



General Assembly

Distr.: General
29 December 2016
English
Original: French

Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-sixth session (22-26 August 2016)

No. 26/2016 concerning Hamo Hassani (Morocco)

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 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 22 June 2016 the Working Group transmitted to the Government of Morocco a communication concerning Mr. Hassani. The Government has not responded 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 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

4. Mr. Hassani was born in 1981 in Khouribga, Morocco. An unmarried Moroccan national, before his detention he was a merchant and lived in the Boblaou neighbourhood of Nador.

5. According to the information submitted by the source, Mr. Hassani was arrested, without an arrest warrant, on the night of 15 December 2004 by intelligence agents in civilian clothing, near his home in the Boblaou neighbourhood of Nador.

6. The source alleges that Mr. Hassani was not informed of the reason for his arrest by the agents and that they treated him with brutality. He was then placed in incommunicado detention.

7. The source reports that on 26 December 2004 Mr. Hassani was transferred to the Témara detention centre, near Rabat, where he was imprisoned for eight days and subjected to torture and other ill-treatment. The source also alleges that the Témara detention centre, which no longer exists, was at that time notorious as a facility where torture was commonplace. The source reports that Mr. Hassani was beaten on all parts of his body, tortured with electricity, stretched and subjected to the “chiffon torture” (simulated suffocation with a drenched rag).

8. It was only after being transferred to Témara on 26 December 2004 that Mr. Hassani learned that he stood accused of arms trafficking and the illegal possession of firearms, accusations that he has always denied.

9. According to the source, Mr. Hassani was then transferred to the Maarif police station in Casablanca where he underwent several interrogation sessions over the course of approximately 12 days. During this interrogation, he was again subjected to acts of torture and ill-treatment and was subsequently forced to sign records of the questioning without being given the chance to see their content.

10. On 15 January 2005 Mr. Hassani was brought before the prosecutor in Rabat and was charged with conspiracy to commit murder. The source alleges that no victim was mentioned or identified in the criminal case and that Mr. Hassani was not at that time assisted by a lawyer.

11. According to the source, although Mr. Hassani had been informed after his transfer to Témara that he was accused of arms trafficking and the illegal possession of firearms, the prosecutor in Rabat accused him of conspiring to commit murder, concealing and mutilating the body of the alleged victim, forming an organized gang to carry out terrorist acts, holding unauthorized meetings and, lastly, carrying out activities in connection with an unauthorized association. The murder of which Mr. Hassani was accused reportedly occurred in 1996. The source reports that despite the allegations of torture of the victim and the lack of any material evidence in the case file corroborating the police reports, the judge did not deem it necessary to open an investigation.

12. According to the source, it was not until after the hearing of 15 January 2005 that Mr. Hassani benefited from the assistance of a lawyer, who filed a request for additional investigative measures, in particular in order to determine the identity of the alleged victim.

No follow-up was given by the judge to this request, in contravention of the rights of the defence.

13. On 9 November 2005, after the case had been referred to the Rabat Court of Appeal, Mr. Hassani was sentenced to death for conspiracy to commit murder. The source alleges that his conviction was based solely on the police reports that he had signed under threat of torture and after numerous types of mistreatment. The source further submits that although Mr. Hassani was convicted of conspiracy to commit murder, the principal perpetrator of the alleged killing was absent during the proceedings, having been released following a decision to discontinue criminal proceedings against him.

14. Furthermore, the source alleges that nine years after Mr. Hassani's conviction, and following the intervention of a member of Parliament, who was concerned about the unfairness of Mr. Hassani's trial, the case was re-examined by the Rabat Court of Appeal, which handed down its decision on 20 November 2013. In the light of the fact that Mr. Hassani had been 15 years old in 1996, at the time of the alleged crime, and that Moroccan law prohibits the death penalty for minors, the Court ruled that his sentence should be reduced to 15 years' imprisonment.

15. According to the information submitted by the source, Mr. Hassani then lodged an appeal in cassation with the Court of Cassation. On 28 May 2014 the criminal division of the Court of Cassation dismissed his appeal and upheld the decision of the Rabat Court of Appeal of 20 November 2013.

16. The source submits on the one hand that this case corresponds to category I of the categories applied by the Working Group on Arbitrary Detention, as there was no legal basis justifying the incommunicado detention of Mr. Hassani for 31 days. The source argues that the detention of Mr. Hassani from 15 December 2004 to 15 January 2005 violated article 9 (1) of the International Covenant on Civil and Political Rights, which provides that everyone has the right to liberty and security of person, that no one shall be subjected to arbitrary arrest or detention and that no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

17. Additionally, the source claims that the case falls under category III of the categories applied by the Working Group because the Moroccan Government disregarded certain procedural safeguards that are protected by both international and domestic law. The source recalls that article 9 (2) of the International Covenant on Civil and Political Rights provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. According to the information received, at no point during his arrest in Nador did Mr. Hassani receive such information, nor was he brought within a reasonable time before a judicial authority to hear the charges against him, if any.

18. The source claims that under Moroccan law, detention in police custody may last for up to 48 hours, after which it may be extended for a further 24 hours. However, for offences linked to terrorism, the maximum duration of police custody is 96 hours, renewable once.

