



General Assembly

Distr.: General
10 October 2016

Original: English

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fifth session, 18-27 April 2016

Opinion No. 9/2016 concerning Amer Jamil Jubran (Jordan)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the 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 1/102 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.

2. In accordance with its methods of work (A/HRC/30/69), on 9 October 2015 the Working Group transmitted a communication to the Government of Jordan concerning Amer Jamil Jubran. The Government replied to the communication on 30 November 2015. The State is a party to the International Covenant on Civil and Political Rights.

3. 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 custody without the possibility of administrative or judicial review or remedy (category IV);

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(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, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mr. Jubran, born on 21 March 1969, is a Jordanian citizen of Palestinian descent. He was the holder of passport No. 9691028935, which was issued by the Government of Jordan on 24 January 2000 and expired on 24 January 2005.

5. Prior to his detention, Mr. Jubran was an activist and advocate for the rights of the Palestinian people and for the rights of people living in Iraq and neighbouring countries. He lived for more than 10 years in the United States of America, where he engaged in advocacy and played a leading role in the anti-war movement.

6. The source claims that Mr. Jubran was questioned by United States authorities on several occasions because of his political activities. On 4 November 2002, following a march for Palestine held in Boston, Mr. Jubran was arrested by a joint patrol of the Immigration and Naturalization Service and the Federal Bureau of Investigation. The source reports that Mr. Jubran became afraid that he could face prosecution in the United States and decided to voluntarily return to Jordan in 2004.

7. According to the source, on 5 May 2014 Mr. Jubran was arrested at his home in Jordan without a warrant, in the middle of the night, by the agents of the General Intelligence Directorate of Jordan. About 20 agents dressed in military uniform broke into his home and used violence to restrain him. During the arrest, they insulted and threatened to kill him, using derogatory words related to his Palestinian descent. They also searched his home and seized various items.

8. Mr. Jubran was then taken to an undisclosed location, where he was held incommunicado and without charges for more than two months. The location was later revealed to the family as being the headquarters of the General Intelligence Directorate. The source submits that, during that period, Mr. Jubran was subjected to torture and other ill-treatment and threats were made against the members of his family. After the officers of the Directorate succeeded in forcing him to confess, through torture, to the offences imputed to him, they transferred him to a regular detention facility in the district of Salt.

9. On 7 July 2014, a joint urgent appeal relating to Mr. Jubran's case was addressed to the Government of Jordan by the Working Group, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. In the appeal, concerns were expressed about the irregularities of the judicial proceedings, the incommunicado detention, the lack of access to a defence lawyer and the fact that Mr. Jubran's arrest and detention might have been related to the peaceful exercise of his right to freedom of expression. The Government of Jordan has not replied to the appeal.

10. In August 2014, Mr. Jubran and six other individuals were charged with a number of terrorism-related offences and brought to trial before the State Security Court of Jordan. In particular, Mr. Jubran was charged with planning to carry out attacks against United States soldiers stationed in Jordan, with having membership in the organization Hizbullah, with committing acts that threaten to harm relations with a foreign Government and with being in possession of firearms and explosives.

11. The source submits that the evidence presented against Mr. Jubran was false since it was obtained under torture. The arrest records presented by the prosecutor at the trial were contested by the defence lawyer as containing false information and being forged. Those records were not presented by the officers who produced them, and the defence lawyer was not allowed to call the officers as witnesses or to question them about the legality of the arrest reports.

12. On 29 July 2015, the State Security Court found Mr. Jubran guilty of all charges against him and sentenced him to 10 years of imprisonment with punitive labour. He was convicted under the Anti-Terrorism Law (Law No. 55 of 2006), as amended, for violations of articles 3 (a)-(c) and (w); 7 (c); 76; 147 (1) and (2); and 148 (1), (2) and (5) of the Penal Code (Law No. 16 of 1960).

13. Mr. Jubran appealed against both the verdict and the sentence. A review of the case by the Court of Cassation of Jordan was scheduled to be held in September 2015 but was postponed. The new date for the appeal hearing has reportedly not yet been notified to Mr. Jubran's defence lawyer.

14. The source submits that the arrest and detention of Mr. Jubran falls under categories II and III of the categories used by the Working Group to determine whether a given case of deprivation of liberty is arbitrary.

15. With regard to category II, the source asserts that Mr. Jubran's advocacy work has always been peaceful and that Mr. Jubran was arrested, detained, imprisoned, ill-treated and tortured for the purpose of silencing him as a writer, political activist and advocate of the rights of the Palestinian people. The source argues that his deprivation of liberty resulted from the peaceful exercise of the rights to freedom of opinion and expression guaranteed under articles 18 and 19 of the International Covenant on Civil and Political Rights, which Jordan ratified on 28 May 1975, and articles 18 and 19 of the Universal Declaration of Human Rights.

