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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-second session, 16–25 November 2011

No. 56/2011 (Lebanon)

Communication addressed to the Government on 29 March 2011

Concerning: Mohammad Khairallah Hamid Ali

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 by Council resolution 15/18 of 30 September 2010. Acting in accordance with its methods of work, the Working Group forwarded the above-mentioned communication to the Government.

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 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. Mohammad Khairallah Hamid Ali (henceforth known as Mr. Hamid Ali), a Sudanese citizen, born in 1980 and in possession of a refugee certificate issued by the regional office of the United Nations High Commissioner for Refugees (UNHCR) in Beirut, works in a carpenter's shop in Beirut, Lebanon.

4. It is reported that, on 16 October 2010, Mr. Hamid Ali was arrested in Jounieh, Keserwan district, Mount Lebanon governorate, by General Security officers. According to the information received, Mr. Hamid Ali was accused of having entered Lebanon illegally in violation of article 32 of the Act of 10 July 1962 regulating the entry and residence of aliens in Lebanon and their departure from the country.

5. According to the communication, Mr. Hamid Ali was placed in custody at the General Security police station in Adlieh, Beirut, where he is being held to this day. He has still not been brought before a judge or been officially charged with a criminal offence.

6. The source maintains that Mr. Hamid Ali's detention since 16 October 2010 is arbitrary because it is without legal basis. Article 8 of the Lebanese Constitution provides that "Individual freedom is guaranteed and protected. No one may be arrested or detained except as provided for by law." According to the source, Mr. Hamid Ali remains in detention and has not been brought before the judicial authorities. Furthermore, the duration of his detention has greatly exceeded the maximum period allowed before he must be brought before a judge, which is 48 hours and which may be extended once in keeping with articles 42 and 47 of the Lebanese Code of Criminal Procedure.

7. According to the source, Mr. Hamid Ali's detention constitutes a violation of Principle 3 of the Guarantees concerning persons held in custody (see E/CN.4/2000/4), which provides that: "Any asylum seeker or immigrant placed in custody must be brought promptly before a judicial or other authority." His detention also violates Principle 6, which provides that: "The decision must be taken by a duly empowered authority with a sufficient level of responsibility and must be founded on criteria of legality established by the law." The source maintains that only a judicial body is competent to rule on a person's detention. Administrative custody is limited to cases where the person concerned is a threat to public safety in conformity with articles 17 and 18 of the Act of 10 July 1962 regulating the entry and residence of aliens in Lebanon and their departure from the country. According to the communication, Mr. Hamid Ali is not a threat to public safety in Lebanon and, therefore, his custody cannot be deemed to be administrative.

8. According to the source, Mr. Hamid Ali's detention also constitutes a violation of Principle 9 of the "Guarantees concerning detention", which provides that: "Custody must be effected in a public establishment specifically intended for this purpose [...]" His custody in a police station for almost 200 days is not, according to the source, being effected in a public establishment specifically intended for that purpose.

Response from the Government

9. The Government, in its response dated 24 May 2011, confirms that Mr. Hamid Ali remains in detention pending the conclusion of the formalities relating to his deportation, a

measure which has been taken following the rejection of his application for refugee status by the regional office of UNHCR in Beirut and in agreement with the Embassy of Sudan.

Comments by the source

10. In comments dated 8 July 2011, the source maintains that the Government does not refute the allegation that Mr. Hamid Ali has not been brought before a judge or been charged with any offence, which, in the source's opinion, confirms the arbitrary nature of his detention. The source further maintains that the rejection of his application for refugee status has no bearing on the violations resulting from his detention. Lastly, the source informs the Working Group that Mr. Hamid Ali was deported to Sudan in early June 2011.

Discussion

11. With regard to the detention of migrants in an irregular situation, in 1997 the former Commission on Human Rights clarified and extended the mandate of the Working Group in resolution 1997/50 by including the question of the administrative custody of asylum seekers and migrants.

12. In one of its annual reports (A/HRC/10/21, para. 67), the Working Group reminded States that the detention of asylum seekers, refugees and immigrants in an irregular situation should 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 Working Group, in deliberation No. 5 on the detention of immigrants and asylum seekers (see E/CN.4/2000/4, annex II), clearly stated that the administrative custody of immigrants and asylum seekers may in no case be unlimited or of excessive length and that a maximum period should be set by the law (deliberation No. 5; Principle 7). The indefinite detention of foreign citizens in an irregular situation, immigrants and asylum seekers runs counter to international law. A maximum period of detention should be set, at the end of which the detained person must be freed. Such detention should never be used as a dissuasive measure. In accordance with article 9, paragraph 4 of the International Covenant on Civil and Political Rights, the detention must be ordered by a judge and be subject to regular judicial review of its lawfulness and reasonableness.

14. In that connection, the principle of proportionality requires that detention be used as the last resort and, in such cases, that strict legal limitations and effective judicial guarantees be established. Thus, the reasons that may be given for such detention, such as the risk that the migrant will seek to avoid justice or possible expulsion ordered by the judicial authorities, must be clearly defined and exhaustively enumerated in the relevant legislation.

15. Since his arrest on 16 October 2010, Mr. Hamid Ali has been held in custody in a police station for more than 9 months. He has never been formally charged or brought before a judge, nor did he have the opportunity to contest the legality of his detention prior to his deportation in June 2011. The Working Group deems such a deprivation of liberty to violate the guarantees set out in articles 9, 10 and 11 of the Universal Declaration of Human Rights, and in articles 9 and 14 of the International Covenant on Civil and Political Rights.

16. Regrettably, in its response, the Government, makes no effort at any time to cooperate with the Working Group by providing it with relevant information, particularly concerning the serious allegations contained in this opinion. The Working Group notes a disturbing tendency to place refugees, asylum seekers and migrants in an irregular situation in Lebanon in administrative custody (for example, see opinion No. 5/2009 (Lebanon)); opinion No. 12/2011 (Lebanon); opinion No. 14/2011 (Lebanon) and opinion No. 55/2011 (Lebanon). Lastly, the Working Group deplores the fact that, while it was considering the

case, the Government deported Mr. Hamid Ali in June 2011, without giving him the opportunity to contest his detention.

Opinion and recommendations

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

(a) The detention of Mr. Hamid Ali since 16 October 2010 is arbitrary, falling under categories I and IV established by the Working Group, and runs counter to 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.

18. The Working Group accordingly requests the Government to compensate Mr. Hamid Ali for the injury done to him during his arbitrary detention.

19. The Working Group also requests the Government to comply with the principles governing the detention of migrants and to respect the principle of non-refoulement recognized by customary international law, according to which no contracting State may expel an asylum seeker or force a refugee to return to a territory where their life and freedom would be under threat.

20. Lastly, the Working Group requests the Government to cooperate more fully with it in the future, in keeping with the resolutions of the Human Rights Council.

[Adopted on 17 November 2011]
