



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. 15/2016 concerning Khalida Jarrar (Israel)**

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 5 January 2016 the Working Group transmitted a communication to the Government of Israel concerning Khalida Jarrar. The Government has not replied to the communication. 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);



(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

4. Khalida Jarrar, a 52-year-old woman, is a member of the Palestinian Legislative Council and a public figure. From 1994 to 2006, Ms. Jarrar was the director of Addameer Prisoners Support and Human Rights Association. In 2006, she was elected a member of the Palestinian Legislative Council. She then served as vice-chair of Addameer Prisoners Support and Human Rights Association. Within the Palestinian Legislative Council, Ms. Jarrar heads the Prisoners Commission and she is a member of the national Palestinian committee for the follow-up with the International Criminal Court.

5. On 2 April 2015, at around 1 a.m., around 60 Israeli soldiers surrounded Ms. Jarrar's house, located in Al-Bireh, Ramallah. The soldiers broke down the main door and entered the house by force. They searched the house without presenting a search warrant and confiscated two laptops and a mobile phone. At approximately 3 a.m., Ms. Jarrar was arrested. The Israeli forces did not produce an arrest warrant or provide a reason for the arrest. Ms. Jarrar was initially taken to Beit El settlement, but later transferred to a military camp near Jaba' village in East Jerusalem. At approximately 7.30 a.m. she was transferred to Ofer military camp near Ramallah, where her interrogation started an hour after her arrival. The interrogation lasted for more than four hours. Ms. Jarrar was later shackled and transferred to HaSharon prison. On the same day, Ms. Jarrar received a six-month administrative detention order under article 271 (A) of Military Order No. 1651, issued in 2009.

6. On 15 April 2015, the prosecution issued a list of charges against Ms. Jarrar that revolved around her affiliation with an "illegal organization", her role as a member of the Palestinian Legislative Council and a political leader, and her work campaigning for prisoners. On the same day, the first hearing to review the charge sheet was held. The defence team requested to postpone the hearing because they had not received all the necessary information from the prosecution. The hearing was postponed until 29 April 2015. That same day, a military judge set a new date for the hearing.

7. On 21 May 2015, a judge at the Ofer Military Court decided to release Ms. Jarrar on bail until the end of the trial proceedings. The judge indicated that he was convinced that the accusations were based on information dating back many years and that there was no justification for the prosecution's failure to take legal action against Ms. Jarrar earlier. The judge also indicated that even the secret file did not contain adequate evidence to suggest that her release would pose a security threat.

8. The military prosecution appealed the judge's decision, and an appeal hearing was held on 28 May 2015. The appeal was initially based on public material available to Ms. Jarrar and her lawyer. However, as the judge was not convinced, the military prosecution presented secret material, on the basis of which the judge decided to remand Ms. Jarrar in custody until the end of the trial. Neither Ms. Jarrar nor her lawyer were able to access the secret material, and therefore could not challenge it.

9. It was reported that, on several occasions during the trial, the military prosecutor explicitly indicated to the judge that if Ms. Jarrar were to be released on bail, she would once again be placed in administrative detention.

10. On 24 August 2015, the first hearing of witness testimonies was held. Three witnesses for the prosecution attended the hearing. However, only two gave their

testimonies, due to time constraints. These two witnesses described the conditions under which their confessions were obtained. They stated that during interrogation, they were subjected to ill-treatment, including sleep deprivation, being tied in stress positions for long hours and being threatened with torture. Subsequently, the prosecution's request that the witnesses be considered hostile witnesses was accepted by the court. The prosecution claimed that the confessions obtained were genuine, and that the witnesses were giving false statements in the courtroom. According to the source, the witnesses had been deprived of access to their lawyer for long periods, indicating that their confessions were made without legal counsel.

11. On 20 September 2015, a second hearing of witness statements was held. The court heard the statement of only one witness, who was at the time imprisoned by the Israeli forces. The military prosecution failed to secure the attendance of the other witnesses. The witness who attended the hearing denied all previous allegations against Ms. Jarrar. As a result, the military prosecution asked for the man to be declared a "hostile witness", a request which was approved by the military court. The military prosecution further requested the court to issue arrest warrants against the witnesses who had failed to attend the hearing, so that they would be in custody during the next hearing, scheduled for 12 October 2015.