16. With regard to category III, the source submits that Mr. Jubran was arrested without a warrant, was held incommunicado for two months from the moment of his arrest on 5 May 2015 and had no access to a legal representative during that period. During the same period, he was not allowed to inform his family of his detention, nor did the General Intelligence Directorate authorities inform the family of his whereabouts. The source argues that these actions violate common article 9 of the Universal Declaration of Human Rights and the Covenant.

17. Furthermore, the source claims that, during his incommunicado detention, Mr. Jubran was subjected to repeated interrogation by officers of the General Intelligence Directorate in the absence of legal counsel and to torture and ill-treatment with the intention of getting him to sign a confession of guilt. During his trial before the State Security Court, Mr. Jubran complained that he had been tortured and that the confession used to incriminate him had been extracted from him under duress. Nevertheless, the Court considered that the confession of Mr. Jubran constituted sufficient evidence to establish his guilt and to sentence him. The source argues that this constitutes a violation of articles 5 and 10 of the Universal Declaration of Human Rights and of articles 7 and 14 of the Covenant.

18. The source claims that the Court ignored all the motions submitted by the defence lawyer to bring evidence exculpating Mr. Jubran and denied the lawyer the right to question the witnesses presented by the prosecution, in particular the General Intelligence Directorate officers who arrested Mr. Jubran and allegedly tortured him. The source argues that this is a violation of articles 10 and 11 of the Universal Declaration of Human Rights and of article 14 of the Covenant.

Response from the Government

19. On 6 October 2015, the Working Group addressed a communication to the Government of Jordan requesting detailed information about the reasons, circumstances and legal grounds justifying Mr. Jubran's arrest, detention and continued deprivation of liberty. The Working Group also requested the Government to provide any other information relating to the case and situation of Mr. Jubran, including the judicial proceedings against him.

20. In its response, dated 30 November 2015, the Government contends that the competent court reviewed the case of Mr. Jubran and issued a judgment, which could be appealed.

Further comments from the source

21. The source submits that the reply of the Government fails to address the issues raised by the source, that a verdict was handed down on 29 July 2015 by the State Security Court and that a motion for appeal was denied by the Court of Cassation.

22. The source contends that if the Government's reply refers to the judgment of the Court of Cassation, then it is incorrect to state that it can be appealed. According to the source, the Court of Cassation issued a decision before mid-November 2015 affirming the verdict of the State Security Court. While doing so, it did not consider the evidence that the verdict of the State Security Court was based on false confessions obtained through torture.

23. It is not clear whether the Court of Cassation rejected the appeal or confirmed the judgment of the State Security Court.

Discussion

24. Being engaged in human rights advocacy does not provide immunity from illegal activities nor does it protect against any ensuing accountability for criminal acts. Being a human rights advocate cannot exonerate anyone from his or her legal responsibility for general crimes, let alone terrorist activities.

25. Despite the fact that the Working Group did not receive sufficient information regarding Mr. Jubran's human rights advocacy work, the Group regrets that the Government failed to provide detailed information about the illegal and terrorism-related activities of Mr. Jubran.

26. In that regard and given the repressive nature of the judicial proceedings that Mr. Jubran has been subjected to, the Working Group believes that Mr. Jubran's deprivation of liberty is associated with his advocacy work.

27. The Working Group confirms that the deprivation of liberty of Mr. Jubran resulted from the peaceful exercise of the rights to freedom of opinion and expression guaranteed under article 19 of the Covenant, which Jordan ratified on 28 May 1975, and of article 19 of the Universal Declaration of Human Rights.

28. The conviction and harsh sentencing of Mr. Jubran too are presumed to constitute an act of reprisal resulting from his refusal to cooperate with the General Intelligence Directorate as a possible infiltrator and informant, which constitutes a violation of the fundamental right to freedom of conscience and political opinion guaranteed by the above-mentioned articles of the Covenant.

29. Accordingly, the deprivation of liberty of Mr. Jubran falls within category II of the categories applicable to the consideration of cases submitted to the Working Group.

30. The Working Group notes with concern that Mr. Jubran was forcefully arrested on 5 May 2014 by the General Intelligence Directorate without a warrant and that he was then placed in incommunicado detention for two months.

31. During the period of detention, he had no access to a legal representative and was not allowed to inform his family of his situation, nor did the General Intelligence Directorate authorities inform the family of his whereabouts. The Working Group also finds that during his incommunicado detention Mr. Jubran was subjected to repeated interrogation by Directorate officers in the absence of legal counsel and to torture and ill-treatment with the intention of forcing him to sign a confession of guilt.

32. The arrest and detention were performed in clear violation of the international norms on the arbitrary deprivation of liberty guaranteed in articles 7, 9 (1) and (2) and 10 (1) of the Covenant and of articles 3, 5 and 9 of the Universal Declaration of Human Rights.