19. The source also points out that in the case of terrorism offences, senior police officers may delay communication between lawyers and their clients for up to 48 hours after the first extension. As a result, by virtue of article 66 (9) of the Moroccan Code of Criminal Procedure, an individual suspected of terrorist acts may be held in police custody for six days without access to a lawyer.

20. Furthermore, the source indicates that under article 293 of the Code of Criminal Procedure, confessions obtained through violence or coercion are invalid and the perpetrators of such acts incur the penalties set out in the Criminal Code, although those

provisions were not yet in force at the time of the proceedings involving Mr. Hassani at the Rabat Court of Appeal on 9 November 2005. That notwithstanding, the source recalls that the use of statements signed under coercion violates article 14 (3) (g) of the International Covenant on Civil and Political Rights, which provides that no one may be “compelled to testify against himself or to confess guilt”. The source submits that Mr. Hassani was convicted solely on the basis of confessions obtained under coercion, at a preliminary hearing where he did not have access to a lawyer, and in the absence of any real evidence.

Response from the Government

21. The Government has not deigned to reply, although the communication was sent to it on 22 June 2016. The Working Group finds this silence all the more regrettable since Morocco has recently shown an increased willingness to cooperate. Its silence in the case in question will not, however, prevent the Working Group from rendering its opinion, as paragraph 15 of the methods of work allows it to do so even in the absence of a response from the Government.

Discussion

22. In this case, the source has presented coherent facts that are credible a priori and the source is itself reliable. It was therefore for the Government to counter the source’s allegations with relevant evidence, to which end it could have produced police reports, documentation on the investigation, the indictment, rulings or other documents that must be in its possession in order to support its challenge. The Government’s silence can therefore only count against it, and as a consequence the Working Group accepts the facts as reported by the source.

23. Thus, Mr. Hassani was arrested on 15 December 2004 by the intelligence services, placed in incommunicado detention and subjected to various acts of torture, without ever being informed of the accusations against him. On 15 January 2005, he was brought before the court without the assistance of a lawyer, the only evidence being the confessions that he had signed under coercion after multiple acts of torture. The lawyer who later represented him raised several objections that were not addressed. On 9 November 2005, Mr. Hassani was sentenced to death for conspiracy to commit a murder that had occurred in 1996. In November 2013, upon re-examination of the case, his sentence was commuted to 15 years’ imprisonment because he had been a minor at the time of the crime, and Moroccan law does not permit the death penalty for minors. His appeal in cassation was rejected and his sentence upheld.

24. The failure to inform Mr. Hassani of the reasons for his arrest violates article 9 (1) of the International Covenant on Civil and Political Rights, as does his subsequent detention, quite apart from the fact that he was held in incommunicado detention, thus violating his right to have his family duly informed of his place of detention and to be promptly brought before a judge for court supervision. In such conditions, the arrest and detention of Mr. Hassani falls under category I as defined in the aforementioned methods of work.

25. The subsequent proceedings against Mr. Hassani were all rendered unjust by a number of shared irregularities. Firstly, Mr. Hassani did not benefit from the assistance of a lawyer from the time of his arrest, despite the very serious nature of the accusations against him. Secondly, no follow-up was given to the objections raised by his lawyer, even to reject them. Lastly, and more seriously, the only evidence in his case was the confessions that he had signed under coercion following several sessions of torture of numerous types. The prohibition of torture is an absolute and peremptory norm; any violation of that norm accompanied by the use of an illegally obtained confession is therefore a major additional

factor that renders the proceedings entirely unjust.¹ Additionally, article 14 (3) (g) of the International Covenant on Civil and Political Rights prohibits compelling accused persons to testify against themselves, and the use of confessions obtained by force would violate that rule. Here, the violation of the right to a fair trial is sufficiently serious for the continued detention of Mr. Hassani to fall within category III of the methods of work.

26. Furthermore, the allegations of torture in this case should be submitted to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment so that an in-depth investigation may be undertaken and any appropriate measures adopted.

Disposition

27. In consideration of the above, the Working Group renders the following opinion:

The arrest and continued detention of Mr. Hassani are arbitrary and fall under categories I and III of the categories applied by the Working Group; the Government of Morocco has an obligation to bring the victim's detention to an end and to provide him with appropriate compensation.

28. The Working Group therefore requests the immediate release of Mr. Hassani and appropriate compensation for the serious violations committed against him.

29. In conformity with paragraph 33 (a) of its methods of work, the Working Group refers the case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Follow-up procedure

30. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Hassani has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to him;
- (c) Whether an investigation has been conducted into the violation of Mr. Hassani's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the Government with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

31. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

¹ This vital rule on the prohibition of torture and the inadmissibility in criminal proceedings of any evidence obtained through torture is established clearly by the Human Rights Committee in its general comment No. 20 (1992) on the prohibition of torture or other cruel, degrading treatment or punishment and its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial. Furthermore, the European Court of Human Rights has also recognized this rule in its references to the right to a fair trial as defined in the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) of 1950, particularly in *Gäfgen v. Germany* (Grand Chamber, decision of 1 June 2010), para. 166.

32. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of the progress made in implementing the recommendations, as well as any failure to take action.

33. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with it and has requested them 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 it of the steps they have taken.²

[Adopted on 23 August 2016]

² See Human Rights Council resolution 24/7, paras. 3 and 7.