12. On 12 October 2015, the session was again postponed as none of the witnesses had shown up. During the hearing on 1 November 2015, a witness who was a former prisoner stated that during interrogations he had lost consciousness three times. He also stated that it was the interrogators who had put forward Ms. Jarrar's name. The witness stated that during the interrogation period he had been deprived of sleep and tied to a chair. He was also declared a hostile witness by the court.

13. It is reported that, during the interrogation of one of the key witnesses in Ms. Jarrar's case, the police interrogator asked the witness to identify Ms. Jarrar. The witness was provided with seven photos and asked to point out which photo was of Ms. Jarrar. Six of those photos were of men.

14. Due to her mistrust of the military justice system, on 7 December 2015 Ms. Jarrar accepted a guilty plea on 2 of the 12 charges against her, taking into consideration the high conviction rate and the expressed intention of the prosecutor to place her under administrative detention even if she was released by a court. The two charges were membership in an illegal organization and incitement. The sentence was set to 15 months, with a fine of 10,000 new Israeli sheqel and a suspended sentence of 12 months within five years.

15. Ms. Jarrar will serve her 15 months of imprisonment in Hasharon prison in Israel.

16. The source submits that the deprivation of liberty of Ms. Jarrar is arbitrary and falls under categories II, III and V of the Working Group's defined categories of arbitrary detention. In its view, the arrest and deprivation of liberty of Ms. Jarrar result from her exercise of the right to freedom of expression, the right to freedom of peaceful assembly and association and the right to take part in public affairs as guaranteed by articles 19, 20 and 21 of the Universal Declaration of Human Rights, and articles 19, 21 and 25 of the International Covenant on Civil and Political Rights. More specifically, the source submits that the arrest and deprivation of liberty of Ms. Jarrar relate to her role as a member of the Palestinian Legislative Council and the fact that she is a political leader and public figure who has actively participated in various demonstrations against the Israeli occupation forces in the Occupied Palestinian Territory.

17. The source further submits that Ms. Jarrar has not been guaranteed the international norms of due process and guarantees to a fair trial during the period of her deprivation of liberty, in violation of 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. Ms. Jarrar was arrested without a warrant and was not informed of the reasons for the arrest, which violates article 9 (2) of the Covenant. She was placed in administrative detention which, under international humanitarian law, is permissible only under stringent conditions. There were serious delays in bringing the case to trial. The court relied on secret files, which were not accessible to Ms. Jarrar and her legal counsel. Lastly, as a civilian, she was brought before a military court in Israel, which lacked impartiality and independence.

18. Furthermore, the source argues that Ms. Jarrar, as a member of the Palestinian Legislative Council, a political leader and an active public figure who has participated in various demonstrations against the Israeli forces in the Occupied Palestinian Territory, was targeted by the Israeli authorities, constituting discrimination on the grounds of her “political or other opinion”, thus falling within category V of the Working Group’s defined categories of arbitrary detention.

Discussion

19. In its letter of 5 January 2016, the Working Group provided the Government of Israel with a summary of the case and requested any information the Government might wish to provide regarding the allegations. The Working Group regrets that the Government has not responded to the allegations transmitted by the Working Group. As the Government opted not to rebut the prima facie, reliable information submitted by the source, the Working Group accepts that information as reliable.

20. Despite the absence of a response from the Government, the Working Group considers it is in a position to render its opinion on the detention of Ms. Jarrar, in conformity with paragraph 16 of its methods of work.

21. The Working Group is aware that Ms. Jarrar was elected to the Palestinian Legislative Council in 2006. Within the Council, Ms. Jarrar heads the Prisoners Commission and is a member of the national Palestinian committee in charge of following up with the International Criminal Court. Furthermore, the Working Group is aware that she was the director of Addameer Prisoners Support and Human Rights Association and served as its vice-chair.

22. The Working Group received reliable information that was communicated to the State, relating to the detention of Ms. Jarrar on 2 April 2015. On that date, around 60 Israeli soldiers surrounded the house of Ms. Jarrar, broke down the main door and entered the house by force. They searched the house without presenting a search warrant and confiscated two laptops and a mobile phone. Ms. Jarrar was arrested without an arrest warrant and the Israeli forces did not provide a reason for the arrest.