33. Breaches of the law also occurred during Mr. Jubran's subsequent trials. During the trial before the State Security Court, and despite Mr. Jubran complaining that he had been tortured and that the incriminating confessions were extracted under duress, the Court considered, on 29 July 2015, in its verdict on case No. 5209/2014, that the confession of Mr. Jubran constituted sufficient evidence to establish his guilt. The Court refused to accept all the motions submitted by the defence lawyer to bring forward evidence exculpating Mr. Jubran and denied the lawyer's right to question the witnesses presented by the prosecution, in particular the General Intelligence Directorate officers who arrested Mr. Jubran and allegedly tortured him.

34. The Court of Cassation, in its decision No. 1486/2015, confirmed the verdict handed down by the State Security Court in late 2015. The Court of Cassation upheld the verdict without paying due consideration to the arguments of the defence lawyer, despite the presentation of Mr. Jubran's detailed testimony concerning his torture at the hands of the General Intelligence Directorate and the process through which the confessions were fabricated and changed. The aforementioned judicial proceedings in both courts, in particular, constitute a violation of articles 5 and 10 of the Universal Declaration of Human Rights and of articles 7 and 14 of the Covenant.

35. The Working Group notes that the State Security Court is a court of exception. In its opinion No. 53/2013, the Group recalled:

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 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).

36. The Working Group also notes that the Human Rights Committee, in its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, 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).

37. The Working Group also recalls that, in its annual report covering 2007, it expressed concern about 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 (see A/HRC/7/4, para. 59).

38. The source submitted that the 2011 reform process and the decision taken by the Council of Ministers based on Royal Orders of 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.

39. The Working Group itself has also, in its jurisprudence, reviewed the issue of wide and overbroad offences. The Working Group recalls its opinions No. 1/2003, No. 13/2007, No. 1/2009 and No. 24/2011 relating to Viet Nam, in which it emphasized the importance of ensuring that national law is consistent with the relevant provisions set forth in the Universal Declaration of Human Rights and in the relevant international legal instruments to which the State concerned has acceded.

40. In this regard, the Working Group reaffirms that any national law touching upon arrest and detention should be worded and implemented in a manner consistent with the relevant international provisions set forth in the Universal Declaration of Human Rights and in the relevant international legal instruments to which the State concerned has acceded. Consequently, even if arrests and detentions are carried out in conformity with national legislation, the Working Group must ensure that they are also consistent with the relevant provisions of international human rights law. Provisions that are vague and whose application is overbroad are at odds with the relevant norms of international law on the administration of criminal justice.

41. In paragraph 34 of its opinion No. 53/2013, the Working Group also referred to the concerns expressed by the Human Rights Committee regarding the vague and broad definition of “terrorist activities” contained in the Prevention of Terrorism Act passed in 2006. The Committee recommended that the State party review the Act and ensure that it defines terrorism and terrorist acts in a manner that is precise and compatible with the Covenant.

42. The Working Group also reiterates its previous finding in its opinions No. 1/2009 and No. 24/2011 that broad criminal law provisions that “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 Covenant.

43. The overbroad wordings of the so-called anti-terrorism laws and their imprecise and often retroactive application raise an array of serious legal concerns.

44. The charges against Mr. Jubran were basically based on the amendments to articles 3 (b) and 7 (c) of the Anti-Terrorism Law, which were not promulgated by the Government of Jordan until June of 2014. Mr. Jubran was charged in August 2014, under that Law, for “harming the relationship with a foreign Government”, which is viewed as a crime of terrorism, further demonstrating the political and arbitrary nature of his arrest and imprisonment.

45. Mr. Jubran's trial for an alleged violation of a law that was enacted two months after his arrest also constitutes a violation of article 15 of the Covenant, which stipulates that no one should be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed, nor should a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.

46. Given the above observations, the deprivation of liberty of Mr. Jubran falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

Disposition

47. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Amer Jamil Jubran, being in contravention of articles 3, 5, 9, 10 and 19 of the Universal Declaration of Human Rights and of articles 7, 9 (1) and (2), 10 (1), 14, 15 and 19 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

48. Consequent upon the opinion rendered, the Working Group requests the Government of Jordan to take the steps necessary to remedy the situation of Mr. Jubran without delay and to bring it into conformity with the standards and principles set forth in the Covenant.

49. The Working Group considers that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release Mr. Jubran and accord him an enforceable right to reparation in accordance with article 9 (5) of the Covenant.

50. In the light of the allegations of torture and other ill-treatment inflicted upon the detainee, the Working Group considers it appropriate, in accordance with article 33 (a) of its methods of work, to refer these allegations to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 20 April 2016]
