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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session (14–23 November 2012)

No. 44/2012 (Lebanon)

Communication addressed to the Government on 30 July 2012

Concerning Badria Abu Meri

The Government has not replied to the communication.

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

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the former Commission on Human Rights. Its mandate was clarified and extended by the Commission in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted 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 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

3. Badria Abu Meri (hereinafter Ms. Abu Meri), aged 45, is a Lebanese citizen and resident of Katermaya, a village in the department of Chouf, Mount Lebanon. She is married and has two children.

4. In April 2010, a murder was committed in the village in which she lived. An elderly couple and their two grandchildren, who were all relatives of Ms. Abu Meri, were found dead. The main suspect, Mohammad Salim Al Msallem, was arrested by the internal security forces (Forces de sécurité de l'intérieur (FSI)) on 28 April 2010. When the FSI officers arrived at the scene of the crime the day after the murders, Mr. Al Msallem had been brutally beaten, and the officers had to take him to hospital. Some of the villagers followed them and attacked and killed Mr. Al Msallem and then left his body in a public square. The security forces could reportedly do nothing to prevent the attack.

5. On 22 May 2010, Ms. Abu Meri was summoned to appear before the court of Baabda, in south-west Beirut, in connection with the murder of her relatives. When she arrived at the courthouse, she was arrested by the FSI on suspicion of having incited Mr. Al Msallem to commit murder.

6. That same day, according to the allegations received, Ms. Abu Meri was tortured by the FSI investigator, Mr. Haytham Abdullah. He reportedly tried to extract a confession from her. She was beaten with sticks and punched.

7. On 23 May 2010, Ms. Abu Meri told the prosecutor, Mr. Claud Karam, about the acts of torture to which she had been subjected. It was not until almost two years later, on 15 February 2012, that the FSI investigator, Mr. Haytham Abdullah, was questioned by the investigating judge Mr. Mohamad Badran, at a hearing held in the court of Baabda.

8. After her arrest, Ms. Abu Meri was incarcerated in the women's prison in Baabda. Despite being interviewed on numerous occasions by the prosecutor and the investigating judge, she was never formally charged. Moreover, she was only recently able to hire a lawyer because most lawyers would refuse to defend her due to the sensitive nature of her case. None of the interview sessions were conducted in the presence of a lawyer.

9. Ms. Abu Meri is still in the Baabda prison today. That prison was originally designed to house a maximum of 36 prisoners but now holds between 90 and 100 women. They share small cells and some are forced to sleep on the floor.

10. The source considers Ms. Abu Meri's detention to be arbitrary because it has no legal basis whatsoever. Ms. Abu Meri has been incarcerated since 22 May 2010 without having been informed of the charges against her or the reasons for her arrest. According to the source, such treatment is a violation of article 108 of the Lebanese Code of Criminal Procedure.

11. The source claims that the infringement of the right to a fair and equitable trial is so serious that it renders Ms. Abu Meri's detention arbitrary. To this day, Ms. Abu Meri has not been brought before a judge to stand trial, as required under article 14, paragraphs 1 and 3 (c), of the International Covenant on Civil and Political Rights. Moreover, until recently, Ms. Abu Meri was not able to obtain legal assistance or the services of a lawyer, contrary to

the provisions of article 14, paragraph 3 (d), of the Covenant and principle 18, paragraphs 1 and 2, of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Response from the Government

12. The Government has not responded within the deadline established in the methods of work of the Working Group or requested an extension of that deadline. The Working Group considers itself to be in a position to issue an opinion on the basis of the information it has received.

Discussion

13. The information submitted by the source has not been contradicted by the Government. It appears from this information that:

(a) Ms. Abu Meri was arrested on 22 May 2010 by agents of the internal security forces (FSI) on suspicion of having incited Mr. Mohammad Salim Al Msallem to murder four members of her family;

(b) Ms. Abu Meri is still in custody awaiting trial 30 months after her arrest, and due process has not been observed in the proceedings against her;

(c) Although she has been questioned several times by the investigators of the public prosecution service and by the investigating judge, she has not been accused of any specific offence that justifies the deprivation of her liberty;

(d) Ms. Abu Meri was subjected to torture and ill-treatment by the FSI investigator inasmuch as she was beaten with a stick and punched;

(e) Although she reported the acts of torture to which she had been subjected to the prosecutor, no inquiry was opened into the matter;

(f) The investigator accused of torturing Ms. Abu Meri was not questioned by the public prosecutor until 15 February 2012, in other words, 21 months after she had reported the torture and the ill-treatment she had experienced;

(g) She was unable to obtain the assistance of a defence lawyer because most lawyers would refuse to defend her due to the sensitive nature of her case;

(h) All the interviews with Ms. Abu Meri were carried out without a lawyer present because Ms. Abu Meri was not able to obtain legal assistance or the services of an attorney or even a court-appointed defence lawyer.

14. The Working Group notes that Ms. Abu Meri, who has been in prison since 22 May 2010, was not informed of the charges against her or the reasons for her arrest. To this day, she has not been brought before a judge to stand trial as required under article 14, paragraphs 1 and 3, of the International Covenant on Civil and Political Rights.

15. The Working Group also notes that the infringement of her right to a fair and equitable trial is so serious that it renders Ms. Abu Meri's detention arbitrary.

16. The facts described above violate the rights set forth in articles 5, 8, 10 and 11 of the Universal Declaration of Human Rights, as well as those set forth in article 2, paragraph 3 (a) and (b), article 9 (particularly para. 3), article 10 and article 14 of the International Covenant on Civil and Political Rights. The violation of these rights is so serious as to render the deprivation of liberty of Ms. Abu Meri arbitrary.

Disposition

17. In light of the above, the Working Group renders the following opinion:
The detention of Badria Abu Meri is arbitrary under category III of the methods of work of the Working Group.
18. Consequently, the Working Group recommends that the Government release Ms. Abu Meri immediately.
19. The Working Group also recommends that the Government grant Ms. Abu Meri appropriate compensation.

[Adopted on 15 November 2012]
