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Human Rights Council Working Group on Arbitrary Detention

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No. 55/2011 (Lebanon)

Communication addressed to the Government on 9 February 2011

Concerning: Jawad Kazem Mhabes Mohammed Al Jabouri

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

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; the mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

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 sentence or despite an amnesty law applicable to him) (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 the 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; 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. Jawad Kazem Mhabes Mohammed Al Jabouri (Mr. Al Jabouri), an Iraqi national born on 4 September 1964, holder of Iraqi passport No. 033 1837 and Refugee Certificate No. 245-06C00030 issued by the Office of the United Nations High Commissioner for Refugees, was employed at a service station.

4. Mr. Al Jabouri was reportedly arrested on 4 November 2007 at his workplace, the Rida Tabaja service station in Kfartabnita, southern Lebanon, by plain-clothes officers of the General Security service, without an arrest warrant.

5. According to the information received, Mr. Al Jabouri was initially placed in Tebnin prison and was subsequently transferred to the following detention centres:

- Tyre prison and then Jezzine prison
- Roumieh central prison, in September 2008
- The General Security service police station on 22 January 2010
- Roumieh central prison on 27 March 2010
- The Directorate General of General Security, Adlieh, Beirut on 20 August 2010, where he subsequently remained until the date of the source's main communication

6. The source draws a distinction between two periods of detention. The arrest and initial detention first took place between 4 November 2007 and 27 March 2010, and was reportedly ordered by the public prosecutor responsible for southern Lebanon, pursuant to article 32 of the Act of 10 July 1962 governing aliens' entry to, departure from and stay in Lebanon. On 15 November 2007, Mr. Al Jabouri was reportedly sentenced to 3 months' imprisonment and issued with a fine of 300,000 Lebanese pounds and a deportation order for entering the country illegally. Instead of being released after 3 months, Mr. Al Jabouri remained in detention for around 2 years.

7. The source thus maintains that the detention of Mr. Al Jabouri from 4 November 2007 to 27 March 2010 violated article 8 of the Constitution, according to which "Individual liberty is guaranteed and protected. No one may be arrested or detained except in accordance with the provisions of the law." The source also alleges that Mr. Al Jabouri's detention is a violation of articles 403 and 406 of the Code of Criminal Procedure, article 371 of the Criminal Code and article 58 of decree No. 14310 of 11 February 1949 on the regime applicable to prisons and places of detention.

8. Mr. Al Jabouri's second period of detention began on 27 March 2010 and continued (under arrest warrant No. 16533). On 27 March 2010, Mr. Al Jabouri was charged by the Baabda region public prosecutor with a breach of article 34 of the Act of 10 July 1962 governing aliens' entry to, departure from and stay in Lebanon, for violating the administrative decision ordering his deportation.

9. On 20 April 2010 the criminal judge of the Al Metn court reportedly delivered a final verdict on the charges of violating an administrative decision. The judge dismissed the case in the absence of substantive facts. In other words, there had been no infringement of

the administrative deportation decision, as it had not been shown that the order had been issued in compliance with article 17 of the Act of 10 July 1962 governing aliens' entry to, departure from and stay in Lebanon. In light of the above, the judge ordered the immediate release of Mr. Al Jabouri.

10. Meanwhile, Mr. Al Jabouri's lawyer filed an application for compensation from the State for the prolonged arbitrary detention, pursuant to article 579, paragraph 3, of the Code of Criminal Procedure. On 8 June 2010, the court granted this request for compensation. According to the information received, the judge called for the immediate release of Mr. Al Jabouri or payment by the State of 250,000 Lebanese pounds for each day of detention. Furthermore, the State was requested to pay the sum of 10 million Lebanese pounds in compensation to Mr. Al Jabouri. On 19 August 2010, the State submitted an appeal against this ruling, the outcome of which is still pending.

11. On 20 September 2010, the Mount Lebanon region public prosecutor again referred the case to the same judge in Al Metn. On 5 October 2012, the judge upheld the verdict and stated that Mr. Al Jabouri could not be tried twice for the same crime.

12. Article 9, paragraph 1, of the International Covenant on Civil and Political Rights states that "No one shall be subjected to arbitrary arrest or detention". It further specifies that "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law". Despite the decision calling for his immediate release, the authorities had not freed Mr. Al Jabouri when the communication was submitted.

13. The source concludes that the deprivation of liberty of Mr. Al Jabouri is arbitrary as it is without proper legal basis and violates the guarantees of a fair and just trial.

Response from the Government

14. The Government in its response dated 26 May 2011 informed the Working Group that Mr. Al Jabouri, an Iraqi citizen, had been transferred to the Directorate General of General Security on 2 November 2010 by court order, on the basis of an alleged violation of a deportation order. He was also subject to a ban on entering the territory for fraud and the use of fraudulent documents. The Government stated that on 12 May 2011 Mr. Al Jabouri had been accompanied to the Office of the United Nations High Commissioner for Refugees to submit an application for asylum, which had been rejected, that he had appealed against the decision and that he categorically refused voluntary return.

