

Opinion No. 5/2009 (Lebanon)

Communication addressed to the Government on 13 November 2008

Concerning: Messrs. Alaa Kasem Lefte, Kaseem Atalla Zayer, Walid Taleb Suleiman Muhammad Al Dilimi, Ali Fadel Al Hsaynawi Elyawi, Kheiry Hussein Hajji, Mouayed Allawi Al Kinany Abed, Ali Al-Tamimi, Ahmad Fathi Hamid, Ziad Tarek Al Abdallah Touman, Ramadan Abdelrahman Hajj and Ahmad Naji Al Aamery

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
2. (Same text as paragraph 3 of Opinion No. 17/2008.)
3. Considering the allegations formulated, the Working Group would have wished the Government's cooperation. In the absence of any information provided by the Government, the Working Group holds that it may deliver an opinion based on the facts and the circumstances related to the cases in question, all the more since the Government has not disputed the facts mentioned and the allegations contained in the communication.
4. The cases mentioned below were reported to the Working Group on Arbitrary Detention as follows:
 5. (a) Mr. Alaa Kasem Lefte, of Iraqi nationality, born on 1 January 1986, labourer in a cement factory, resident of Hindiya, Jadwal Al Gharbi, Towarij, Karbala, and recognized as a refugee by the Office of the United Nations High Commissioner for Refugees (UNHCR), was arrested on 1 February 2007 by members of the security forces who did not show any arrest warrant. He was then sentenced to two a half months in prison for illegal entry into the Lebanese territory.
 - (b) Mr. Kassem Atalla Zayer, of Iraqi nationality, born in 1982, owner of a laundry, resident of Kerbala, Al Hindiya, and recognized as a refugee by UNHCR, was arrested on 10 April 2007 by agents of the security forces who did not show any arrest warrant. He had entered Lebanon in May 2005. He was sentenced to one month of prison for illegal entry into the territory according to article 32 of the Act of 1962 on the entry, stay and exit of aliens.
 - (c) Mr. Walid Taleb Suleiman Muhammad Al Dilimi, of Iraqi nationality, born in 1978, resident at 8th February Street, Hay Al Tamim, Ramadi, and recognized as a refugee by UNHCR, was arrested on 23 April 2007 by members of the security forces who did not show any arrest warrant.
 - (d) Mr. Ali Fadel Al Hsaynawi Elyawi, of Iraqi nationality, born on 20 January 1969, resident of Basra, Ashar, recognized as a refugee by UNHCR and holder of refugee certificate No. 245-00C16182 issued on 6 July 2007, was arrested on 20 February 2007 by general security agents. He was sentenced to one month in prison for illegal entry into the Lebanese territory and for providing the name of a non-existent person as a guarantor.

(e) Mr. Kheiry Hussein Hajji, of Iraqi nationality, born on 10 August 1972, holder of Iraqi identity card No. 350727, member of the Yezidi religious minority, employed in his father's liquor store, resident of Ninewa, Mosul, recognized as a refugee by UNHCR and holder of refugee certificate No. 245-04C02044, was arrested on 17 December 2006 by agents of the security forces who did not show any arrest warrant. He was sentenced to one month in prison. The source adds that, in view of his membership of a religious minority, his continued detention may affect his physical integrity and his safety.

(f) Mr. Mouayed Allawi Al Kinany Abed, of Iraqi nationality, born on 25 August 1982, resident of Sadr City, Baghdad, milliner, and recognized as a refugee by UNHCR, was arrested on 9 April 2007 by members of the security forces of the Ministry of the Interior. He was sentenced to one month in prison.

(g) Mr. Ali Al-Tamimi, of Iraqi nationality, born in 1966, holder of identity record No. 141092 issued by the Iraqi Ministry of the Interior on 22 November 2004, janitor, resident of Hay Al Jihad, Baghdad, and recognized as a refugee by UNHCR, was arrested on 12 April 2007 in the Wadi Khalid sector of the Lebanese border with Iraq by general security agents. He was sentenced to one month of prison and detained in the Tripoli, Quba, Halba and Roumieh prisons.

(h) Mr. Ahmad Fathi Hamid, of Iraqi nationality, born in 1974, resident of Hay Al Zuhur, Mousi, recognized as a refugee by UNHCR and holder of refugee certificate No. 245-07C00429 issued on 5 March 2007, was arrested on 17 February 2007 by agents of the security forces. He was sentenced to one month in prison.

(i) Mr. Ziad Tarek Al Abdallah Touman, of Iraqi nationality, born on 1 November 1983, salesman, resident of Baghdad and recognized as a refugee by UNHCR, was arrested on 12 April 2007 by members of the security forces of the Ministry of the Interior. He was sentenced to one month in prison.

(j) Mr. Ramadan Abdelrahman Hajj, of Iraqi nationality, born in 1953, ambulance driver in Iraq and janitor in Lebanon, resident of Airport Road, Hay el Jezaer, Mosul and recognized as a refugee by UNHCR, was arrested on 3 March 2007 by members of the security forces of the Ministry of the Interior. He was sentenced to 10 days in prison.

(k) Mr. Ahmad Naji Al Aamery, of Iraqi nationality, born in 1988, baker, resident of Ghazaleya, Baghdad, recognized as a refugee by UNHCR and holder of refugee certificate No. 245-06C00967 issued on 9 March 2007, was arrested on 27 July 2006 by members of the security forces of the Ministry of the Interior. He was sentenced by the court of Beirut to three months in prison, payment of a Lebanese Pound (LP) 200.00 fine and deportation, having been found guilty of illegal entry into the territory and possession of three forged Syrian identity documents, under article 32 of the Act of 1962 on the entry, stay and exit of aliens and articles 463/219, 463/454 and 464/454 of the Criminal Code.

