundamental legal safeguards such as access to a lawyer and on the right to trial within a reasonable time by an independent and impartial tribunal.

25. The Working Group is of the view that incommunicado detention constitutes a total violation of international human rights law, including during states of emergency and armed conflict. No jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including habeas corpus (A/HRC/16/47, para. 54).

26. The Government is alleged to have held these two persons incommunicado for over 2 months. The Working Group thus believes that the detention of Mr. Marei and Mr. Al Mustafa is in breach of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, and falls under category I of the criteria applicable to the consideration of cases submitted to the Working Group.

27. The Working Group is also persuaded by the persistent allegations that Mr. Marei and Mr. Al Mustafa were subjected to torture and subsequently confessed to the acts with which they were charged. In this regard, it was incumbent on the Government, under article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Lebanon is a party, to ensure that its competent authorities proceeded to a prompt and impartial investigation, wherever there was reasonable ground to believe that an act of torture has been committed, while article 15 of the same Convention provides that any statement which is established to have been made as a result of torture shall not be invoked as evidence.

28. It is established jurisprudence that confessions obtained by torture cannot be admitted in the interests of upholding the right to a fair trial. Accordingly, the Working Group concludes that the detention of Mr. Marei and Mr. Al Mustafa and their convictions based on confessions obtained under torture, in the absence of any material or other evidence and with no investigation having been conducted to confirm the veracity of the confessions, are contrary to articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and fall under category III of the criteria applicable to the consideration of cases submitted to the Working Group.

29. The Working Group notes that the source has already contacted the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and that there is therefore no need to refer these cases to him, as is the established practice. The Working Group nevertheless draws these allegations of torture to the attention of the Special Rapporteur in the hope that he will pay them particular attention during his assessment of the Republic of Lebanon in fulfilment of his mandate.

Opinion and recommendations

30. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Mr. Tarek Mostafa Marei and Mr. Abdel Karim Al Mustafa is arbitrary, inasmuch as it lacks a legal basis and the confessions were extracted by torture in violation of the peremptory norms of international law. This deprivation of liberty therefore constitutes a violation of the rights and freedoms declared in articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls under categories I and III of the criteria applicable to the consideration of cases submitted to the Working Group.

31. The Working Group therefore requests the Lebanese Government to proceed with the immediate release of Mr. Marei and Mr. Al Mustafa and to order an independent and impartial investigation into the acts of torture to which they were reportedly subjected during their incommunicado detention, at the same time providing full compensation for the material and moral damage they have suffered, including fair and adequate reparation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

32. The Working Group recalls that the Human Rights Council has requested all States to cooperate with the Working Group, take account of its views and take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken. The Working Group therefore requests the full cooperation of the Lebanese Republic in

implementing this Opinion to provide effective redress for a violation of international law.¹

[Adopted on 19 November 2014]

¹ Human Rights Council resolution 24/7, paras. 3, 6 and 9.