Further comments from the source

15. In a letter dated 8 July 2011, the source contests some of the points made by the Government in its response. Regarding the transfer of Mr. Al Jabouri to the General Security facility on 2 November 2010, the source states that the transfer date was 29 October 2010 and that before that date Mr. Al Jabouri had been detained in the same facility on several occasions. The source maintains that the court decision to which the Government refers acquitted Mr. Al Jabouri of all charges. According to the source, on 20 September 2010 the Mount Lebanon region public prosecutor again referred the case to the court on the basis of a violation of a deportation order. On 5 October 2010, the judge ruled that Mr. Al Jabouri could not be tried twice for the same crime, and ordered his release, but he was never released.

16. The source states that the information provided by the Government, which said that on 12 May 2011 Mr. Al Jabouri was taken to the Office of the United Nations High Commissioner for Refugees to appeal the decision denying his request for asylum, is incorrect. Mr. Al Jabouri has held recognized refugee status since 2006 under registration No. 245-06C00030. His refugee status was not at issue; it was his request for resettlement

in the United States that was being appealed. The source provided evidence of his Refugee Certificate to the Working Group.

17. The source corroborates the allegation that Mr. Al Jabouri refused to voluntarily return to Iraq. According to the source, Mr. Al Jabouri's refusal was the result of the pressure and other forms of harassment he suffered from the Lebanese authorities and the Iraqi embassy to force him to sign the deportation papers.

18. The source points to a contradiction in the Government's response, where reference is made to a decision on Mr. Al Jabouri's residence in Lebanon which was pending, owing to instructions from the Minister of the Interior to temporarily halt the deportation procedure. The source states that the Government did not specify the legal basis for the continued detention of Mr. Al Jabouri. According to the source, the detention was in violation of article 9 of the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, article 8 of the Lebanese Constitution, articles 403 and 406 of the Code of Criminal Procedure, article 371 of the Criminal Code and article 58 of decree No. 14310.

19. In a communication dated 4 October 2011, the source informed the Working Group that Mr. Al Jabouri had been deported to Iraq that day.

Discussion

20. Regarding the detention of illegal migrants, the former Commission on Human Rights clarified and extended the mandate of the Working Group in its resolution 1997/50 of 1997 to cover the issue of administrative detention of asylum seekers and migrants. In addition, the Working Group adopted its deliberation No. 5 on the human rights guarantees that asylum seekers and immigrants in detention should enjoy. The Working Group's opinion expressed therein supports the decriminalization of this type of detention.

21. Along the same lines, the principle of proportionality always requires that detention be used only as a last resort, and that when it is used, strict legal limitations and effective judicial guarantees must be in place. The justifications required for the detention, such as the risk that the migrant will seek to abscond or to avoid a possible expulsion ordered by the judicial authorities, must be clearly defined and enumerated in the legislation.

22. Lastly, a maximum duration must be specified, at the end of which the detained person must be freed. Such detention should never be used as a dissuasive measure. It must be ordered by a judge and be subject to regular judicial review of its lawfulness and reasonableness as required by the provisions of article 9, paragraph 4, of the International Covenant on Civil and Political Rights.

23. In the present case, Mr. Al Jabouri was arrested for illegally entering Lebanon and he remained in detention from 4 November 2007 until 4 October 2011. A distinction must be made between the two periods of detention. During the detention period between 4 November 2007 and 27 March 2010, Mr. Al Jabouri was sentenced on 15 November 2007 to 3 months' imprisonment and was issued with a deportation order. After serving his sentence, Mr. Al Jabouri remained in prison without any court decision for almost two years. Such detention violates article 9 of the International Covenant on Civil and Political Rights and article 9 of the Universal Declaration of Human Rights.

24. The detention period from 27 March 2010 was based on the failure to comply with the detention order. The Working Group considers that such a legal basis was no longer valid following the verdict issued on 20 April 2010 by the criminal judge of the Al Metn court ordering the immediate release of Mr. Al Jabouri. The judge ruled on this issue again on 5 October 2010, following a new review application by the Mount Lebanon region

public prosecutor. Despite these two court decisions ordering his immediate release, he remained in detention until the day of his deportation.

25. The Working Group notes a disturbing tendency in Lebanon to place refugees, asylum seekers and migrants in an irregular situation in administrative custody (see, for instance, opinions No. 5/2009 (Lebanon); opinion No. 12/2011 (Lebanon); and opinion No. 14/2011 (Lebanon)). It is unfortunate that in its response the Government did not at any moment attempt to cooperate with the Working Group and provide it with useful information, particularly with regard to the serious allegations mentioned in this opinion. Furthermore, the Working Group categorically condemns the decision by the Government to deport Mr. Al Jabouri without giving him the possibility to contest his long-term arbitrary detention or to seek compensation for damages.

Disposition

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

The deprivation of liberty of Mr. Al Jabouri was arbitrary and constitutes a breach of 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, falling within category I and IV of the categories applicable to the consideration of cases submitted to the Working Group.

27. Consequent upon the opinion rendered, the Working Group requests the Government to provide Mr. Al Jabouri with adequate compensation for any suffering as a result of detention and to conform in future to the principles governing the detention of migrants.

28. The Working Group requests the Government to respect the principle of non-refoulement stipulated by customary international law, under which no Contracting State may expel an asylum seeker or return a refugee to a territory where his or her life or freedom may be at risk.

29. The Working Group requests the Government to cooperate more closely with the Working Group in the future, in accordance with the resolutions of the Human Rights Council.

[Adopted on 17 November 2011]