6. According to the information received, these 11 persons were turned over to General Security in order to be deported and, after serving their sentences, were taken to buildings C and D of Roumiyeh prison, where their Iraqi passports and identity documents were confiscated. Although UNHCR had recognized their refugee status, their deportation was ordered on the grounds of illegal entry into or stay in the Lebanese territory, pursuant to article 32 of the Act of 1962 on the entry, stay and exit of aliens.

7. Although the period of time of their respective sentences has elapsed, these persons are still detained. No judicial or administrative decision prolonging their detention beyond the prison term has been issued. Moreover, they are jailed together with ordinary criminals and offenders.

8. The source adds that the discretionary power of General Security is very broad and vague and that the detention of these persons during the enforcement of the deportation

orders is in any case contrary to the Lebanese Republic's international obligation to respect the principle of non-refoulement. There is no maximum detention for persons waiting to be deported. Moreover, detainees have no possibility to appear before a judge in order to ask for a judicial review of the deportation decision.

9. In its Deliberation No. 5 on the situation regarding immigrants and asylum-seekers (cf. E/CN.4/2000/4, annex II), the Working Group has clearly stated that the administrative custody of immigrants and asylum seekers may in no case be unlimited or of excessive length because a maximum period should be set by law (Deliberation No. 5, principle 7). The detention of foreign citizens in an irregular situation, immigrants and asylum seekers for an indefinite period is at variance with international law.

10. The Working Group also stated that the asylum-seeker or immigrant must be able to apply for a remedy to a judicial authority, which shall decide promptly on the lawfulness of the measure and, where appropriate, order the release of the person concerned; and that the notification of the custodial measure must set out the conditions under which the asylum-seeker or immigrant should be able to apply for such a remedy (principle 8).

11. In view of the widespread character of illegal emigration, the Working Group has repeatedly, since 1999, formulated various resolutions stating that the unlimited detention of a non-citizen on the grounds of his or her irregular situation is arbitrary.

12. Thus, in its last report (A/HRC/10/21, paragraph 67), the Working Group reminded States that the detention of asylum seekers, refugees and immigrants in an irregular situation must be the last resort and permissible only for the shortest period of time, and that alternatives to detention should be sought whenever possible.

13. The Government has not denied that the detention of the 11 persons listed above is part of the Lebanese authorities' practice of arresting Iraqi refugees without a valid visa and detaining them for an indefinite period in order to compel them to return to Iraq. These persons risk wasting away in prison interminably, unless they accept to return to Iraq.

14. Lebanon has not signed the United Nations Convention Relating to the Status of Refugees of 1951, and the Lebanese authorities do not ascribe any significant legal value to the recognition of refugee status to Iraqis by UNHCR.

15. The Working Group considers that compelling refugees to return to a country where their lives and freedoms are in danger clearly violates the principle of non-refoulement. These persons were accused and sentenced for illegally entering or residing in the territory of Lebanon, while actually they sought the international protection of the Lebanese Republic in exercise of their right to request and enjoy asylum under article 14 of the Universal Declaration of Human Rights. Considering the exceptional situation of war, violence and persecution in their country, it is impossible to maintain that these persons should have followed the normal procedure and fulfilled ordinary administrative formalities to travel abroad, obtain a valid passport and apply for a visa in order to enter Lebanon legally.

16. The Working Group considers that these persons are kept in detention although they have already served their criminal sentences; without any judicial authorization; without the possibility of applying for review to a judge or magistrate or of having recourse to another means of contesting the legality of their detention; and in violation of customary international law and of the principles and standards in force regarding the right to asylum.

17. The Working Group reiterates that it must be possible to challenge the legality of detention before an ordinary judicial authority and that such legality must be subject to review in due form within a specific time limit. Measures should always be taken to render detention illegal, if, *inter alia*, expulsion is impossible on the basis of legal considerations,

including the principle of non-refoulement, which precludes a person's removal in the event of risk of torture or of arbitrary detention in the country of destination.

18. Imprisonment of persons having entered a country irregularly may be used only as a measure of last resort before proceeding with the expulsion. Imprisonment must be as short as possible and should be applied only according to rules clearly laid down and defined in detail. Asylum seekers, refugees or immigrants in an irregular situation should not be characterized or treated as offenders.

19. It must always be possible to challenge administrative custody before the courts. Such custody should in no case be unlimited or of excessive length; and should not depend on the behaviour of the non-citizen having irregularly entered the national territory, if there are grounds preventing the Government from expelling such a person.

20. The Lebanese Government did not deny the source's affirmations to the effect that the 11 persons in question are indefinitely deprived of liberty on the sole grounds of being non-citizens having entered the country in an irregular manner. This situation leads to an additional violation, since UNHCR has granted these persons refugee status in accordance with the United Nations Convention Relating to the Status of Refugees of 1951 and the principle of non-refoulement has not been taken into consideration in their cases.

21. The Working Group notes that the refusal of the Lebanese authorities to regularize the situation of the persons concerned not only affects those in detention but may lead the majority of Iraqi refugees to live in constant fear of being arrested.

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

The deprivation of liberty of Messrs. Alaa Kasem Lefte, Kaseem Atalla Zayer, Walid Taleb Suleiman Muhammad Al Dilimi, Ali Fadel Al Hsaynawi Elyawi, Kheiry Hussein Hajji, Mouayed Allawi Al Kinany Abed, Ali Al-Tamimi, Ahmad Fathi Hamid, Ziad Tarek Al Abdallah Touman, Ramadan Abdelrahman Hajj and Ahmad Naji Al Aamery is arbitrary, violating articles 9, 10 and 14 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls into categories I and III of the criteria used in considering cases submitted to the Working Group.

23. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of the persons in question, in conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 7 May 2009