23. Ms. Jarrar was initially taken to Beit El settlement and then transferred to a military camp near Jaba’ village in East Jerusalem. She was subsequently transferred to Ofer military camp near Ramallah, where her interrogation started an hour after her arrival. The interrogation lasted for more than four hours. Ms. Jarrar was later shackled and transferred to HaSharon prison. Ms. Jarrar received a six-month administrative detention order.

24. After lengthy criminal proceedings before a military tribunal that should not be competent to judge civilians under relevant international law, Ms. Jarrar’s mistrust of the military justice system led her to accept a guilty plea on 2 of the 12 charges against her, as she was aware of the high conviction rate and the expressed intention of the prosecutor to place her under administrative detention even if she was released by a court. The two charges were membership of an illegal organization and incitement. The sentence was set to 15 months, with a fine of 10,000 new Israeli sheqel and a suspended sentence of 12 months within five years.

25. Although Ms. Jarrar is a civilian, she was prosecuted and tried in a military court. The Working Group has consistently held the view that, whatever the charges, civilians shall never be tried by military courts because they cannot be considered to be independent and impartial tribunals for civilian accused persons.

26. In its opinions, annual reports and other documents in which it has addressed the issue, the Working Group has relied on the report on the issue of the administration of justice through military tribunals, which was submitted to the Commission on Human Rights at its sixty-second session (E/CN.4/Sub.2/2005/9) in 2006, and which contains the draft principles governing the administration of justice through military tribunals. Principle 5, which deals with the functional jurisdiction of military courts, states: "Military courts should, in principle, have no jurisdiction to try civilians. In all circumstances, the State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts."

27. The Working Group has also addressed the issue of military tribunals and the minimum guarantees that military justice must not fail to respect (see A/HRC/27/48, paras. 66-69).

28. The Working Group received credible information, which was not rebutted by the Government of Israel, that the purpose of the arrest and deprivation of liberty of Ms. Jarrar related to her role as a member of the Palestinian Legislative Council and the fact that she is a political leader and a public figure who has actively participated in various demonstrations against the Israeli occupation of the Occupied Palestinian Territory. Her detention results from her exercise of the right to freedom of expression, the right to freedom of peaceful assembly and association and the right to take part in public affairs, as recognized by articles 19, 20 and 21 of the Universal Declaration of Human Rights and articles 19, 21 and 25 of the International Covenant on Civil and Political Rights. Therefore, the detention of Ms. Jarrar is arbitrary, falling within categories II and V as defined in the methods of work of the Working Group on Arbitrary Detention.

29. Furthermore, the Working Group is convinced that international norms of due process and guarantees to a fair trial were violated during the arrest, investigation and trial of Ms. Jarrar, in respect of her deprivation of liberty. Ms. Jarrar was arrested without a warrant and was not informed of the reasons for the arrest. She was placed under irregular administrative detention, the trial was seriously delayed and the court relied on secret files, which were not accessible to Ms. Jarrar and her legal counsel. Lastly, being a civilian, she was brought before a military court in Israel, which was neither impartial nor independent. For these reasons, the Working Group concludes that the breaches of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant are of such gravity as to give Ms. Jarrar's deprivation of liberty an arbitrary character, falling within category III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

Disposition

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

The deprivation of liberty of Khalida Jarrar was arbitrary, being in contravention of articles 9, 10, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 9, 14, 19, 21, and 25 of the International Covenant on Civil and Political Rights, and falls within categories II, III and V of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

31. Under international law, victims of arbitrary detention are entitled to seek and obtain effective reparations from the State, which include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In conformity with the present opinion, the

Working Group recommends the Government of Israel to provide full reparations to Ms. Jarrar, starting with her immediate release.

32. The Working Group recalls the call made by the Human Rights Council for all States to cooperate with the Working Group, to take account of its views and, where necessary, to 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.¹

33. The Working Group would like to urge the Government to consider favourably its request to visit Israel, in order to engage in constructive dialogue with the relevant authorities, with a view to identifying appropriate and effective measures to prevent arbitrary detention by the authorities.

34. In accordance with rule 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 22 April 2016]

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